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Committee Secretary
Senate Standing Committees on Environment and Communications
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Mr Secretary / Ms Secretary

Inquiry into the Biosecurity Amendment (Enhanced Risk Management) Bill 2021

Shipping Australia welcomes the opportunity to provide a submission to the Senate Standing Committees on Rural and Regional Affairs and Transport about the Biosecurity Amendment (Enhanced Risk Management) Bill 2021.

About Shipping Australia

Shipping Australia is an industry association that represents the participants in Australia's international supply chain (for more information, see www.shippingaustralia.com.au).

We provide policy advice and information to approximately 30 full members, which includes ocean shipping companies and shipping agents active in Australia. We have over 40 corporate associate members, which generally provide services to the maritime industry in Australia. These services include port and terminal operations, pilotage, and legal advice among other services.

Our members handle the vast majority of approximately eight million TEUs (containers of twenty foot equivalent) containerised seaborne cargo imports to, and exports from, Australia. They also handle a considerable volume of our car trade and our bulk commodity trade.

Our members employ more than 3,000 Australians.

Comments on the Biosecurity Amendment (Enhanced Risk Management) Bill 2021 ("the Bill")

1. Shipping Australia supports the policy goals of protecting Australia's unique flora, fauna, and ecosystem. We appreciate that a viable and valuable agricultural industry exists in Australia and that many Australians enjoy and cherish a lifestyle that is directly or indirectly focused on some aspect of Australia's agricultural industries or the natural environment. We also acknowledge and appreciate that Australia's undisturbed natural environment is of extremely high value in, and of, itself. We appreciate, understand, and support the goal of providing biosecurity so that Australia's agricultural- and environmentally-related industries and ways of life continue unharmed.

2. On Wednesday 1 September 2021, the Hon. Stuart Robert, MP for Fadden and Minister for Employment gave the Bill's second reading speech. He stated: *"The COVID-19 pandemic has tested Australia's human biosecurity systems in an unprecedented way… Through this pandemic, international maritime vessels have emerged as a significant risk pathway for biosecurity threats to enter Australia. This bill will amend the Biosecurity Act to provide an improved framework to assess and manage incoming vessels and aircraft where infectious*

disease risks have been identified on board. These amendments are consistent with recommendations made by the Inspector-General of Biosecurity in his review of the Ruby Princess cruise ship incident, which the minister commissioned. Currently, Australia is one of the few countries in the world that is free of serious pests and diseases. This means our current biosecurity system is serving our country well. It has been instrumental in successfully protecting our $51 billion agricultural export industries…".

False dilemma; many management options are in fact available

3. A ***false dilemma error*** occurs when only two options are presented even though other options are available and decision-makers are forced to choose between only two options. We are presented with a false dilemma in that unspoken implied choices appear to be *"to preserve Australia's environment and human health by keeping undesirable organisms completely out by managing it offshore"* (a "Fortress Australia" type of policy) or *"to allow the complete over-running of Australia by undesirable organisms".*

4. This dilemma is a false dilemma because there are likely a whole spectrum of potential choices that lie between the two extremes outlines above that involve the careful risk-based management of biosecurity programmes while also accepting that we live in an imperfect world that, inevitably, entails the creation and acceptance of different kinds of risk in different kinds of environments and with different kinds of human activities.

5. We are concerned about this false dilemma as there appears to have been little-to-no consideration of other management approaches other than "try to keep all pests out" and "let all pests in". As a basic point of good policy generation, false dilemmas such as that described above ought to be avoided and there should be an examination of a range of management counter-measures for management of pest species.

6. Shipping Australia calls for an independent expert examination of multiple different ways in which the biosecurity risk can be managed.

Advantages and disadvantages to a variety of parties ought to be considered by policy makers; costs to trade industries are immense

7. An ***observational selection error*** occurs when a proponent of a policy only draws attention to certain, favourable, aspects of the policy and then ignores unfavourable aspects. The Ministers' second reading speech, the Bill and Explanatory Memorandum are largely focused on the positive aspects of a Fortress Australia style of biosecurity policy. We note that there is little to no discussion (i.e. there is an observational selection error) about the costs and drawbacks of maintaining such a policy.

