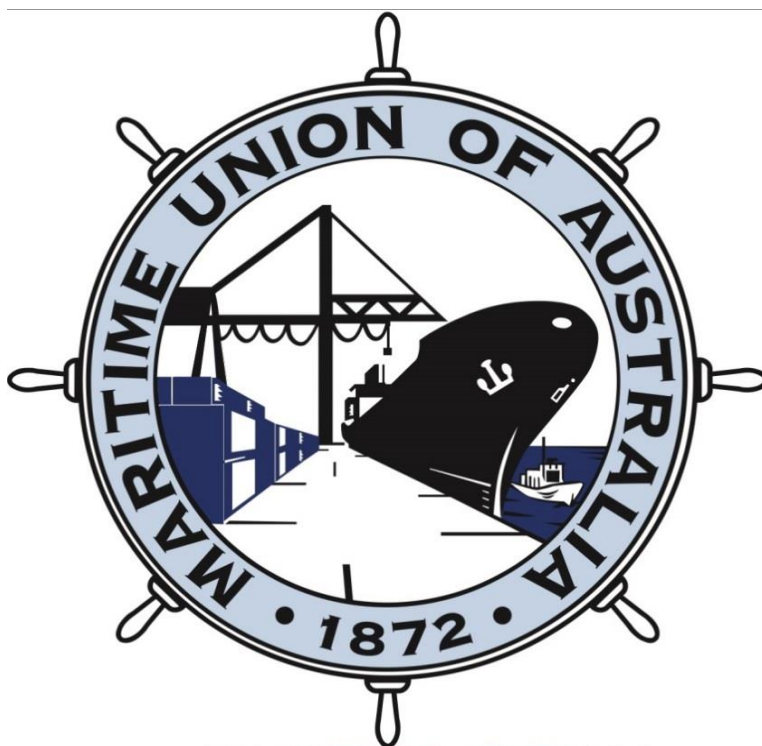


Submission by the Maritime Union of Australia

Parliamentary Joint Committee on Intelligence and Security

Review of the Security Legislation Amendment (Critical Infrastructure) Bill 2020 and Statutory Review of the *Security of Critical Infrastructure Act 2018*



12 February 2021

**Paddy Crumlin, National Secretary,
Maritime Union of Australia
A Division of the Construction, Forestry, Maritime, Mining and Energy Union
365 Sussex St, Level 2,
Sydney, NSW, 2000**



Website: www.mua.org.au

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 represent workers across various areas of maritime operations. 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).
- Offshore oil and gas industry seafarers servicing oil and gas platforms.

Overview

The MUA acknowledges the importance of working in partnership with government to develop proportionate requirements that strike a balance between uplifting security, and ensuring businesses remain viable and services remain sustainable, accessible and affordable.

We agree that an uplift in security and resilience across critical infrastructure sectors may be necessary to ensure that businesses benefit from strengthened protections to the networks, systems and services we all depend on.

We are well aware of the need to build the resilience of critical infrastructure, especially in transport and logistics supply chains, due to incidents like:

- The Beirut ammonium nitrate induced explosion that destroyed its port and grain storage, not to mention thousands of residential properties and businesses with significant loss of life;
- The running aground of the *MV Wakashio* off Mauritius in August 2020 with severe consequences for the environment and the livelihood of fishers and tourism businesses;

- The sinking off Japan of the livestock carrier *Gulf Livestock 1* carrying NZ cattle to China in September 2020 with the loss of over 40 lives including 2 Australians;
- The disruption to Toll Holdings shipping and freight operations that affected thousands of customers due to cyber-attacks in 2020;
- The revelations in the 2015 Coroner's Inquiry into deaths in Australian waters on the foreign registered ship the *Sage Sagittarius* transporting coal from Australia that revealed evidence of possible gun smuggling;
- The threat posed by the outsourcing to developing nations of critical aspects of Australia's port container stevedoring functions; and
- The impact of the COVID-19 pandemic on international shipping and port operations, including the human impacts due to ships being workplaces prone to infectious disease transmission and the inadequacy of global systems to support ship crew change and repatriation arrangements.

These are just a few recent incidents in transport and logistics supply chains that highlight the potential risks to Australian shipping and port security, and infrastructure.

The key to any uplift in security and resilience is proportionality, particularly in relation to impacts on workforces and their human rights, transparency around the reasons for such an uplift, and the way it is managed and regulated.

Along with failure in energy systems, failure in any part of the transport and logistics system, particularly ships and ports, can have almost immediate consequential impacts through the supply chain, impacting on many businesses and households. As noted in the Department of Home Affairs Consultation Paper that preceded the Exposure Draft Bill, transport and energy disruptions can impact on essential medical supplies, food and groceries, fuel and other inputs to production such as gas, for both businesses and households, fertilisers for agriculture, mining equipment for mining and materials for manufacturing.

The Departmental Consultation Paper referred to insights revealed since the *Security of Critical Infrastructure Act 2018* (the SOCI Act) required entity reporting, including the need for an enhanced understanding of the ultimate ownership of entities and improved visibility of entities' supply chain and outsourcing arrangements.

