

The Senate

Rural and Regional Affairs
and Transport
References Committee

Increasing use of so-called Flag of Convenience
shipping in Australia

July 2017

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List of recommendations

Recommendation 1

2.74 The committee recommends that the Fair Work Ombudsman implement a program of inspection for ships with foreign seafarers, to verify that the wages paid on board accord with Australian legal requirements.

Recommendation 2

2.75 The committee recommends that the Australian Government provide adequate funding to the Fair Work Ombudsman to implement an inspection program of ships with foreign crews, to assess the payment of wages.

Recommendation 3

3.60 The committee recommends that the Australian Government implement clear guidelines and procedures to direct authorities on how to respond to deaths that occur on shipping vessels travelling in or to Australian waters, including how to engage with a vessel's flag state in a timely manner to progress appropriate investigations.

Recommendation 4

3.61 The committee recommends that the Australian Government consider any possible amendments to legislation governing federal investigative authorities, to provide clarity on jurisdictional responsibility for investigating deaths at sea, when they occur on shipping vessels travelling in Australian waters. The Australian Government should progress jurisdictional issues with the states and the Northern Territory at COAG to ensure satisfactory outcomes.

Recommendation 5

5.36 The committee recommends the re-establishment of the Maritime Workforce Development Forum, or a similar advisory body. The advisory group would comprise a variety of key maritime industry stakeholders and provide advice to government on new Australian shipping policies and workforce development and training opportunities.

Recommendation 6

5.61 The committee recommends that the Australian Government undertake a focussed and targeted review of the Australian maritime industry, with a view to growing and supporting the Australian maritime industry and developing policies that appropriately manage the operation of flag of convenience vessels in Australian waters.

Recommendation 7

5.62 The committee recommends that the Australian Government undertake a comprehensive whole-of-government review into the potential economic, security and environmental risks presented by flag of convenience vessels and foreign crews.

Chapter 1

Introduction and context of inquiry

Referral

1.1 On 18 June 2015 the Senate referred the following matters to the Rural and Regional Affairs and Transport References Committee (the committee) for inquiry and report by the first sitting day of 2016 (being 2 February 2016):

The increasing use of so-called Flag of Convenience shipping in Australia, with particular reference to:

- (a) the effect on Australia's national security, fuel security, minimum employment law standards and our marine environment;
- (b) the general standard of Flag of Convenience vessels trading to, from and around Australian ports, and methods of inspection of these vessels to ensure that they are seaworthy and meet required standards;
- (c) the employment and possible exposure to exploitation and corruption of international seafarers on Flag of Convenience ships;
- (d) discrepancies between legal remedies available to international seafarers in state and territory jurisdictions, opportunities for harmonisation, and the quality of shore-based welfare for seafarers working in Australian waters;
- (e) progress made in this area since the 1992 House of Representatives Standing Committee on Transport, Communications and Infrastructure report *Ships of shame: inquiry into ship safety*; and
- (f) any related matters.¹

1.2 The Senate agreed to two extensions of time for reporting, the final reporting date being 22 June 2016.² A substantive interim report was tabled in the Senate on 3 May 2016.³ On 9 May 2016 the inquiry lapsed with the dissolution of the Parliament.

1.3 On 15 September 2016 in the 45th Parliament the Senate agreed to re-refer the inquiry, with a reporting date of 19 July 2017. It was also agreed that the committee

1 *Journals of the Senate* No. 98, 18 June 2015, p. 2708.

2 *Journals of the Senate* No. 138, 22 February 2016, p. 3747.

3 *Journals of the Senate* No. 152, 3 May 2016, p. 4210. The substantive interim report was the second interim report of the committee. The report can be found at: http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Rural_and_Regional_Affairs_and_Transport/Shipping/Second_Interim_Report

have the power to consider and use the records of the committee as it was constituted in the previous Parliament.⁴

Conduct of the inquiry

1.4 The committee held a number of public hearings during the 44th Parliament. It held further public hearings in Canberra on 13 and 21 June 2017, the details of which are referred to in Appendix 2. The committee received 25 submissions as part of its inquiry.

1.5 All public submissions and the Hansard transcripts of evidence from the hearings can be accessed through the committee's webpage.⁵

Acknowledgements

1.6 The committee thanks all individuals and organisations that assisted the committee and gave evidence to the inquiry, either by making submissions or attending public hearings.

Flag of convenience shipping

Definition

1.7 As detailed in the interim report, flag of convenience (FOC) shipping refers to those vessels that travel internationally, but are not registered to the state it is most closely associated with. Regardless of where a ship may be operating, the national registration determines the applicable laws governing all the activities on the ship.⁶

1.8 FOC registration is most commonly used as a means of reducing or minimising operating costs and other financial imposts, including:

- reducing the tax burden for ship owners;
- making the vessel subject to less stringent labour legislation, thereby reducing wages and the financial burden of enforcing higher working conditions and safety standards;
- minimising currency exchange and investment controls that ship owners are subject to; and

4 *Journals of the Senate* No. 7, 15 September 2016, p. 225.

5 See http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Rural_and_Regional_Affairs_and_Transport

6 Cindy Lazenby, 'SOS: The Call Sign of the 'Ships of Shame'', *Deakin Law Review*, Volume 4, No 1 (1998), p. 74.

- avoiding costs from meeting more stringent safety or inspection regimes for vessels.⁷

1.9 It is often argued that FOC registration is used by shipping owners to maintain anonymity, and avoid the employment, tax and environmental requirements and restrictions in place at what would normally be considered the ship's country of origin.

1.10 This is despite Article 5 of the 1958 United Nations Convention on the High Seas, which states that 'there must exist a genuine link between the [flag] state and the ship; in particular, the state must effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag'.⁸

1.11 Article 91 of the United Nations Convention on the Law of the Sea (UNCLOS) also provides that every state shall 'fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag'. Article 91 also states that there must be a 'genuine link' between a flag state and a ship.⁹

1.12 In a submission to the inquiry, the Department of Infrastructure and Regional Development (DIRD) argued that there is no definitive understanding of what a 'genuine link' is. This has 'seen the requirement for a genuine link not being widely observed' and the development of two types of shipping registries:

- Traditional or closed registries: generally focus on establishing a genuine link between the state and the ship in order to register that ship; and
- Open registries: allowing foreign ship owners to register with a state, with little to no focus on the genuine link concept.¹⁰

1.13 As canvassed in the interim report, some stakeholders hold concerns over the term 'flag of convenience'. They argued that it attracts negative connotations, and prefer the term 'open registries'.¹¹ As with the interim report, this report will use the flag of convenience terminology, reflecting the Senate's terms of reference.

