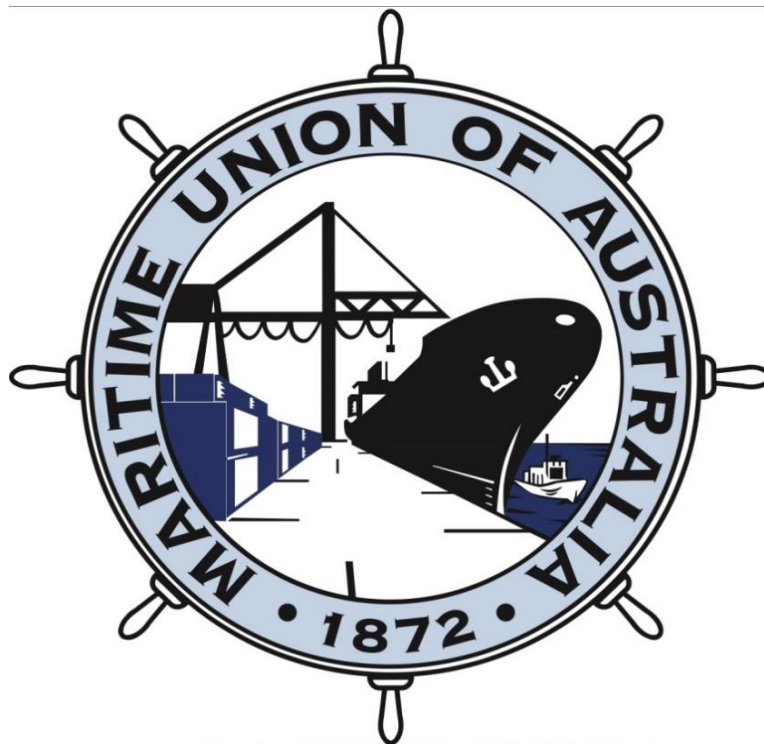


Submission by the Maritime Union of Australia

**The Joint Standing Committee on Foreign
Affairs, Defence and Trade Inquiry into the
implications of the COVID-19 pandemic for
Australia's foreign affairs, defence and trade**



24 July 2020

Australian Parliament

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Introduction

This submission has been prepared by Maritime Union of Australia (MUA). The MUA is a Division of the 120,000-member Construction, Forestry, Maritime, Mining and Energy Union and an affiliate of the 20-million-member International Transport Workers' Federation (ITF).

The MUA represents approximately 14,000 workers in the shipping, offshore oil and gas, stevedoring, port services and commercial diving sectors of the Australian maritime industry. The MUA is also part of an Offshore Alliance with the Australian Workers Union that jointly organises workers across the Australian offshore oil and gas industry.

The MUA notes and supports the submission to the Committee from the International Transport Workers Federation (ITF).

The MUA represent workers across various areas of maritime operations where workers in those operations were impacted by the COVID-19 pandemic. These include:

- Onshore workers in ports who are required to interact with domestic and international ships docking at Australian ports and with landside workers involved in road and rail transportation to and from ports. International ships include both cargo ships and passenger ships, mainly large cruise ships. These workers include:
 - Container stevedoring workers (including dockworkers who board cargo ships to undertake lashing of containers);
 - Break bulk ship stevedoring workers (including dockworkers who board break bulk ships to assist with loading and unloading in ship's hatches);
 - Cruise ship baggage handlers, operators of gangplanks or passageways used for the embarkation and disembarkation of passengers and wharf workers that load stores;
 - Ship mooring workers;
 - Port security workers.
- On-water services workers servicing cargo and passenger ships i.e. workers involved in towage, mooring, pilotage, bunkering, waste removal.
- Harbour/river ferry workers.
- Shipboard workers (ship's crew) including (i) marine crew; and (ii) in the case of passenger ships non marine crew (collectively defined as seafarers in this submission).
- Offshore oil and gas industry seafarers servicing oil and gas platforms.

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Summary

The COVID-19 pandemic has had an extraordinary impact on workers in the maritime industry. On the one hand, it has displayed how important the work of maritime workers is to keep the economy functioning and to continue the movement of essential goods. However, the sacrifices and risks that maritime workers have taken to continue their work has not been properly recognised. Workers have been told to take extreme precautions in their personal life, yet were subjected to employer resistance, discipline and loss of pay if they attempted to take equivalent measures at work.

The COVID-19 pandemic has revealed critical risks in Australia's long and fragmented supply chains that arises from the nation's almost complete dependency on the use of international ships (most registered in Flag of Convenience¹ nations) not only in our international trades, but in domestic coastal trades. Reform is needed to strengthen supply chain resilience. The establishment of the Maritime Response Group by the Department of Infrastructure, Transport, Regional Development and Communications (Department of Infrastructure) shows the advantages of a more coordinated approach and government oversight of shipping. Yet much more action is needed to ensure the nation is fully equipped to deal with this unfolding global pandemic and any future crisis that impacts on supply chains.

There has been a decline in trade through virtually all ports as economic activity slowed. The cruise industry has been shut down entirely, along with jobs supplying and servicing cruise ships. The offshore oil and gas industry has also experienced an abrupt decline, as the price of oil first plunged for geopolitical reasons and then due to oversupply when demand dropped due to the global lockdown. The stress of dealing with the virus at work is now compounded with loss of income and redundancies. These workforce vulnerability factors, when combined with the weakness of WHS law in addressing the power imbalance between employers and workers, is likely to make workers more reluctant to raise safety issues in the future.

The situation of seafarers on international ships is acute. On the one hand, most Australian imports and exports are by sea and the Australian economy is highly reliant on the labour of international seafarers. On the other hand, an estimated 300,000 seafarers are stranded on their ships with many forced to work months beyond the end of their employment contracts.² Border restrictions by the Australian and other governments are making it extremely difficult for seafarers to return home and be replaced by new crew. The Australian government must put much more effort into solving this problem.

The crisis has shown the value of union collective agreements. In Australian workplaces covered by union negotiated collective agreements, the MUA has been able to improve safety and significantly reduce the effects of the economic downturn on workers. These have been negotiated outcomes with clear triggers for return to normal operations. Workers without the protection of a union negotiated collective agreement have found their work and livelihood upended, without consultation or recourse. We also note that since the beginning of the pandemic it has become much more difficult to conclude the negotiation of enterprise agreements with employers. Given that the percentage of Australian workers covered by union-negotiated enterprise agreements is already quite low, we are concerned that this could be reduced even further.

¹ A flag of convenience ship is one that flies the flag of a country other than the country of ownership.

² The MLC Standard A2.1 (Seafarers' employment agreements) requires that seafarers working on ships shall have a seafarers' employment agreement signed by both the seafarer and the shipowner or a representative of the shipowner, which may incorporate the collective agreement or award that applies to the seafarer which shall be referred to in the SEA and shall form part of the seafarer's employment agreement.

The cases of COVID-19 on the *Ruby Princess*, other cruise ships, and the cargo ship *Al Kuwait* and other cargo ships (both case studies examined in more detail below) have largely been discussed in the media as if we could close our borders to such ships. Yet the current economy and the international supply chains that serve the economy are wholly integrated with international shipping. These case studies must be examined in detail to understand the complexity and failings of the international system of ship regulation, and the failings of the Australian agencies tasked with keeping ships and ship's crews safe.

These case studies reveal the source and cause of the crisis in international shipping, the failures of regulation and of gaps in biosecurity and work health and safety arrangements.

A key lesson arising from these cases is that human biosecurity risk mitigation relies on ensuring that ships and wharves are safe for workers. Biosecurity arrangements at the border are an after-the-event risk management strategy. If ships and wharves as workplaces are safe and free from disease and illness, the chance of infectious diseases spreading in Australia and elsewhere is significantly minimised.

The submission outlines a set of reforms at both the international and domestic level that Australian governments, supported by stakeholders, can take, beginning immediately, to resolve the crisis in international ship regulation and management, both cruise and cargo, and in resolving the over-dependence on foreign ships in domestic shipping.

The reforms we propose are designed to minimise biosecurity risks, reduce modern slavery risks and which will improve the work health and safety arrangements on ships so they are safe workplaces, improve labour standards for seafarers and ensure seafarers can properly enjoy their rights as provided in International Conventions of the International Labour Organisation (ILO) and International Maritime Organisation (IMO).

These reforms, which we hope the Inquiry is persuaded to support, will when implemented, help protect Australians from viral pandemic transmission across borders, ensure seafarers are safe and protected at work and improve Australia's supply chain resilience.

The MUA submission addresses the following terms of reference:

1. Threats to the global rules-based order that emerged due to actions by nation states during the pandemic, and how such threats can be mitigated in the event of future crises;
2. The impact on human rights;
3. Supply chain integrity / assurance to critical enablers of Australian security (such as health, economic and transport systems, and defence); and

The submission contains 2 recommendations addressing policy and practical measures would be required to form an ongoing effective national framework to ensure the resilience required to underpin Australia's economic and strategic objectives.

Addressing term of reference 1: Threats to the global rules-based order that emerged due to actions by nation states during the pandemic, and how such threats can be mitigated in the event of future crises; and term of reference 2: The impact on human rights

Managing risk in workplaces dealing with international maritime trade

The administration of the 14-day quarantine period

Many MUA members work in workplaces that constantly interface with international shipping. To deal with these risks, a 14-day quarantine period was recommended by Australian Border Force (ABF)³, initially for ships arriving from certain countries, and then extended to all countries – but this was inconsistently implemented by port entities in Australia.

For example, the Port Authority of NSW (PANSW) and Maritime Safety Queensland (MSG) both implemented a 14-day quarantine period in accordance with the ABF guidance (except in the privatised Port of Brisbane, where there is no external port authority because of the way the port sale was organised). Terminal operators in the Pilbara adopted a set of risk mitigation measures including the requirement for vessels to wait the full 14 days after departure from their previous port before being granted a berth at the terminal by the relevant harbourmaster. The Pilbara Port Authority developed a risk assessment process to determine the likelihood of risk and identify where vessels presented low risk, allowing them to enter the port before the expiration of the 14-day quarantine period, but apply the ABF guidance restrictions. Both Queensland and Northern Territory implemented a health screening process for newly arrived vessels in their first port of call.

It is our submission that for cargo ships the 14-day quarantine period should be enforced by all ports for any ship arriving from an international port to their first port of call in Australia (exceptions to this could be declared, for example for vessels arriving from New Zealand or Pacific Islands), meaning there should be no berthing and therefore no loading/unloading (no pratique granted) until the 14 day period has elapsed. However, this could be modified in ports where it is practicable to undertake onboard health screening at anchorage before berthing at the unloading wharf and before pratique is granted.

The MUA view is that on board health screening checks (typically requiring swabs being obtained on board for onshore testing) should be an important feature of a robust human biosecurity health assessment (what we propose as a stage 2 assessment – which follows a stage 1 assessment derived from the Pre-Arrival Report (PAR) supplied by a ship, that is loaded into the Maritime Arrivals Reporting System (MARS). Based on the PAR, MARS generates a Biosecurity Status Document (BSD) in response to certain biosecurity risks identified by the information provided by the ship.

The BSD uses a traffic light system as a visual cue to alert the user regarding the vessel's status and any associated directions or advice issued by the Department of Agriculture, Water and the Environment (Agriculture). Information that is inputted into MARS is processed by the Maritime National Coordination Centre (MNCC). Human health information input into MARS is directed to the MNCC for assessment if the vessel reports: a death on board; an illness on board and an affirmative answer to one or more of the subsequent questions regarding symptoms in the PAR; or an illness on board and no answer to one or more of those subsequent questions.

In relation to human health, the BSD that is generated via MARS will include a red traffic light in the section 'Vessel Pratique and Ship Sanitation' if the vessel has not yet submitted a PAR. The traffic

³ ABF, *Restrictions on Commercial Maritime Vessels and Crew*, 1 April 2020.

light in this section will be orange if the vessel has declared human health issues or has requested a Ship Sanitation Certificate. The traffic light will be green if the vessel has been granted pratique.⁴

However, the whole system is only as effective as the quality and accuracy of the information inputs provided by the ship. It relies on a self-declaration by the ship's master in the PAR. In most cases this does not trigger a board inspection of the ship by a biosecurity officer.⁵

In the cases of the *MV Northern Precision*, *OOCL Norfolk* and *Cosco Thailand*, PAR declarations made under that MARS system led to vessels being required to remain outside the port, enabling NSW Health to transport COVID-19 swabs to the vessels at anchorage, undertake the swabbing and return those swabs to an onshore laboratory for testing.

Gaps or inaccuracies in the self-declaration process are discussed in the case study of the *Al Kuwait* and we recommend changes to the MARS. The MUA has also proposed a best practice pilotage and pratique process in its submission to the NSW Special Commission of Inquiry into the *Ruby Princess*, which we outline later in the submission.

We also submit that biosecurity processes and risk assessment must be integrated with a full and proper application of the International Labour Organisation (ILO) Maritime Labour Convention (MLC), particularly to facilitate crew access to medical treatment onshore and an orderly and timely crew change procedure. This is also discussed further in the case studies.

Recommendation 1: That the Joint Committee recommend that the ABF amend its guidance on *Restrictions on Commercial Maritime Vessels and Crew* to clarify that the 14-day quarantine period means there should be no berthing and therefore no loading/unloading (no pratique granted) until the 14 day period has elapsed. This requirement must be enforced by all ports for any ship arriving from an international port to their first port of call in Australia (with only limited exceptions, for example for vessels arriving from New Zealand or Pacific Islands). Where on board screening results in clearance of any suspect case of a declared communicable disease on board, the ship may berth and commence loading/unloading in under 14 days with implementation of the current ABF restrictions.

Case study: COVID 19 on the *Ruby Princess* and in the NSW cruise ship industry

We submit that there was a breakdown in the application of the work health and safety (WHS) system, of WHS regulation (including compliance and enforcement) and in biosecurity arrangements during the COVID-19 pandemic which resulted in maritime workers being exposed to avoidable risk of infection from COVID-19. We use the cruise industry in NSW as an example.

In NSW we say this breakdown occurred in two circumstances: (i) in relation to the onshore (and on water) maritime workforce at NSW ports servicing cruise ships; and (ii) in relation to seafarers onboard international cruise ships docking at NSW ports. The examples we refer to involve the WHS

⁴ A comprehensive outline of the Biosecurity reporting obligations and information-gathering procedures are contained in the *Voluntary Statement of the Commonwealth of Australia*, dated 12 June 2020, submitted to the NSW Special Commission of Inquiry into the *Ruby Princess*, Exhibit 114, <https://www.rubyprincessinquiry.nsw.gov.au/assets/scirp/files/Exhibit-114.pdf>.

⁵ The Biosecurity Status Document (BSD) is triggered by information lodged in the Maritime Arrivals Reporting System (MARS) operated by the Commonwealth Department of Agriculture, Water and the Environment. The MARS Pre-Arrival Report requires the master/ship's agent/shipowner to declare any biosecurity threats, including human illness and in this case COVID-19 symptoms. The information contained within the BSD then informs the next steps of communication with agencies.

arrangements applying in the case of the cruise ship, the *Ruby Princess*, but the principles apply to all cruise ships, and also apply to all cargo ships. We provide a case study of COVID-19 cases on board the cargo ship *Al Kuwait* later in the submission.

It should also be noted that there were multiple COVID-19 cases in passengers and crew on number of other cruise ships at a similar time as the *Ruby Princess*. These ships have similar management structures, and we believe similar issues are present with these vessels and the companies that own/operate/charter them (Table 1).

Table 1: Known cases of COVID 19 associated with cruise ships deemed home-ported in Australia. [The *Ovation of the Seas*, *Voyager of the Seas* and *Celebrity Solstice* were ordered to leave NSW and Australian waters on 5 April 2020. All ships discharged their final passengers in Sydney on around 17-19 March 2020.]

Ship name Nation of registration (Flag)	Beneficial owner (location)	Reported COVID cases	Homeport (where ship loaded and discharged passengers)
Ovation of the Seas <i>Bahamas</i>	Royal Caribbean (USA)	84 passengers	Sydney, for multiple short trips from 19 Oct 2019 – March 2020
Voyager of the Seas <i>Bahamas</i>	Royal Caribbean (USA)	34 passengers and 5 crew	Sydney, for multiple short trips from 29 November 2019 – March 2020
Celebrity Solstice <i>Malta</i>	Royal Caribbean (USA)	12 passengers	Sydney, for multiple short trips from 10 October 2019 – March 2020
Ruby Princess <i>Bermuda</i>	Princess Cruise Ltd (USA) – a company in the Carnival PLC Group	600 passengers, including 21 deaths and 203 crew (at 23 April 2020) ⁶ , Approximately 10 crew were treated in hospital, while others were treated in quarantine.	Sydney, for multiple short trips from 22 Oct 2019 – March 2020

Source: I Maritime commercial ship database. NSW health [media releases](#) on 2 and 3 April. Naaaman Zhou, [Ruby Princess crew fear for their health as ship leaves Australia](#), The Guardian, 23 April 2020.

The extent of systemic failure of ship regulation, WHS regulation applying to international seafarers and application of the rights of seafarers deriving from international Conventions like the ILO MLC to which Australia and other nations involved in ship regulation are signatories, highlighted in the case of both the cruise and cargo ship sectors during the COVID-19 pandemic, indicates that both national and global solutions are required to address these systemic failures.

