

**HOME AFFAIRS PORTFOLIO  
AUSTRALIAN BORDER FORCE**

**PARLIAMENTARY INQUIRY SPOKEN QUESTION ON NOTICE**

Select Committee COVID-19

**QoN Number: CV19-258**

**Subject: Cruise ship ban**

*Asked by: Kristina Keneally*

**Question:**

**Senator Keneally:** No, that's not what the question was about. I refer you to that: it's on your website. You were asked specifically about the discretion that you were given under the Prime Minister's announcement. You said that you could not stop the *Ruby Princess* because: the decision of the Government was that vessels that were already on the water, coming to Australia at the time of the ban, could continue their journey to Australia.

**Mr Outram:** That's true. The guidance I received from government in relation to the cruise ship ban was that ships which had already departed port as at one minute past midnight on 16 March were able to continue their journeys.

**Senator Keneally:** So you couldn't have stopped it from coming. You could direct it where to go but you couldn't have stopped it from coming.

**Mr Outram:** I could direct it where to go, under the Customs Act.

**Senator Keneally:** But you couldn't have stopped it from coming,

**Mr Outram:** No. I think that's right; I'll check the law the law on that. But what the change did so – and this is the most important point to make – is, as I have said, that we went from a demand driven model to a permission based model.

**Answer:**

The Australian Border Force Commissioner had the legal power to prevent the arrival of the *Ruby Princess* in the Port of Sydney on 19 March 2020, by ensuring no permission was granted for the ship to arrive at the Port of Sydney under s.58(2) of the *Customs Act 1901*. (Such a permission was granted.)

However, to refuse to grant permission would have been contrary to the Government's policy that the cruise ship ban did not apply to cruise ships which were already destined for an Australian port when the cruise ship ban was announced on 15 March 2020.

As the ABF Commissioner has stated in evidence it also would have been entirely impractical to refuse permission for the *Ruby Princess* to arrive on 19 March 2020 as requested considering the circumstances, which included:

- 1) The *Ruby Princess* had departed Napier in New Zealand on 15 March 2020 bound for the Port of Sydney;
- 2) The *Ruby Princess* had been given approval by the ABF to operate as a round-trip cruise starting and finishing in Sydney, long before the cruise commenced; and
- 3) The *Ruby Princess* had 2,647 passengers on board including 1,682 Australians.

### ***The cruise ship ban and legal measures to implement it***

The Prime Minister announced the ban on cruise ships from arriving at Australian ports at a media conference on 15 March 2020, which was followed by a media release on 16 March.

Two legal measures were put in place to enforce that ban before the *Ruby Princess* arrived in Sydney on 19 March 2020.

The first legal measure was that on 15 March 2020 nine ports commonly used by international cruise ships (including the Port of Sydney) were re-appointed as ports under s.15 of the *Customs Act 1901* (Customs Act) by a delegate of the Comptroller-General of Customs (ie by a delegate of the ABF Commissioner). Each of the re-appointments states that the port is a port “only for the purposes in relation to ships which are not international passenger cruise ships”.

The practical result under the Customs Act of these re-appointments is that it became an offence under subsection 58(1) to bring an international passenger cruise ship into any of the re-appointed ports (including the Port of Sydney), unless a permission is granted under subsection 58(2) by a Collector. (A *Collector* is relevantly defined as the Comptroller-General of Customs, and any officer doing duty as such.)

Such a permission was granted by a Collector when the Maritime Travellers Processing Committee (MTPC) granted permission on 18 March 2020 to the *Ruby Princess* to arrive in the Port of Sydney on 19 March 2020. The MTPC included an ABF representative who acted as a Collector in giving permission. There was no reason for the MTPC to refuse permission for the *Ruby Princess* to arrive.

The second legal measure was that on 18 March 2020 the Health Minister made a determination under s.477 of the Biosecurity Act 2015: *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency requirements) Determination 2020*. That Biosecurity Determination had the effect that an international cruise ship must not enter a port in Australia unless:

- 1) a permission is given by the Comptroller-General of Customs on the basis that the ship is in distress or that emergency circumstances exist; or
- 2) the ship had departed a port outside Australian territory before the end of 15 March 2020 and was bound directly for a port in Australian territory.