8. We are extremely concerned that there has apparently been little-to-no consideration of the importance of Australia's international trade.

9. Although we note that Australia has *"$51 billion agricultural export industries…",* we would like to invite the committee to reflect upon the value of Australian cargo. And we would also like to invite the committee to consider the subsequent economic value of those goods and commodities being present for transport, storage, sale and use in Australia or, likewise, the economic activity generated by goods / commodities being exported from Australia.

10. The value of the cargo itself that is shipped into / out of Australia is about ***AUD$693 billion dollars a year***. On a simple comparison of numbers basis, the value of our trade far outweighs the value of our agriculture – ***by about 13.6 times.***

11. ***Exports of goods and services to / from Australia accounts for about 45.7% of our gross domestic product.*** Australia's merchandise trade (the trade in physical goods that crosses the border of a country and are sold and / or used in that country) accounts for about 35.3% of our gross domestic product.

12. We would like to reflect upon the costs and benefits of biosecurity programmes using the example of the Khapra Beetle. The costs to Australia of maintaining a 100% Khapra Beetle-free status may well outweigh the harm caused by not having a 100% Khapra Beetle-free status.

13. While it may, ultimately, be decided to maintain a 100% Khapra Beetle-free status, other matters ought to at least be considered by policy makers prior to enacting new law.

14. We note Department of Agriculture, Water and the Environment ("DAWE") statements that a widespread incursion could cost Australia ***$15.5 billion over 20 years.*** We also note the use of the qualifiers ***"widespread"*** and ***"could".***

15. The details of how this is calculated do not appear to have been publicly released. Shipping Australia has asked the DAWE for these details but our communications to DAWE on this point have gone unanswered. What, for example, would be the impact of a non-widespread incursion in a non-rural area? Can this be managed? Is it an acceptable risk to run?

16. As a general point of good governance, such calculations and the underlying assumptions ought to be released to the public. We urge that a recommendation be made that DAWE publicly release its calculations as to how it arrived at an AUD$15.5 billion figure over 20 years, explain what assumptions it has made to arrive at those figures, and explain what evidence it has as to why it reasonably believes these are reasonable assumptions and figures.

17. In Australia, we understand from the DAWE that there are approximately 2.4 million actual imported ocean shipping containers each year. Note: these are not TEUs but are actual containers. A twenty-foot-equivalent-unit is the industry standard way to count container capacity. Some containers are actually forty foot equivalent i.e. they are two TEU, so it is important to specify whether a person is talking about TEU or containers.

18. On the assumption that a USD$100 certificate of cleanliness is required, at the time of writing (2021-09-24) USD$100 equates to about AUD$137. A quick google of the web reveals that the cost of fumigating a twenty footer with methyl bromide (a well-known fumigant) costs about AUD$330 inclusive of GST. According to the ACCC's annual stevedore container monitoring report, the cost per container lift is about AUD$263.2 per container (2019-2020 values). Add it all up and that's about AUD$730 per box.

19. That AUD$730 per box figure is almost certainly an underestimate – some goods may have to be destroyed (price for goods destruction varies), some cargo may have to be unpacked to allow methyl fluoride to circulate (AUD$163 for the first three cubic metres), there may be truck storage at the rate of AUD$163 an hour and destruction of dunnage (AUD$163 for the first three square metres) among various other costs.

20. If we ignore the extra costs and if we take the AUD$730 per box as the basic starting flat rate, assume that all boxes have to be fumigated, and multiply that by 2.4 million boxes, then that's AUD$1.75 billion a year (specifically, AUD$1,752,000,000). If we multiply that by 20 years, the total figure is just over AUD$35 billion over twenty years for only a couple of Khapra counter measures being a certificate of cleanliness and fumigating containers.