7 Cindy Lazenby, 'SOS: The Call Sign of the 'Ships of Shame'', *Deakin Law Review*, Volume 4, No 1 (1998), p. 75.

8 United Nations, *Convention on the High Seas*, 29 April 1958, p. 3, http://www.gc.noaa.gov/documents/8_1_1958_high_seas.pdf

9 United Nations Convention on the Law of the Sea, 1982, p. 58, http://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf

10 Department of Infrastructure and Regional Development, *Submission 7*, p. 5.

11 See for example the International Chamber of Shipping, *Submission 8*. The issue of contested terminology is discussed in Chapter 1 of the interim report.

Flag of convenience registries

1.14 A number of countries offer FOC shipping registrations. Primary countries include Panama, Liberia, and the Marshall Islands, along with Bolivia, Cambodia, North Korea, Belize, Bolivia, Vanuatu, Antigua and Barbuda, and Moldova. A number of smaller countries have also started to offer FOC registration, including Tonga and Gibraltar.¹²

1.15 Collectively, in 2016 Panama, Liberia and the Marshall Islands accounted for the registration of more than 60 per cent of shipping vessels, a marked increase from only 4 per cent of ship registrations during the 1950s. Other countries not traditionally associated with the shipping industry are increasing their presence on international waters via ship registration. This includes Mongolia, despite it being a landlocked country.¹³

1.16 DIRD noted that the open registries of Liberia, Panama, the Marshall Islands and the Bahamas have all ratified and are bound by a number of international Conventions regarding ship operations, and relating to maritime safety and environmental protection. However, these nations have not ratified subsequent amendments to these conventions.¹⁴

1.17 The International Transport Workers' Federation (ITF) has argued that in some instances, the registries themselves are not run by the country in which they are situated:

Some FOC shipping registers are franchised out to foreign companies and are also corporate registers. The Liberian Registry, the second largest in the world, is administered by the Liberian International Ship and Corporate Registry (LISCR), a wholly US owned and operated company.¹⁵

1.18 The ITF has argued for the 'genuine link' between the real owner of a vessel, and the flag being flown by the vessel, to increase accountability and improve conditions for seafarers.¹⁶

12 International Transport Workers' Federation, *Flags of Convenience*, 2016, <http://www.itfglobal.org/en/transport-sectors/seafarers/in-focus/flags-of-convenience-campaign/> (accessed 10 July 2017).

13 Craig Moran, 'Flags of Convenience: Panama Papers on the high seas', *World Policy Blog*, 20 July 2016, <http://www.worldpolicy.org/blog/2016/07/20/flags-convenience-panama-papers-high-seas> (accessed 7 November 2016).

14 Department of Infrastructure and Regional Development, *Submission 7*, p. 8.

15 International Transport Workers' Federation, 'ITF comment on Panama Papers revelations', press release, 7 April 2016, <http://www.itfglobal.org/en/news-events/press-releases/2016/april/itf-comment-on-panama-papers-revelations/> (accessed 21 November 2016).

16 International Transport Workers' Federation, 'ITF comment on Panama Papers revelations', press release, 7 April 2016.

1.19 In the United States, research has shown that over 70 per cent of privately owned American ships (with a gross tonnage over 1000 tons) are registered outside the country, primarily in the Marshall Islands, Liberia and Vanuatu. It has been reported that the total average cost of operating a 'US flag vessel in foreign commerce [is] 2.7 times higher than foreign-flag equivalents'.¹⁷

1.20 In Britain, it has been reported that the majority of ships are now registered under flags of convenience, with only a third of British-owned vessels registered under a British flag. A European Union (EU) initiative to ensure that crews on ships sailing between EU states are paid and regulated under EU law is yet to be approved or implemented.¹⁸

1.21 The International Chamber of Shipping (ICS) submitted to the committee that while there has been considerable improvement in the operations and regulation of numerous flag states:

There are a number of smaller flag States that still have considerable work to do, and ICS continues to suggest that shipowners should think very carefully about using such flags. The largest of these [in 2015] is Tanzania, but Mongolia, Moldova, Cambodia and Sierra Leone are also conspicuous examples.¹⁹

1.22 Some countries have taken steps to address FOC registration issues. In September 2016, the Cambodian government announced that foreign-owned ships would no longer be able to use the Cambodian flag, as it was not benefitting the country. A number of Cambodian-flagged vessels had been involved in illegal fishing activities and were caught carrying drugs and weapons. By cancelling FOC registration, Cambodia hoped to improve its image, while acknowledging it did not have the capability for long-range law enforcement and monitoring.²⁰

1.23 It should be noted that not all ships flying a foreign flag are doing so under an FOC scheme. The ITF's Fair Practices Committee declares those countries which it considers to be running FOC shipping registries, based on the following factors of the flag state:

17 Josie Albertson-Grove and Masako Melissa Hirsch, 'Family's shipping company could pose problems for Trump's Transportation pick', *ProPublica*, 12 December 2016, <https://www.propublica.org/article/familys-shipping-company-could-pose-problems-for-trumps-transportation-pick> (accessed 19 December 2016).

18 Polly Toynbee, 'How Britain sank its shipping industry by waiving the rules', *The Guardian*, 30 August 2016, <https://www.theguardian.com/commentisfree/2016/aug/30/malaviya-twenty-britain-sank-shipping-industry> (accessed 7 November 2016).

19 International Chamber of Shipping, *Submission* 8, p. 10.

20 Kali Kotoski, 'Flag of convenience scheme retired', *The Phnom Penh Post*, 1 September 2016, <http://www.phnompenhpost.com/business/flag-convenience-scheme-retired> (accessed 7 November 2016).

- the ability and willingness to enforce international minimum social standards on its vessels;
- its social record – considering whether the state has ratified and enforced International Labour Organization conventions and recommendations; and
- its safety and environmental record – considering whether or not it has ratified and enforced International Maritime Organization conventions.²¹

1.24 The ITF currently has 35 countries declared as offering FOC registries.²²

Australian shipping industry

1.25 Throughout its inquiry, the committee received a significant amount of evidence that emphasised the decline in the Australian shipping sector, despite Australia being an island nation with a heavy and increasing reliance on shipping. The ongoing decline of Australian shipping is increasing the opportunities for FOCs to operate along Australia's coast, using foreign crew.

1.26 Information published by DIRD highlights the issues facing the Australian shipping industry:

- between 2000 and 2012, shipping's share of Australia's freight task fell from around 27 per cent to under 17 per cent, while the volume of Australian freight grew by 57 per cent;
- an Australian ship can cost around \$5 million a year more than a comparable foreign ship on comparable routes; and
- 49 million tonnes of coastal freight was loaded in 2012-13, yet in 2007-08 it was over 59 million tonnes, representing a 2.4 per cent decline each year in the total weight of coastal freight.²³

1.27 Evidence suggests that FOC vessels will continue to increase their presence in Australian waters in coming years. In 2014, the Office of Transport Security (OTS) noted that:

The maritime industry will see continued diversity in crew origin and ship ownership. Trends to date indicate that the Australian trading fleet is becoming increasingly registered overseas....The international trading fleet facilitating Australia trade is made up of a diverse range of foreign flags

21 International Transport Workers' Federation, *Defining FOCs and the Problems they Pose*, <http://www.itfseafarers.org/defining-focs.cfm> (accessed 10 July 2017).

