



27 September, 2021

Committee Secretary
Senate Rural and Regional Affairs and Transport Legislation Committee
PO Box 6100
Parliament House
Canberra ACT 2600
Email: rrat.sen@aph.gov.au

Dear Sir/Madam,

Biosecurity Amendment (Enhanced Risk Management) Bill 2021

Carnival Australia welcomes the opportunity to provide a submission to the Senate Rural and Regional Affairs Legislation Committee (the Committee) in relation to its inquiry into the Biosecurity Amendment (Enhanced Risk Management) Bill 2021.

Given what the world has learned through the current COVID-19 pandemic, strengthening the efficiency and effectiveness of the Biosecurity Act is an important step to better protect Australia from the risk of foreign pests or diseases affecting Australians' health, our environment and the economy.

As the main cruise organisation in this region, Carnival Australia - with a 90-year history of sailing from Australia through the home-grown cruise line, P&O Cruises Australia - supports the importance of a robust and well-functioning biosecurity system for the cruise industry in Australia.

Furthermore, based on everyone's experience with *Ruby Princess* and the subsequent detailed examination of Federal and State biosecurity arrangements undertaken by Mr Bret Walker SC¹, we are looking for the proposed legislation and accompanying regulations (which are yet to be drafted) to provide a clear, streamlined and efficient system. This is important for the public as it is for operators in both the maritime and aviation sectors.

¹ Special Commission of Inquiry into the Ruby Princess available at <https://www.rubyprincessinquiry.nsw.gov.au/report>

Improving biosecurity protocols to ensure all parties clearly understand their obligations, as well as structuring better information sharing and coordination among government agencies, were matters identified by the NSW Special Commission of Inquiry (SCoI), and by the Inspector General of Biosecurity's report, as areas for attention. We have previously stated our support for such improvements and look forward to collaborating with government agencies and industry peers in this regard.

We would also like to acknowledge the Department of Agriculture, Water and Energy (the Department) for recognising in its Regulatory Impact Assessment that a "key benefit" expected to materialise from the legislation is support for the recovery of the cruise industry to pre-pandemic levels. We are a \$5 billion industry that can play a significant role in unlocking the national economy, especially in regional areas. As the Department says: *"Any regulation that will support the recovery of the industry will be of significant value to the Australian economy and community as a whole"*.

About Carnival Australia

Carnival Australia represents seven leading cruise brands: Carnival Cruise Line, Cunard, Holland America Line, P&O Cruises Australia, P&O Cruises World Cruising (UK), Princess Cruises and Seabourn. Our homegrown cruise line, P&O Cruises Australia, has been sailing from Australia for about 90 years.

Our highest responsibility and top priority is compliance, environmental protection and the health, safety and well-being of our guests, the people in the communities we touch and serve, and our shipboard and shoreside employees.

In normal times, Carnival Australia has about 7 ships based full-time in Australia each year. Our operations have been paused since March 2020 with the onset of the COVID-19 pandemic in Australia, and we have been using this time to prepare for a safe resumption of Australia-only cruising, with the approval of government agencies and public health authorities.

Key areas for clarification

Carnival Australia supports the intended purpose of the proposed amendments. The cruise industry is proposing a staged return to operation, beginning with domestic cruising (local cruising for locals). This may be a way to test those changes, including the biosecurity arrangements with the States. Intrastate cruising would have different considerations.

Based on our reading of the proposed legislation, much of the detail and clarification for operators will be contained in the regulations, which are yet to be drafted. Carnival Australia has not been consulted on the proposed legislation up to this point, but would welcome the opportunity to work with the government and departmental officers in any further drafting or testing of the proposed amendments and intended regulations.

We trust our submission will be of assistance in that regard.

Relationship with State Health Authorities

In his report into Ruby Princess, Mr Bret Walker SC in the SCoI highlighted the overlapping of Commonwealth and State functions in relation to biosecurity, however, we note that this issue is not dealt with in these amendments. The Committee may wish to consider this further.

The Bill proposes that the new “human biosecurity group directions” can only be made by a chief human biosecurity officer (**CHBO**) or a human biosecurity officer (**HBO**): see s 108B(1). This raises a potential problem, in that ss. 562-564 of the Act, which provides that State health officials may be authorised to act as CHBOs or HBOs under an “arrangement” between the Commonwealth and the relevant State or Territory may result in a situation under which an authorised State health official may be empowered to make “human biosecurity group direction” under s 108B(1).

This might lead to an information management problem if State officials exercise these Commonwealth-conferred powers, but the same State official doesn’t have the same power under the State Act or is not making it clear that the exercise of power is by way of conferral i.e., the right hand not knowing what the left hand is doing, or what Mr Bret Walker SC called a “*disturbing disconnectedness between the Commonwealth’s and the State’s respective biosecurity operations*” (See para. 11.9)).

However, this is a problem created by the Act as it already stands, not by the proposed Bill. There is an opportunity for the proposed Bill to address this issue.

Biosecurity group direction notification – regulatory burden on a “person in charge”

Under the proposed Bill, it seems that the person in charge may be personally liable for notifying all individuals onboard who are subject to a biosecurity group direction. In the context of cruise ships, which sometimes have close to 4,000 people (crew and guests) onboard, the size of a small country town, if a single person in the class cannot be notified to the relevant standard for whatever reason, then the person in charge (presumably the master) is liable and has no excuse or defence.