21. So the possible cost of handling a widespread incursion of Khapra is about AUD$15.5 billion over 20 years, while the almost-certainly massively underestimated cost of imposing a completely Khapra-clean supply chain is AUD$35 billion over twenty years. Or, in other words, the Khapra counter measure costs nearly twice the amount of the potential harm done.

22. Incidentally, no-one has publicly explained (as far as we are aware), what the consequences are of increasing the consumption of methyl bromide – it's a potent destroyer of the environment.

23. For the avoidance of doubt, we are aware that there is (currently) no policy to mandate that 100% of containers are fumigated as a Khapra counter measure. There are requirements that apply to containers that (currently) originate from 40 or so countries (Middle East and North Africa, typically), and there are heat and insecticide treatment options. However, there are other pests from other areas of the world, such as the Brown Marmorated Stink Bug, which is present in 40 countries in Europe, North America and Russia. So, the point still stands, extensive biosecurity restrictions to tackle all pests and completely keep out all pests are likely to fail at some point and will extraordinarily costly. Those costs will be paid by the Australian public as a whole.

24. Biosecurity measures ought to be proportional to the risk i.e. proportional to the likelihood of harm, the magnitude of possible damage – including the possibility of damage to what is being protected and what may be damaged by overly-restrictive and costly control measures, the cost of preventative measures, and the costs of recovery once an incident occurs.

Biosecurity costs imposed on Australia's trade and Australian families are likely to escalate

25. Looking forward, we can easily envisage that even a few years down the line, these Khapra counter measures will likely be even greater simply because the volume of trade is forecast to increase. Ports Botany and Melbourne currently each handle about 2.6m to 3.0m TEU (varies by year) which is about 70% of the eight million or so TEU handled in Australia each year. Port Botany forecasts growth of up to 8.4 million TEU by 2045[1] Port of Melbourne envisages that its trade will grow to about nine million TEU by 2050[2].

26. It can clearly be anticipated that per-container created biosecurity costs in the supply chain will massively escalate if these 2.5 x to 3 x growth forecasts eventuate.

27. Given that so much of the goods that we, the Australian public, buy are imported, it is the everyday Australian consumer that will ultimately be paying for these treatments. The Australian public likely pay a greater sum of money than indicated above as companies will typically pass on imposed biosecurity costs as an ancillary charge on their invoice to their customers. Their customers will likely do the same and the cost will eventually be incorporated into the final price that is paid for by the consumer.

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[1] *NSW Ports, 2015 Masterplan, p37*

[2] *Port of Melbourne 2050 Port Development Strategy (2020 edition), page 23*

28. At each stage of the pass through, there is administration that must be done and that incurs an administration fee. Ultimately, the consumer ends up paying for the cost of the goods, the cost of transporting the goods, the cost of treating the goods and a myriad of administration fees. All of which makes goods more expensive than they otherwise would be.

29. For the avoidance of doubt, we are not suggesting that Khapra be allowed to run wild. However, Shipping Australia submits that a completely-Khapra-clean plan does not represent good value for money and, over time, will provide decreasing value for money as the value of trade outpaces the value of agriculture. And that's before we even start considering the possibility that (a) the completely-clean plan may somehow fail at some point and (b) even before we start taking into account pests such as Brown Marmorated Stink Bug or Asian Gypsy Moth, to name but two.

30. Shipping Australia suggests that the DAWE ought to work out an approach to pest management that considers the benefits to agriculture ***and*** the costs to wider society.

Funding biosecurity programmes

31. It is also worth considering the nature of how all of this is funded. If I, as a consumer demand a particular service, then I, as a consumer, must pay for it. Agriculture demands a service, namely extremely high biosecurity, however, it does not appear to want to pay for it. There is no good reason why the agricultural sector should not contribute to biosecurity costs given that it is the agricultural sector that profits from the high levels of biosecurity provided.

32. Likewise, we, the general Australian public, also benefit from a bio-secure environment. Accordingly, we, the general public also should contribute to proper biosecurity which we can do through payments of monies raised through general taxation. This would also eliminate the problem escalating and cascading administration costs as described above. Biosecurity for the benefit of all Australians can and should be thought of as a general good that can and should be funded in much the same way as our civil defence and military forces.