Failures by the Port Authority of NSW

⁶ NSW Special Commission of Inquiry into the Ruby Princess, Exhibit 57, Statement of Dr McAnulty, dated 15 June 2020, [117]–[120], <https://www.rubyprincessinquiry.nsw.gov.au/assets/scirp/files/Exhibit-57.pdf>.

In relation to the onshore (and on water) maritime workforce at NSW ports servicing cruise ships, we submit that the Port Authority of NSW (PANSW)⁷ failed to adopt the required standards of due diligence and risk management practices in the performance of its functions, particularly the harbourmaster functions, which require it to determine if it is safe for a ship to berth at a NSW port for which the PANSW has ship navigation responsibility.

In performing its functions, the PANSW did not put in place adequate and robust systems to ensure that they were made aware of the COVID-19 risk on cruise ships, that could create a health and or safety risk to port and on water workers in the port of Sydney under the control of the PANSW. It is these port workers who are exposed to seafarers and or passengers on cruise ships like the *Ruby Princess* where all the available information indicated the likelihood of COVID-19 infection on board those ships.

In the case of the *Ruby Princess* the PANSW failed to put in place a robust due diligence system to ensure it had all the information it needed from both the *Ruby Princess* cruise ship and NSW Health on the health status of seafarers and passengers to undertake an appropriate assessment of risk, and instead relied on “self-declaration” from the ship, notwithstanding:

- A World Health Organisation declaration of the COVID-19 pandemic in February 2020;
- On 18 March 2020, the Governor-General declared (under s 475 of the Biosecurity Act) that a human biosecurity emergency exists: Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) Declaration 2020 (Cth).⁵⁸
- On the same day, the Commonwealth Health Minister determined a requirement under s 477 of the Act: Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements) Determination 2020 (Cth). The effect of that determination was that an international cruise ship must not enter a port in Australian territory before 15 April 2020 unless:
 - A permission given by the Comptroller-General of Customs was in force for the ship to enter the port on the basis that the ship is in distress or that emergency circumstances exist, or
 - The ship had departed a port outside Australian territory before the end of 15 March 2020 and was bound directly for a port in Australian territory.
- The public information about COVID-19 infection outbreaks on the *Diamond Princess* and *Grand Princess* and learnings and experience available from those ships;
- Correspondence from the Sydney Branch of the Maritime Union of Australia (MUA) of 29 January 2020 to the PANSW raising concerns about the adequacy of ship self-declaration systems when dealing with a human biosecurity risk like COVID-19 and proposing that

⁷ The Port Authority of NSW (PANSW) is a statutory state owned corporation established under the [State Owned Corporations Act 1989 \(NSW\)](#) and [Ports and Maritime Administration Act 1995 \(NSW\)](#), and operates in accordance with those Acts. Other significant legislation affecting the PANSW for ship safety and WHS purposes includes:

- The [Public Health \(COVID-19 Maritime Quarantine\) Order 2020 made under the Public Health Act 2010](#) of 28 March 2020;
- The [Biosecurity Act 2015 \(Cth\)](#) and in particular the *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements) Determination 2020* made under the Biosecurity Act, of 27 March 2020;
- The [Marine Safety Act 1998 \(NSW\)](#) and associated Regulations;
- The *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* (Cth);
- The [Maritime Transport and Offshore Facilities Security Act 2003 \(Cth\)](#) and associated Regulations;
- The *Navigation Act 2012* (Cth) and in particular, Marine Order 64 (Vessel traffic services) 2013, made under that Act; and
- The [Work Health and Safety Act 2011 \(NSW\)](#) and associated Regulations.

Departmental biosecurity officers undertake their own biosecurity assessments aboard the ship before unloading/loading passengers or cargo, and not rely upon the self-declaration reports provided by ship's masters. The self-declaration systems referred to are: (i) the Department of Agriculture, Water and the Environment (Department of Agriculture) Pre-Arrival Report (PAR) and Human Health Report as part of the Maritime Arrivals Reporting System (MARS); (ii) the NSW Health Pre Arrival Risk Assessment and Acute Respiratory Diseases (ADR) Log; and the PANSW Biosecurity Declaration.⁸

- The concerns that the PANSW held about the veracity of health information being supplied by the *Ruby Princess* when it docked on 8 March 2020, as evidenced by PANSW witnesses statements tendered, and evidence given by PANSW executives, before the NSW Special Commission of Inquiry into the *Ruby Princess*⁹ that could have been utilised in decision making about the entry of the *Ruby Princess* to Sydney Harbour on 18/19 March 2020; and
- The fact that the *Ruby Princess* had cut short its NZ cruise itinerary due to respiratory illness on board the ship, prior to returning to Sydney on 18/19 March 2020.

We understand that the PANSW commenced an investigation shortly after 8 March 2020 as to why the ship had reported to the PANSW Vessel Traffic Services (VTS) it had no ill passengers or seafarers onboard, despite reporting through the MARS, required by the Department of Agriculture under Section 193 of the *Biosecurity Act 2015*, that there were 128 people on board who were sick, 24 of whom had an elevated temperature (we don't know how many, if any were seafarers, though we know that 3 seafarers were swabbed in port on 8 March 2020). This raises a concern about false declarations from ships to PANSW, especially when the MARS report provided by the ship's master on 18 March 2020 advised there were 36 people on board with respiratory symptoms, just under the 1% threshold used by NSW Health to meet its 'low risk' assessment on a respiratory outbreak (that did not trigger on board screening). There were a total of 3,795 people on board at 18 March 2020, comprising 2,647 passengers and 1,148 seafarers.¹⁰

Notwithstanding the PANSW concerns, and commencement of an investigation which resulted in production of a PANSW COVID-19 Response Scenario Matrix to assist the harbourmaster and VTS staff in managing ship arrivals/departures during the COVID-19 pandemic, the PANSW did not sufficiently elevate its risk management processes, did not properly promulgate awareness of the Matrix to ensure it was well understood among staff, nor provide adequate training (if any) to ensure that VTS staff knew how to use the Matrix.

Additionally, PANSW did not effectively utilise its statutory powers. There is no reason why the PANSW could not, as one outcome from its investigation, have sought a Ministerial Direction under section 87 (General functions of harbour master) subsection (3) (The exercise of the functions of a harbour master are subject to any directions given from time to time to the harbour master by the Minister) to strengthen the VTS reporting requirements from cruise ships (or all ships), and to ensure

⁸ The PANSW Biosecurity Declaration at April 2020 included six questions: (i) What were the last 5 ports of call?; (ii) Are there any ill passengers or crew on board?; (iii) Are any crew members showing symptoms of COVID-19 on board?; (iv) Has the vessel been in mainland China, Iran, Republic of Korea, or Italy in the last 14 days?; (v) What date did the vessel depart these countries?; (vi) Has any person on the vessel been in contact with a proven case of novel coronavirus infection in the last 14 days?. It also asked: Are there any crew or passengers who have left, or transited through, mainland China, Iran, Republic of Korea, or Italy less than 14 days ago?

⁹ See for example the Statement of Stephen Howieson dated 27 April 2020 (Exhibit 25) at Para 60 – <https://www.rubyprincessinquiry.nsw.gov.au/assets/scirp/files/Exhibit-25.pdf>, Exhibit 23 (The statement of Sarah Marshall), Annexure J, P44/45 and Exhibit 25, PP89-119.

¹⁰ NSW Commission of Inquiry into the Ruby Princess, Statement of Stephen Howieson, Human Health Report, P114-116, 27 April 2020 (Exhibit 25).

there was sharing of MARS advice from the Department of Agriculture and of health assessments undertaken by NSW Health.

These failures, along with the failure of NSW Health to undertake an adequate health due diligence assessment process before determining the *Ruby Princess* was “low risk” (in our view it should have tested all seafarers and passengers and had access to the results prior to disembarkation), thus approving disembarkation before COVID-19 swab results were known that are well documented in the evidence before the Commission Inquiry into the *Ruby Princess*, led to the PANSW having both inadequate information and inadequate processes to perform a risk assessment on: (i) the health and safety risks and therefore the controls required to ensure the health and safety of the marine pilot who was required to board the *Ruby Princess* on 18 March 2020; and (ii) whether it was safe for the ship to proceed to berth, and once berthed and new information about possible COVID-19 infection on board came to the attention of the PANSW¹¹ staff prior to disembarkation, whether to return to anchor in Sydney Harbour to prevent disembarkation. That procedure would have provided time to make those important assessments about the health and safety risks to onshore workers involved in baggage handling and other wharfside roles once disembarkation of passengers was to proceed, as it did on 19 March 2020. We say that the sole discretion to determine the navigation of the ship in Sydney Harbour rested with the PANSW harbourmaster, and not with any Commonwealth agency, or the NSW Commissioner of Police.

We note in evidence before the NSW Commission of Inquiry into the *Ruby Princess* that NSW Health has relied on one of two methods to determine if a ship is low, medium or high risk in determining the appropriate biosecurity response i.e. what action is to be taken before disembarkation or unloading. The first method is whether the number of cases presenting with ILI (Influenza Like Illness) exceeds that expected for the specific itinerary and season (an outbreak) drawn from the US Center for Disease Control (CDC) definition of “1.38 cases per 1,000 traveller days”, while the second method, favoured by NSW Health, is outbreaks of influenza or ILI ($\geq 1\%$) among passengers and crew members.¹² We wish to make the point that neither methodology should be accepted as a risk threshold for work health and safety purposes, where the standard must be zero tolerance of infection.

Furthermore, it appears that PANSW did not have an agreed procedure with NSW Health to ensure that both agencies compared intelligence so the health status of seafarers and or passengers could be properly assessed before making critical decisions on: (i) berthing a cruise ship which brings the ship into contact with onshore workers (not only those directly related to the ship operations, but for example, private sector security workers and public sector workers from various state and federal agencies); or (ii) disembarking a cruise ship, which releases passengers and seafarers (who may be completing a swing or a contract and returning to their home city or nation) into the community.

PANSW also failed as an employer to comply with its duty as a person conducting a business or undertaking (PCBU) to consult with workers under sections 47 to 49 of the NSW *Work Health and Safety Act 2011* (WHS Act NSW). Section 47 imposes a duty to consult, while s48 outlines the nature of consultation that *inter alia* requires the views of workers to be considered and that decisions taken reported back to the workforce. S49 addresses the circumstances when consultation is required – all subsections being highly relevant in relation to the COVID-19 risks. It also requires that the PCBU i.e. PANSW must also have meaningful and open consultation about work health and

¹¹ Statement of Stephen Howieson dated 27 April 2020 (Exhibit 25), whole statement.

¹² NSW Commission of Inquiry into the *Ruby Princess*, *Exhibit 28: Statement of Dr Sean Tobin*, 29 May 2020, Para 33, <https://www.rubyprincessinquiry.nsw.gov.au/assets/scirp/files/Exhibit-28.pdf>.

safety with workers, HSRs, and health and safety committees. No such consultation occurred as far as we are aware.

The same duties fell on the other PCBUs at the Sydney Overseas Passenger Terminal i.e. employers of labour at the port servicing cruise ships and the *Ruby Princess* in particular. We are concerned that the towage company, Engage Marine, the mooring company, Ausport Marine and the bunkering company Inco Ships, may not have fully complied with their s47 obligations as a PCBU under the WHS Act NSW. Whilst ignorance of the law is not a defence, it may well have been the apparent lack of structured communication channels between the PANSW and its contractors that may potentially have led those companies to not comply with their statutory obligations.

It also appears that PANSW had no formal relationship with SafeWork NSW which presumably could have been of major assistance to PANSW in designing and implementing robust WHS due diligence and risk assessment processes, to implementation of hazard control measures and provision of guidance to its workforce, as well as to the companies it engages to perform port services, as well as to its stakeholders, including ships entering Sydney Harbour. It is now clear that health pandemics as declared under Biosecurity and Health Acts should be notifiable incidents under the WHS Act NSW and that the WHS Act NSW be amended to accommodate that requirement.

Throughout the COVID-19 pandemic, we have been concerned about the lack of visibility of SafeWork NSW, especially in relation to ports where Australian workforces come into direct contact with ships in the context of the well-publicised risk of COVID-19 transmission from workers (and in the cruise sector, passengers) arriving from other countries with known COVID-19 outbreaks. It was of course those known risks that resulted in the Australian Border Force (ABF) advice on *Restrictions on Commercial Maritime Vessels and Crew: Travel restriction for all non-Australian citizens and non-residents* issued on 1 April 2020, and other measures taken by some State port regulators to reduce COVID-19 transmission risk.

If NSW Health was primarily concerned with passengers and broad public health issues, and if the PANSW was primarily concerned about the navigational safety aspects of the ship, that surely requires SafeWork NSW to be concerned about the onshore and on-water workforce interface with incoming ships at NSW ports. While SafeWork NSW provided case study guidance information for some specific sectors such as agriculture, construction, grocery/retailer, office environments, road freight, small business tradespeople and taxi and ride share, it provided no guidance to the marine sector, and nothing specifically for the cruise ship sector, notwithstanding the high viral transmission risk.

It is our submission that PANSW performance as an Australian Maritime Safety Authority (AMSA) authorised Vessel Service Traffic (VTS) provider under Marine Order 64 (Vessel traffic services) 2013 should be reviewed by AMSA or an independent auditor, and at the very least AMSA should impose new conditions on PANSW requiring it to:

- Develop, in consultation with stakeholders, a new risk assessment framework that addresses WHS risks for port workers such as the risks arising from communicable diseases like COVID-19:
 - And that the new protocols include a publicly available MOU or similar instrument setting out cooperative information exchange and communication arrangements between the two organisations, and that part of that communication require the PANSW to convey decisions arising from communication and information exchange to the port workforce, maritime unions and employers of port workers;
- Consult SafeWork NSW, NSW Health, employers of workers who perform roles at NSW ports and their trade unions on the WHS risks, on new WHS standards (integrated with health

agency standards) and due diligence processes and protocols to ensure risks to the health and safety of all port workers are taken into consideration in decision making by the harbourmaster and VTS staff in relation to ship entry to ports in circumstances where communicable diseases are prevailing and or pandemics declared; and

- Re-train all VTS staff, including management and the crisis management team, in new risk assessment and risk procedures and protocols.

Recommendation 2: That the Joint Committee recommend that the Commonwealth and States amend model WHS laws so that health pandemics as declared under Biosecurity and State/Territory Public Health Acts are notifiable incidents under WHS law.

Recommendation 3: That the Joint Committee recommend that state governments and the NT Government amend Marine Safety Acts so that:

- It is an offence to provide false information to a harbourmaster; and
- Port authority functions explicitly refer to ensuring the work health and safety of all portside workers.

Failures by the Australian Maritime Safety Authority (AMSA)

It is our submission that AMSA failed to perform its Port State Control (PSC) functions under the *Navigation Act 2012*, functions derived from Australian ratification of the International Labour Organisation (ILO) Maritime Labour Convention (MLC), thereby contributing to seafarers on cruise and cargo ships operating in Australian waters, the seafarers on the *Ruby Princess* in particular, being unnecessarily exposed to the COVID-19 disease.

There are two aspects to AMSAs PSC function where AMSA failed. First, that in conformance with the objective in Article IV(1) of the MLC ("*Every seafarer has the right to a safe and secure workplace that complies with safety standards*") and Article IV(4) of the MLC ("*Every seafarer has a right to health protection, medical care, welfare measures and other forms of social protection*"), AMSA did not take appropriate steps, in the context of the heightened risks to the health and safety of seafarers from COVID-19, to ensure ships, like the *Ruby Princess*, were a safe workplace nor to ensure that seafarers had adequate medical care arising from COVID-19 illness.

Second, that it did not respond appropriately to complaints from seafarers in accordance with Division 19 (*Onshore complaints*) of Marine Order 11 ([Living and working conditions on vessels] 2015¹³) made under the *Navigation Act 2012* (noting that Division 19 of MO11 is one of 2 Divisions in the Marine Order that applies to foreign ships by virtue of s6(2) (application)) where s96(3) of Division 19 requires that AMSA must investigate a complaint from a foreign registered ship and in so doing act in accordance with its obligations under MLC regulations 5.1.4, 5.2.1 and 5.2.2. Nor did AMSA undertake any inquiries of seafarer industrial organisations, NSW Government agencies or other organisations that regularly communicate with foreign seafarers in Australian waters such as seafarer welfare organisations and employee assistance providers (EAPs), nor undertake any direct due diligence assessment or inspection to determine if there were any complaints or matters relating to WHS risk from COVID-19 that required investigation. Two seafarer complaints were submitted to AMSA by the Australian Inspectorate of the International Transport Workers Federation (ITF).

¹³ Marine Order 11 is the principal legislative instrument that gives effect to Australian ratification of the International Labour Organisation (ILO) Maritime Labour Convention (MLC) and guides AMSAs performance of its Flag State Control (FSC) function in relation to Australian (and in some circumstances foreign) flagged ships.

Regulation 5.1.4 of the MLC (Inspection and enforcement) essentially provides for the relevant regulator to have in place a system of inspection and for enforcement. Regulation 5.2 is about enabling the regulators in each nation to implement its responsibilities under the MLC under a system of international cooperation for the implementation and enforcement of the Convention standards on foreign ships. In that context, Regulation 5.2.1 (Inspections in port) provides for the PSC regulator (AMSA in this case) to undertake ship inspection for the purpose of reviewing compliance with the requirements of the MLC (including seafarers' rights) relating to the working and living conditions of seafarers on the ship (and those catch-all provisions specifically includes WHS [denoted in the MLC as Health and safety and accident prevention; and On-board medical care]).