That second exception in the Biosecurity Determination reflected the policy of the Government that the cruise ship ban did not apply to cruise ships that were already bound for an Australian port by the end of 15 March 2020, which was the day the ban was announced. The *Ruby Princess* had departed Napier bound for the Port of Sydney on 15 March 2020, and so the second exception to the Biosecurity Determination applied.

We note for completeness that the Biosecurity Determination was amended on 27 March 2020, relevantly to require all foreign cruise ships that are in Australian territory to leave Australian territory, subject to a few exceptions including if a permission by a Collector for the ship to remain in Australian territory. All foreign cruise ships have left Australian territory.

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**PARLIAMENTARY INQUIRY SPOKEN QUESTION ON NOTICE**

Select Committee COVID-19

**QoN Number: CV19-259**

**Subject: Breakdown of inbound travel exemptions**

**Asked by:** Nick McKim

**Question:**

Senator McKIM: Because you verbally paraphrased some of the guidelines earlier—and if you need to take this on notice, of course, please do—do the guidelines include people who have jobs in Australia and people who have homes in Australia? That's in addition to the split families that I was asking about earlier.

Mr Outram: There are a number of exemptions in policy....

Of course, I could, on notice, give you the details of the breakdown of how many applications in those categories we've received and approved and declined and those sorts of things.

Senator McKIM: I do ask, given your kind offer, Commissioner, that you would provide that information on notice, so thank you. I'll just be clear here that I'm referring to people who are applying for inbound travel exemptions under the compelling and compassionate criteria, so that's the context of these questions.

**Answer:**

The below statistics are as at 20 August 2020, inclusive.

**Inward travel exemption decisions from ABF Commissioner or his delegates**

Category	Approved*	Refused*
Compelling and Compassionate	3,003	3,929

*\*Please note that the figures do not include requests from persons who were found to meet an already exempt category, any requests that were withdrawn, or any requests that did not contain sufficient information for consideration by the Commissioner or a delegate. This data has been drawn manually from multiple systems and is an approximation only.*

The Department and the ABF is unable to provide a breakdown of the number of people with jobs or homes within the compelling and compassionate criteria without examining each individual case manually. This would constitute an unreasonable diversion of resources.

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**PARLIAMENTARY INQUIRY SPOKEN QUESTION ON NOTICE**

Select Committee COVID-19

**QoN Number: CV19-260**

**Subject: Detainees transferred under medevac**

**Asked by:** Nick McKim

**Question:**

Senator McKIM: How many detainees have been transferred to Christmas Island?

Mr Outram: So far I believe it's about 21. We've had one charter, and there's another charter due today with approximately the same number of detainees.

Senator McKIM: Alright. Are any of those detainees people who were transferred to Australia under the medevac legislation?

Mr Outram: No.

Senator McKIM: Are any of those detainees people who have previously sought asylum in Australia?

Mr Outram: I believe not. We're really confining this measure to those detainees who are detained under section 501. Although, if somebody previously arrived and claimed asylum and subsequently had their visa cancelled under section 501 because they committed a criminal offence, I'll take that aspect on notice just to be double sure.

**Answer:**

Detainees who have sought asylum in Australia and subsequently had their visa cancelled under section 501 or section 116(e), may be considered for transfer to Christmas Island.

Detainees meeting this criteria have been transferred to Christmas Island.

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**PARLIAMENTARY INQUIRY SPOKEN QUESTION ON NOTICE**

Select Committee COVID-19

**QoN Number: CV19-261**

**Subject: Number of staff on Christmas Island**

**Asked by:** Katy Gallagher

**Question:**

**CHAIR:** Are there a number of staff there?

**Mr Outram:** Yes, we have a significant number of staff. I can take that on notice. It's obviously primarily Serco and IHMS, and a number of ABF staff have had to go onto the island to re-establish and stand up that facility.

