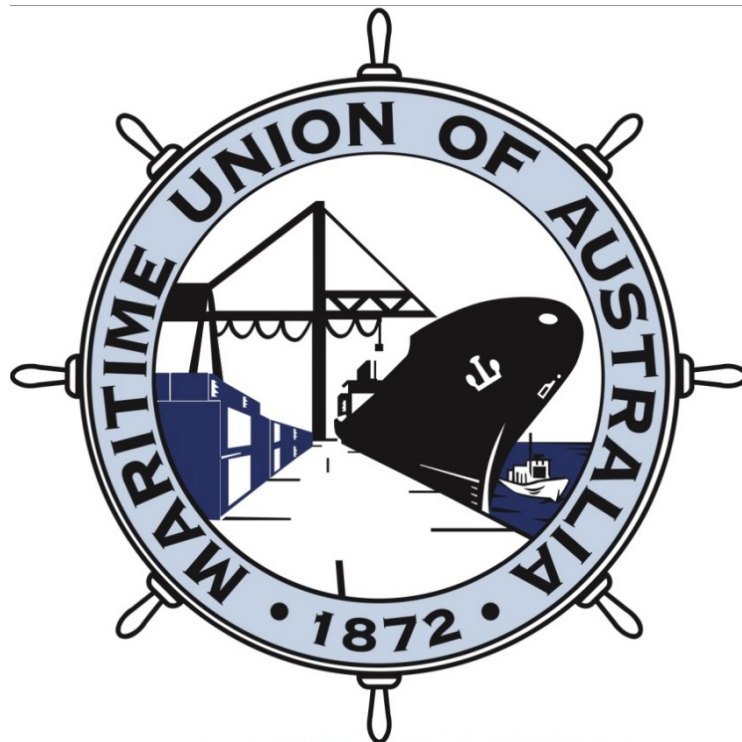


MUA Submission: Inquiry into Provisions of the Biosecurity Amendment (Enhanced Risk Management) Bill 2021



22 September 2021

Senate Standing Committee on Rural and Regional Affairs and Transport

Submitted via email: rrat.sen@aph.gov.au

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Background

The Maritime Union of Australia (the MUA), a division of The Construction, Forestry, Maritime, Mining and Energy Union (CFMMEU), makes the below submission to the Rural and Regional Affairs and Transport Senate Committee's inquiry in to the Provisions of the *Biosecurity Amendment (Enhanced Risk Management) Bill 2021* on behalf of its members in the Australian shipping, port services, and stevedoring industries whose health and safety at work is directly affected by the biosecurity measures this Bill seeks to amend.

Throughout the COVID-19 pandemic, the MUA has taken an early, proactive position on biosecurity and quarantine matters affecting the safety and viability of Australia's Ports.

The MUA was quick to raise its concerns with both state and federal governments in the early months of 2020 that the biosecurity regime in various Ports around Australia had – over the course of many years – become porous and was – in the context of responding to the emerging threat of COVID-19 – open to manipulation or abuse by rogue multinational shipping and cruise companies.

Therefore, the MUA offers the below submission in the same spirit and puts forward its perspective, and the collective perspective of the union's members who work in those Ports, on the issues arising from the proposed measures in the *Biosecurity Amendment (Enhanced Risk Management) Bill 2021*.

Summary

The MUA is supportive of measures to strengthen Australia's biosecurity regime in the context of the present COVID-19 pandemic as well as the development of a long-term, robust enforcement regime that multinational shipping companies must comply with. This will hopefully have a secondary benefit of developing and improving a culture of compliance amongst shipping companies and ships' owners.

The provisions of this Bill repair problems caused by the abolition in 2015 of the old *Quarantine Act 1908*, but the MUA cautions the Government to ensure that maritime and port workers are not unreasonably or unjustifiably disadvantaged or harmed by newly restored measures to issue group quarantine directions.

The Government must also use this opportunity to enshrine further protections in law for international seafarers on foreign-flagged ships visiting our Ports, in line with our obligations as a signatory to the *Maritime Labour Convention 2006*.

Provisions of the Bill

The MUA notes the intentions of the Bill and that it seeks to strengthen pratique arrangements for incoming vessels (and aircraft) and manage biosecurity risks associated with the health of those vessels' crew and passengers by:

- Expanding pre-arrival reporting requirements for aircraft and vessels;

- Strengthening penalties for non-compliance with negative pratique requirements;
- Creating a mechanism to make a human biosecurity group direction;
- Increasing civil and criminal penalties for contraventions of the Biosecurity Act;
- Streamlining the process for determining goods to be prohibited, conditionally non-prohibited or suspended, and the granting of permits on a risk-assessment basis; and
- Other measures, including establishing Ministerial powers to authorise government expenditure on biosecurity programs and activities.

Pre-Arrival Reporting Requirements

Given the extent to which the then new *Maritime Arrivals Reporting System* (MARS) emerged as a factor in the *Ruby Princess* debacle in March 2020, it is timely that the Federal Government is finally responding to feedback provided by the MUA and industry that the legislative and regulatory framework for assessing biosecurity risk at Australian Ports was and remains inadequate.

The MUA is therefore supportive of measures which might avoid a future, similar debacle from reoccurring.

To the extent that the Inspector-General of Biosecurity has already indicated that much of the blame for the *Ruby Princess* debacle lies at the feet of the federal Department of Agriculture, and its failure to enforce its own existing protocols, it is the MUA's position that the pre-arrival reporting requirements for international vessels must be further improved, and moreover, that an enforcement regime be implemented which elevates the importance of compliance over simple convenience for shipping companies.