These are critically important issues in the globally integrated transport and logistics systems that delivers the nation's exports and imports, where the real ownership of ships and some port service providers is notoriously difficult to ascertain.

Comments on the Exposure Draft Bill

Uncertainty about the application of the Bill to ships and to ship owners/ship operators

We note that the 'transport sector' is defined in the Bill as meaning that sector of the Australian economy that involves:

- Owning or operating assets that are used in connection with the transport of goods or passengers on a commercial basis, or
- The transport of goods or passengers on a commercial basis.

That clearly captures ships.

As an aside we draw the Committee's attention to the example used in Clause 259 of the Explanatory Memorandum (EM) accompanying the Bill that defines "transport sector" where it refers to "*the transport of essential food and groceries into remote areas of the Northern Territory relies on the availability of long combination vehicles or 'road trains'*". We say that a better or additional example would be the ships that transport essential food, groceries, medical supplies and fuel to northern Australian ports and importantly to the Torres Strait and Timor Sea islands e.g. Tiwi Islands, supporting many Indigenous communities. Similarly, Tasmania is close to being wholly dependent on ships for supply of essential goods and for exports of key resource and agricultural products essential for its economic functioning.

We note also that a 'critical liquid fuel asset' is defined to include:

- A liquid fuel refinery that is critical to ensuring the security and reliability of a liquid fuel market,
- A liquid fuel pipeline that is critical to ensuring the security and reliability of a liquid fuel market, or
- A liquid fuel storage facility that is critical to ensuring the security and reliability of a liquid fuel market:

However, the definition does not include a ship involved in the supply of oil to a refinery, nor a ship involved in the distribution of refined petroleum products from a refinery. Ships are not dissimilar to a pipeline in that regard – just a different type of infrastructure asset for transporting liquid fuel products.

We submit that ships are also an integral part of liquid fuel storage capability and are critical to ensuring the security and reliability of a liquid fuel market.

We further note that the 'food and grocery sector' is defined as the sector of the Australian economy that involves manufacturing, processing, packaging, distributing or supplying food or groceries on a commercial basis. Again, we make the point that ships are an integral part of the distribution and supply of food and groceries, through ports, to the networks of warehousing/distribution centres that support the retailing of food and groceries in Australia.

However, in proposed new section 12B of the SOCI Act which provides the definition of 'critical freight infrastructure asset', ships (or transport by sea) are not specifically mentioned, only road and rail. That section defines an asset as being a critical freight infrastructure asset if it is any of the following:

- A road network that, in accordance with subsection (2), functions as a critical corridor for the transportation of goods between two States, a State and a Territory, two Territories or two regional centres
- A rail network that, in accordance with subsection (3), functions as a critical corridor for the transportation of goods between two States, a State and a Territory, two Territories or two regional centres (paragraph (b)), or
- An intermodal transfer facility that, in accordance with subsection (4), is critical to the transportation of goods between two States, a State and a Territory, two Territories or two regional centres.

There is no reference to ships or to the sea freight corridors in which fleets of ships routinely ply their trade. We think this is an important omission in the Bill.

We draw the Committee’s attention to Clause 343 of the EM, which identifies the considerations when determining criticality (of critical freight infrastructure assets) under subsections 12B(2), (3) and (4) which may include:

- The volume of freight the network or facility enables to be transported;
- The value of the commodities the network or facility enables;
- The frequency of heavy vehicles the network or facility utilising the network or facility;
- Whether the network or facility enables the transport of specific commodities of high economic significance for the region; or
- Whether any alternative transport routes are available should the network or facility become unavailable.

In relation to the consideration regarding alternative transport routes, we suggest this section of the Bill be strengthened to refer to the availability of Australian ships to provide the alternative transport, noting that the lack of Australian ships in the current mix of ships undertaking sea freight transportation is a threat to national supply chain security and stability. This is why there is wide industry support for the strategic fleet.

You will note from Table 1¹ that coastal ships will continue to transport significant volumes of freight in the domestic freight market, even based on the assumption that current shipping policy and legislative settings remain unchanged.

The Committee would be aware of a significant coastal shipping reform agenda that was recently laid out in the Report of the Senate Rural and Regional Affairs and Transport References Committee Inquiry into the Policy, regulatory, taxation, administrative and funding priorities for Australian shipping tabled in the Parliament on 15 December 2020. That report emphasises the need for policy and regulatory certainty to create the conditions for investment in Australian ships, as well as creation of a level playing field between transport modes to deliver fair competition and effective modal choice for shippers (freight interests).

Table 1 Projected future freight task, by major transport mode, 2018–2040

Year	Mode				Total
	Road	Rail	Coastal	Air	
2018	216.3	441.6	112.1	0.3	770.4
2020	223.1	458.7	111.6	0.4	793.8
2025	250.9	482.4	110.3	0.4	844.0
2030	279.5	496.2	109.0	0.4	885.2
2035	308.7	505.5	109.7	0.4	924.2
2040	337.4	514.1	110.7	0.4	962.5

Source: BITRE estimates.