33. In addition, or in the alternative, it is us – the general Australian public – who have created this biosecurity risk by demanding cheap goods from overseas (so cheap, in fact, that the Australian manufacturing sector could not compete). We, the general public, create a biosecurity risk every time we place an order to buy something from overseas. Accordingly, we, the general public, should contribute to proper biosecurity which we can do through payments of monies raised through general taxation.

One-size all risk profile is not appropriate; different risk profiles for different types of ship

34. A ***false equivalence error*** occurs when it is incorrectly reasoned that two objects, subjects, or arguments, are equivalent based on some shared characteristic, when the two subjects are manifestly different.

35. By way of analogy and to demonstrate the error with the greatest possible clarity, it would be logically invalid to reason that the Chihuahua breed of dog (one of the world's smallest breeds of dog and bred for ceremonial purposes) and the Great Dane (one of the world's largest breeds of dog and bred for hunting and guarding purposes) are equivalent. They are not. Members of each breed are fundamentally different in many ways even though both breeds

are members of the same species – the domesticated dog *(canis familiaris).*

36. We are concerned that the viewpoint that "international maritime vessel arrivals" are a "significant risk pathway" for biosecurity threats to travel to Australia is an extremely gross oversimplification. To argue that all international maritime vessel arrivals present a significant risk pathway is to commit the same kind of error in reasoning as proclaiming that the Chihuahua and Great Dane breeds are equivalent on the factually true basis that both breeds are types of dog.

37. There are many different types of ship, with many different characteristics, calling at many different places in the world, with different numbers of crew members and using different types of facilities. A container ship is not remotely like a parcel tanker which is not remotely like a dry bulker, which is not remotely like a wide variety of other ship types.

38. We very specifically point out that ***cruise ships are not like cargo-carrying ships***. These considerations ought to be taken into account. Law-makers ought to note the fundamental differences between cruise ships and cargo ships. There is probably too much detail to go into here, but we can summarise the key differences.

39. Cargo carrying ships have small crews of between 15 to 26 or so individuals. Those people tend to stay onboard for eleven months at a time and, other than shore leave (practically non-existent in the pandemic) they interact with few people. The nature of the cargo ship's trade is relevant as crew on, say, a large dry bulker used to carry coal or iron ore is likely to shuttle back and forth between North Asia and Western Australia and few places else. Container ships working in the Australia trades are likely to shuttle around Australia and into southeast Asia and then to relatively few other places.

40. Conversely, cruise ships are a very different type of ship. The "Crew-Center.com" cruise ship website estimates that there are, on average, around 223-224 crew aboard a cruise ship. The Inspector-General of Biosecurity, in his 2021 report into border biosecurity (see Table 2), noted that about 200,000 international cruise visitors from 145 different visited Australia. The Inspector-General also noted hundreds of shore-visit days, 391 days in NSW alone.

41. We would also point out that, even in non-pandemic times, cargo ships typically call at very secure port areas, to which few people have access, and that cargo ship crew are often not allowed into the port area other than in very controlled circumstances.

42. In contrast, while cruise ships also call at secure port areas, literally thousands upon thousands of people have access, albeit under controlled conditions.

43. The Inspector General also noted that, on cruise ships, diverse populations come into proximity for many days, facilitating the potential transmission of respiratory illness. The diversity of passengers and crew, in a confined environment, along with the rapid movement of cruise ships from port to port in different countries, and large numbers of people disembarking also enables the spread of disease.

44. We note in the regulatory impact statement that "commercial vessels" (type unspecified) as of June 2021 were found to have had 101 COVID cases. That needs to be borne against the context, namely, as at the time of writing (September 2021) Australia had unfortunately recorded 97,540 cases of COVID. Meanwhile, there are approximately 17,500 to 20,000 port calls by ships last calling at overseas ports each year. An incidence of about 100 or so cases as

against 97,540 cases and 20,000 port calls conclusively demonstrates that the risk from international commercial vessels is, in fact, extremely low.