**Answer:**

As at Tuesday 18 August 2020, there were 52 Serco staff, seven (7) International Health and Medical Services staff and four (4) Australian Border Force staff deployed on Christmas Island to facilitate the reactivation of the North West Point Immigration Detention Centre.

Christmas Island Maintenance Services (CIMS) maintain an ongoing presence on Christmas Island to deliver facilities management services across all Immigration Detention Facilities and provide staff accommodation services. There are currently 44 CIMS staff on Christmas Island, 41 of whom are locally engaged.

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**PARLIAMENTARY INQUIRY SPOKEN QUESTION ON NOTICE**

Select Committee COVID-19

**QoN Number: CV19-262**

**Subject: Privacy Restrictions**

**Asked by:** Kristina Keneally

**Question:**

**Senator KENEALLY:** I think the public might have a different view, because we lived with the outcomes of the *Ruby Princess*, but I am going to move on. I refer to a media report from the ABC on Friday 14 August. It states that both Virgin and Qantas requested a *Ruby Princess* passenger list because they were concerned about the health risk from individuals from the *Ruby Princess* boarding their flights. The media report says that the basis for the refusal from Australian Border Force was on privacy grounds; I don't query that. In relation to privacy matters, did Australian Border Force officers violate any privacy restrictions when they requested the medical records of *Ruby Princess* passengers from the ship?

**Mr Outram:** I'd have to take that on notice. That is quite a technical legal question. I don't know if they breached privacy and whether they can request that information under the ABF Act. I'd need to take that on notice and see if there is any potential privacy—

**Senator KENEALLY:** It would be interesting to know if they could request it under the ABF Act, because that would suggest that they have legislative authority to deal with medical or health matters.

**Mr Outram:** It's a good question. I haven't turned my mind to whether there is a Privacy Act breach there or not. We will turn our minds to that.

**Answer:**

In relation to the question of whether there is a privacy breach, the relevant provision of medical information to the Australian Border Force (ABF) is as described in the Commonwealth Voluntary Statement to the Ruby Princess Special Commission of Inquiry (paragraphs 172-173). The ABF officer asked the Port Agent to send to him the information that test results had come back negative.

The *Australian Border Force Act 2015* (Cth) is not relevant to a request for medical information of passengers.

The collection of medical information by the ABF is consistent with the *Privacy Act 1988* (Cth), namely Australian Privacy Principle (APP) 3.4(b) and item 1 of section 16A. The collection is lawful where it is necessary to lessen or prevent a serious threat to the life, health or safety of an individual or to public health and safety and where it is unreasonable or impracticable to obtain the individuals' consent.

Additionally, one purpose for the collection of the medical information by the ABF officer was to ensure the health and safety of ABF officers. That collection of medical information was consistent with the *Work Health and Safety Act 2011* (Cth) and the *Privacy Act 1988* (Cth).



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**PARLIAMENTARY INQUIRY SPOKEN QUESTION ON NOTICE**

Select Committee COVID-19

**QoN Number: CV19-263**

**Subject: Inbound exemption by Country**

**Asked by:** Nick McKim

**Question:**

**Senator McKIM:** I appreciate that, Commissioner. In terms of inbound travel exemption applications, which you've addressed in the evidence you've just given, does Border Force have the data sets that would allow for a breakdown by countries in which those people are currently living?

**Mr Outram:** Possibly. I suspect the answer is yes, but I'll just take that on notice to be sure. I haven't got that level of detail in front of me.

**Senator McKIM:** That's okay, Commissioner; thank you. If that is the case, if your response to that question is yes, as you suspect it will be, could you please provide that breakdown by country from which the application has been made?

**Mr Outram:** Indeed.

**Senator McKIM:** I'm happy for you to take that on notice, obviously. Also, could you please provide a breakdown of approved applications by country from which those applications were made?

**Answer:**

The Department of Home Affairs has provided the breakdown of top 10 passport nationalities by exemption requests received and approvals between 1 and 20 August 2020, inclusive. From 1 August all travel exemption requests are processed in a new case management system. This data is not available prior to 1 August 2020.