We also draw the Committee’s attention to the inaccuracy at Clause 344 of the EM which says “Major road and rail assets are vital in responding to and mitigating the impacts of natural disasters. The

¹ Bureau of Infrastructure, Transport and Regional Economics (BITRE) 2019, *Australian aggregate freight forecasts – 2019 update*, Research Report 152, Canberra, ACT, https://www.bitre.gov.au/sites/default/files/documents/research_report_152-final.pdf

criticality of these assets is amplified if there is a lack of redundancy, as inconvenience gives may (sic) to a threat to national interests. For example, the 2009 floods in Queensland's north and north-west temporarily closed the Bruce highway and limited the availability of food and supplies to the region."

It was in fact ships that provided the transportation of critical supplies along the Queensland coast during the 2009 flood emergency.

The omission of a reference to ships in the definition of 'critical freight infrastructure asset' is partially rectified in proposed Section 12C which defines a 'critical freight services asset'. Subsection (1) provides that an asset is a critical freight services asset if it is a network that is used by an entity carrying on a business that, in accordance with subsection (2), is critical to the transportation of goods by road, rail, inland waters or sea.

An important by-product in clarifying the application of the SOCI Act to ships is that the provisions in the Bill would require much greater transparency around the beneficial owners of ships. At present no information is collected or known about the beneficial owners of the 5,743 cargo ships which made 17,068 voyages to Australian waters from overseas ports, involving 32,801 port calls at Australian ports (in 2016–17).² Reducing Australia's dependency on foreign ships and increasing the use of Australian ships, particularly if part of a national strategic fleet as being advocated by all industry stakeholders, would result in far easier identification of the beneficial owner of ships.

The general omission of ships and shipping camouflages the risk to national security from over dependency on foreign ships in Australian transport supply chains and the ease of access of non-national seafarers to critical infrastructure assets

Because the Bill does not create certainty about the application of the *Security of Critical Infrastructure Act 2018* (SOCI Act) to ships, it camouflages and leaves a gap in Australia's critical infrastructure risk mitigation system being strengthened by the provisions in the Bill.

This is because:

- Australia is almost totally dependent on foreign owned and operated ships for its sea freight trade (only 4 [or 0.06 per cent] of the nearly 6,000 different ships annually involved in Australia's imports and exports, offshore oil and gas operations and large cruise ship trades are Australian registered ships crewed by Australian nationals);
- Most of Australia's sea freight trade in exportable commodities is undertaken using Free on Board (FOB) shipping contracts resulting in the cargo purchaser taking responsibility for the shipping, with a resultant transfer of control over the shipping of those commodities to a foreign entity;
- The vast majority of Australia's interstate domestic coastal freight is transported in foreign registered ships using a foreign crew under the lightly regulated licencing system provided by the *Coastal Trading (Revitalising Australian Shipping) Act 2012* (CT Act);
- The majority of Australia's intrastate coastal shipping by volume is transported in foreign registered ships using a foreign crew in a totally unregulated environment, outside the coverage of the CT Act; and

² Bureau of Infrastructure, Transport and Regional Economics (BITRE), *Australian sea freight 2016–17*, https://www.bitre.gov.au/sites/default/files/documents/asf_2016_17.pdf

- There are a large number of seafarers (approximately 138,000 annually, some entering Australia on multiple occasions, which is not that far below Australia's net overseas annual migration [around 180,000 in recent years]) entering Australia on foreign registered ships and accessing critical infrastructure (ports) using only a Subclass 988 Maritime Crew visa. Many of those foreign seafarers holding a MCV remain in Australia in coastal trade for long periods (up to 11 months, and in the current COVID-19 pandemic for up to 14 months or longer), without the requirement to transfer to a genuine work visa for employment in a domestic industry, like the Temporary Skill Shortage visa (subclass 482).

Securing a MCV for a foreign seafarer requires only the flimsiest of checking which does not match the requirements of Australian nationals who require access a port (defined as critical infrastructure in the SOCI Act) for employment and other purposes. All that is required to obtain a MCV is an identification document, name of ship, a maritime occupational licence and meeting a character check. The MCV is granted within two to four days.

In contrast, Australian nationals wishing to access a port are required to hold a Maritime Security Identification Card (MSIC) consistent with the provisions of the *Maritime Transport and Offshore Facilities Security Act 2003*. The AusCheck scheme established in relation MSICs includes an identity check, a criminal history check, an immigration status check, and a security assessment conducted by the Australian Security Intelligence Organisation (ASIO) under Part IV of the *Australian Security Intelligence Organisation Act 1979*. This process can sometimes take weeks or longer, often jeopardising continuity of employment of Australian nationals.

No such checks are required for non-national seafarers to secure a Subclass 988 Maritime Crew visa, yet those non-national seafarers are entering the same ports and often working side by side with Australian port workers who require an MSIC.

We submit that this should be rectified as one of the key risk mitigation strategies in minimising threats to national critical infrastructure.