One of the provisions applying to Regulation 5.1.4 provides that the PSC regulator can board a ship to inspect if there is a belief that the working and living conditions on the ship do not conform to the requirements of the MLC. We submit that given all the national and international knowledge of COVID-19, the experiences of cruise ships such as the *Diamond Princess* and *Grand Princess* and the previous experience of the *Ruby Princess* docking on 8 March 2020 that AMSA should have had a heightened concern about COVID-19 risk to the health and safety of ship's seafarers and should have inspected all cruise ships in Australian ports, the *Ruby Princess* in particular, to satisfy itself that the requirements of the MLC to provide a safe workplace for seafarers (and passengers, to whom the company also owes a duty of care) was in fact the case, and as part of that inspection, should have conferred with the organisations and bodies listed below and have regard to the documents listed below:

Organisations and bodies

- The Bermuda Shipping and Maritime Authority (BSMA) (the *Ruby Princess* is registered [flagged] in Bermuda) and in particular ensured the ship was complying with the requirements of the Bermuda *Merchant Shipping (Health and Safety At Work) Regulations 2004* (BR 52/2004) and Bermuda *Merchant Shipping (Seafarer's Employment) Regulations 2013* and any advices the BSMA had published for Bermudan registered ships, such as the Bermuda Merchant Shipping Guidance Notice: *Prevention and Management of COVID-19 on Board* of 3 April 2020;
- The ship Safety Committee, to obtain minutes of its meetings and to know if it conveyed any views to the company on COVID-19 risks and about hazard controls for COVID-19;
- Company managers (on board and onshore) with responsibility for WHS, and Safety Representatives (as described under Bermuda law [the equivalent of Health and Safety Representatives (HSRs) under Australia's model WHS laws]) elected by the workforce or appointed by trade union parties to the collective agreement/s;
- The ship's medical team (to assess medical facilities and supplies of hazard controls such as PPE);
- Agencies such as the Port Authority of NSW regarding its expectations and advices to the ship and NSW Health as to its systems for determining health risk and advices it had provided to the ship;
- The ship's port agent; and
- The trade union representatives of the seafarers i.e. the ITF or any of its seafarer affiliates such as the MUA.

Documents

- The Seafarers Employment Agreements signed individually by each seafarer member (which incorporate seafarer collective agreements, in this case being collective bargaining agreements (CBAs) between Princess Cruise Lines Ltd and the Italian Federation of Transport Workers (FILT/CGIL) and Italian Transport Federation (FIT/CISL)) to assess what those CBAs require of the employer regarding safe workplaces, noting that Articles 5.2 (Illness or injury

[medical on board or onshore]) and Article 29 (Shipboard safety committee and safety representative) in the CBA covering seafarers are relevant;

- The Princess Cruise Lines Ltd Safety Policy and the Injury and Illness Prevention Program required by the California *Occupational Safety and Health Act of 1973* (the company (employer) is based in the State of California);
- The Princess Cruise Lines Ltd Safety Management System for the *Ruby Princess*, required by the International Safety Management (ISM) Code made under the IMO International Convention for the Safety of Life at Sea (SOLAS) Convention and the ILO Guidelines on occupational safety and health management systems, ILO-OSH 2001; and
- COVID guidance (from various agencies such as from the ILO, IMO, WHO, BSMA, as well as Australian health and WHS agencies¹⁴) applicable to the ship.

It is our submission that seafarers on board the *Ruby Princess*:

- Were not properly advised of the risks to their health and safety from COVID-19 from the time of an outbreak of illness on the ship during its voyage from Sydney to NZ commencing on 8 March 2020 until the ship departed Australia on 23 April 2020;
- Were not provided with appropriate PPE at all times from the period since 8 March 2020 i.e. for the whole time the vessel was in Australia and NZ from 8 March 2020 until 23 April 2020;
- Were not properly instructed on how to comply with health agency and WHS agency advice on COVID-19 hazard controls; and
- Were not swabbed and tested for COVID-19 where symptoms were present:
 - This situation existed, notwithstanding that:
 - ❖ Three seafarers and six passengers from the previous cruise had exhibited COVID-19 like symptoms, were kept in isolation and were swabbed by NSW Health on arrival of the ship on 8 March 2020 (even though the results were negative);
 - ❖ The PANSW commenced an investigation shortly after 8 March 2020 as to why the ship had reported to the PANSW VTS it had no ill passengers or seafarers onboard, despite reporting through the Maritime Arrivals Reporting System (MARS) that they had 128 people who were sick, 24 of whom had an elevated temperature;
 - ❖ Despite 3 seafarers being held in isolation in the period leading up to docking on 8 March 2020, being tested and the ship being delayed in port for some hours for its next departure due to COVID-19 risks before it sailed from Australia late on 8 March 2020; and
 - ❖ Despite seafarer concerns about COVID-19 infection resulting in requests to company managers for testing, by seafarers themselves and the ITF representing the seafarers.

As a result, and based on the best information available to the MUA:

- Some seafarers were again required to isolate in their cabins due to exhibiting COVID-19 like symptoms prior to the ship arriving in Australia on 18/19 March 2020, but were not among those who were swabbed for onshore testing on the instruction of NSW Health when the ship docked in Sydney on 19 March 2020;
- At the time that Aspen Medical (contracted to Australian Border Force) collected swabs from somewhere between 80 and 100 symptomatic seafarers while the ship was docked in Port Kembla on 9 April 2020 around 46 tested positive. These seafarers were placed in isolation

¹⁴ See for example Safe Work Australia, *National COVID-19 safe workplace principles*, <https://www.nsw.gov.au/sites/default/files/2020-05/National%20COVID-19%20safe%20workplace%20principles%20-%2024%20April.pdf>

in NSW hotels for treatment, 11 then returning to the ship for sailing on 23 April 2020, while 33 were repatriated by air to their home nation.

- Despite the testing, isolation and treatment in hotels of those who tested positive, and NSW Health declaring the ship was clear to sail on 23 April 2020, some 203 seafarers had tested positive to COVID-19. By the time the ship was off the Qld coast on its way to Manila, Philippines, another 6 seafarers exhibited COVID-19 symptoms and were isolated in their cabin, with an additional seafarer exhibiting symptoms and being isolated by the time the ship arrived in Manila.

The net result is that by 23 April 2020 over 210 *Ruby Princess* seafarers of the 1,148 seafarers on board the *Ruby Process* at the time it docked on 19 March (or over 18 per cent) had contracted the COVID-19 infection. This contrasts with a positive test results for the entire Australian population of 0.6 per cent (at 26 May 2020).¹⁵

There could be no more damning evidence of failure to protect the health and safety of seafarers on the *Ruby Princess* and clearly indicates that the Port Authority of NSW, NSW Health, SafeWork NSW, AMSA, the Bermuda Shipping and Maritime Authority and Princess Cruise Lines Ltd have all failed their duty of care to seafarers and or failed to perform their regulatory functions to ensure the ship was a safe workplace and safe to voyage into international waters. In the case of AMSA and the Bermuda Shipping and Maritime Authority these PSC and Flag State Control (FSC) regulators demonstrated a failure to ensure conformance with the ILO MLC as given effect by both Australian and Bermudan law.

To the best of our knowledge, AMSA did not confer with any of the organisations or bodies listed above nor did it refer to any of the source documents listed above to ensure it was aware of the legal responsibilities of Princess Cruise Lines Ltd (the PCBU) and to ensure compliance the law. The exceptionally high level of COVID-19 infection among seafarers is due in part to the failure of AMSA to perform its regulatory functions.

Regulation 5.2.1 of the MLC deals with how onboard complaints should be managed. It says the inspection shall generally be limited to matters within the scope of the complaint, although a complaint, or its investigation, may provide clear grounds for a detailed inspection especially if the complaint is of a nature that could have application to the workplace as a whole. Note that for the purpose of the Regulation given effect by Standard A5.2.1 (1)(d) of the MLC, a "complaint" means information submitted by a seafarer, a professional body, an association, a trade union or, generally, any person with an interest in the safety of the ship, including an interest in safety or health hazards to seafarers on board.

Regulation 5.2.2 (Onshore seafarer complaint-handling procedures) sets out the process that must apply to ensure that seafarers on ships calling at a port who allege a breach of the requirements of the MLC have the right to report such a complaint in order to facilitate a prompt and practical means of redress. It requires that in cases where complaints are not resolved, the regulator must inform the appropriate shipowners' and seafarers' organisations in the port State.

In summary, we submit that AMSA did not perform as required on both these aspects of the MLC in ensuring cruise ships and the *Ruby Princess* in particular, were a safe workplace and to ensure that seafarers had adequate medical care arising from COVID-19 illness; and that seafarer complaints were managed as required.

¹⁵ Commonwealth Department of Health, *Total COVID tests conducted and test results*, 26 May 2020, <https://www.health.gov.au/resources/total-COVID-19-tests-conducted-and-results>

We do not know if AMSA has a Memorandum of Understanding with the Bermuda Shipping and Maritime Authority, which we understand is a member of the Paris PSC Group (given Bermuda is a British Overseas Territory) and although AMSA is not a member of the Paris PSC Group, as a member of the Tokyo PSC Group covering the Asia Pacific region, it could readily have made contact with the Bermuda Shipping and Maritime Authority or the Paris MOU Group to establish an arrangement for managing the PSC functions as a collaboration between the two PSC agencies.

To our knowledge this was not done. The lack of clarity about PSC responsibility for foreign registered ships undertaking international voyages has been starkly revealed in the case of the *Ruby Princess* while in Australian waters (in the territorial sea).

We submit that AMSA's role as the Australian PSC regulator should be the subject of an independent investigation that is undertaken with the imprimatur of the ILO so the findings gain a level of international ownership and response for application to the worldwide international shipping industry.

Failures by Princess Cruises Lines Ltd

The *Ruby Princess* is registered in Bermuda. The ship owner and ship operator is Princess Cruises Lines Ltd (a company within the Carnival Group, a US company based in Florida. Carnival Corporation and Carnival plc are two entities operating as one but trading on both the New York and London stock exchanges).¹⁶

Princess Cruises Lines Ltd is a US company based in California. The seafarers on the *Ruby Princess*, totalling approximately 1,140 are offered to the ship operator by nation based crewing agencies in nations like the Philippines, India and Italy. The *Ruby Princess* seafarers originate from many different nations including Italy, UK, Croatia, Bulgaria, Philippines, India and Indonesia. The collective bargaining agreements covering seafarers are made between Princess Cruises Lines Ltd and Italian seafarer labour unions, consistent with an ITF Special Agreement.¹⁷

All seafarers¹⁸ on the *Ruby Princess* are required by the MLC and by Section 4 of the Bermuda *Merchant Shipping (Seafarer's Employment) Regulations 2013* (BR 107 / 2013), which applies to any ship registered in Bermuda, to have a signed seafarer's employment agreement (SEA) which shall be in writing, and by virtue of s8 of those Regulations, where any of the terms included in a seafarer's employment agreement are set out in a collective bargaining agreement these shall be referred to in the SEA and shall form part of that employment agreement. The CBA for *Ruby Princess* seafarers

¹⁶ Shipping and seafarer organisations use a global subscription database source to identify the beneficial owner of ships - IHS Maritime. It identified Carnival Corporation as the beneficial owner and Princess Cruise lines as the registered owner. However, evidence given by the company representative before the NSW Special Commission of Inquiry into the Ruby Process, Peter Little, Senior Vice President Guest Experiences, P&O Cruises, stated that the *Ruby Princess* is owned and operated by Princess Cruise Lines under a time charter to Carnival Plc and that Princess Cruise Lines supplied the crew. The collective agreements covering the crew were signed by Princess Cruise Line. Identification of the real owner and employer of crew is a critical issue for compliance with CBAs, compliance with WHS laws and compliance with laws giving effect ILO Conventions.

¹⁷ An ITF Special Agreement is a legally binding document that binds the employer to the relevant ITF approved Collective Bargaining Agreement (CBA). It states which CBA applies, it gives the details of the ship covered and it states the dates the agreement is valid from/to. It states the shipowner obligations and it also states the legal right of ITF representatives to access and inspect the vessel for compliance with the agreement.

¹⁸ A seafarer is defined in the MLC and in the Bermuda *Merchant Shipping (Seafarer's Employment) Regulations 2013* as "any person, including a master, who is employed or engaged or works on any capacity on board a ship, on the business of the ship"

was signed on 1 January 2019 between Princess Cruises Lines Ltd and the Italian Federation of Transport Workers (FILT/CGIL) and Italian Transport Federation (FIT/CISL) and so forms part of the SEA for *Ruby Princess* seafarers. Given those requirements and agreements, seafarers on the *Ruby Princess* are to the best of our knowledge, employees of Princess Cruises Lines Ltd. It is also the person conducting a business or undertaking (PCBU) for WHS purposes.

That being the case, Princess Cruises Lines Ltd as both employer and ship operator, is likely to be bound by:

- The California *Occupational Safety and Health Act of 1973*, requiring it by virtue of section 3203 (Injury and Illness Prevention Program) to establish, implement and maintain an effective Injury and Illness Prevention Program;
- The Bermuda Shipping and Maritime Authority *Merchant Shipping (Health and Safety at Work) Regulations 2004* (BR 52/2004), requiring it (as a duty) to:
 - Ensure the health and safety of workers and other persons [for example, passengers] so far as is reasonably practicable, which duty shall be met by the application of the following principles:
 - ❖ The avoidance of risks, which among other things include the combating of risks at source;
 - ❖ The evaluation of unavoidable risks and the taking of action to reduce them;
 - ❖ Equipment, the working environment and any other factors which may affect health and safety;
 - ❖ Adoption of a coherent approach to management of the vessel or undertaking, taking account of health and safety at every level of the organisation;
 - ❖ Giving collective protective measures priority over individual protective measures; and
 - ❖ The provision of appropriate and relevant information and instruction for workers.
 - Without prejudice to the generality of the duties the matters to which those duties extend shall include in particular:
 - ❖ Provision of systems of work that are, so far as is reasonably practicable, safe and without risk to health;
 - ❖ Maintenance of all places of work in the ship in a condition that is, so far as is reasonably practicable, safe and without risk to health;
 - ❖ Arrangements to ensure, so far as is reasonably practicable, that no person has access to any area of the ship to which it is necessary to restrict access on grounds of health and safety unless the individual concerned has received adequate and appropriate health and safety instruction;
 - ❖ Provision and maintenance of an environment for persons aboard a ship that is, so far as is reasonably practicable, safe and without risk to health;
 - ❖ Collaboration with any other persons to protect, so far as is reasonably practicable, the health and safety of all authorised persons aboard the ship or engaged in loading or unloading activities in relation to that ship.
 - Establish and maintain a health and safety policy.
 - Undertake risk assessments to assess the risks of the health and safety of workers arising in the normal course of their activities or duties, for the purpose of identifying:
 - ❖ Groups of workers at particular risk in the performance of their duties; and
 - ❖ The measures to be taken to comply with the employer's duties under these Regulations; and:
 - ✓ Any significant findings of the assessment and any revision of it shall be brought to the notice of workers.

- ❖ This assessment shall extend to the risks to the health and safety of other persons on board a ship in so far as they may be affected by the acts and omissions of the employer:
 - ✓ The assessment shall be reviewed if there is reason to suspect that it is no longer valid; or there has been a significant change in the matters to which it relates:
 - Measures shall be taken, and if necessary protective equipment supplied, to ensure an improvement in the health and safety of workers and other persons in respect of those risks identified and workers shall be informed of the measures taken for their protection.
- The MLC rights, requiring it to ensure every seafarer has a right to health protection, medical care, welfare measures and other forms of social protection (Article IV).

Based on the advice the MUA has received from the Australian Inspectorate of the ITF (regarding the concerns of seafarers about lack of onboard action to protect their health), which was in regular communication with seafarer members on the *Ruby Princess* during the period the ship entered Sydney Harbour around 18 March 2020 up until it reached the Philippines having departed Port Kembla on 23 April 2020, and on the evidence before the Commission of Inquiry into the *Ruby Princess*, we submit that Princess Cruises Lines Ltd has failed in its duty of care to seafarers on the *Ruby Princess*.

It is our view that Princess Cruises Lines Ltd should be the subject of an independent investigation regarding its WHS practices on the *Ruby Princess* by a panel of WHS experts, trade union and ship owner representatives led by a non-Australian PSC Regulator such as Maritime NZ, preferably with the imprimatur of the ILO so the findings gain a level of international ownership and response.

We say there has been a systemic WHS failure applying to cruise ships in Australia during the COVID-19 pandemic, that has implications for the entire management of WHS applying to international seafarers in the international shipping industry.

It is our proposition that the WHS of international seafarers must be the responsibility of at least one WHS regulator, yet this appears to be unclear while international ships are within Australia's jurisdictional responsibility under laws giving effect to international Conventions applying to ships that impact on seafarers WHS.

It is our view that the appropriate regulator is AMSA and it should therefore have assessed if the principal seafarer employer (Princess Cruise Lines Ltd) complied with its duty of care to both seafarers and passengers in accordance with the company's safety policy and safety management system and with relevant WHS law and guidance. We say that AMSA had that responsibility directly (or at the very least on behalf of the Bermuda Shipping and Maritime Authority) consistent with the requirement for international PSC cooperation implied by the MLC.