22 International Transport Workers' Federation, *Flags of Convenience*, 2016, <http://www.itfglobal.org/en/transport-sectors/seafarers/in-focus/flags-of-convenience-campaign/> (accessed 10 July 2017).

23 Department of Infrastructure and Regional Development, *Factsheet: Coastal Shipping Reform*, 7 January 2015, <https://infrastructure.gov.au/maritime/publications/factsheets.aspx> (accessed 6 July 2017).

such as: Liberian and Korean vessels carrying bulk cargo; British, Singaporean and Tongan vessels carrying containerised and general cargo; and Australian, Bermudan and Hong Kong flag vessels carrying LNG.²⁴

1.28 While in 2011-12, the majority of Australian coastal shipping vessels were Australian flagged, in the five years to 2014 the number of Australian registered vessels declined at a rate of 4.4 per cent per year. In the same period, foreign-flagged vessels increased their presence by 17.3 per cent per year.²⁵

1.29 Statistics on vessels operating on the Australia coast in 2014-15 reveal the decline in Australian-flagged vessels:

- in the major trading fleet there were four vessels registered to Australia for major international trading, a decrease from nine in 2005-06;
- for coastal trading, there were 20 registered ships, down from 32 ten years prior; and
- there were 15 major Australian registered ships (over 2000 dead weight tonnes) operating under a general licence, a decrease from 33 vessels in 2005-06.²⁶

1.30 Despite this marked decrease in the Australian shipping fleet, vessel activity is forecast to increase by 28 per cent between 2013 and 2025, comprising mostly bulk vessels and containerships.²⁷

Flags of convenience vessels operating in Australian waters

1.31 In 2016, there were 27 516 ship arrivals in Australian ports, by 5719 foreign-flagged vessels. Port Hedland was the busiest Australian port for foreign vessels, accounting for a total of 10.3 per cent of nationwide ship arrivals.²⁸

1.32 On the arrival of foreign-flagged and other vessels, Port State control (PSC) activities are undertaken by the Australian Maritime Safety Authority (AMSA), including vessel inspections. In 2016, PSC undertook 3675 inspections of foreign-flagged vessels, at 54 Australian ports, and detained 246 vessels. Intervention and detention occurs if a ship does not adhere to the applicable maritime conventions,

24 Department of Infrastructure and Regional Development, *Transport Security to 2025*, 2014, p. 9.

25 Department of Infrastructure and Regional Development, *Transport Security to 2025*, 2014, p. 9.

26 Bureau of Infrastructure, Transport and Regional Economics, *Maritime Statistical Report: Australian sea freight 2014-15*, April 2017, p. 59.

27 Department of Infrastructure and Regional Development, *Transport Security to 2025*, 2014, p. 8.

28 Australian Maritime Safety Authority, *Port State Control – 2016 Report*, p. 7.

and is not allowed to sail until it no longer presents a danger to the vessel, its crew, or the environment, regardless of scheduled departures.²⁹

1.33 Of all inspections, five flag states accounted for 65 per cent of the vessels inspected:

- Panama – 942 vessels;
- Hong Kong – 426 vessels;
- Singapore – 368 vessels;
- Liberia – 360 vessels; and
- Marshall Islands – 358 vessels.³⁰

1.34 FOC vessels were detained primarily on safety grounds. The most prevalent cause for detention related to the operation of the International Safety Management (ISM) Code, regarding passage planning and the conduct of voyages.³¹ AMSA stated that this was a 'major cause of concern as it indicates that the management of ships still leaves considerable room for improvement'.³²

1.35 Further to ISM issues, 7.1 per cent of detainable deficiencies in 2016 related to labour conditions (25 deficiencies). AMSA advised that:

In 2016 material issues such as fire safety (13.9%), emergency systems (12.5%) and lifesaving appliances (12.5%) continued to be a regular cause of detention. This has been a consistent trend over the years 2014-16.

During 2016, [AMSA] continued to work with flag States and ship owners to try and improve performance with regards to requirements related to fire safety, lifesaving appliances and pollution prevention.³³

1.36 AMSA examined the rate of total inspections against detention by flag state, and found that 'where the percentage share of detentions is higher than the percentage share of inspections this is an indication that the flag State is not performing well'. The worst-performing flag states were Taiwan (22.2 per cent), Netherlands (11.8 per cent), Italy (10 per cent), Antigua and Barbados (9.8 per cent), Marshall Islands (8.1 per cent), Cyprus (8 per cent) and Panama (7.9 per cent).³⁴

29 Australian Maritime Safety Authority, *Port State Control – 2016 Report*, pp. 7, 24.

30 Australian Maritime Safety Authority, *Port State Control – 2016 Report*, pp. 4-5, <http://www.amsa.gov.au/forms-and-publications/international/publications/Ship-Safety/PSC-Annual-Reports/PSCREPORT-2016.pdf>.

31 27.8 per cent of vessels detained in 2016 concerned ISM infringements.

32 Australian Maritime Safety Authority, *Port State Control – 2016 Report*, pp. 6, 24.

33 Australian Maritime Safety Authority, *Port State Control – 2016 Report*, p. 6.

34 Australian Maritime Safety Authority, *Port State Control – 2016 Report*, p. 27.

1.37 The Australian Transport Safety Bureau (ATSB), when deciding to undertake a shipping investigation, does not consider the country of registration of that vessel. However, given the proportion of foreign ships in and out of Australian ports, 'the very significant majority of the ATSB's investigations have involved ships under foreign flags, including the so-called 'flags of convenience''. The ATSB had not identified any safety issues that were more prevalent, or associated with, FOC vessels when compared with other ships.³⁵

1.38 Shipping Australia Limited (SAL) likewise stated that despite the frequency and volume of foreign ships entering Australian ports, there were very few serious accidents or incidents. SAL argued that this was testament to 'the effectiveness of the international and national maritime regulatory (safety and security) framework under which these ships are governed'.³⁶

1.39 Submissions received by the committee argued for the regular monitoring of FOC vessels engaged in coastal trade, to ensure compliance with Australian standards as enforced by AMSA and other authorities like the Australian Federal Police (AFP).³⁷

1.40 In its submission to the committee, the Maritime Union of Australia (MUA) argued that Australia has an important role to play in improving shipping standards both internationally and locally:

Australia, which has the 5th largest shipping task in the world, is ideally placed to be an influential player in setting the expectations for international shipping standards, and in fact has a national interest responsibility to do so given the nation's dependence on shipping, the importance of its coastline to communities, to tourism and to the environment, and to the length and exposure of its borders.³⁸

International incidents

1.41 Concerns over the operations of FOC shipping are not limited to Australia. There are numerous reports identifying serious international incidents involving FOC vessels, and a variety of flag states.