45. Cargo ships and cruise ships have markedly different populations, patterns of movement, people exchange, port calls and so on. Cargo ships and cruise ships are so different from each other that they have radically different risk profiles. Accordingly, the risk management strategies for cargo ships and cruise ships ought to differ.

Seafarers should not be targeted; seafarer rights to healthcare

46. We understand that policy makers are concerned about a repeat of the COVID contagion that spread from the cruise ship, *Ruby Princess.*

47. However, it should be remember that the contagion spread after "serious", "inexcusable" and "inexplicable" errors by state government officials working with New South Wales Health and by Federal Department of Agriculture officials in not following protocols and in the "crucial error" of not screening or interviewing stick travellers, along with years of missed opportunities of improving the biosecurity system.

48. The obvious point to make is that the tragic errors in relation to the Ruby Princess were made by landside government officials. It is not clear that, given the Ruby Princess errors were committed by government officials, why it is that seafarers are being targeted with civil and criminal penalties. Nor is it clear why the marine sector is being targeted at all, given the errors were made by government officials. Nor is it clear why civil and criminal penalties are not being suggested for government officials, given the errors made by government officials.

49. It is not clear why large financial penalties need be imposed on members of ship crew. The reason for imposing a penalty in this case is deterrence. The explanatory memorandum states that the proposed penalties are necessary to disincentivise the financial benefit a person in charge is likely to stand to gain from not complying with various measures. However, cargo ship masters are paid employees are not likely to stand to gain financially from non-compliance therefore there is no need for deterrence on this ground.

50. Shipping Australia also emphasises that, as a matter of basic compassion and also under international maritime labour and health law, seafarers have a basic right to health care that simply cannot be abrogated, amended, changed or interfered with in any way. Sadly, during the COVID pandemic we have become aware of seafarers who – in agonising pain – have been denied access to medical care for such things as broken ankles and dental abscesses. It is, frankly, shameful that Australian officials have seen fit to allow seafarers to suffer agonising pain and to deny them access to medical care.

51. Shipping Australia also urges that shipping companies must be allowed to change crews even during biosecurity emergencies such as pandemics.

52. Seafarers who are at sea for extended periods may suffer from personal illness, mental illness and are likely at greater risk of making injurious or fatal mistakes. Errors of navigation by exhausted, fatigued or sick crew are also possible and, the more exhausted, fatigued or sick, then the more likely a navigational error becomes. Navigational errors may result in ships becoming grounded on Australian beaches, or grounded on Australian reefs. This could potentially lead to extensive pollution, possibly oil pollution.

53. If shipping companies cannot change crews then it literally threatens the ability of ships to carry on trading. This is of vital importance to Australia given that 99.92% of everything that comes into or out of this country moves by sea and given that the supply of goods and commodities directly or indirectly underpins all economic activity in Australia.

54. Further details of the crew change crisis can be found on our website. For further reading, see:

- Crew change crisis continues to worsen
- Shipping community puts pressure on governments to end crew change woes
- Regional WA crew changes now virtually impossible
- Government COVID-19 crew change policies threaten safety, imperil the environment and disrupt the flow of goods
- Reasons why Australia should help crew changeovers take place here
- Help operators to carry out crew changes, governments are urged

Reporting requirements: Single Windows and "Tell us once"

55. Ships and shipping companies are already subject to reporting requirements. Reporting can be expensive, difficult and time consuming. Accordingly, reporting should be limited to what is necessary and undue or unreasonable reporting should be avoided.

56. Duplication of reporting requirements ought to be avoided. Once a government authority is given appropriate information it should then be incumbent upon the government authorities to share information. This is known as the Single Window.