If in the circumstances of the *Ruby Princess* there was any doubt as to the duty of Princess Cruises Lines Ltd to provide a safe workplace, or doubt about which legislation applies, AMSA could have sought advice from Safe Work Australia or SafeWork NSW (with which it has a Memorandum of Understanding that provides guidance on respective jurisdictional responsibilities in maritime operations between the two organisations), to ensure that the employer was adopting exemplary WHS practice, and had in place the expected hazard responses based on the principles of all contemporary WHS laws. Alternatively, or in addition, it should have sought to settle an arrangement with the Bermuda Shipping and Maritime Authority.

Failures by the NSW and Commonwealth Health Ministers

It appears to the MUA that both the NSW Health Minister and Commonwealth Health Minister, when exercising their powers under respective legislation either by design and intent, or based on poor advice, when making, in the case of the NSW Minister the Public Health (COVID-19 Maritime Quarantine) Order 2020 of 28 March 2020 and in the case of the Commonwealth Minister, when making the Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements) Determination 2020 of 27 March 2020, to have overridden the operation of NSW WHS law, Commonwealth WHS law, marine law and laws conferring rights on seafarers.

We think this may have occurred because of the principle that Commonwealth law overrides State law to the extent of any inconsistency (derived from section 109 of the Constitution). As the biosecurity powers derived from a Commonwealth law, it and the broad biosecurity arrangement were possibly thought to prevail. We say that if this was the basis for the apparent overriding of State laws, it was an incorrect interpretation as there was no inconsistency on foot. In the case of the hierarchy of powers or authority between NSW state agencies, it appears that the PANSW and SafeWork NSW deferred to powers exercised by NSW Health under the NSW *Public Health Act 2010*, but that does not seem to have been tested or challenged, or a division of powers worked out to enable the specialist responsibilities of each agency under the laws they administer, to continue to function in a cooperative manner.

The result is that safety regulators such as the Port Authority of NSW, SafeWork NSW and AMSA may have been impeded, legally or by misinterpretation or ignorance, from performing their ship and seafarer safety regulatory functions.

Furthermore, we submit that the NSW Commissioner of Police:

- Exceeded his power under the NSW Public Health Order in preventing seafarer representative organisations and WHS inspectors from accessing seafarers on board the *Ruby Princess* and in doing so:
 - Contributed to seafarers having an unsafe workplace resulting in many seafarers contracting COVID-19;
 - Denied ill seafarers the right to onshore medical services in contravention of the requirements of the MLC;
 - Denied seafarers their common law right to legal representation in relation to interviews arising from police evidence gathering processes in relation to a criminal investigation instigated by the NSW Premier; and
- Was not properly authorised under the Biosecurity Determination to instruct ship's masters to leave Australian waters, and even if that power was properly authorised, failed to consult with and take into consideration advice from the following organisations in making such decisions:
 - The Port Authority of NSW which has statutory responsibilities regarding ship navigation within the PANSW VTS area that requires PANSW to ensure the seafarers on board are safe (well enough, and not face known risks to their WHS that could impact on the safe navigation of the ship in international waters after leaving Australia);
 - AMSA regarding the WHS and welfare of seafarers, again to ensure that the seafarers could safely navigate the ship once it left Australian waters and entered international waters; nor
 - Seafarer representative organisations regarding the labour rights of seafarers.

Recommendation 4: That the Joint Committee acknowledge there was a breakdown of work health and safety (WHS) systems and regulation in the maritime industry during the COVID-19 pandemic, which is jeopardizing the health and safety of international seafarers on ships voyaging to and from Australia and workers in Australian ports.

Recommendation 5: That the Joint Committee acknowledge that there remain failings in the Australian biosecurity arrangements applying at seaports and in dealing with international ships docking at Australian ports, which is compounding the health and safety risk to seafarers, to port workers and to the Australian community from the transmission of communicable diseases such as COVID-19.

Recommendation 6: That the Joint Committee recommend that AMSA's role as the Australian Port State Control (PSC) regulator be the subject of an independent investigation involving the International Labour Organisation (ILO) so the findings gain a level of international ownership and response; and that the focus of the investigation be on the actions taken by AMSA and any gaps in the performance of AMSA as PSC regulator during the 2020 COVID-19 pandemic to ensure that:

- Foreign ships were safe workplaces under applicable WHS law;
- Employers of seafarers on foreign ships in Australia's territorial waters (and as PCBUs) complied with their statutory duty to provide a safe workplace for seafarers and complied with all applicable WHS Acts, Regulations and applicable COVID-19 hazard control guidance to ensure that the risk of seafarers contracting COVID-19 were fully applied; and
- Laws giving effect to the ILO MLC were fully applied to ensure seafarers were able to access their rights under those laws in accordance with the intent of the MLC.

Recommendation 7: That the Joint Committee recommend that the Australian and State Governments reform Australia's human biosecurity arrangements by:

- Amending the Commonwealth Maritime Arrivals Reporting System (MARS), the NSW Health Pre Arrival Risk Assessment and Acute Respiratory Diseases (ADR) Log reports, and the PANSW Biosecurity Declaration (with future application to all States and the Northern Territory) to provide clear instructions to ships' masters on the quality, accuracy and detail of reporting, that must contain co-signing by the chief onboard officer responsible for seafarer and passenger health;
- Ensuring there is a common and highly precautionary threshold standard used by State and NT health agencies to determine risk of community transmission of a communicable disease;
- Substantially increasing penalties for false or misleading or inadequate human biosecurity information provision by ships masters;
- Requiring that the state agencies responsible for human biosecurity health assessments of seafarers and passenger be mandated to undertake comprehensive onboard health screening/assessment of seafarers and passengers in circumstances where the WHO or Australian biosecurity officials have declared an outbreak of a communicable disease, before any other onshore workers are permitted to board a ship and before approval is given for ships to commence unloading cargo or disembarking crew and or passengers i.e. before pratique is granted; and
- Requiring that all biosecurity, immigration, customs and marine agencies develop and implement, and make public, appropriate interagency communication protocols that ensures full disclosure of ship reporting under the Pre Arrival Report in MARS to other agencies including marine and WHS agencies, and build these protocols into risk management systems.

Recommendation 8: That the Joint Committee recommend that the Australian and State Governments adopt a best practice pilotage and pratique system based on the following principles:

- Before a ship is approved by a harbourmaster to navigate to a wharf to dock, while it is at an anchorage point, the relevant state health agency be provided with all MARS human biosecurity information for a stage one assessment of the human biosecurity risk presenting on the ship.
- That if a stage one assessment requires swabs for a communicable disease to be tested at an onshore testing laboratory, those swabs be obtained from the ship while at the anchorage point (by water police, by helicopter, by a pilotage ship or other means).
- That based on the test results from swabs and any other human biosecurity information required, the relevant state health agency complete a stage two human biosecurity health assessment.
- That stage two human biosecurity health assessment be then provided by the Chief Human Biosecurity Officer in the state with a recommendation on pratique to the Commonwealth designated Biosecurity Officer, who then makes a decision on pratique (grants pratique).
- That the pratique decision be then provided to the relevant port harbourmaster who subject to written confirmation from the ship's port agent that it has been formally advised of the pratique decision by the Commonwealth designated Biosecurity Officer, is then authorised to make a determination (taking into account the usual ship navigation criteria) as to whether the ship proceeds to berth.
- Pratique, with whatever conditions are attached to the pratique decision, can then practically proceed.

Recommendation 9: That the Joint Committee recommend that the Australian Maritime Safety Authority (AMSA), consistent with its responsibility to authorise Vessel Service Traffic (VTS) providers under Marine Order 64, engage an independent auditor to undertake a review of its VTS authorisation of the Port Authority of NSW (PANSW) with a view to imposing new conditions on PANSW requiring it to:

- Develop, in consultation with stakeholders, a new risk assessment framework that addresses WHS risks for port workers such as the risks arising from communicable diseases such as COVID-19:
 - And that the new protocols include a publicly available MOU or similar instrument setting out cooperative information exchange and communication arrangements between the two organisations, and that part of that communication require the PANSW to convey decisions arising from communication and information exchange to the port workforce, maritime unions and employers of port workers;
- Consult SafeWork NSW, NSW Health, employers of workers who perform roles at NSW ports and their trade unions on the WHS risks, new WHS standards and due diligence processes and protocols to ensure risks to the health and safety of all port workers are taken into consideration in decision making by the harbourmaster and VTS staff in relation to ship entry to ports in circumstances where communicable diseases are prevailing; and
- Re-train all VTS staff, including management and the crisis management team, in new risk assessment and risk procedures and protocols.

Recommendation 10: That the Joint Committee recommend that Princess Cruises Lines Ltd be the subject of an independent investigation regarding its WHS practices by a panel of WHS experts, trade union and ship owner representatives led by a non-Australian PSC Regulator such as Maritime NZ and involving the ILO, to determine if it has breached any WHS law, and if so, recommend that SafeWork NSW or the NSW Director of Public Prosecutions initiate legal proceedings against Princess Cruises Lines Ltd.

[Case study: COVID-19 on the *Al Kuwait* livestock carrier](#)

The outbreak of COVID-19 infection among seafarers onboard the livestock carrier *Al Kuwait* that docked at Fremantle port on 22 May 2020 and the resultant transmission risk to onshore and on-water workers from onboard seafarers has again highlighted systemic work health and safety (WHS) and biosecurity failures in Australia.

Once again, a shipowner has failed to ensure a safe workplace for its seafarers. Commonwealth and State agencies responsible for managing human biosecurity arrangements at an Australian port have failed to adopt fail-safe risk management strategies, nor adequately communicated with marine agencies, resulting in an avoidable transmission risk to onshore workers that has the potential for fatality to occur. This case further demonstrates weaknesses in Australia's biosecurity management in the shipping and ports sector, and inadequate work health and safety (WHS) management on board the *Al Kuwait* and by the ship owner/operator, both failures leading to potential disruption in Australia's supply chain security.

The MUA remains concerned that should outbreaks of COVID-19 occur among the limited number of marine pilots in a port who are invariably the first Australian worker to board a ship navigation from outside Australia, or among waterfront workers, ports would quickly grind to a halt, forcing all trade to cease. Changes must be made to both WHS and biosecurity arrangements to avoid that situation.

On 3 June 2020, the MUA understands from advice provided by the Australian Inspectorate to the ITF there were 20 seafarers on the *Al Kuwait* who tested positive to COVID-19 from a crew complement of 48 seafarers, an infection rate on board the ship of 46 per cent (compared to the Australian rate of 0.6 per cent at 26 May 2020).

The MUA understands that the ship's master reported on 20 May 2020 some two days before the ship berthed, in the Department of Agriculture biosecurity Pre-Arrival Report (PAR), that there were three ill seafarers on board but apparently no details of the symptoms of those seafarers were in the PAR.

On 22 May, the ship provided an updated report to the Department of Agriculture, which notified one crew member with a high temperature plus three showing similar symptoms in the last 15 days. The Department of Agriculture then notified the WA Department of Health, also on 22 May 2020, on the updated information received from the ship, prior to it berthing.

According to media reports, which cited an email from the Department of Agriculture, it included the following advice to the WA Department of Health – "*from the information received there was no concern of COVID-19 on the vessel*".¹⁹ It is not known what assessment the WA Department of Health, as the organisation in the biosecurity chain with human health assessment expertise, made about human biosecurity risk based on the information it received, but it appears that it assessed the ship as low risk i.e. there was no need for its officers to board the ship and undertake a health (human biosecurity) assessment. It also appears however that neither the WA Department of Health, nor the Commonwealth Department of Agriculture, notified the Fremantle Port Authority of any COVID-19 risk on board, which subsequently permitted the ship to dock, on the basis of not having advice that there were any biosecurity issues that would indicate it should not allow the ship to proceed to dock. Subsequently, Commonwealth biosecurity officers and an AMSA inspector boarded the ship, having no advice that there was COVID-19 infection on board.

¹⁹ ABC, *Coronavirus outbreak on live export ship Al Kuwait docked in Fremantle as six test positive for COVID-19*, 26 May 2020, <https://www.abc.net.au/news/2020-05-26/coronavirus-outbreak-on-live-export-ship-al-kuwait-in-fremantle/12287006>

We are also concerned about the way that AMSA has performed its PSC responsibilities, particularly given the *Ruby Princess* incident almost two months previously.. We submit that given all the national and international knowledge of COVID-19 and the experiences of the cruise ship sector that AMSA should have had a heightened concern about COVID-19 risk to the health and safety of ship's seafarers.

Consequently AMSA should have been inspecting all ships entering Australian ports, particularly ships like the *Al Kuwait* with a large crew and no medical expertise or medical facilities on board, to satisfy itself that the requirements of the ILO MLC to provide a safe workplace for seafarers were being applied, and as part of that inspection, should have conferred with the organisations and entities listed below and have regard to the documents listed below:

Organisations and entities

- The Kuwait Marine Transport Department within the Kuwait Ministry of Communications (the Kuwait ship registry) (notwithstanding that Kuwait is not a signatory to the ILO MLC, which places a higher obligation on AMSA to ensure the MLC provisions are being applied as required by the MLC) and in particular ensured the ship was complying with the requirements of the Kuwait Work Health and Safety Law No. 6 of 2010 concerning Labour in the Private Sector, and Decree No. 22 regarding respect for safety precautions at the workplace;
- The ship Safety Committee, to obtain minutes of its meetings and to know if it conveyed any views to the company on COVID-19 risks and about hazard controls for COVID-19;
- Company managers (on board and onshore) with responsibility for WHS, and Safety Representatives (as described under Kuwait law [the equivalent of Health and Safety Representatives (HSRs) under Australia's model WHS laws]) elected by the workforce or appointed by trade union party to the collective agreement;
- The ship's officers responsible for crew health, medical facilities and supplies of hazard controls such as PPE;
- Agencies such as the Fremantle Port Authority regarding its expectations and advices to the ship and WA Department of Health as to its systems for determining health risk and advices it had provided to the ship;
- The ship's port agent;
- The trade union representatives of the seafarers i.e. the ITF or any of its seafarer affiliates.

Documents

- The Seafarers Employment Agreements signed individually by each seafarer member (which incorporate seafarer collective agreements, in this case being a collective bargaining agreement (CBA) between Kuwait Livestock Transport and Trading (the ship owner/operator) and the International Transport Workers Federation (ITF) signed on its behalf by the Sindikst Pomoraca Hrvatske (Seamans Union of Croatia), to assess what the CBA requires of the employer regarding safe workplaces, in this case being:
 - That there is a Safety and Health Committee on board;
 - That the company has a safety-management system;
 - Compliance with the ILO Code of Practice on Accident prevention on board ship at sea and in port (2nd edition);
 - That the company appoint a Safety Officer who shall implement the company's safety and health policy and program and carry out the instructions of the Master to:
 - ❖ Improve the crew's safety awareness;
 - ❖ Investigate any safety complaints brought to her/his attention and report the same to the Safety and Health Committee and the individual, where necessary;
 - ❖ Investigate accidents and make the appropriate recommendations to prevent the recurrence of such accidents; and
 - ❖ Carry out safety and health inspections;

- That the crew have elected a safety representative;
- That the crewing level must never fall below the level at which the Seafarers' right to good health and safety is jeopardised;
- The Kuwait Livestock Transport and Trading Safety Policy;
- The Kuwait Livestock Transport and Trading Safety Management System for the *Al Kuwait*, required by the International Safety Management (ISM) Code made under the IMO International Convention for the Safety of Life at Sea (SOLAS) Convention and the ILO Guidelines on occupational safety and health management systems, ILO-OSH 2001 and the ISM Code; and
- COVID guidance (from various agencies such as from the ILO, IMO, as well as Australian health and WHS agencies²⁰) applicable to the ship.

This situation demonstrates, just as occurred in the *Ruby Princess* case:

- That the quality of information provided by the ship's master on the health status of seafarers is inadequate and unreliable i.e. self-assessment does not work, and that ship reporting i.e. the Maritime Approval Reporting System (MARS) must be reformed:
 - That the quality of self-reporting is likely to be less reliable on cargo ships that do not include any medically qualified crew on board, as is the case with the *Al Kuwait*, who could provide the master with accurate medically assessed health status information:
 - ❖ And the quality of information provided by ship's masters could be impacted by poor quality instructions associated with PAR completion in the MARS online system, in the case of a communicable viral disease like COVID-19.
- That the WA Department of Health, charged with making the health assessment in the biosecurity chain, failed in its risk assessment process by not requiring an on-board health assessment (screening) of all seafarers on board, based on the information provided in the PAR and as updated prior to the ship berthing;
- The Commonwealth Department of Agriculture had no authority nor expertise to make a health assessment on the PAR information, and the WA Department of Health was derelict in its duty if it had regard to that advice and not make its own health assessment as soon as the ship docked (or ask the Fremantle Port Authority to not permit the ship to dock but to assist in getting WA Department of Health officers on board at anchorage to assess the COVID-19 health status seafarers);
- That the Fremantle Port Authority had in place an inadequate risk management process itself that should have required it to make its own assessment of the health status of the seafarers in determining whether to permit the ship to proceed to dock;
- There was inadequate communication protocols in place between WA state agencies; and
- That AMSA failed to perform its PSC functions by ensuring the shipowner was in compliance with the requirements of the ILO MLC, and applicable WHS laws applying to the employer, the ship and the seafarers.