### Inwards Requests Received 1–20 August 2020: top 10 passport nationalities

Nationality	Total
India	2,531
United Kingdom	1,417
New Zealand	1,398
United States	1,366
China	836
Philippines	392
Canada	390
South Africa	380
Pakistan	369
Germany	331
Other	5,048
<b>Total</b>	<b>14,458</b>

*Note: these numbers include applications from individuals in exempt cohorts.*

### Inwards Requests Approved 1–20 August 2020: top 10 passport nationalities

Nationality	Met already exempt criteria*	Discretionary exemption**	Total
New Zealand	523	263	786
United Kingdom	228	454	682
United States	201	293	494
India	131	113	244
China	96	86	182
South Africa	17	125	142
Ireland	18	116	134
France	26	92	118
Canada	56	60	116
Germany	44	71	115
Other	750	864	1,614
<b>Total</b>	<b>2,090</b>	<b>2,537</b>	<b>4,627</b>

*\*Persons who are already exempt include: Australian citizens or permanent residents and their immediate family members; maritime or aviation crew; New Zealand citizens usually resident in Australia; Diplomatic visa holders.*

*\*\* This may include persons requesting an exemption under compelling or compassionate grounds, or as under critical skills, as examples.*

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**PARLIAMENTARY INQUIRY SPOKEN QUESTION ON NOTICE**

Select Committee COVID-19

**QoN Number: CV19-264**

**Subject: Inbound Exemptions - threshold for referral**

**Asked by:** Nick McKim

**Question:**

**Senator McKIM: ...**

Do those guidelines that you've just informed the committee this morning that you have issued relate to the first stage of the process, the second stage of the process or both?

**Mr Outram:** I think they relate broadly to all stages of the process, because obviously we need to be consistent in terms of how we triage the workload. We are committed here to consistency as far as we can, recognising that each case is different and we are working case by case. But I would say that the broad guidance that I've given would apply to how we triage matters and how we determine matters. In the system here that we've built, we seek to turn around inbound applications—every application now—within seven days, and, if it's an urgent case, as I mentioned earlier on, with critically ill family or what have you, we aim to do that in 48 hours. A lot of information is provided now online, since our last conversation, Senator, that probably wasn't at that time, as this process has evolved. But I'd say that my guidance is applicable to all parts of the decision-making process here, to ensure consistency.

**Senator McKIM:** That's clear. I'm happy for you to take this on notice, and perhaps it is contained in the guidelines, but what is the threshold for referral? For an application to clear the first bar, which is a referral to

**Answer:**

Criteria for decision making by the Australian Border Force Commissioner personally are set out in the *Inwards travel restrictions exemption requests – Commissioner's decisions* document.

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**PARLIAMENTARY INQUIRY SPOKEN QUESTION ON NOTICE**

Select Committee COVID-19

**QoN Number: CV19-265**

**Subject: Date Guidelines Issued**

**Asked by:** Nick McKim

**Question:**

**Senator McKIM:** Commissioner, these questions go on from the evidence you gave to the committee earlier today around the guidelines you've issued in terms of people applying for exemptions from the inbound travel ban. Could you firstly confirm when those guidelines were issued?

**Mr Outram:** I'll have to take that on notice, I think. I don't have the exact dates when guidelines have been provided, so I'll need to take that on notice. There may be different iterations of the guidelines.

**Answer:**

The *Inwards travel restriction exemption requests – Commissioner's decisions* document was issued on 9 July 2020. This document was developed on the precedent of individual decisions made by the Australian Border Force Commissioner, as the sole decision maker from 20 March until 9 July 2020 when additional decision making delegates were introduced into this process, and was promulgated to decision makers.