1.42 It has been argued that flags of convenience allow unscrupulous operators to avoid authorities in countries in which they may operate. Many FOC registries are 'from weak or impoverished – even landlocked – nations desperate for hard currency'. Additionally:

35 Department of Infrastructure and Regional Development, *Submission 7*, p. 16.

36 Shipping Australia Limited, *Submission 2*, p. 2.

37 Navy League of Australia, *Submission 6*.

38 The Maritime Union of Australia, *Submission 19*, p. 2.

Flags of convenience continue to provide cover for owners engaged in criminal enterprises, which include not just smuggling fuel, but such dangerous gambits as shipping weapons to terrorists.

Rogue flag-of-convenience ships tend to be found around the world's ungoverned or barely governed spaces.³⁹

1.43 Reports state that in 2016, prior to amendments to Cambodia's FOC scheme, a Cambodian-flagged vessel called *Jie Shun*, with a North Korean captain and crew, was found to be carrying 30 000 rocket grenades. The weapons were hidden on the ship under thousands of tons of iron ore. Official records listed the ship's cargo as 'underwater pump parts'. It was not long after this discovery that Cambodia moved to cancel FOC registration.⁴⁰

1.44 The Tongan FOC registry was reportedly forced by international pressure to shut down its foreign registrations, due to the alarming operations of its registered vessels. Several Tongan-flagged ships were discovered to belong to al Qaeda, while others were reported to be transferring weapons and ammunition, or carried crew reported to be planning terrorist activities in Europe.⁴¹

1.45 In European waters, an investigation revealed that some cargo and other large vessels routinely turn off GPS tracking, allowing them to 'disappear' and undertake suspicious or illegal activity. During January and February 2017, there were 2850 occasions where ships halted GPS transmission before entering European waters; more than 60 per cent of these ships were under FOC registration. Experts have argued that 'cargo ships may anchor in foreign waters to pass people, weapons and drugs to smaller vessels while avoiding detection by maritime authorities'.⁴²

1.46 Flags of convenience are not always limited to cargo vessels. The Deepwater Horizon oil rig, that in 2010 spilled 5 million barrels of oil into the Gulf of Mexico, was registered to the Marshall Islands under a flag of convenience. The resulting disaster was therefore the responsibility of the Marshall Islands registry, as was the safety and quality of the equipment leading up to the event.⁴³

39 Ann Marlowe, 'Whose Convenience? The murky world of bottom-feeding shipping registries', *The Weekly Standard*, 12 December 2016, <http://www.weeklystandard.com/whose-convenience/article/2005622> (accessed 19 December 2016).

40 Megha Rajagopalan, 'Trump has said cutting off North Korea's trade is easy. Here's why he's wrong', *BuzzFeed News*, 6 June 2017, https://www.buzzfeed.com/meghara/north-korea-flags-of-convenience?utm_term=.axwN69NDY#.lla3p03B6 (accessed 7 June 2017).

41 Ann Marlowe, 'Whose Convenience? The murky world of bottom-feeding shipping registries', *The Weekly Standard*, 12 December 2016.

42 Fiona Hamilton, 'Ghost ships' spark European terror fears', *The Times*, 10 March 2017, <https://www.thetimes.co.uk/article/ghost-ships-in-european-waters-spark-terror-fears-hkdbffdv5> (accessed 14 March 2017).

43 Craig Moran, 'Flags of Convenience: Panama Papers on the high seas', *World Policy Blog*, 20 July 2016.

1.47 The shipping practices of some of Australia's closest neighbours are also a matter of concern. In 2016, the International Organization for Migration (IOM) released a report into human trafficking and forced labour in the Indonesian fishing industry. As part of its findings, the IOM identified that:

- fishers and seafarers were actively recruited from South East Asian countries, via systemic and organised deceptive recruitment practices;
- some vessels were double-flagged and registered in two countries, with forged documents;
- illegal fishers were operating in multiple countries and under flags of convenience, and selling the fish in the international market at high cost;
- illegal fishing operations were managed by large companies utilising commercial or businesslike structures, often established with foreign investments, yet were evading taxes and breaking the law;
- some crew witnessed the murder of fellow crew members and the illegal disposal of the corpses; and
- there were extreme cases of labour exploitation with fishers working in excess of 20 hours a day, up to seven days per week.⁴⁴

Employment of seafarers

1.48 The increasing use of FOC vessels to transport cargo around Australia is contributing to ongoing job losses for Australian seafarers, particularly in light of the various financial benefits afforded to FOC operators over locally registered operators. The committee in its interim report presented evidence that job losses would result in an erosion of the skills base for maritime workers, making it even harder to reinvigorate the local shipping industry.

1.49 The committee was advised that in Australia, it takes more than ten years of training and sea service to become a qualified Master, in addition to passing physical assessments, and medical examinations every five years. Despite extensive training, there is limited ability for Australian seafarers to secure work.⁴⁵

1.50 The majority of the non-officer crew on foreign-flagged vessels in the Asia-Pacific region are predominantly from the Philippines and India, with these countries likely to 'continue to be leading providers of seafarers to the maritime industry, as they have established technical colleges for training technicians and lower level crews'.⁴⁶

44 International Organization for Migration, *Report on Human Trafficking, Forced Labour and Fisheries Crime in the Indonesian Fishing Industry*, 2016, pp. xi-xii.

45 Australian Maritime Officers Union, *Submission 20*, pp. 2-3.

46 Department of Infrastructure and Regional Development, *Transport Security to 2025*, 2014, p. 9.

1.51 The committee's interim report examined the evidence concerning various workplace safety and seafarer wellbeing issues, often associated with FOC vessels. Primary concerns include the potential for exploitation and corruption, poor wages, inadequate safety conditions, bullying and abuse of crews, and a lack of welfare services on-shore.⁴⁷

1.52 A survey of seafarers highlighted the serious hazards of this occupation:

38 per cent of 1,594 respondents said that they worked on a ship where there had been a serious injury or fatality to another member of the crew. Twenty-eight per cent of respondents had made a compensation claim for an injury or disease due to their seafaring work. In 2012, it is estimated that worldwide 1,051 seafarers lost their lives at work. The year before, the number was 1,095.⁴⁸

1.53 A number of case studies will be presented in this report, providing examples of poor working conditions, crew exploitation and deaths at sea, for workers of all nationalities.

Interim report

1.54 The committee's interim report examined key issues around the use of FOC shipping in Australia. Matters considered by the committee included employment issues that arise from the use of FOC vessels, such as Australian job losses, poor working conditions, and the decline of the local shipping sector. The committee also considered the risks presented by FOC shipping to Australia's national, environmental and fuel security.