In summary, the result was:

- That the *Al Kuwait* was not a safe workplace and that an outbreak of COVID-19 occurred on the ship, thus jeopardising the lives of seafarers;
- That a marine pilot under the control of the Fremantle Port Authority boarded the *Al Kuwait* to pilot the ship into Fremantle port without adequate knowledge of the on board

²⁰ See for example Safe Work Australia, *National COVID-19 safe workplace principles*, <https://www.nsw.gov.au/sites/default/files/2020-05/National%20COVID-19%20safe%20workplace%20principles%20-%2024%20April.pdf>

COVID-19 risk, notwithstanding the hazard controls put in place by the Fremantle Port Authority for all marine pilots boarding ships within its VTS area;

- That two Commonwealth biosecurity officers and an AMSA safety inspector subsequently boarded the ship, without adequate knowledge of the on board COVID-19 risk; and
- A Mission to Seafarers driver boarded the ship, also without adequate knowledge of the on board COVID-19 risk.

This suggests that:

- The ship owner/operator, Kuwait Livestock Transport and Trading, failed in its duty of care to provide a safe workplace for seafarers onboard the *Al Kuwait*;
- Department of Agriculture and or Australian Border Force (ABF) and AMSA, as employers and each as a PCBU, failed in their WHS duty of care to their officers who boarded the ship without being informed of the risk to their health and safety; and
- That the Fremantle Port Authority failed in its WHS duty of care to its officers who boarded the ship without being appropriately informed of the risk to their health and safety.

This case once again highlights:

- That there were inadequate COVID-19 hazard controls on board an international ship, the *Al Kuwait* in this case, that allowed the infection to spread quickly among the crew of 48 seafarers, once again demonstrating that the WHS arrangements and labour standards on board international ships operating from ship registries over which there is little or no international regulatory oversight of labour and WHS standards nor a compliance and enforcement mechanism, is manifestly inadequate;
- The international system of PSC by national maritime regulators like AMSA is ineffective and not interconnected;
- That international seafarers, out of sight on the high seas are treated indifferently by ship owners and operators, and that seafarer welfare is not given adequate attention, supporting the long-held contention of the ITF and its seafarer labour union affiliates that international seafaring remains a place of significant worker exploitation and that international seafaring labour practices require inclusion in modern slavery laws;
- The inadequacy of self-reporting arrangements by ship's masters to the Department of Agriculture in the biosecurity Pre-Arrival Report (PAR) as part of the Maritime Arrivals Reporting System (MARS) in relation to human biosecurity regarding on board seafarers. It appears to the MUA that shipowners/operators/masters are seeking to avoid the risk of potential delays in port and subsequent financial costs by not accurately self-declaring health issues, thereby putting Australian maritime workers, their families, and the broader Australian community at risk of COVID-19 infection;
- The poor risk management practices, including a lack of interagency communication protocols in the COVID-19 pandemic environment exhibited by the WA Department of Health and the Fremantle Port Authority; and
- The low-key role that WorkSafe WA played on relation to the WHS of onshore and on-water workers at the international shipping interface with Australia.

It is important in our view to emphasise that ensuring ships as workplaces are safe, is central to the human biosecurity effort as biosecurity arrangements are an after-the-event risk management strategy. If ships as workplaces are safe and free from disease and illness, the less chance of communicable diseases breaching the biosecurity barrier at the Australian border.

Failures by the flag state and employer

The *Al Kuwait* is a livestock carrier ship registered in Kuwait by the Marine Transport Department within the Kuwait Ministry of Communications. The ship is owned and operated by Kuwait Livestock Transport and Trading a public company part owned by the Government of Kuwait through the shareholding of the Kuwait Investment Authority.

The 48 seafarers on board comprise Croatian officers and Filipino, Indian and Australian crew. The ship was due to transport 56,000 live sheep to the Middle East, prior to the live animal curfew which commences on 1 June each year (coinciding with the northern summer, a time period not considered appropriate for live animal transportation, by Australia).

The ship operator, Kuwait Livestock Transport and Trading, arranged for engagement of the seafarers for the ship. The Seamans Union of Croatia signed an ITF Special Agreement with Kuwait Livestock Transport and Trading incorporating the ITF Uniform Total Crew Cost (TCC) Collective Bargaining Agreement (CBA). The seafarers have all signed a Seafarer Employment Agreement (SEA) incorporating the ITF TCC CBA/Special Agreement.

Kuwait Livestock Transport and Trading is therefore, to the best of our knowledge, the employer of seafarers aboard the *Al Kuwait* and we understand is therefore bound by the Kuwait Work Health and Safety Law No. 6 of 2010 concerning Labour in the Private Sector, and Decree No. 22 regarding respect for safety precautions at the workplace²¹, which, inter alia, specifies that:

- The employer shall take all the needed precautionary safety measures for securing the safety of his workers, machinery, equipment, and the circulated materials in the firm and the persons utilising these materials against the work hazards.
- The employer shall keep in the workplace records of the routine medical checks for operators who are exposed to health hazards.
- The employer shall provide the required safety and occupational health instruments and kits.
- The employer shall take the necessary precautionary measures for protecting workers against health hazards and occupational diseases resulting from the practice of such work, and shall further provide the necessary first aid kit and medical services.
- The employer shall explain to the worker before commencing work of the risks involved and the precautionary requirements.
- Every employer must keep occupational safety records according to specific forms, rules and regulations.
- The employer shall prepare and keep records of:
 - Sick leave.
 - Injured workers.
 - Occupational diseases.
 - Routine medical examinations of workers who are exposed to occupational diseases.

Kuwait is not a signatory to the ILO Maritime Labour Convention, though it is a signatory to the ILO core Labour Conventions. Kuwait is nevertheless a signatory to the ILO Occupational Safety and Health Convention, 1981 (No. 155) and Protocol of 2002 to the Occupational Safety and Health Convention, 1981.

²¹ International Labour Organisation (ILO), *Global Database on Occupational Safety and Health Legislation* (LEGOSH), Kuwait, https://www.ilo.org/dyn/legosh/en/f?p=14100:1100:0::NO::P1100_ISO_CODE3,P1100_SUBCODE_CODE,P1100_YEAR:KWT,,2013

The role of the shipper of the livestock and the WA Government

We are concerned that the shipper of the livestock, Rural Export and Trading (WA), the Australian-based arm of Kuwait Livestock Transport and Trading, that we understand was responsible for arranging for purchase of the sheep to be loaded onto the *Al Kuwait* did not undertake an adequate due diligence process when chartering the ship for this shipment of livestock, and should not have chartered a ship registered in a nation where that nation has not ratified the ILO MLC. Alternatively, it should have ensured that the ship owner/operator signed an addendum to the charter party contract requiring the shipowner/operator to comply with the MLC (as given effect by AMSA Marine Order 11 [Living and working conditions on vessels]) and nominated AMSA as the PSC regulator for compliance purposes.

It is our view that the WA Government should also take a closer interest in the labour arrangements for ships that trade with Western Australia and put in place a process to lift the labour and WHS standards on ships which wish to trade through WA ports. This could be progressed in one of two ways:

- The ports Minister could utilise Division 4 (Ministerial directions, general provisions) under the *WA Port Authorities Act 1999* to require port authorities to introduce new conditions for ships entering WA ports to which the Port Authorities Act applies that requires those ships to meet specified labour and safety standards; and or
- The WA laws specifying the powers of harbourmasters could be amended to provide new powers to harbourmasters to require ships that wish to enter the VTS areas of harbourmasters to be compliant with specified labour and WHS standards.

It is the view of the MUA that such actions would be entirely consistent with Australia's obligations under the Safety of Life at Sea (SOLAS) Convention to which Australia is a signatory.

Recommendation 11: That the Joint Committee recommend that the Prime Minister write to the head of the Kuwait Government advising that Australia expects the Kuwait Government to ratify the ILO Maritime Labour Convention (MLC) if it wishes to continue to undertake maritime trade with Australia.

Recommendation 12: That the Joint Committee recommend that AMSA write, after consulting with the MUA and ITF, to its counterpart PSC regulator in Kuwait and to the ship owner/operator and employer, Kuwait Livestock Transport and Trading, recommending improvements to WHS and labour practices on Kuwait registered ships that trade with Australia.

Recommendation 13: That the Joint Committee recommend that the WA Government confer with all entities involved in the live animal export trade in WA to advise WA Government expectations in relation to labour and WHS standards applying to ships chartered for the live animal trade from WA ports, and one of those expectations be that the nation in which the ship for that trade is chartered, has ratified the ILO MLC and has in place appropriate WHS and labour standards in all elements of the live animal supply chain.

Recommendation 14: That the Joint Committee recommend that the WA Government, after conferring with the maritime unions, the ITF, AMSA and WA state marine and port authorities that have harbourmaster functions, develop WHS and labour standards conditions for all international ships that wish to trade through WA ports, and for the WA Government to identify the most effective legislative mechanism to ensure those new conditions are introduced and enforced.

The crew change crisis on international ships

The hostage of seafarers on international cruise vessels during the COVID pandemic, arising from the decisions of Governments to restrict entry of cruise ships to ports and to force to sea cruise ships that have no corporate or employment connection to the nations and their ports on the itineraries of such cruise ships, including Australia, points in our view to a serious case of modern slavery.

The ITF submission to this inquiry refers to some 300,000 seafarers trapped working aboard ships due to the crew change crisis caused by COVID-19 border and travel restrictions introduced by governments, and an equal number of unemployed seafarers waiting to join them who are ashore, desperate to relieve these seafarers and start earning wages again. In our view it will be necessary for the cruise sector to rebuild and sustain its social licence to operate in Australia if the cruise industry is to regain the confidence of its workforce, its consumers and Governments. In the interim it is incumbent on the Australian Government to work with international organisations and through international fora, with shipping lines and airlines to find practical solutions to the entrapment of seafarers on international ships, many of which are the supply chain infrastructure that is sustaining the Australian economy.

Internationally, the stranding of seafarers aboard is putting tremendous strain on seafarers' mental and physical health. Fatigue, isolation, anxiety and depression is affecting a large number of these seafarers. The MUA and the ITF are concerned about seafarer wellbeing, and we suspect there has been a rise in suicides, with a number of prominent cases in recent months related to the growing desperation of crew.

The MUA and ITF are concerned about the health and safety and environmental risks associated with an increasingly fatigued crew.

This issue also has dangers for global trade. Maritime regulatory authorities have the ability to refuse entry to port or to detain vessels that are in breach of maritime standards, including maximum time at sea for seafarers. Regulatory authorities that consider these stranded vessels as posing an undue risk may start taking these actions, causing financing and insurance issues for shipowners, thus impacting on global trade, dealing a blow to supply chain security.

There must be much better international arrangements in place to address these issues in a structured way which ensures that cargo and passenger ships are safe, that cargo can continue to be transported and that ships are safe workplaces. We believe that protocols must be in place to ensure that during human biosecurity events:

- Seafarers can get ashore for medical treatment;
- Seafarers are permitted to pass through their territory to facilitate a crew change (including through ports and airports);
- Seafarers are permitted to be repatriated to their nation of origin;
- Seafarers be exempt from restrictions that would prevent them from returning in a practical way to their homes or travelling to relieve another crew; and
- Seafarers be recognised as 'key workers' providing an essential service (and afford them the accompanying rights and support key workers are entitled to in those countries, such as health workers).

Recommendation 15: That the Joint Committee recommend that the Australian government urgently establish a Crew Change Task Force to facilitate crew changes for all ships calling in Australian ports. The Task Force must involve dedicated resources to work with federal and state

agencies and government departments to harmonise procedures to expedite crew changes in Australia. These procedures should:

- Involve one set of clear set of rules explaining how crew change works across Australia, applicable across all states and territories, and made easily accessible online
- As far as possible, implement the protocols of the International Maritime Organization (IMO) Circular Letter No.4204/Add.14 on safe crew changes issued on 5 May 2020, and the outcomes of the *International Maritime Virtual Summit on Crew Changes* (hosted by the United Kingdom government). Current procedures in Queensland should also be examined as a model
- Allow seafarers to travel quickly and safely via airports, safe corridors, and to and from seaports to board and disembark their ships
- Exempt seafarers from any caps on airport arrival numbers
- Recognise that time at sea counts as an isolation period

The Task Force must also play a leading role in coordinating a greater number of flights to see seafarers returned home and replacement crew brought in from overseas, including arranging for government to underwrite flights until they are filled.

Seafarer welfare and communication

A critically important welfare issue faced by seafarers while at sea, particularly in situations when a potentially deadly viral pandemic is on foot is not being able to communicate with home and family. A significant proportion of seafarers on international ships have very limited or no access to Wi-Fi, such an essential technological aide to communication with family and friends. The lengthy periods of seafarer employment agreements, with limited opportunity for shore leave due to the short turnaround time of ships in ports in normal circumstances, now exacerbated by COVID-19 restrictions means seafarers are unable to maintain regular communication with home and miss many of the important occasions with their loved ones.

Numerous international reports indicate this isolation can be very damaging for mental health, particularly when seafarers are away from their families on a regular basis. Researchers have found that a lack of internet access, long periods away from home, poor accommodation and poor food quality were a concern for those working at sea. A 2019 mental health study of 1,572 seafarers found that 20% of those surveyed had thought about suicide or self-harm in the two weeks before the study.²²

In another 2019 Seafarers Mental Health and Wellbeing study, Cardiff University researchers specifically recommended that, "*free and unlimited internet should be made available to all seafarers on board all cargo vessels.*" Internet access should be offered to seafarers to improve their mental health according to this study.²³

The current COVID-19 pandemic has significantly increased these negative elements to seafarer's mental health as travel restrictions have made crew changes increasingly difficult, extending their time in isolation on their ships. Seafarers are now spending extended periods on board ships, over 12 months in some cases, with no ability for shore leave, limiting the ability to access

²² Rozanov, Vsevolod, *Mental health problems and suicide in the younger generation — implications for prevention in the Navy and merchant fleet*, International Maritime Health Journal, Vol 71, No 1 (2020), https://journals.viamedica.pl/international_maritime_health/article/view/66040

²³ BBC, Seafarers' mental health studied by Cardiff University, 6 November 2019, <https://www.bbc.com/news/uk-wales-50315080#:~:text=Internet%20access%20should%20be%20offered,for%20those%20working%20at%20sea.>

communication technology. This needs to be addressed as an outcome from the COVID-19 pandemic.

Recommendation 16: That the Joint Committee recommend that the Australian Government recognise the significant increase in the social isolation to seafarers on ships servicing Australian ports arising from the COVID-19 pandemic and the impact this isolation is having on the mental wellbeing of the seafarers.

Recommendation 17: That the Joint Committee recommend that the Australian Government allocate funding for the provision of Wi-Fi access for seafarers on ships on the Australian coastline as well as those at berth in Australian ports to improve their communication access and reduce the incidence of mental health issues among seafarers.

A pathway to global reform of international shipping

Seafarers on international ships while in Australian waters and the waters of some other advanced nations were and still are being denied the right to a safe workplace as we have demonstrated in this submission, but were also denied rights to adequate medical care on board and to onshore medical facilities. They were also denied the right to legal representation in relation to a criminal investigation being undertaken by the NSW Police Force.

Importantly, seafarers were denied all rights to representation by trade unions, which were refused access to ships and to seafarers. The denial of such rights is contrary to the rights of all workers to labour union representation under the core ILO Labour Conventions, to which Australia is a signatory.

The MUA submits that as a nation which is committed to an international rules based system for addressing global problems and which remains committed to the United Nations frameworks for resolution of issues arising from national commitments to treaties and other multi-lateral agreements, Australia, as a major cruise and cargo destination and as a nation in which some cruise lines choose to "home port" their ships, incentivised by State Government support, should become active in relevant international fora to seek both global and domestic solutions to the serious failings outlined in this submission.

The issues in international shipping go much deeper than ship safety and seafarer WHS. They go to labour standards and international minimum wages for seafarers, lack of pension funds for international seafarers and many other labour conditions that are standard practice for onshore workforces, but not available to international seafarers.

To commence a national discussion and to commence framing solutions to these matters of significant national importance, the MUA submits that the Department of Foreign Affairs and Trade, as the Commonwealth agency with responsibility for advancing human rights globally and the agency with key responsibility for Australia's linkages to the United Nations, be tasked with leading and coordinating a national stakeholder discussion (task force) aimed at developing solutions and proposals for injecting into the relevant international fora on which Australia is represented, like the ILO and IMO.

This process needs to involve the policy departments overseeing ship safety, the Department of Infrastructure, Transport, Regional Development and Communications, the Department overseeing labour relations and WHS, the Attorney General's Department, the agency responsible for modern slavery, the Department of Home Affairs and relevant statutory agencies such as AMSA and Safe

Work Australia, along with the employer organisation MIAL, and seafarer representative organisations, the MUA and ITF.

It is our submission that such a task force be charged with developing an Australian initiative in the ILO aimed at securing international support for a package of reforms to international shipping that builds on the ILO MLC of 2006, adopted some 14 years ago. We believe it is time for new international standards to be developed, that might require a new Convention or significant amendment to the ILO MLC to provide, inter alia, for a new international seafarer labour standards and WHS compliance and enforcement regime that would establish a series of domestically based, but internationally connected international shipping tribunals to enable the weaknesses in international shipping regulation (and compliance/enforcement) to be systematically addressed in key shipping regions like North America, Europe/UK, Latin America, Africa, Asia and Australia/Oceania.

Domestically, we believe Australia should take the lead by establishing the forerunner to the international shipping tribunal concept we propose by establishing an International Shipping Commission.