57. Shipping Australia calls upon all biosecurity pre-arrival and reporting requirements to fit within the Single Window concept. We specifically encourage the committee to review and read our article: " A solitary guiding philosophy for multiple ‘single window’ projects: “tell us once!” https://www.shippingaustralia.com.au/a-solitary-guiding-philosophy-for-multiple-single-window-projects-tell-us-once/.

58. Shipping Australia calls for the creation of one, unified, solitary, Single Window so that ships can report all their information once and then all government bodies, agencies, ports, and authorities can then access that information.

Ship-operating is extremely expensive; ships must not be delayed

59. Previous biosecurity programmes have resulted in delays to shipping and those delays have been caused by manageable and trivial reasons. For instance, entomologists have not been available on site to examine dead insects, or entomologists did not work weekends.

60. Container ships that call in Australia may range in size from small (under 1,000 TEU) to very large (over 8,500 TEU). Typically the ships that most frequently call in Australia range in size from about 4,000 TEU to about 6,000 TEU.

61. At the current costs and in the current market environment (subject to frequent change), a container ship of 4,000 TEU capacity currently costs about AUD$140,000 A DAY and that's before it even sails anywhere. A ship of 6,000 TEU capacity currently costs about

AUD$163,000 a day.

62. So even one day of delay is extraordinarily expensive. The costs mount up – shipping companies may have several ships that call in Australia and those ships may repeatedly call in Australia. Repeated delays imposed on a shipping company will result in massively wasted costs, a loss of supply of shipping services (something that is vociferously complained about) and, if history repeats, it will likely result in an escalating series of costs cascading through the supply chain as costs are passed on. Ultimately, everyday Australians will be the losers with goods costing more than they should. Australian exporters of farm produce will also likely experience higher costs and fewer services in a scenario where ships are held up.

63. Delays also breed their own delays. Let's assume there are five ports in Australia labelled A, B, C, D, E. If a ship arrives on-time at Port A, but it is delayed, then it may arrive a day late at Port B. It may then miss its berthing window and be made to wait until the next berthing window. That may be a day or two (or more). It may arrive several days late at Port C and then, extremely late at Port E.

64. In addition to the costs of each day of delay per ships, the costs continue to escalate in other ways as explained on the Shipping Australia website (www.shippingaustralia.com.au), in our article "Extreme container disruption continues in Sydney despite industrial cease fire" https://www.shippingaustralia.com.au/extreme-container-disruption-continues-in-sydney-despite-industrial-cease-fire/ disruption caused by delay leads to numerous escalating costs, all of which ultimately result in higher costs for Australians.

65. Shipping Australia calls for offshore treatment, cleaning and certification and that ships are preferably not held up at all, and in the event of delay, should not be held up by biosecurity officials any more than is necessary. All appropriate measures ought to be taken, such as requiring entomologists to work weekends, so that ships are not delayed.

66. By way of example, under the Verified Gross Mass rules, an overweight shipping container is simply not loaded onto a ship and the ship is not held up or delayed. Similarly, it should not be allowed for any shipping containers of biosecurity concern to be loaded onto a ship at its load-port overseas. This will prevent the ship being delayed later.

67. If Department-employed entomologists are not available, then the expert opinions of entomologists in private practice ought to be accepted. To avoid conflicts of interest, the Department could be the party that engages private entomologists subject to shipping companies guaranteeing that they will pay the bill (e.g. by a deposit of monies in advance).

Shipping companies should not be held liable

68. Biosecurity risks are created by us, the general public, and by Australian businesses placing orders for goods / commodities or fulfilling overseas orders for goods / commodities. The spread of that risk then happens because of the actions of various parties in the supply chain endeavouring to fulfill the goods / commodities orders. The ship and the ship operating company are little control in this process – they merely carry the goods in a container and carry the container. They have little to no control over what happens at the stuffing stage inside the container. And, when thousands of containers are stacked deep and high inside a ship's hull, have absolutely no ability to control what is happening inside the container during a voyage. Accordingly, it logically follows that the shipping company and shipping operator

ought not to be liable for and costs, expenses, damages, or recompense that may arise because of any kind of spread of pests.

Authorised by:

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