1.55 The interim report's recommendations focused on growing the Australian maritime sector, enhancing work opportunities and conditions for Australian seafarers, and improving the conditions, legal accountability and safety of FOC vessels operating in Australian waters.⁴⁹

1.56 The recommendations were aimed at promoting the support and growth of the Australian-flagged shipping industry as it moves into a future of heightened security risks, increased use of vessels flying flags of convenience, and drastic changes to the work environment both in Australia and internationally.

47 Detailed discussion on working conditions, training and standards can be found in Chapter 3 of the committee's interim report.

48 David Walters and Nick Bailey, *Lives in Peril: Profit or Safety in the Global Maritime Industry?* as cited by Mr Brian Mitchell MP, *House of Representatives Hansard*, 1 June 2017, p. 72.

49 The interim report is available on the committee's website at: http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Rural_and_Regional_Affairs_and_Transport/Shipping, with recommendations found on pp. vii-viii.

1.57 The committee noted in the interim report that this inquiry has raised a number of serious issues that will be of ongoing concern to the government, including how flag of convenience vessels are managed and overseen whilst in Australian waters.⁵⁰

Government response to interim report

1.58 On 10 May 2017, the government tabled its response to the interim report. Of the 10 recommendations made, the government did not support six and noted the remaining four.⁵¹

1.59 The government did not agree with the committee's main recommendation regarding a review into the Australian maritime sector, including an examination of the security and marine environment risks presented by FOC vessels. The government also did not agree to the tightening of temporary licence provisions as they apply to FOC vessels and their crew.⁵²

1.60 In declining to support a review into the maritime sector, the government argued that a number of reviews into this sector had recently been completed, along with subsequent reforms to legislation. The government stated that 'another review is unlikely to change the current decline of the Australian shipping industry'.⁵³

1.61 The government noted recommendations in relation to risk assessments and oversight of seafarers working in Australia, and improving the working conditions, safety standards and remuneration rates for international seafarers. The government also noted the recommendations regarding improved legal accountability for FOC vessels, and providing early intervention and counselling resources to crews of international vessels.

1.62 In noting the recommendations, the government stated that there were high levels of immigration compliance by the commercial maritime industry, via the Maritime Crew Visa (MCV) program, and oversight by AMSA as to the rights and conditions of international seafarers and the enforcement of minimum employment standards.⁵⁴

50 Rural and Regional Affairs and Transport Committee, *Increasing use of so-called Flag of Convenience Shipping in Australia*, Interim report May 2016, p. 2.

51 Senator the Hon Simon Birmingham, Minister for Education and Training, *Senate Hansard*, 10 May 2017, pp. 3345-3348.

52 *Senate Hansard*, 10 May 2017, pp. 3345-3347.

53 *Senate Hansard*, 10 May 2017, p. 3345.

54 *Senate Hansard*, 10 May 2017, pp. 3346-3347.

Report structure

1.63 This chapter provides a brief overview of the committee's interim report, and examines the government's response to the recommendations made in that report. It provides an overview of the state of FOC shipping internationally, and the current state of the Australian shipping industry.

1.64 Chapter 2 provides a summary of reviews and legislative amendments completed into the Australian maritime sector. This chapter considers the efficacy of the *Coastal Trading (Revitalising Australian Shipping) Act 2012* and the temporary licence system. This chapter also discusses the wages paid to seafarers, and the provision of seafarer welfare services.

1.65 Chapter 3 details recent serious incidents involving FOC vessels in Australian waters, including Australian job losses, poor working conditions, disappearances and deaths at sea. A number of case studies are provided. The chapter discusses issues with interjurisdictional responsibility and legal accountability when these incidents occur, and details the Coronial Inquest findings into the deaths of Hector Collado and Cesar Llanto on the *MV Sage Sagittarius*.

1.66 Chapter 4 considers the national security and environmental threats presented by FOC vessels. The chapter discusses the appropriateness and efficacy of border inspection regimes of FOC vessels, including the visa clearance and approval processes, and security in place at Australian ports. The efficacy of immigration and border alert systems are discussed, with regards to Captain Venancio Salas of the *MV Sage Sagittarius*.

1.67 Chapter 5 will discuss the future of the Australian shipping industry. The chapter looks at some of the reviews and reforms that have recently been announced with regards to coastal shipping. The chapter will examine the government's response to the interim report, and summarise the committee's key views and recommendations.

Chapter 2

Australian shipping reviews and regulations

2.1 This chapter examines previous reviews and reports into Australian shipping, and the findings of those reports. The chapter considers the 1992 and 1995 *Ships of Shame* reports into ship safety, and the 2008 inquiry into the revitalisation of the Australian coastal shipping industry.

2.2 The chapter discusses the legislation governing the movement of vessels in Australian waters, primarily the *Coastal Trading (Revitalising Australian Shipping) Act 2012* and considers the efficacy of the general and temporary licence schemes.

2.3 The chapter also considers the wages paid to international seafarers, how the *Fair Work Act 2009* applies to maritime crew on FOCs, and the welfare services available to Australian and international seafarers.

Maritime Labour Convention

2.4 The Maritime Labour Convention 2006 (MLC) is an international convention developed under the International Labour Organization (ILO), and ratified by Australia in December 2011. The MLC determines the working rights and living conditions for seafarers at sea, on public or private commercial vessels. It aims to 'achieve decent work arrangements for seafarers and secure economic interests in fair competition for quality shipowners'.¹

2.5 The MLC contains five main subject areas:

- Minimum requirements for seafarers to work on vessels: sets minimum age requirements, health and training conditions and the regulation and audit of seafarer recruitment and placement services;
- Conditions of employment: determines minimum requirements in relation to wages, hours of work and rest, leave, compensation and access to training;
- Accommodation, recreational facilities, food and catering: relates to on-board living conditions and standards, including room sizes, heating and cooling, laundry and sanitary facilities, and hospital accommodation;
- Health protection, medical care, welfare and social security protection: to ensure the prompt access to medical care on-board, including dental care, by appropriately trained personnel, and access to shore-based welfare facilities; and

1 Australian Maritime Safety Authority, *Maritime Labour Convention, 2006: A Guide to the implementation of the MLC in Australia*, Version 3, March 2016, p. 1.

- Compliance and enforcement: details flag state responsibilities for implementation and enforcement, and port state responsibilities for enforcement on foreign vessels (such as inspections, investigations and detention).²

2.6 The MLC also provides that seafarers, or their representatives, should be given clear direction on how to make complaints about the working and living conditions on a vessel. Owners must ensure that seafarers can make a complaint 'without recourse or concern'. Seafarers can make a complaint directly to AMSA or any other organisation involved with seafarer welfare, and cannot have any actions taken against them for making a complaint.³

2.7 In its submission to the inquiry, the ICS argued that the standards developed by the ILO through the MLC showed that shipping was 'the only industry with a comprehensive framework of detailed employment regulations that is enforced on a global and uniform basis'.⁴

2.8 In 2016, AMSA received 133 complaints about 179 alleged breaches of the MLC, with regards to living and working conditions on vessels. The main category of complaint was wages, followed by food and catering. AMSA advised that:

Of the complaints received, 52 were through the International Transport Workers Federation (ITF), 38 directly from seafarers, 20 from various welfare groups, 13 from government agencies and 10 from other sources.