Recommendation 18: That the Joint Committee recommend that the Department of Foreign Affairs and Trade, as the Commonwealth agency with responsibility for advancing human rights globally and as the agency with key responsibility for Australia's role within the United Nations, be tasked with:

- Leading and coordinating a national stakeholder discussion aimed at developing solutions and proposals for injecting into the relevant international fora on which Australia is represented, like the ILO and IMO aimed at framing long term solutions to systemic failure of international ship regulation; and
- Considering modern slavery risk, WHS regulation and labour standards applying to international seafarers and better ways to enforce the rights of seafarers deriving from international Conventions like the ILO MLC and the core ILO Labour Conventions to which Australia and other nations involved in ship regulation are signatories, where failures have been highlighted in the case of the cruise and cargo ship sectors of international shipping during the COVID-19 pandemic, and that the stakeholders to be involved include:
 - The policy departments overseeing ship safety, the Department of Infrastructure, Transport, Regional Development and Communications, the Department overseeing labour relations and WHS, the Attorney General's Department, the agency responsible for compliance with the *Modern Slavery Act 2018*, the Department of Home Affairs and relevant statutory agencies such as AMSA and Safe Work Australia, along with the employer organisation MIAL, and seafarer representative organisations the MUA and ITF.

Recommendation 19: That the Joint Committee recommend that one key initiative to be developed through the stakeholder discussion is an Australian initiative for consideration by the ILO aimed at securing international support for a set of reforms to international shipping regulation that builds on the ILO MLC of 2006 by requiring a new Convention or significant amendment to the ILO MLC. The aim of a new or amended Convention is to:

- Establish new international seafarer labour standards including a minimum wage and retirement benefits; and
- Establish a new international shipping labour and WHS compliance and enforcement regime that might for example, establish a series of domestically based international shipping tribunals to enable the weaknesses in international shipping to be systematically addressed

by such a network of interconnected shipping tribunals in key shipping regions like North America, Europe/UK, Latin America, Africa, Asia and Australia/Oceania.

Establishing an International Shipping Commission in Australia

The purpose of an International Shipping Commission is to provide a national framework to coordinate the operation and regulation of international shipping in Australia aimed at ensuring that Australia maximises the economic and social benefits from international shipping, a vital component of Australia's economic security and supply chain resilience. It could evolve from the Maritime Response Group established by the Commonwealth Department of Infrastructure, Transport, Regional Development and Communications, though would need to include additional agencies such as those responsible for labour and industrial relations, WHS, human rights and modern slavery.

All sections of the industry continue to work cooperatively and constructively, including the workforce and their trade unions in supply chains involving land, water and air transportation, to keep ports and supply chains functioning during the COVID-19 pandemic. Australia drew heavily for guidance on protocols developed by the ILO, IMO and World Health Organisation (WHO), prepared in consultation with the International Transport Workers Federation (ITF) and International Chamber of Shipping (ICS).²⁴ We submit that there needs to be a nationally coordinated framework established by government to ensure there is an inclusive stakeholder coordination process established, and on permanent standby, that considers and provides guidance on matters such as:

- A consistent approach to the health protections and protocols for workers in essential maritime services such as ports and port services, and ships, including cargo ships, offshore oil and gas ships, passenger ferries, harbour towage, pilotage, mooring ships, bunkering ships and cruise ships, based on the best available advice from the ILO, IMO and WHO, supported by Australian experience gained during the pandemic.
- A consistent approach to operator responsibilities in the event that one or more workers in a port or shipping workplace contracts a communicable disease, that address worker health and safety (e.g. procedures for shift and crew changes) and equipment/workplace clean-ups and safety to ensure that maritime workplaces are safe for remaining and replacement workers.
- A template ports and shipping assistance package, based on the key worker status of port and shipping workforces, that supports port and ship operators who experience a business downturn due to lower volumes of throughput being handled through Australian ports and who are incurring additional costs to keep workforces and workplaces safe, and such workforces in employment, so that the port gateways can continue to ensure the nation is supplied with essential goods such as food, fuel and medical supplies; and
- A strengthening of Commonwealth and state/NT regulatory and taxation/fees and charges arrangements to ensure that Australian businesses and their workforces are given full support and protection so that they are in a sound position to help deliver a stronger ports and shipping sector when a recovery from a disruptive event like the COVID-19 pandemic emerges.

²⁴ See for example, the ILO/IMO *COVID-19 and Maritime Labour Issues: Impact and Responses*, which lists COVID-19 protocols and resources available to the industry, https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/genericdocument/wcms_746994.pdf and the IMO web page *Coronavirus disease (COVID-19) Pandemic*, <http://www.imo.org/en/MediaCentre/HotTopics/Pages/Coronavirus.aspx> and WHO, *Operational considerations for managing COVID-19 cases or outbreaks on board ships Interim guidance*, 25 March 2020, <https://www.who.int/publications/i/item/operational-considerations-for-managing-covid-19-cases-outbreak-on-board-ships>

It is important that we learn from adversity what works best in the interests of the nation and to ensure we take advantage of those experiences in the years ahead.

It is clear to the MUA since the COVID-19 crises erupted, based on our dealings with employers, port operators, regulators and industry organisations, that there is a disconnect between the national economic interest where the Commonwealth has key responsibility and the management/regulation of supply chains, especially the ports' role as gateway in those supply chains, which are a state responsibility. Meanwhile, shipping falls into both jurisdictions – international and interstate shipping being a Commonwealth regulatory function and intrastate shipping a state/NT responsibility. This disconnect needs to be patched so there are appropriate protocols in place to address a future disruptive event impacting on the nation's international and domestic transport supply chains.

The Commission would be responsible for ensuring there is an appropriate interface and clearly defined responsibilities with and between the many agencies that have oversight of Australian laws impacting on international shipping as outlined.

Such a commission would also provide for shipowners/operators, and their representative organisations, such as MIAL and the Cruise Lines International Association (CLIA) and ship's port agents, and the workforce, represented by their labour unions, to partner with government in ensuring the industry can rebuild supply chains, brands and consumer confidence and adopt better corporate governance, public health and work health and safety practices that will deliver a better and safer shipping industry that will also benefit both passengers and crew.

The commission would be responsible for coordinating and ensuring the efficient operation and interaction of each or the Commonwealth and State/NT agencies and the key stakeholders that interface with international shipping in Australia, covering:

- Public health standards for passengers, ships' crew, the shoreside workforce that interface with cruise and cargo ships and the wider Australian community;
- Ship safety, including biosecurity (including ship pollution derived from IMO Conventions); and human biosecurity and the interaction between marine laws and biosecurity laws;
- Work health and safety (WHS) and welfare of ships' crew and port workers (derived from ILO Conventions) and including the interface with public health and human biosecurity laws and procedures;
- Labour standards and modern slavery (derived from the ILO Core Labour Conventions and the Maritime Labour Convention);
- Seafarer rights including representational and ship and workforce access rights (derived from ILO and IMO Conventions);
- Ship crew change processes and procedures;
- Border security, customs, immigration, taxation and crimes at sea;
- The interface with domestic shipping and ports, and service providers (including port agents);
- Training and instruction of public agency officials and cruise industry staff that are responsible for administering laws and procedures.

It is our submission that there are a number of immediate tasks for the Commission:

- To review and report on the ways that the failures of the WHS system and associated regulatory arrangements could be reformed and made fit for purpose (with a view to improving the health impacts of crew interaction with passengers in cruise shipping);
- To develop and promulgate improved cruise ship operator public health practices onboard cruise ships;

- To develop protocols to address the stranding of seafarers aboard international ships in circumstances where governments place restrictions on travel and borders, which are preventing seafarers from being relieved by fresh crews;
- The processes and procedures surrounding public health reporting and assessment standards, pilotage, pratique and the interface with harbourmaster functions, including the quality of authorisations of statutory appointments and monitoring of those authorisations to ensure the integrity of statutory intent;
- To ensure interagency communication and communication protocols are agreed and become operational.
- To identify ways that seafarers can be appropriately represented and accessed by industrial and welfare organisations whilst in Australian waters.

We propose that within the international shipping commission framework, Codes of Conduct be developed by relevant stakeholders in each of the key subsectors of international shipping that interfaces with Australia – cruise shipping, cargo shipping and offshore energy shipping. The Codes of Conduct could establish principles and mechanisms for addressing the full spectrum of labour, WHS, modern slavery, biosecurity protocols, employment, training and qualification issues as well as agency coordination and compliance and enforcement issues.

Recommendation 20: That the Joint Committee recommend that the Australian Government, in cooperation with the States/NT, establish an ongoing international shipping commission with the involvement of all relevant stakeholders, the purpose of which is to:

- Provide a national framework to ensure that Australia maximises the economic and social benefits from international shipping;
- Set and review minimum standards for the cruise sector to re-establish a social licence to operate in Australia;
- Develop and promulgate Codes of Conduct on the advice of relevant stakeholders in each of the key subsectors of international shipping in Australia – cruise shipping, cargo shipping and offshore energy shipping. The Codes of Conduct be designed to establish principles and mechanisms for addressing the full spectrum of labour, WHS, biosecurity protocols, employment, training and qualification issues as well as agency coordination and compliance and enforcement arrangements, and in particular:
 - A consistent approach to the health protections and protocols for workers in essential maritime services such as ports and port services, and ships, including cargo ships, offshore oil and gas ships, passenger ferries, harbour towage, pilotage, mooring ships, bunkering ships and cruise ships, based on the best available advice from the ILO, IMO and WHO, supported by Australian experience gained during the pandemic.
 - A consistent approach to operator responsibilities in the event that one or more workers in a port or shipping workplace contracts a communicable disease, that address worker health and safety (e.g. procedures for shift and crew changes) and equipment/workplace clean-ups and safety to ensure that maritime workplaces are safe for remaining and replacement workers.
 - A template ports and shipping assistance package, based on the key worker status of port and shipping workforces, that supports port and ship operators who experience a business downturn due to lower volumes of throughput being handled through Australian ports and who are incurring additional costs to keep workforces and workplaces safe, and such workforces in employment, so that the port gateways can continue to ensure the nation is supplied with essential goods such as food, fuel and medical supplies; and
 - A strengthening of Commonwealth and state/NT regulatory and taxation/fees and charges arrangements to ensure that Australian businesses and their workforces are

given full support and protection so that they are in a sound position to help deliver a stronger ports and shipping sector when a recovery from a disruptive event like the COVID-19 pandemic emerges.

- Develop protocols, in conjunction with international labour and maritime organisations, to address the stranding of seafarers aboard international ships trading with Australia in circumstances where government restrictions on travel and borders prevent seafarers from being relieved by fresh crews;
- Ensure clearly defined responsibilities and the efficient operation and interaction of each of the Commonwealth and State/NT agencies and the key stakeholders that interface with international shipping in Australia, covering:
 - Ship safety, including pollution and biosecurity (derived from IMO and ILO Conventions);
 - WHS and welfare of seafarers (derived from ILO Conventions) and including the interface with public health and human biosecurity laws;
 - Labour standards and modern slavery (derived from the ILO Core Labour Conventions);
 - Seafarer rights including representational and access rights (derived from ILO and IMO Conventions);
 - Border security, customs, immigration, taxation and crimes at sea; and
 - Interface with domestic shipping and ports.

Addressing term of reference 3: Supply chain integrity assurance to critical enablers of Australian security (such as health, economic and transport systems, and defence)

Shipping and supply chain resilience

As an island nation the Australian economy is heavily reliant on international shipping, both cargo and passenger, both sectors playing a strategic and important role in the economy. Ten per cent of the world's sea trade passes through Australian ports and Australia relies on sea transport for 99 per cent of its international trade (by volume).²⁵ In 2016–17, the value of Australia's exports by sea was \$252.1 billion and it imports \$193.1 billion by sea. This involved 28,584 ship arrivals by 5,981 individual foreign-flagged ships in 2019.²⁶

Australia is the largest iron ore exporter with 57 per cent of the world market, the second largest coal exporter with 30 per cent of the global market and the eighth largest grain exporter with 4 per cent of the world market. Globally, Australia is the fourth largest user of ships.²⁷

In 2017, Australia was at the top of the global cruise industry for market penetration with 5.7 per cent of the population taking an ocean cruise. An independent assessment by AEC Group revealed that cruise tourism was worth \$4.8 billion to the Australian economy in direct and indirect economic output during the 2017-18 financial year and that 1,236 ship visits to Australian ports led to 3.5 million passenger and crew visit days which raised \$2.3 billion in direct economic output and \$2.5 billion in indirect and induced output, as well as \$2.6 billion in value-added dollars.²⁸

²⁵ Department of Infrastructure and Regional Development, Trends: Transport and Australia's Development to 2040 and Beyond, 2016,

https://www.infrastructure.gov.au/infrastructure/publications/files/Trends_to_2040.pdf

²⁶ Australian Maritime Safety Authority, *Port State Control Australia, 2019 Report*, p.2.

²⁷ United Nations Conference on Trade and Development (UNCTAD), *Review of Maritime Transport 2019*,

https://unctad.org/en/PublicationsLibrary/rmt2019_en.pdf

²⁸ Cruise Lines International Association (CLIA), *Cruise Industry Ocean Source Market Report – Australia 2017*, [https://www.cruising.org.au/Tenant/C0000003/Cruise%20Industry%20Source%20Market%20Report%20\(1\).pdf](https://www.cruising.org.au/Tenant/C0000003/Cruise%20Industry%20Source%20Market%20Report%20(1).pdf)

The efficiency and functionality of ships and shipping, both international and domestic, along with port operations is crucial to supply chain resilience and reliability. Notwithstanding the COVID-19 restrictions like border closures and quarantine arrangements that posed difficulties for ship crew changes, that impacted on rosters, combined with the confined working environments prevalent onboard and which exacerbated the isolation factor for seafarers, that gave rise to issues like fatigue and mental stress, ships and ports continued to function. Ships continued to deliver the nation's exports that helped hold up the performance of the economy (at least to the March quarter at the time of this submission) and on the import side, the delivery of essential supplies like fuel, medical equipment, medicines and food that has sustained the nation during the COVID-19 pandemic.

Ships and the ports they use are a critical component of the supply chains that support other wealth generating industries. Ships are critical to the import and export supply chains for all facets of manufacturing, resources and energy including refined petroleum products, agriculture, aquaculture, fishing, tourism (including the growing marine tourism and cruise sectors), wholesale and retail distribution, and construction.

Key manufacturing industries such as steel (requiring iron ore and coal), aluminium (requiring bauxite and alumina), petroleum (requiring crude oils and condensates), chemical and explosives production (requiring ammonium nitrate, acids etc), building products (requiring gypsum, mineral sands etc); food processing (requiring sugar, salt, food concentrates), as well as agricultural production (requiring fertiliser, fuels, grain seeds) and offshore extractive industries such as oil and gas, are reliant on ships for supply of key bulk commodity inputs and distribution of outputs, for their efficient operation.

Bulk commodity ships and other trading ships used in these supply chains create demand for a range of other marine services including towage, pilotage, bunkering, waste removal, provisioning, firefighting, salvage and marine rescue as well as requiring port services and stevedoring services.

During the COVID-19 pandemic international ships continued to transport vital supplies to Australia including medical equipment, medicines, consumer staples and fuel needed to maintain the critical sectors of the economy and to provide household needs that were required during the restrictions and to support the health system. Ships also maintained the flow of key export commodities to overseas customers, thus maintaining the flow of revenue into the economy, including tax revenue to government.

Similarly, ships that perform vital supply and support roles to offshore oil and gas production platforms continued to perform those supply and support functions, notwithstanding seafarer crew change difficulties imposed by Australian Border Force advice on *Restrictions on Commercial Maritime Vessels and Crew: Travel restriction for all non-Australian citizens and non-residents* that are addressed elsewhere in this submission.

Dockworkers continued to load and unload ships at ports across the nation.

While costs increased to wholesalers, retailers and consumers for some products for which demand increased during the pandemic, this cost increase did not arise from freight cost increases and no bottlenecks arose in the shipping and ports component of supply chains. They continued to function efficiently and productively.

That efficiency and productivity was delivered by the workforce on ships and in the ports, who continued to perform their roles notwithstanding the risks to their health and the imposition of work health and safety risk controls like social distancing that are sometimes difficult to maintain in the

confines of ships as workplaces and in certain spaces within ports, necessitating appropriate involvement of the workforce to ensure functional outcomes.

The sovereignty issue – addressing weaknesses in Australian supply chains

Notwithstanding the cooperation of the stakeholders that kept supply chains functioning, from a wider supply chain standpoint, the COVID-19 pandemic has revealed critical risks in Australia's supply chains that arises from the nation's almost complete dependency on the use of foreign ships, not only in international inbound and outbound trade, but in domestic coastal trade.

The current crew change crisis referred to earlier in this submission is the most immediate manifestation of this supply chain vulnerability. All of our seaborne exports and imports rely on the international ships' crew drawn from countries around the world – we only have four Australian international trading ships, all carrying LNG exports. Each one of the almost 6,000 other ships carrying Australian imports and exports is affected by the current crew change crisis that involves 300,000 seafarers working well beyond the end of their contract.

Critical vulnerabilities in the nation's supply chains were initially highlighted in a leaked Defence Department report from 2019 that revealed essential services would break down within months in a major crisis.²⁹ The MUA has been arguing for some years that unless there are actions taken to address these risks, a future military conflict, natural disaster, economic crisis or pandemic that cuts or significantly impeded seaborne trade will result in catastrophic consequences for the economy. The union urges the Committee to ensure the public release of the full report, commissioned by the Defence Department and produced by Engineers Australia.

The MUA has also advocated solutions that would make the country more resilient to a crisis, such as creating domestic stockpiles of fuel and other essential products, increasing local manufacturing capacity, and creating a strategic fleet of Australian-owned vessels to carry essential goods.