The Federal Government must become proactive and interventionist in its day-to-day management of any newly bolstered compliance regime since the obvious tendency of international shipping companies to minimise or avoid altogether the costs of their compliance, including by hiding their non-compliance, remains a daily risk to Australia's biosecurity.

Strengthening penalties for non-compliance

The MUA is supportive of measures to compel or ensure greater compliance with Australia's biosecurity regime by shipping operators [or the person(s) in charge of a vessel] whose vessels enter Australian Ports, including by strengthening civil and criminal penalties for non-compliance.

However, the MUA notes that in a context where international shipping companies routinely shirk their industrial and workplace obligations to their own employees, it is likely that these companies will seek to minimise their operational costs in myriad ways, including by becoming routinely non-compliant with various aspects of any newly amended *Biosecurity Act*.

The Government's proposed amendments include increases to penalty provisions in the Biosecurity Act. These penalties, both civil and criminal, are to be increased over the status-

quo by at least 250% in most instances and in the remainder of instances by more than triple the current penalties.

However, routine non-compliance remains a risk unless the Government commits itself to lasting cultural change from the sector.

This can only be achieved through more vigilant enforcement of the provisions of the *Biosecurity Act* than has been apparent to date.

Creating a mechanism to make group directions in respect of human biosecurity

The MUA notes that the intention of a new Section 108B provides for directions to be made in respect of human biosecurity to a group of individuals and that the inclusion of this new provision arises as a direct consequence of the COVID-19 pandemic and the failure by the drafters and proposers of the *Biosecurity Act 2015* in its original form to carry over similar provisions as which existed in the *Quarantine Act 1908*.

Presently, directions may be made by a human biosecurity officer in respect of individuals, and while this may be adequate for a cargo ship and its crew, it becomes impractical to manage the biosecurity risk of a passenger ship with thousands of passengers on board in the same way. The *Ruby Princess* debacle illustrates the shortcomings of the existing *Biosecurity Act* in this respect.

The MUA notes, however, that the current drafting of the new Section 108B allows for directions by the Chief Human Biosecurity Officer or another Human Biosecurity officer to be made in respect of a group of individuals who “...are at a landing place or port in Australian territory, or at a place that is in close proximity to a landing place or Port in Australian territory, where an aircraft or vessel has arrived at the landing place or port.”

This provision clearly has the effect of capturing portside workers, stevedores, pilots, tug operators and other maritime services workers whose duties require them to either board a vessel or engage in close quarters with the crew of a vessel.

The MUA notes that the onus is upon governments at a state and federal level to legislate and regulate for a safe working environment and to enforce that legislation where private sector employers fail to meet their obligations. This must include biosecurity protocols to protect maritime workers whose skill and labour is essential for the international shipping industry.

It therefore must not fall upon these workers to bear an unreasonable brunt of any failure by their employer, any failure by their employers’ client shipping company, or any failure in the federal government’s pre-arrival reporting and screening protocols to protect them from a human biosecurity risk in their workplaces. This includes those workers who were in fact not exposed to a human biosecurity risk even where one may have existed at a Port while they were working.

The MUA therefore seeks clarification from the Committee about the intention and scope of the new Section 108B and further, seeks amendments to this Section to protect port

workers from becoming the subject of such a Group Direction when it would be unfair and unreasonable to do so simply because they were present (in whatever capacity and at whatever distance) at a Port where a human biosecurity risk was deemed to exist.

Simply put, it is the MUA's position that this new power must not be used capriciously or recklessly in such a way as might unnecessarily threaten the freedom or livelihood (however temporary) of a port or maritime worker by unnecessarily subjecting them to a group quarantine direction.

Noting the measures contained in the new Section 108M creating the power for a Human Biosecurity Officer to make a group direction which includes requirements for those subject to such a direction to wear certain protective clothing and use certain protective equipment, it is the MUA's position that the *Biosecurity Act* should also be further amended to include requirements for the use of adequate protective clothing and equipment at other, earlier stages of a vessel's arrival, berthing and stevedoring procedures.

Since these protocols are presently set and managed by States and Territories, rather than by the Commonwealth, the sector as a whole would benefit from a consistent, national approach to what amounts to a basic workplace safety issue for port and maritime workers in Australian Ports.

The MUA also makes clear that the issuing of a group direction in respect of human biosecurity must not prevent the immediate provision of medical care (being medical care of any kind, whether related to the human biosecurity concern prompting such a group direction or any other kind of necessary, routine medical care) to international seafarers in line with Australia's obligation as a signatory to the International Labour Organisation's *Maritime Labour Convention (2006)*.

The Maritime Labour Convention, at Regulation 4.1 (3), sets out Australia's obligations to international seafarers while they are in our Ports and territorial waters:

Regulation 4.1 – Medical care on board ship and ashore

Purpose: To protect the health of seafarers and ensure their prompt access to medical care on board ship and ashore

1. Each Member shall ensure that all seafarers on ships that fly its flag are covered by adequate measures for the protection of their health and that they have access to prompt and adequate medical care whilst working on board.
2. The protection and care under paragraph 1 of this Regulation shall, in principle, be provided at no cost to the seafarers.
3. Each Member shall ensure that seafarers on board ships in its territory who are in need of immediate medical care are given access to the Member's medical facilities on shore.
4. The requirements for on-board health protection and medical care set out in the Code include standards for measures aimed at providing seafarers with health protection and medical care as comparable as possible to that which is generally available to workers ashore.

These obligations must not be forgotten as the Federal Government seeks to bolster quarantine measures and protocols at our Ports.

It is therefore the MUA's view that the Government should take the opportunity while making amendments to the Australian Biosecurity regime to include provisions which reinforce these long standing international obligations to visiting international seafarers.

ENDS.