Under the proposed amendments, the person in charge may be required under sections 108E, 108F or 108G to give biosecurity group direction notifications to a class of individuals onboard an aircraft or vessel. We suggest that requirement is easier on an aircraft when most people are buckled into their designated seats.

Section 108U of the proposed amendments imposes a civil penalty on the person in charge for failing to give the biosecurity group direction notification to the relevant standard. The civil penalty provisions are governed by the *Regulatory Powers (Standard Provisions) Act 2014* (Cth) (**RPA**). Section 94 RPA states that those who contravene a civil penalty provision will be

liable, despite their intention or mental state, unless there is a mistaken but reasonable belief about the facts at or before the time of contravention under section 95 RPA.

The effect of the RPA is that the person in charge would effectively have no defence to a failure to give the notification to *all* members of the class. What the proposed amendments require is that the class be notified of the direction and its contents. If the notice is not actually delivered to everyone in the class, there is then a contravention of the notification requirements. So, the “conduct constituting the contravention” for purposes of section 95(1)(a) RPA is failing to ensure that the notification is made to all the those in the class.

This issue is further compounded with difficulty as we expect there is no easy way to contact everyone who is subject to a biosecurity direction at the same time, say on the ship’s public address system, without risking a breach of privacy laws. This is particularly so given the potential for a variety of privacy laws from different countries to apply on a ship engaged on international cruising, particularly with international guests.

For these reasons and in the context of further matters regarding implementation identified below, the Committee may wish to consider that the fairest and most efficient way to implement biosecurity group directions should be done directly by the Department, rather than by any means of delegation.

Enforcing Biosecurity Group Directions whilst a class of individuals are onboard a vessel

Under the proposed amendments, biosecurity group directions can be applied to a class of individuals onboard a ship in the territorial sea under section 108B(2)(a). The provisions are silent on who is responsible for implementing the direction measures whilst the ship is at sea, potentially putting the responsibilities on the ship operator. This raises a number of questions regarding the ship operator’s own liability and ability to enforce the measures.

The available biosecurity group direction measures under Division 3 include requiring individuals to wear protective clothing and equipment (section 108M), undergo examinations (section 108N), provide body samples (section 108P) and remain or go to specific places (section 108L).

The proposed amendments are silent on who is responsible for implementing and providing the equipment for these measures, which poses the question as to how will they be enforced whilst a vessel is in the Australian territorial sea and presumably beyond the reach of biosecurity officials?

By way of example, section 108T of the proposed amendments makes a failure to comply with wearing the directed clothing or equipment an offence subject to a civil penalty. But if the class of individuals specified in the direction are on a vessel in the territorial sea, how can they comply with an order to wear the clothing or equipment unless someone supplies it to them? The proposed amendments say that the class of individuals can be ordered to do things, without saying anything about how those orders are to be implemented. If the type of things required are known in advance, then operators can be prepared if sufficient notice is

provided. This raises questions regarding preparedness for new or different obligations that may be imposed by the Department without warning.

There is nothing in the proposed amendments suggesting that the ship operator needs to provide the clothing or equipment, but it doesn't specifically say that it must be provided by the Department, either. Consequently, how is the Department of Agriculture going to supply the clothing or equipment to a ship they cannot board? Is the ship obliged to provide the clothing or equipment so that the master and crew can comply with the order, given that they may be members of the affected class, too?

The same kind of thing is true of the other proposed provisions in Division 3. For example, who will be responsible for carrying out the examinations under section 108N? Who will be responsible for storing the body samples taken under section 108P whilst a vessel is at sea? Cruise ship's do not have the facilities to examine and test a significant volume of those onboard and will require government assistance depending on the scope of the direction.

Likewise, who will be responsible for collecting the contact and location information required under section 108K when a vessel is at sea? If responsibility is placed on a passenger ship operator, there are serious extraterritorial liability concerns to be considered. For example, the operator may be at risk of breaching the European Union General Data Protection Regulations if they are required to collect information from EU data subjects.

Finally, who is responsible for feeding and caring for individuals who are required to remain at a specified place under section 108L? Given that the biosecurity group directions can be re-applied indefinitely if the criteria in section 108B continue to be met, it's possible passengers may be required to remain on board a vessel for an extended amount of time. The proposed provisions are silent on who is caring for and feeding passengers if they are required to remain onboard.

It might seem obvious that if the government makes orders of this kind, it must provide the means to comply with them, but the fact that the proposed amendments don't say anything about implementation is concerning for cruise ship operators as these provisions may turn out to be an unfunded and practically impossible mandate to carry out.

In closing

We thank the Committee once again for the opportunity to make this submission. Making sure the biosecurity framework, in which cruise lines – and other industries, including aviation and agriculture – are required to operate, is as robust and clear as possible is critical to the safe resumption of cruising in Australia.

Strengthening the integrity of our biosecurity system and in so doing, supporting the recovery of the cruise industry in Australia – including the expansive cruise ecosystem of small businesses and suppliers of transport and logistics, food and beverage, shore tours,

marine engineering companies, entertainers and travel agents – is a positive step towards Australia’s recovery from the COVID-19 pandemic.

We are keen to ensure that the biosecurity framework is clear and can be practically implemented in the interests of protecting the Australian public. We look forward to working with the Department on this shared interest and remain available for consultation.

Yours sincerely,

Sture Myrsmell
President, Carnival Australia and P&O Cruises Australia