A continuation of the Temporary Licencing (TL) system as provided in the *Coastal Trading (Revitalising Australian Shipping) Act 2012* (CT Act) and as administered by officers in the Department of Infrastructure, Transport, Regional Development and Communications (as the Minister's delegate) that permits the unfettered and unregulated use of foreign ships in Australian coastal trade is the antithesis of a functional system of human biosecurity.

Firstly, there are no quality assurance requirements on TL applicants, nor any background checks before they are issued with a TL to operate ships in Australia's coasting trade. Multiple entities can apply for a licence – a shipowner, a ship charterer, a ship's master, an agent of a vessel; or a shipper (cargo interest). TL applicants are not required to adhere to any standards of performance to be a TL holder.

Second, a TL holder can hold a licence for up to 12 months and through the flimsiest of due diligence processes can obtain authorisations for multiple voyages under that TL. There is no requirement on the TL holder to nominate the ship to be used for a voyage, in advance, so it can be vetted. Furthermore, every voyage can use a different ship, obtained at short notice on the international spot market. In fact, that is the norm adopted by TL holders to avoid the payment to crew of a special Award wage scale [slightly above the international benchmark set by International Transport

²⁹ ABC 7.30 Report, 28 April 2020, Confidential report predicted how long it would take for essential services to break down during a major crisis, <https://www.abc.net.au/7.30/confidential-report-predicted-how-long-it-would/12195072>

Workers Federation collective agreement rates] that applies only to the third and subsequent voyage.

Third, there is only minimalist checking of the foreign crew engaged by the chartered TL ship, and what checking is undertaken through the application process for a Maritime Crew Visa (MCV) that can be obtained online, almost instantaneously, by the applicant seafarer. The MCV is a transit visa designed for seafarers on international ships that are only in a port for short periods during loading and unloading operations as part of an international voyage. Yet the CT Act exempts the transit aspects of the MCV and allows it to be used as an ongoing work visa, but without any of the checks and balances of a genuine work visa. Up to 300,000 different foreign seafarers from across many nations have been employed on the 17,000 plus TL voyages undertaken since the CT Act commenced on 1 July 2012. No checks whatsoever are undertaken on their qualifications, their immunisation record or health status.

The large number of foreign ships using thousands of foreign seafarers that are granted a TL under the CT Act, and which enter a multitude of Australian ports and who interact by necessity with Australian port workers, creates an infectious disease transmission risk that should not be tolerated.

The foreign ship dependency encouraged by the CT Act, and its administration by the Government, creates a major biosecurity risk to Australia. It is time for a review of the CT Act and its interaction with the Customs Act 2001 (and by implication the MCV system) as well as Australia's biosecurity arrangements. We address the Customs Act and biosecurity arrangements later in this submission.

Transitioning away from foreign ship dependency, where it is most notable in trades such as refined petroleum products (RPP) which is 100 per cent dependant on foreign ships crewed by foreign seafarers – in both the nation's imports of RPP and crude oil but also in the distribution of RPP from import storage centres and from Australia's remaining four refineries to ports around Australia – must be a high national strategic priority. There is not one Australian RPP ship on the Australian General Shipping Register i.e. not one RPP tanker flying the Australian flag.

This situation exists notwithstanding that:

- At any point in time, there are around 45 oil tankers sailing for Australian ports and approximately 90 petroleum tankers arriving in Australia each month;
- Australia derives around 90% of its fuel requirements from imports;
- Analysis of published data on ships issued with Temporary License under the *Coastal Trading (Revitalising Australian Shipping) Act 2012* (CT Act) reveals that there is sufficient domestic cargo volume to commercially sustain at least 3 domestic RPP tankers in interstate coastal trade; and
- Australia does not comply with the oil stockholding guidelines of the International Energy Agency (IEA) that requires a 90-day obligation based on the previous year's imports. In November 2018, Australia had 53 days of stocks.

But Australia's foreign ship dependency is not confined to the RPP trade. In Australia's coastal bauxite trade, 100 per cent is transported in foreign ships, though about 33 per cent of that trade is undertaken on foreign ships that utilise Australian crew. Similarly, nearly 100 per cent of Australia's alumina trade feeding domestic aluminium smelters is transported in foreign ships. Australia's iron ore trade servicing its domestic steel works is transported in foreign ships, as is most construction materials like cement, potash and gypsum. All domestic sugar is transported in foreign ships as is fats, protein meals, grains, oilseed and pulse cargoes.

Any future disruptive event such as another pandemic or a geopolitical conflict that impedes foreign ship availability could impact severely on supply chain resilience and capability and quickly bring the economy to a standstill, including civilian food, manufacturing, RPP and other production, health sector supplies, household essentials and Defence capability.

Establishing a national strategic fleet and restoring a balanced cabotage regime

Maritime industry leaders like Maritime Industry Australia Ltd (MIAL) and Ports Australia³⁰, as well as economic, national security and Defence policy experts and opinion leaders now recognise the important role that Australian ships need to play in building supply chain resilience, in energy security, in border security and for better integration of merchant or commercial shipping with Navy shipping to meet the Defence Force's maritime requirements.

The policy solution that is now under consideration is development of a national strategic shipping fleet. The proposal to establish a national strategic fleet in Australia has been gaining momentum since it was first advocated by MIAL in 2016 when legislation regarding the regulation of coastal shipping was being considered by the Federal Parliament.³¹

Over the following three to four years the proposal for a national strategic fleet has achieved considerable bi-partisan political support and has attracted policy attention in national security circles and in consideration of policy to address Australia's fuel security. It has been and remains under consideration in Government and Parliamentary Inquires.³²

There are very real threats to Australia's economic security, sovereignty and border security if urgent and positive steps are not taken to stem the decline of Australian shipping and maritime industries and to commit to rebuild Australian shipping. The establishment of a national strategic fleet is the most immediate requirement to address the supply chain sovereignty issue.

In the absence of a coordinated policy response, the key threats to the nation are:

- That Australia will lose its entire merchant trading fleet, increasing its dependency on foreign-owned and controlled ships for supply of fuels for Defence, industry and citizens; for the export of mining resources and primary agricultural outputs that sustain the Australian economy; and for importation of inputs to production and finished goods. A single disruption to foreign ship supply in the event of a conflict in the Asia Pacific region or another pandemic that crippled international ship availability would have immediate and catastrophic consequences for the Australian economy;
- That the downward spiral in the number of Australian trading ships operating under medium to long term contracts of affreightment (COA) to service the manufacturing and agricultural industries, with a consequential increase in reliance on the spot shipping market, means

³⁰ Ports Australia, Ports Australia Welcomes Action On Australian Shipping And Maritime Skills, 7 May 2019, <https://www.portsaustralia.com.au/blog/ports-australia-welcomes-action-on-australian-shipping-and-maritime-skills>

³¹ Maritime Industry Australia Ltd (MIAL) *Coastal Trading Green Paper: A Maritime Transition* of 2016 which proposed the creation of a national strategic shipping fleet, defined as ships that offer strategic national interest benefits to the nation

³² For example, Bateman Sam, Australian Strategic Policy Institute, *Does Australia need a merchant shipping fleet?*, March 2020; the Senate Rural and Regional Affairs and Transport References Committee *Inquiry into the policy, regulatory, taxation, administrative and funding priorities for Australian shipping*, due for report in June 2020; the MUA report *Putting the 'Justice' in 'Just Transition' Tackling inequality in the new renewable economy*, November 2019; and the MUA report prepared by John Francis, *Australia's Fuel Security: Running on Empty*, November 2018

Australia will lose complete control of ship scheduling and opportunities to create efficiencies in coastal trading through the use of a balanced mix of Australian ships (on the AGSR) with a General License issued under the CT Act and foreign ships with a Temporary Licence as was intended by the CT Act when introduced in 2012, that creates opportunities to smooth out freight rates and utilise triangulation and cargo aggregation to reduce ballast legs, which keeps freight rates lower;

- That the maritime skills base will reach unsustainable levels. Maritime skills are necessary for a maritime dependant island nation with a strong demand for maritime skills in shipping related services like towage, pilotage, mooring, bunkering and harbourmaster; and in onshore roles in ship regulation, safety, training, freight forwarding, marine insurance, marine chartering, ship financing etc; along with the capacity to support Navy alternative crewing models, essential for merchant navy support for the Defence Forces;
- Mainstreaming the use of non-national seafarers in routine coastal trading, who enter and remain indefinitely in Australia under a Maritime Crew Visa that can be secured online in less than 24 hours and which contains none of the checks and balances of a typical work visa creates a grave maritime security risk and is the largest single threat to Australia's border protection regime, and also places unnecessary pressure on Australia's biosecurity regime;
- That Australia's greenhouse gas and particulate emissions targets will be more difficult to achieve if it loses control of the regulation of all coastal trading ships as will be the case if the entire merchant fleet is lost and replaced with foreign ships, invariably flag of convenience (FOC) ships operating from registries that have considerably less regard for environmental standards; and
- That Australia's ability to protect its coastal, ocean and marine environments will be diminished in the event that all coastal trading is undertaken by foreign ships, whose registries do not adopt the same standards of ship and crew skills and qualifications to ensure that those ships meet Australia's stricter marine pollution standards.

The MUA has proposed that national strategic fleet ships be defined (in the CT Act) as ships which are of national strategic importance to the nation, and provide a social and or community service benefit to the nation and would include:

- A core fleet of clean petroleum product and oil tankers (liquid bulk ships) involved in domestic and international supply chains and providing national fuel security, and also temporary oil/RPP storage capacity to supplement onshore storage facilities;
- A core fleet of dry bulk commodity ships, necessary to service Australian heavy manufacturing industry;
- A core fleet of ships capable of transporting containerised cargo, essentially coastal feeder ships to service hubs ports;
- A core fleet of multi-purpose ships to deliver machinery and other non-standard (over size/over mass [OS/OM]) cargoes required in particular for the agricultural and mining industries:
 - Some of these ships are necessary to service regional and remote ports/communities and by necessity have a community service obligation (CSO);
- Emergency towage vessels (ETVs - marine rescue and salvage ships) operated by AMSA;
- Emergency response ships e.g. the *Aurora Australis* (if transitioned to an emergency response role when it completes its Antarctic duty).
- Research, supply and oceanographic ships such as those operated by or chartered to the CSIRO, the Australian Antarctic Division of the Department of Environment and Energy, and marine authorities such as the Great Barrier Reef Marine Park Authority;
- Border Force ships;
- Certain Defence/Navy ships such as auxiliary fleet ships (particularly non-combat ships such as Navy training ships, auxiliary oiler replenishment (AOR) ships, supply ships etc.);

- Training ships such as those operated by the Australian Maritime College (AMC); and
- Offshore wind installation and maintenance ships:
 - Offshore wind turbine installation and maintenance ships are included because of their strategic significance in developing and maintaining Australia's renewable energy resources required to meet Australia's greenhouse gas emissions target. These ships are in limited supply internationally, and only a small proportion are equipped to build the large turbines further offshore that are proposed for Australia. They are purpose-built ships with more deck space than a typical offshore oil and gas support ship, they cope with more severe weather and as a result can reduce overall installation durations. They require support to ensure that Australia can access the limited global supply of these specialist ships for offshore wind turbine installation.

Under the MUAs conception of a national strategic fleet, the ships that fall under the definition (with the exception of those providing a public/community service such as emergency towage vessels, research, supply and oceanographic ships, Australian Border Force ships and certain Defence/Navy ships) would trade commercially for the majority of the time, so the distinguishing feature of such ships is that they can be called upon by government in times of emergency to undertake functions that keep supply chains functional and secure.

In return for the capacity of government to call upon such ships in times of emergency to undertake specific functions, governments would provide industry policy support for such ships, which could take the form of taxation incentives, training support, priority berthing slot access to trading ports, and or discounts on fees and charges e.g. those levied by the Australian Maritime Safety Authority (AMSA) and landlord ports.

In parallel with establishment of a national strategic fleet, urgent reform of CT Act is required to restore balance in the coastal trading licencing regime to preference Australian ships with Australian crews in core trades.

Utilisation of Australian ships that use a consistent core complement of Australian crews who can be subject to close health monitoring, tracking and tracing, and who can be trained in all the best practice COVID-19 control measures, is an essential and urgent post COVID-19 requirement, to ensure supply chain integrity and continuity. A crew health monitoring protocol could in future be a condition of registration on the Australian General Shipping Register (AGSR) requiring that ships and crews meet stringent infectious disease control requirements, that could be monitored by AMSA as part of its Flag State Control (FSC) responsibilities under the Navigation Act (Cth).

A number of modest amendments to the CT Act, which could readily attract bi-partisan support could be quickly enacted to restore a balanced and functional cabotage regime in Australian coastal shipping, enhance the resilience of the supply chain and ensure that infectious disease transmission opportunities from foreign seafarers through Australian ports is minimised, thereby significantly strengthening Australia's human biosecurity arrangements. The amendments to the CT Act that are required are:

- An amendment to the Object clause in the CT Act that removes current ambiguity as found by the Federal Court (see for example the Judgement in the Full Federal Court *CSL Australia Pty Limited v Minister for Infrastructure and Transport [2014] FCAFC 10* 26 February 2014) and which clarifies that the primary Object of the CT Act is to maintain and increase the use of Australian ships in coastal trade.
- An amendment to remove those subsections of the Object clause that have provided the Minister (or Minister's Delegate) with the opportunity to take into consideration freight

rates when deciding an application in accordance with s34(2)(f) of the CT Act, and to replace a freight rate consideration with a trade volume consideration.

- A restructure of Division 2 Temporary Licences of Part 4 of the CT Act so that the procedure for the issue of TLs is based on commercial negotiations, not on decision making by Departmental officials as the Minister's Delegate. The primacy of the role of shippers (cargo interests) is replaced by a primacy on the role of ship providers, particularly GL and modified general licence (MGL) holders.
- Establishing a nomination process for General Licence (GL) holders to indicate the voyages, cargoes or routes that they wish to contest, aimed at reserving for GL ships, national interest trades e.g. the expedition cruise sector.
- There be provision for a new licence type (in addition to a GL and a TL) for foreign registered ships operating under a demise charter with full Australian crews (similar in some respects to the former Transitional General Licence – TGL); designated as a modified general licence (MGL).
- That separate licencing provisions for large cruise ships be introduced requiring a repeal of the Ministerial exemption for large cruise ships³³ and adoption of a more flexible licensing system to meet the commercial arrangements for the large cruise sector that incentivises these cruise ships that wish to home port in Australia, as well as those including multiple Australian port visits in their itineraries, to become registered as GL or MGL ships:
 - Incentives could be complemented by conditionality around meeting biosecurity standards, including appropriate health assessments, seafarer labour and WHS standards, compliance with the laws giving effect to ILO and IMO Conventions and appropriate seafarer representation rights in return for exclusive access to the Australian international cruise market.
- All licences be issued to the ship, not the applicant as at present (currently supported in the case of TLs by multiple voyage authorisation of ships where there is scope to game the system), and it is proposed there be no minimum or maximum voyage requirements.
- There be provision for commercial arbitration to help facilitate fair commercial outcomes.
- There be a procedure for establishing price reviews/price monitoring by the Australian Competition and Consumer Commission (ACCC) or another body to eliminate price gouging in ship trades where there is only one ship supplier.
- A strengthening of the licencing procedure for General Licences (GL), including that GL ships and crews meet stringent infectious disease control requirements, to be monitored by the Australian Maritime Safety Authority as part of its Flag State Control (FSC) responsibilities.

Public investment in ships

A number of options are available for initial investment in strategic fleet ships that will operate commercially, such as refined petroleum product (RPP) tankers. One option is for the Commonwealth Government to provide an initial investment (for example a capital grant as part of an industry policy package) and own or charter the ships, leasing them to shippers (cargo owners) and or ship operators to recoup that investment over time. Another option is for the Commonwealth Government to underwrite the operating cost differential between a foreign registered and an Australian registered ship, at least until the trade is well established and profitability is established. Alternatively, the Commonwealth could establish a Government Business Enterprise (GBE) under the *Public Governance, Performance and Accountability Act 2013* to purchase/charter and lease commercial ships under the Strategic Fleet. Whatever transpires as the

³³ Coastal Trading (Revitalising Australian Shipping) Act 2012, *Section 11 exemption for cruise vessels 2019*, <https://www.legislation.gov.au/Details/F2018L01523#:~:text=This%20instrument%20provides%20an%20exemption,carriage%20of%20passengers%20between%20any>

most suitable financing and funding option, the Commonwealth will be required to commit public resources to the strategic fleet.

Public ownership or a public stakeholding in commercial shipping operations is not new in Australia. The Commonwealth previously owned Australian National Line (ANL), it established the Australian River Company Ltd which owned coastal bauxite ships for a period of time, the WA Government has previously operated State Ships and the Qld Government is considering an investment (possibly as a co-investment) in a new Qld coastal shipping venture, aimed at building supply chain resilience in Qld coastal trade where other transport modes often face disruption due to floods and other weather events.

The Commonwealth also leases (charters) ships to perform a range of non-commercial Government functions such as emergency towage and marine rescue (e.g. the *Coral Knight* based in Cairns and operated by AMSA), research, supply and oceanographic ships such as those operated by or chartered to the CSIRO, the Australian Antarctic Division of the Department of Environment and Energy for example the *Aurora Australis*, and marine authorities such as the Great Barrier Reef Marine Park Authority. The Government also operates Australian Border Force ships.