A total of 68 complaints were substantiated, nine were forwarded to the Fair Work Ombudsman for investigation and four were unable to be investigated due to the vessel departing and not returning to Australian waters. No evidence could be found to substantiate the remaining complaints.⁵

1992 and 1995 Ships of Shame reports

2.9 FOC vessels in Australian waters were first seriously considered by the House of Representatives Standing Committee on Transport, Communications and Infrastructure, in its 1992 report *Ships of Shame: Inquiry into Ship Safety*. This was

2 Australian Maritime Safety Authority, *Maritime Labour Convention, 2006: A Guide to the implementation of the MLC in Australia*, Version 3, March 2016, pp. 2-3.

3 Australian Maritime Safety Authority, *Maritime Labour Convention, 2006: A Guide to the implementation of the MLC in Australia*, Version 3, March 2016, p. 19.

4 International Chamber of Shipping, *Submission 8*, p. 7.

5 Australian Maritime Safety Authority, *Port State Control – 2016 Report*, p. 8.

followed by the same committee's follow-up report in 1995, *Ships of Shame: A Sequel*.⁶

2.10 The 1992 report was triggered by the loss of six bulk carriers off the coast of Western Australia between January 1990 and August 1991, with increased awareness during the inquiry that the loss of bulk carriers was a significant problem. The report focused on the minority of foreign ships that endangered the lives of all crew on board, as well as the environment and the marine facilities in the countries they visited.⁷

2.11 The *Ships of Shame* inquiry heard evidence of:

- unseaworthy ships in operation;
- the use of poorly trained crews, some with false qualification papers;
- flag states failing to carry out their responsibilities under international maritime conventions;
- inadequate, deficient and poorly maintained safety and rescue equipment, and seafarers being denied medical treatment;
- beatings of sailors by ships' officers, sexual abuse of young sailors and crews being starved of food;
- crew being forced to sign false statements indicating a higher rate of pay than actually received, and crew being forced to work excessive overtime hours for no pay; and
- seafarers not being paid for several months and/or remittances not being made to families at home.⁸

2.12 The inquiry found that this and other evidence came as no surprise to industry participants, who all seemed aware that such events were occurring. Yet 'almost no one was trying to assist the unfortunate seafarers', with the exception of seafarer unions and the Missions to Seamen. However, their 'limited efforts were hampered by

6 House of Representatives Standing Committee on Transport, Communications and Infrastructure, *Ships of Shame: Inquiry into Ship Safety*, December 1992; House of Representatives Standing Committee on Transport, Communications and Infrastructure, *Ships of Shame: A Sequel*, December 1995. Both reports can be found at: http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=report_register/bycomlist.asp?id=120

7 House of Representatives Standing Committee on Transport, Communications and Infrastructure, *Ships of Shame: Inquiry into Ship Safety*, December 1992, pp. ix, xv.

8 House of Representatives Standing Committee on Transport, Communications and Infrastructure, *Ships of Shame: Inquiry into Ship Safety*, December 1992, p. ix.

threats of seafarers being blacklisted and intimidated by crewing agencies, ship officers, managers, owners and operators'.⁹

- 2.13 The 1992 report presented a number of recommendations, that were aimed to:
- reduce the level of risk to which the lives of seafarers, the Australian marine environment and property were subject to;
 - improve the level of compliance with international convention standards by flag states, ship owners and managers; and
 - improve the efficiency and effectiveness of the ship safety regulatory regime both internationally and in Australia.¹⁰

2.14 The *Ships of Shame* reports, and an additional progress report completed in 1994, were considered by the committee's May 2016 interim report, as was evidence received by the committee as to the progress made since the 1992 and 1995 reports. The interim report detailed a number of positive developments that had been made, including the International Safety Management Code, the Port State control system, the 2006 MLC and improved monitoring of and communication with foreign vessels in Australian waters.¹¹

2.15 However, the committee went on to note the continued areas of concern with regards to the operation of FOC vessels, including new issues that have arisen since the reports of the early 1990's. Some matters raised by *Ships of Shame* do not appear to have been rectified and in some instances are just as bad, as use of flags of convenience has become more prevalent.

2008 inquiry into rebuilding Australia's coastal shipping industry

2.16 In October 2008, the House of Representatives Standing Committee on Infrastructure, Transport, Regional Development & Local Government tabled its report, *Rebuilding Australia's Coastal Shipping Industry: Inquiry into coastal shipping policy and regulation* (the shipping inquiry).¹²

2.17 The inquiry identified an increase in foreign-flagged vessels, a 'skills crisis' and port infrastructure as key issues directly impacting the growth of the Australian coastal shipping industry, alongside a growth in freight movements by road and rail,

9 House of Representatives Standing Committee on Transport, Communications and Infrastructure, *Ships of Shame: Inquiry into Ship Safety*, December 1992, p. x.

10 House of Representatives Standing Committee on Transport, Communications and Infrastructure, *Ships of Shame: Inquiry into Ship Safety*, December 1992, p. 76.

11 Discussion on the *Ships of Shame* reports, and evidence as to the progress made since their completion, can be found in Chapter 1 of the committee's interim report.

12 The final report can be found at http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=itrdlg/coastalshipping/report.htm. A Government Response was not received for this inquiry.

but not shipping. For shipping to increase its share of the national freight task, it would need to become more competitive when compared with rail and roads.¹³

2.18 Evidence reviewed by that shipping inquiry found that a number of developed countries, particularly in Europe, had taken steps to address the decline in their shipping fleets. The fiscal incentives and measures taken by these countries included favourable tax regimes for ship-owners, cost-offsets in employing domestic seafarers and the encouragement of training and career development.¹⁴

2.19 The shipping inquiry acknowledged that many recommendations had already been made, primarily by industry stakeholders, to reform the maritime sector. However, it noted that 'much of the hard work and analysis required to reform Australia's shipping policy and regulation has been completed without a clearly articulated policy'. Government announcements made in 2008 about fostering a viable shipping industry went some way to develop policy, and the shipping inquiry also made a number of recommendations to guide a new policy framework for coastal shipping.¹⁵

2.20 The shipping inquiry recommended the establishment of a single, national maritime training authority, to help attract and retain new seafarers, address the prohibitive cost of maritime training and to harmonise the disparate training standards found across Australian jurisdictions.¹⁶

2.21 Overall, the shipping inquiry found that:

The strongest argument for revitalising Australia's coastal shipping industry is an economic one. A strong domestic shipping industry can assist in the alleviation of land transport bottlenecks, infrastructure constraints and environmental impacts, as well as provide economic benefits derived from the creation of local employment and the growth of maritime services. Australian defence, maritime safety and security could also benefit from an expanded coastal shipping sector.¹⁷

13 House of Representatives Standing Committee on Infrastructure, Transport, Regional Development & Local Government, *Rebuilding Australia's Coastal Shipping Industry: Inquiry into coastal shipping policy and regulation*, October 2008, pp. 6-7, 11.

