



Australian Government

**Department of Immigration
and Border Protection**

Inquiry into Increasing use of so-called Flag of Convenience shipping in Australia

**Senate Standing Committee on Rural and Regional
Affairs and Transport References Committee**

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Introduction

This submission to the Senate Rural and Regional Affairs and Transport References Committee Inquiry into 'Increasing use of so-called Flag of Convenience shipping in Australia' addresses matters relating to the role the Department of Immigration and Border Protection (the Department) plays in regulating and monitoring international and domestic shipping of goods and passengers in Australia's maritime domain.

Department Submission

Background

The Department supports a range of activities including the regulation and monitoring of international and domestic shipping of goods and passengers across the border continuum.

The Australian Border Force (ABF), the Department's operational arm, undertakes maritime enforcement activities at border entry points where it administers a range of legislation including the *Australian Border Force Act 2015*, the *Customs Act 1901* (the Customs Act) and the *Migration Act 1958*. All arriving international vessels are assessed and treated according to their assessed risk profile. FOC ships arriving in Australian ports are not treated differently under the Customs Act; rather they are treated in the same way as any arriving international vessel.

At sea, monitoring and regulating international and domestic shipping is carried out by Maritime Border Command (MBC), a multi-agency force positioned within the ABF. MBC uses assets and personnel from the ABF and the Australian Defence Force and enforces a range of laws¹ in Australia's maritime jurisdiction including the Australian Exclusive Economic Zone (AEEZ), Territorial Sea and Contiguous Zone.

Once in an Australian port Flag of Convenience (FOC) vessels may also be subject to inspection by the Australian Maritime Safety Authority.

Flag of Convenience shipping and threats to Australia

The Department notes that while a significant proportion of legitimate sea trade is conducted by ships with FOC registration, there are features of FOC registration, regulation and practice that organised crime syndicates or terrorist groups may seek to exploit.

These features are:

- a lack of transparency of the identity of shipowners and consequent impediment to holding the owner to account for a ship's actions; and
- insufficient flag state regulatory enforcement and adherence to standards.

Identification of ownership and accountability

A lack of transparency through concealed ownership in some FOC registration regimes is caused by a flag state not requiring disclosure of ownership as a condition for registering ships (some flag states actively advertise secrecy as a benefit of registering ships to their flag). Further, timely

¹ In addition to powers under the Immigration, Customs and Australian Border Force Acts, the MBC also exercises powers under other legislation including the *Maritime Powers Act 2013*, the *Fisheries Act 1975* and the *Quarantine Act 1969*.

verification and validation of a ship's registration can often be delayed where flag state registries are managed by third parties or if flag states do not respond to enquiries.

In addition, FOC registered ships often have complex financial and ownership arrangements (such as ownership through shell companies) that make it difficult to identify the individuals and organisations involved in their operations.

Reduced transparency or secrecy surrounding complex financial and ownership arrangements are factors that can make FOC ships more attractive for use in illegal activity, including by organised crime or terrorist groups.

This means that FOC ships may be used in a range of illegal activities, including illegal exploitation of natural resources, illegal activity in protected areas, people smuggling, and facilitating prohibited imports or exports.

Regulatory enforcement and adherence to standards

Some flag states require adherence to minimum required standards of shipboard practice instead of best practice. These flag states may also have poor governance and compliance regimes and fail to adhere to international maritime conventions and standards.

Limited compliance regimes and lack of adherence to international conventions and standards can contribute to a decreased or limited crew capability and diminish a ship's general seaworthiness. Both factors can contribute to a heightened risk to the environment or other shipping, potentially leading to a compromise to biosecurity, for example through poor ballast water management or by causing marine pollution.

Flag of Convenience shipping and illegal unregulated and unreported (IUU) fishing

Large numbers of fishing vessels, registered to FOC nations, operate in waters adjacent to the AEEZ. These vessels are able to evade high seas fisheries conservation and management regulations because FOC nations are often not signatories to relevant international conventions and agreements. This can compromise the management of internationally significant fisheries, as enforcement action cannot be taken against such vessels on the high seas without the authorisation of their flag state.

More significantly, these fishing vessels change flag registration easily and often, which impedes vessel identification.

An example: Interception of the *Kunlun*

A recent instance is the internationally listed IUU fishing vessel *Kunlun*. Prior to its boarding by MBC in February 2015, *Kunlun* claimed to have been flagged to 12 different states under 16 different names.

MBC boarded the *Kunlun* to the west of the Cocos (Keeling) Islands for the purposes of verifying its flag state because there were significant grounds to suspect that its claim to be flagged to the Republic of Equatorial Guinea was dubious.² During boarding, the master made further claims that the vessel was flagged to Indonesia under the name *Taishan*. Based on the information obtained during the course of the boarding, both claims were found to be false.

² *Kunlun* was boarded under international law and Article 110 of the United Nations Convention on the Law of the Sea. Ordinarily, a ship on the high seas is boarded with the consent of the flag state.

Information gathered during the boarding of the *Kunlun* assisted in its subsequent detention by authorities in Thailand. But the complexities of timely flag state verification procedures and difficulties involved in validating this vessel's claims of registration made identification difficult and could only be resolved by boarding at sea.

Flagless vessels such as the *Kunlun* operate in breach of international standards and conventions and often try to disguise this by claiming FOC registration.

Summary

The regulatory, registration and compliance practices of the so-called FOC states have the potential to create vulnerabilities for Australia's enforcement of laws in its maritime domain.

These vulnerabilities add to the attractiveness of FOC shipping to entities such as organised crime syndicates and other entities seeking to illegally exploit natural resources both within and outside the AEEZ.

The Department will continue to use an intelligence-led, risk-based approach to identify and mitigate threats to Australia's maritime border security.