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**PARLIAMENTARY INQUIRY SPOKEN QUESTION ON NOTICE**

Select Committee COVID-19

**QoN Number: CV19-266**

**Subject: Inbound exemptions – Guidelines**

**Asked by:** Katy Gallagher

**Question:**

**Mr Outram:** I'm surprised to hear about the cases that involve families because generally I've been approving or we've been approving—obviously, there's such a volume here that we've delegated the authority, but with guidance—cases involving the separation of minors from their family unit, and the general guidance is we will approve those. Our general policy is to approve those seeking to attend the funeral of a close family member or visit close family members in critical care at the end of their life. We're tending to approve those seeking to visit a close family member who's seriously or critical ill and who can't get appropriate support, and those who are the partner of a person who is in Australia, including temporary visa holders, and who is in the final trimester of pregnancy or is otherwise due to give birth. So we have been focusing on the issue of people who are in family groups. In fact, in some cases, those people in family groups don't actually need an exemption; there are standing policy exemptions. I'm surprised to hear there are still people in family groups, children and so on and so forth who are separated by this measure and that we've refused those. But there are a lot of applications and it's a big process. I'm happy to look at any decisions in the context of families who've been separated.

**Senator McKIM:** Could you provide the committee with a copy of the guidance that you've just referred to?

**Mr Outram:** I'm sure it's in the *Hansard*, but, yes.

**Senator McKIM:** Can I also confirm that you've taken on notice my request that you provide a copy of those guidelines to the committee.

**Mr Outram:** I have, yes.

**Answer:**

A copy of the *Inwards travel restriction exemption requests – Commissioner's decisions* document is attached.



# Inwards travel restriction exemption requests – Commissioner’s decisions

For your information, outlined below are scenarios where the Commissioner has generally approved inwards travel exemptions. This interim information is provided pending finalisation of endorsed Commissioner’s guidelines to decision makers:

- Delivery of critical medical services, including air ambulance and delivery of supplies, that regularly arrive into Australia from international ports
- Non-citizens travelling at the invitation of the Commonwealth or State governments for the purpose of assisting in the COVID-19 response or whose entry would be in the national interest
- People with critical skills, including nurses, doctors, medical specialists, engineers, marine pilots and crews. Skills must be critical to Australia’s COVID-19 response or economic recovery. Support from a State, Territory or Commonwealth government authority has been given considerable weight.
- Strong economic or scientific benefit to Australia would result from the person being entering Australia (not including students). Support from a State, Territory or Commonwealth government authority has been given considerable weight.
- Non-citizens requiring urgent or critical medical treatment in Australia, including medical evacuations - subject to the capacity of receiving medical facilities and ensuring that there is no impact on Australian citizens and residents. An accompanying family member or other support person has also been approved where: a minor requires treatment; where a medical condition is life threatening; or where medical advice supports the requirement for the family member or support person to travel
- Military personnel, including those who form part of the Status of Forces Agreement, Commonwealth Armed Forces, Asia Pacific Forces and Status of Armed Forces Agreement
- The immediate family member of a non-citizen with critical skills in Australia, where the person in Australia holds a temporary or provisional visa. The impact to Australia has been considered – particularly where there is a high risk that the person with critical skills will depart Australia
- Individuals who are part of elite sporting teams who are able to demonstrate there is a viable competition, the sporting code confirms how their entry and stay is critical to Australia, there is community interest and economic activity related to that sport
- Non-crew members who are critical to the operation of a vessel and/or where the vessel operator can demonstrate the criticality of the person, or where a State or Territory authority or has provided support
- Case involving separation of minors from their family unit, including:
  - Minors needing to travel to Australia to reunite with their parent/s or guardian. One accompanying close family member (aunt, uncle, grandparent) has been approved, where parents cannot accompany the child.

- Cases demonstrating strong compassionate circumstances that, if not recognised, would result in serious, ongoing and irreversible harm and continuing hardship to a person lawfully in Australia, including:
  - Those seeking to attend a funeral of a close family member or visit a close family member in critical care at end of life. Up to four persons permitted to travel.
  - Those seeking to visit a close family member who is seriously or critically ill, particularly where there is little support in Australia.
  - The partner of a person who is in Australia (including Temporary visa holders) in the final trimester of their pregnancy or otherwise due to give birth.