14 House of Representatives Standing Committee on Infrastructure, Transport, Regional Development & Local Government, *Rebuilding Australia's Coastal Shipping Industry: Inquiry into coastal shipping policy and regulation*, October 2008, p. 10.

15 House of Representatives Standing Committee on Infrastructure, Transport, Regional Development & Local Government, *Rebuilding Australia's Coastal Shipping Industry: Inquiry into coastal shipping policy and regulation*, October 2008, pp. 20-22.

16 House of Representatives Standing Committee on Infrastructure, Transport, Regional Development & Local Government, *Rebuilding Australia's Coastal Shipping Industry: Inquiry into coastal shipping policy and regulation*, October 2008, pp. 56-67.

17 House of Representatives Standing Committee on Infrastructure, Transport, Regional Development & Local Government, *Rebuilding Australia's Coastal Shipping Industry: Inquiry into coastal shipping policy and regulation*, October 2008, p. v.

2.22 As a result of the shipping inquiry's recommendations, a Shipping Policy Advisory Group was established in 2009, comprising of union and industry representatives. In 2010, this Group provided advice on how to implement the shipping inquiry's recommendations, via its report *Reforming Australia's Shipping – A Discussion Paper for Stakeholder Consultation*. Following this, between February and May 2011, three industry reference groups met and advised on key reform areas.¹⁸

Coastal Trading (Revitalising Australian Shipping) Act 2012

2.23 In 2012, the then Minister for Infrastructure and Transport, the Hon Anthony Albanese MP, introduced a suite of legislation aimed at revitalising the Australian shipping industry, as part of the 'Stronger Shipping for a Stronger Economy' package. The package included the *Coastal Trading (Revitalising Australian Shipping) Act 2012* (the CT Act). The CT Act sought to regulate the operation of vessels in Australian waters and carrying cargo between Australian ports, updating outdated provisions of the *Navigation Act 1912*. Its primary purpose was to promote a viable local shipping industry and its long-term growth, by maximising the use of Australian-flagged vessels.¹⁹

2.24 The CT Act established the Australian General Shipping Register, for domestic vessels and Australian vessels with international certification to have access to the coastal trade. It also established the Australian International Shipping Register (AISR), for ships engaged in international trade and who meet specific criteria, in order to 'put Australian companies on level footing with their international competitors'.²⁰

2.25 Prior to the implementation of the CT Act, vessels operated in Australian waters under a permit system. The CT Act replaced the permit system with a three-tiered licence system:

- General licences: for Australian-flagged vessels to have unrestricted access to coastal trade, and access to various tax incentives;
- Temporary licences: for foreign-flagged vessels or vessels registered under the AISR to have restricted access to coastal trade; and
- Emergency licences: to provide restricted coastal access in response to major emergencies and natural disasters.²¹

18 Explanatory Memorandum, Coastal Trading (Revitalising Australian Shipping) Bill 2012, pp. 2-3.

19 Explanatory Memorandum, Coastal Trading (Revitalising Australian Shipping) Bill 2012, p. 4.

20 Les Nielson and Michele Brennan, Coastal Trading (Revitalising Australian Shipping) Bill 2012 [and] Coastal Trading (Revitalising Australian Shipping) (Consequential Amendments and Transitional Provisions) Bill 2012, *Bills Digest No. 151*, 2011-12, Parliamentary Library, Canberra, 2012, p. 14.

21 The Hon Anthony Albanese, Minister for Infrastructure and Transport, *House of Representatives Hansard*, 22 March 2012, p. 3935.

2.26 Foreign vessels can apply for temporary licences, but this may be subject to negotiation with general licence holders. General licence holders are all notified of a temporary licence application and have the right to respond and negotiate or compete for the transport of the cargo as proposed by the foreign vessel.²²

2.27 As with the legislation in place prior to the CT Act, this allows operators of foreign registered vessels to 'apply for a permit to carry Australian domestic cargo and passengers on the basis that there is no licenced vessel available [or] adequate', and it is in the public interest to allow the licence.²³

2.28 This 'notice and response' process between general and temporary licence holders was explained further by the department. Ms Judith Zielke, of DIRD, explained that:

currently, each time a [foreign or ASIR] ship wants to carry goods, that voyage—no matter what the circumstance—is advertised to all general licence holders, even when we are aware that they do not actually have any ships that could carry those goods.²⁴

2.29 In looking at coastal shipping reform, DIRD has suggested streamlining this licence process. Reforms would remove the need to consult general licence holders, if there are no general licence holders who wish to be consulted or are able to carry the product. For example, consultation is currently still required on all applications for temporary licences to carry fuel, despite knowing 'there are no Australian flagged vessels capable of carrying petroleum products'.²⁵ Ms Zielke further explained that:

In effect, we are undertaking a step in the process where we know that there is no Australian ship to carry those goods. [The reforms] would—only in the circumstances where we know that there are no Australian ships to carry those goods—remove the need for us to go out and advertise it to all of the general licence holders.²⁶

Five voyage minimum

2.30 Temporary licences are valid for 12 months, but may be renewed or varied an unlimited amount of times. A temporary licence can only be issued for a minimum of five voyages, potentially requiring applicants to provide voyage information well in

22 Anne Holmes and Jaan Murphy, Shipping Legislation Amendment Bill 2015, *Bills Digest No. 53*, 2015-16, Parliamentary Library, Canberra, 2015, p. 23.

23 Explanatory Memorandum, Coastal Trading (Revitalising Australian Shipping) Bill 2012, pp. 6-7.

24 Ms Judith Zielke, Department of Infrastructure and Regional Development, *Proof Estimates Hansard*, 23 May 2017, p. 118.

25 Department of Infrastructure and Regional Development, *Coastal Shipping Reforms: Discussion Paper*, March 2017, p. 5.

26 Ms Judith Zielke, Department of Infrastructure and Regional Development, *Proof Estimates Hansard*, 23 May 2017, p. 118.

advance of a voyage taking place. Any new voyages undertaken during the period of the temporary licence requires variations to the original licence (but any application to increase the number of voyages must have a minimum of five voyages).²⁷

2.31 As part of Budget Estimates, the Rural and Regional Affairs and Transport Legislation Committee (legislation committee) heard that stakeholders were raising concerns over the minimum five voyage requirement. The OTS advised the legislation committee that:

We have a range of stakeholders, companies, who would like to move goods for which their needs are infrequent and therefore ships cannot actually allocate what those five voyages will be for and therefore are unable to apply for a [temporary] licence. We have had situations in that particular circumstance where that has led to companies having to move goods by truck, because they are not able to move them on a ship.²⁸

2.32 On its website, DIRD has published examples of where the five-voyage minimum does not work as originally intended:

For example, a piece of heavy machinery was unable to be shipped as a single voyage and, therefore, a Temporary Licence could not be granted. The machinery was moved by road, which required a police escort due to the over-size load and removal of overhead power lines. This was more complicated and costly than a voyage by ship.²⁹

2.33 As discussed later in this report, the government is looking at a number of coastal shipping reforms, including the removal of the five voyage minimum for temporary licences.