All these examples demonstrate a commitment of public finance to essential government functions. It is our view that reducing sovereign risk in supply chains through the development and maintenance of a national strategic fleet in critical links in the supply chain, such as transportation capability in RPP is a legitimate and essential basis for allocation of public funds.

We are also advocating for additional public funding for emergency towage and marine rescue (a second ETV to service the offshore energy sector) and for the establishment and maintenance of a marine emergency response capability to be available in times of national emergency such as was required during the 2019/2020 bushfire season. We are proposing that the Commonwealth purchase three eminently suitable emergency response ships that are already, or about to become available, that could form part of the national strategic fleet for emergency response and for other purposes such as seafarer training and charter for commercial coastal trading when not required for emergency response duties. These are:

- The *Aurora Australis*, a ship with considerable emergency response capability, when it completes its final mission under charter to the Australian Antarctic Division (AAD) sometime in 2020 to be replaced by the *RSV Nuyina*, which is under construction under a Federal contract and is due for completion later in 2020. The *Aurora Australis* has previously been chartered to the Navy for humanitarian missions; and
- Two ocean going RO-RO cargo ships owned by Toll Marine which were previously used in the Bass Strait trade (replaced with new-builds in 2019), and are now laid-up awaiting a buyer.

Recommendation 21: That the Joint Committee acknowledge that the COVID-19 pandemic has highlighted the importance of improving supply chain resilience and that ships and the ports they use are a critical component of the supply chains necessary to build and maintain supply chain resilience.

Recommendation 22: That the Joint Committee recommend that the Federal Government move quickly to make policy and regulatory changes to overcome the critical risks in Australia's supply chain resilience and biosecurity risks from the nation's almost complete dependency on the use of foreign ships, not only in international inbound and outbound trade, but in domestic coastal trade.

Recommendation 23: That the Joint Committee recommend that the Federal Government proceed as a high priority to establish and maintain a national strategic fleet as an important first step in

improving Australia's supply chain resilience, and that to give effect to this policy commitment, the Government establish an independently chaired stakeholder and government task force to:

- Clarify the rationale and the principles for, and conditions under which, ships would fall into the national strategic fleet;
- Identify the types of ship operations that would form part of the national strategic fleet;
- Advise on the legislative, fiscal and regulatory arrangements that would establish and maintain a national strategic fleet; and
- Develop options for the funding and financing required to establish and maintain a national strategic fleet, including the public service and commercial opportunities arising from public investment in a national strategic fleet.

Recommendation 24: That the Joint Committee recommend that the Federal Government urgently reform the *Coastal Trading (Revitalising Australian Shipping) Act 2012* (CT Act) as proposed in this submission to restore balance in the coastal trading licencing regime to preference Australian ships with Australian crews in core trades, noting that utilisation of Australian ships that use a consistent core complement of Australian crews who can be subject to close health monitoring, tracking and tracing, and who can be trained in all the best practice COVID-19 control measures, is an essential and urgent post COVID-19 requirement, to ensure supply chain integrity and continuity, to strengthen WHS arrangements for seafarers, to strengthen Australia's human biosecurity arrangements and to minimise modern slavery risk in the shipping industry.

Recommendations

Recommendation 1: That the Joint Committee recommend that the ABF amend its guidance on *Restrictions on Commercial Maritime Vessels and Crew* to clarify that the 14-day quarantine period means there should be no berthing and therefore no loading/unloading (no pratique granted) until the 14 day period has elapsed. This requirement must be enforced by all ports for any ship arriving from an international port to their first port of call in Australia (with only limited exceptions, for example for vessels arriving from New Zealand or Pacific Islands). Where on board screening results in clearance of any suspect case of a declared communicable disease on board, the ship may berth and commence loading/unloading in under 14 days with implementation of the current ABF restrictions.

Recommendation 2: That the Joint Committee recommend that the Commonwealth and States amend model WHS laws so that health pandemics as declared under Biosecurity and State/Territory Public Health Acts are notifiable incidents under WHS law.

Recommendation 3: That the Joint Committee recommend that state governments and the NT Government amend Marine Safety Acts so that:

- It is an offence to provide false information to a harbourmaster; and
- Port authority functions explicitly refer to ensuring the work health and safety of all portside workers.

Recommendation 4: That the Joint Committee acknowledge there was a breakdown of work health and safety (WHS) systems and regulation in the maritime industry during the COVID-19 pandemic, which is jeopardizing the health and safety of international seafarers on ships voyaging to and from Australia and workers in Australian ports.

Recommendation 5: That the Joint Committee acknowledge that there remain failings in the Australian biosecurity arrangements applying at seaports and in dealing with international ships docking at Australian ports, which is compounding the health and safety risk to seafarers, to port workers and to the Australian community from the transmission of communicable diseases such as COVID-19.

Recommendation 6: That the Joint Committee recommend that AMSA's role as the Australian Port State Control (PSC) regulator be the subject of an independent investigation involving the International Labour Organisation (ILO) so the findings gain a level of international ownership and response; and that the focus of the investigation be on the actions taken by AMSA and any gaps in the performance of AMSA as PSC regulator during the 2020 COVID-19 pandemic to ensure that:

- Foreign ships were safe workplaces under applicable WHS law;
- Employers of seafarers on foreign ships in Australia's territorial waters (and as PCBUs) complied with their statutory duty to provide a safe workplace for seafarers and complied with all applicable WHS Acts, Regulations and applicable COVID-19 hazard control guidance to ensure that the risk of seafarers contracting COVID-19 were fully applied; and
- Laws giving effect to the ILO MLC were fully applied to ensure seafarers were able to access their rights under those laws in accordance with the intent of the MLC.

Recommendation 7: That the Joint Committee recommend that the Australian and State Governments reform Australia's human biosecurity arrangements by:

- Amending the Commonwealth Maritime Arrivals Reporting System (MARS), the NSW Health Pre Arrival Risk Assessment and Acute Respiratory Diseases (ADR) Log reports, and the PANSW Biosecurity Declaration (with future application to all States and the Northern

Territory) to provide clear instructions to ships' masters on the quality, accuracy and detail of reporting, that must contain co-signing by the chief onboard officer responsible for seafarer and passenger health;

- Ensuring there is a common and highly precautionary threshold standard used by State and NT health agencies to determine risk of community transmission of a communicable disease;
- Substantially increasing penalties for false or misleading or inadequate human biosecurity information provision by ships masters;
- Requiring that the state agencies responsible for human biosecurity health assessments of seafarers and passenger be mandated to undertake comprehensive onboard health screening/assessment of seafarers and passengers in circumstances where the WHO or Australian biosecurity officials have declared an outbreak of a communicable disease, before any other onshore workers are permitted to board a ship and before approval is given for ships to commence unloading cargo or disembarking crew and or passengers i.e. before pratique is granted; and
- Requiring that all biosecurity, immigration, customs and marine agencies develop and implement, and make public, appropriate interagency communication protocols that ensures full disclosure of ship reporting under the Pre Arrival Report in MARS to other agencies including marine and WHS agencies, and build these protocols into risk management systems.

Recommendation 8: That the Joint Committee recommend that the Australian and State Governments adopt a best practice pilotage and pratique system based on the following principles:

- Before a ship is approved by a harbourmaster to navigate to a wharf to dock, while it is at an anchorage point, the relevant state health agency be provided with all MARS human biosecurity information for a stage one assessment of the human biosecurity risk presenting on the ship.
- That if a stage one assessment requires swabs for a communicable disease to be tested at an onshore testing laboratory, those swabs be obtained from the ship while at the anchorage point (by water police, by helicopter, by a pilotage ship or other means).
- That based on the test results from swabs and any other human biosecurity information required, the relevant state health agency complete a stage two human biosecurity health assessment.
- That stage two human biosecurity health assessment be then provided by the Chief Human Biosecurity Officer in the state with a recommendation on pratique to the Commonwealth designated Biosecurity Officer, who then makes a decision on pratique (grants pratique).
- That the pratique decision be then provided to the relevant port harbourmaster who subject to written confirmation from the ship's port agent that it has been formally advised of the pratique decision by the Commonwealth designated Biosecurity Officer, is then authorised to make a determination (taking into account the usual ship navigation criteria) as to whether the ship proceeds to berth.
- Pratique, with whatever conditions are attached to the pratique decision, can then practically proceed.

Recommendation 9: That the Joint Committee recommend that the Australian Maritime Safety Authority (AMSA), consistent with its responsibility to authorise Vessel Service Traffic (VTS) providers under Marine Order 64, engage an independent auditor to undertake a review of its VTS authorisation of the Port Authority of NSW (PANSW) with a view to imposing new conditions on PANSW requiring it to:

- Develop, in consultation with stakeholders, a new risk assessment framework that addresses WHS risks for port workers such as the risks arising from communicable diseases such as COVID-19:

- And that the new protocols include a publicly available MOU or similar instrument setting out cooperative information exchange and communication arrangements between the two organisations, and that part of that communication require the PANSW to convey decisions arising from communication and information exchange to the port workforce, maritime unions and employers of port workers;
- Consult SafeWork NSW, NSW Health, employers of workers who perform roles at NSW ports and their trade unions on the WHS risks, new WHS standards and due diligence processes and protocols to ensure risks to the health and safety of all port workers are taken into consideration in decision making by the harbourmaster and VTS staff in relation to ship entry to ports in circumstances where communicable diseases are prevailing; and
- Re-train all VTS staff, including management and the crisis management team, in new risk assessment and risk procedures and protocols.

Recommendation 10: That the Joint Committee recommend that Princess Cruises Lines Ltd be the subject of an independent investigation regarding its WHS practices by a panel of WHS experts, trade union and ship owner representatives led by a non-Australian PSC Regulator such as Maritime NZ and involving the ILO, to determine if it has breached any WHS law, and if so, recommend that SafeWork NSW or the NSW Director of Public Prosecutions initiate legal proceedings against Princess Cruises Lines Ltd.

Recommendation 11: That the Joint Committee recommend that the Prime Minister write to the head of the Kuwait Government advising that Australia expects the Kuwait Government to ratify the ILO Maritime Labour Convention (MLC) if it wishes to continue to undertake maritime trade with Australia.

Recommendation 12: That the Joint Committee recommend that AMSA write, after consulting with the MUA and ITF, to its counterpart PSC regulator in Kuwait and to the ship owner/operator and employer, Kuwait Livestock Transport and Trading, recommending improvements to WHS and labour practices on Kuwait registered ships that trade with Australia.

Recommendation 13: That the Joint Committee recommend that the WA Government confer with all entities involved in the live animal export trade in WA to advise WA Government expectations in relation to labour and WHS standards applying to ships chartered for the live animal trade from WA ports, and one of those expectations be that the nation in which the ship for that trade is chartered, has ratified the ILO MLC and has in place appropriate WHS and labour standards in all elements of the live animal supply chain.

Recommendation 14: That the Joint Committee recommend that the WA Government, after conferring with the maritime unions, the ITF, AMSA and WA state marine and port authorities that have harbourmaster functions, develop WHS and labour standards conditions for all international ships that wish to trade through WA ports, and for the WA Government to identify the most effective legislative mechanism to ensure those new conditions are introduced and enforced.

Recommendation 15: That the Joint Committee recommend that the Australian government urgently establish a Crew Change Task Force to facilitate crew changes for all ships calling in Australian ports. The Task Force must involve dedicated resources to work with federal and state agencies and government departments to harmonise procedures to expedite crew changes in Australia. These procedures should:

- Involve one set of clear set of rules explaining how crew change works across Australia, applicable across all states and territories, and made easily accessible online;

- As far as possible, implement the protocols of the International Maritime Organization (IMO) Circular Letter No.4204/Add.14 on safe crew changes issued on 5 May 2020, and the outcomes of the *International Maritime Virtual Summit on Crew Changes* (hosted by the United Kingdom government). Current procedures in Queensland should also be examined as a model;
- Allow seafarers to travel quickly and safely via airports, safe corridors, and to and from seaports to board and disembark their ships;
- Exempt seafarers from any caps on airport arrival numbers; and
- Recognise that time at sea counts as an isolation period.

The Task Force must also play a leading role in coordinating a greater number of flights to see seafarers returned home and replacement crew brought in from overseas, including arranging for government to underwrite flights until they are filled.

Recommendation 16: That the Joint Committee recommend that the Australian Government recognise the significant increase in the social isolation to seafarers on ships servicing Australian ports arising from the COVID-19 pandemic and the impact this isolation is having on the mental wellbeing of the seafarers.

Recommendation 17: That the Joint Committee recommend that the Australian Government allocate funding for the provision of Wi-Fi access for seafarers on ships on the Australian coastline as well as those at berth in Australian ports to improve their communication access and reduce the incidence of mental health issues among seafarers.

Recommendation 18: That the Joint Committee recommend that the Department of Foreign Affairs and Trade, as the Commonwealth agency with responsibility for advancing human rights globally and as the agency with key responsibility for Australia's role within the United Nations, be tasked with:

- Leading and coordinating a national stakeholder discussion aimed at developing solutions and proposals for injecting into the relevant international fora on which Australia is represented, like the ILO and IMO aimed at framing long term solutions to systemic failure of international ship regulation; and
- Considering modern slavery risk, WHS regulation and labour standards applying to international seafarers and better ways to enforce the rights of seafarers deriving from international Conventions like the ILO MLC and the core ILO Labour Conventions to which Australia and other nations involved in ship regulation are signatories, where failures have been highlighted in the case of the cruise and cargo ship sectors of international shipping during the COVID-19 pandemic, and that the stakeholders to be involved include:
 - The policy departments overseeing ship safety, the Department of Infrastructure, Transport, Regional Development and Communications, the Department overseeing labour relations and WHS, the Attorney General's Department, the agency responsible for compliance with the *Modern Slavery Act 2018*, the Department of Home Affairs and relevant statutory agencies such as AMSA and Safe Work Australia, along with the employer organisation MIAL, and seafarer representative organisations the MUA and ITF.

Recommendation 19: That the Joint Committee recommend that one key initiative to be developed through the stakeholder discussion is an Australian initiative for consideration by the ILO aimed at securing international support for a set of reforms to international shipping regulation that builds on the ILO MLC of 2006 by requiring a new Convention or significant amendment to the ILO MLC. The aim of a new or amended Convention is to:

- Establish new international seafarer labour standards including a minimum wage and retirement benefits; and
- Establish a new international shipping labour and WHS compliance and enforcement regime that might for example, establish a series of domestically based international shipping tribunals to enable the weaknesses in international shipping to be systematically addressed by such a network of interconnected shipping tribunals in key shipping regions like North America, Europe/UK, Latin America, Africa, Asia and Australia/Oceania.

Recommendation 20: That the Joint Committee recommend that the Australian Government, in cooperation with the States/NT, establish an ongoing international shipping commission with the involvement of all relevant stakeholders, the purpose of which is to:

- Provide a national framework to ensure that Australia maximises the economic and social benefits from international shipping;
- Set and review minimum standards for the cruise sector to re-establish a social licence to operate in Australia;
- Develop and promulgate Codes of Conduct on the advice of relevant stakeholders in each of the key subsectors sectors of international shipping in Australia – cruise shipping, cargo shipping and offshore energy shipping. The Codes of Conduct be designed to establish principles and mechanisms for addressing the full spectrum of labour, WHS, biosecurity protocols, employment, training and qualification issues as well as agency coordination and compliance and enforcement arrangements, and in particular:
 - A consistent approach to the health protections and protocols for workers in essential maritime services such as ports and port services, and ships, including cargo ships, offshore oil and gas ships, passenger ferries, harbour towage, pilotage, mooring ships, bunkering ships and cruise ships, based on the best available advice from the ILO, IMO and WHO, supported by Australian experience gained during the pandemic.
 - A consistent approach to operator responsibilities in the event that one or more workers in a port or shipping workplace contracts a communicable disease, that address worker health and safety (e.g. procedures for shift and crew changes) and equipment/workplace clean-ups and safety to ensure that maritime workplaces are safe for remaining and replacement workers.
 - A template ports and shipping assistance package, based on the key worker status of port and shipping workforces, that supports port and ship operators who experience a business downturn due to lower volumes of throughput being handled through Australian ports and who are incurring additional costs to keep workforces and workplaces safe, and such workforces in employment, so that the port gateways can continue to ensure the nation is supplied with essential goods such as food, fuel and medical supplies; and
 - A strengthening of Commonwealth and state/NT regulatory and taxation/fees and charges arrangements to ensure that Australian businesses and their workforces are given full support and protection so that they are in a sound position to help deliver a stronger ports and shipping sector when a recovery from a disruptive event like the COVID-19 pandemic emerges.
- Develop protocols, in conjunction with international labour and maritime organisations, to address the stranding of seafarers aboard international ships trading with Australia in circumstances where government restrictions on travel and borders prevent seafarers from being relieved by fresh crews;
- Ensure clearly defined responsibilities and the efficient operation and interaction of each of the Commonwealth and State/NT agencies and the key stakeholders that interface with international shipping in Australia, covering:
 - Ship safety, including pollution and biosecurity (derived from IMO and ILO Conventions);

- WHS and welfare of seafarers (derived from ILO Conventions) and including the interface with public health and human biosecurity laws;
- Labour standards and modern slavery (derived from the ILO Core Labour Conventions);
- Seafarer rights including representational and access rights (derived from ILO and IMO Conventions);
- Border security, customs, immigration, taxation and crimes at sea; and
- Interface with domestic shipping and ports.

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