Cases where the Commissioner has generally not approved exemption to inwards travel restrictions, include the following:

- If there is a threat to the health of the Australian community
- Non-critical illness of family members, where immediate family support is already available in Australia.
- Requests for Temporary visa holders' family members to join them in Australia
- Students who do not meet one of the above scenarios
- Requests for multiple travellers seeking to travel on compassionate grounds outside those articulated above
- Attending significant family events, such as weddings or major birthdays
- Any request that includes demonstrably false or misleading documentation or other demonstrably false or misleading evidence or statements of claim or history with the ABF or the Department
- Adverse alerts including PACE alerts

The Commissioner will continue to personally consider requests for:

- Elite sporting teams and their entourages
- Persons who are undertaking research (especially on a Student visa)
- Anyone considered to be of 'social or cultural benefit'
- Visa holders who fall within the at risk/refugee cohort – XB visa holders etc
- Persons who are considered to be 'grant ready' for permanent residence, and who are proposing to travel to Australia for visa grant
- Other novel, unusual or high risk requests

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**PARLIAMENTARY INQUIRY SPOKEN QUESTION ON NOTICE**

Select Committee COVID-19

**QoN Number: CV19-267**

**Subject: Immigration Detention - Social distancing requirements**

**Asked by:** Nick McKim

**Question:**

**Mr Outram:** There's a standard that we adhere to and that we check ourselves against, and that is the Communicable Diseases Network Australia's National Guidelines for the Prevention, Control and Public Health Management of COVID-19 Outbreaks in Correctional and Detention Facilities in Australia. It's a national standard....

**Senator McKIM:** Does the national standard to which you referred in the answer you've just given include a requirement for 1.5-metre social distancing?

**Mr Outram:** I'll take that detail on notice in terms of the actual detail of the CDNA guidelines for social distancing.

**Answer:**

The Communicable Diseases Network Australia (CDNA) *Guidelines for the Prevention, Control and Public Health Management of COVID-19 Outbreaks in Correctional and Detention Facilities in Australia* acknowledges it is difficult to practice physical distancing in detention facilities.

The guidelines recommend physical distancing as an infection prevention and control measure, a minimum of 1.5m between beds when there is an outbreak and maintaining 1.5m distance between an infected person and others.



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**PARLIAMENTARY INQUIRY SPOKEN QUESTION ON NOTICE**

Select Committee COVID-19

**QoN Number: CV19-268**

**Subject: Pratique granted for disembarkation**

**Asked by:** Nick McKim

**Question:**

**Senator McKIM:** Alright; thank you. And I'm happy if you want to take this next one on notice. I'm specifically interested in what time the ABF officer became aware that pratique had been granted and how that was communicated to the relevant ABF officer.

**Mr Outram:** I will take that on notice, thank you, and come back to you.

**Answer:**

We understand from the context of the Senator's question that "the relevant ABF officer" is the officer who was in charge of the ABF team that attended the Ruby Princess on 19 March 2020, and who after conducting some immigration and customs checks answered "yes" to a Ruby Princess crew member when asked whether passengers could disembark.

Pratique is permission to disembark a vessel, granted under the *Biosecurity Act 2015* by a biosecurity officer. The only biosecurity officers attending the Ruby Princess on 19 March 2020 were DAWE officers.

The ABF officer arrived at the overseas passenger terminal at around 6:15am. Shortly after, the ABF, DAWE and port agent attended the vessel to undertake their respective functions. Prior to boarding the vessel, the ABF officer was aware that NSW Health had assessed the vessel as low risk and would not attend. When the ABF officer indicated passengers could disembark, he was not aware of any DAWE officer seeking to prevent disembarkation.

As outlined in the Commonwealth's statement to the Special Commission of Inquiry into the Ruby Princess on 16 July 2020, there was a practical granting of pratique when biosecurity officers did not seek to prevent passengers from disembarking.

Formal pratique had not been granted at that time. The ABF officer was not informed on 19 March 2020 that pratique had been granted. As outlined in the Commonwealth's statement to the Special Commission of Inquiry into the Ruby Princess on 16 July 2020, because there was no connectivity on board the Ruby Princess, pratique was not formally granted until the biosecurity officer submitted the vessel inspection form at 7.37am.