Wages for seafarers

2.34 It has been repeatedly argued that the current coastal shipping regulatory environment has increased costs and administrative burdens, while decreasing competition. The concerns around costs often involve discussion of payment of seafarers operating in Australian waters.

2.35 The ILO has determined a minimum monthly wage for international seafarers. The MLC provides that 'the basic pay or wages for a calendar month of service for an able seafarer should not be less than the amount periodically set by the [Joint

27 Explanatory Memorandum, Coastal Trading (Revitalising Australian Shipping) Bill 2012, pp. 23-24.

28 Ms Judith Zielke, Department of Infrastructure and Regional Development, *Proof Estimates Hansard*, 23 May 2017, p. 116.

29 Department of Infrastructure and Regional Development, *Factsheet: Coastal Shipping Reform*, 7 January 2015, <https://infrastructure.gov.au/maritime/publications/factsheets.aspx> (accessed 6 July 2017).

Maritime Commission] or another body authorized by the Governing Body of the ILO'.³⁰

2.36 The minimum monthly basic wage for able seafarers was set at US\$592 as of 1 January 2015, rising to US\$614 as of 1 January 2016.³¹

2.37 Ships operating in Australian waters under temporary licences must, under certain circumstances and pursuant to the *Fair Work Act 2009* (Fair Work Act), pay Australian wages to the crew, regardless of their nationality. The Fair Work Act applies when a foreign-flagged vessel undertakes a voyage in Australian waters under a temporary licence and:

- made at least two other voyages under either a temporary licence or single voyage permit in the last 12 months; or
- held a continuous voyage permit in the previous 15 months.³²

2.38 Once an FOC vessel makes at least three voyages in Australian waters, it is required to pay award wages as specified by the law. However, temporary licences specify a five voyage minimum. It has been noted that:

Whilst it is theoretically possible that a ship could apply for a temporary licence and only undertake two voyages in a 12 month period (and hence not be required to pay Australian wages), this appears unlikely to occur on a regular basis.³³

2.39 Accordingly, all FOC vessels undertaking regular interstate voyages along the Australian coast should, in theory, be paying award wages. However, there are apparent loopholes being exploited in the CT Act to avoid proper wage payment, and a lack of regulatory oversight verifying the wages paid in Australian waters.

2.40 The legislation committee brought to the attention of OTS claims that foreign vessels with foreign crew were loading freight onto vessels in Australian ports, leaving Australian waters and then returning after visiting another country. OTS confirmed that under temporary licensing, vessels are:

30 International Labour Organization, *ILO body adopts new minimum monthly wage for seafarers*, http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_236644/lang--en/index.htm (accessed 7 July 2017).

31 International Labour Organization, *ILO body adopts new minimum monthly wage for seafarers*, http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_236644/lang--en/index.htm (accessed 7 July 2017).

32 Fair Work Ombudsman, *Maritime industry – workplace rights and entitlements*, <https://www.fairwork.gov.au/how-we-will-help/templates-and-guides/fact-sheets/rights-and-obligations/maritime-industry-workplace-rights-and-entitlements> (accessed 3 July 2017).

33 Anne Holmes and Jaan Murphy, *Shipping Legislation Amendment Bill 2015, Bills Digest No. 53, 2015-16*, Parliamentary Library, Canberra, 2015, p. 19.

only required to seek approval for voyages where they are actually coming on-coast, and actually dropping off and picking back up again on-coast. So yes; they can come into port, allow their passengers to visit – noting they will have passports and those sorts of things to come onshore – and then they can depart Australia again and continue. Our permits and licensing system is in relation to coastal shipping – where they are continuing around the coastline.³⁴

2.41 The committee's interim report presented evidence that FOC vessels were using temporary licences on permanent domestic routes, and that it was possible for vessels to leave Australian waters after two voyages to avoid paying Australian wages from the third voyage onwards. Likewise, vessels could be interchanged for regular voyages to ensure the three-voyage wage threshold was not reached.³⁵

2.42 Under current arrangements and the temporary licence scheme, there is nothing to prevent shipping companies and operators cycling vessels and their movements, in an attempt to avoid higher levels of regulatory scrutiny and the payment of award wages to crew, under temporary licensing. The committee remains concerned that this loophole continues to expose workers to substandard conditions and wage payments, and Australia to unnecessary security risks.

Case Study – MT Turmoil

2.43 The *MT Turmoil*, an oil and chemical tanker flagged to Panama and owned by Norwegian company Transpetrol, was chartered by BP and Caltex while in Australian waters between 2013 and 2015. The ship travelled interstate between ports in 'Perth, Adelaide, Burnie, Melbourne, Sydney, Brisbane, Darwin' and other areas.³⁶

2.44 It was alleged that the 61 workers on board, mostly from India or the Philippines and as young as 21, were paid the equivalent of \$1.25 an hour, in addition to allowances and overtime rates. The Fair Work Ombudsman (FWO) commenced legal action against Transpetrol, following a request for assistance from a crew member. The FWO stated that:

Transpetrol allegedly paid the foreign crew rates that were the equivalent of as little as \$1.25/hour in relation to base rates, in addition to industry specific allowances and overtime amounts...However, it is alleged that under the Fair Work Act the crew were entitled to the minimum entitlements that applied under Australia's Seagoing Industry Award and National Minimum Wage Order.

34 Ms Judith Zielke, Department of Infrastructure and Regional Development, *Proof Estimates Hansard*, 23 May 2017, p. 117.

35 Mr Ian Bray, Maritime Union of Australia, *Committee Hansard*, 3 February 2016, p. 14.

36 'Shipping company allegedly underpaid crew', *The West Australian*, 8 April 2017, <https://thewest.com.au/news/wa/shipping-company-allegedly-underpaid-crew-ng-b88440741z> (accessed 29 June 2017).

Transpetrol was allegedly obligated to pay 58 of the crew minimum hourly rates of between \$15.95 and \$30.66 and overtime rates of between \$19.94 and \$38.32 per hour under the Seagoing Industry Award.

It is alleged that the other three foreign crew members were entitled to be paid base rates of up to \$16.87/hour under the National Minimum Wage Order.³⁷

2.45 The underpayments to workers totalled more than \$255,000. The underpayments for individuals ranged from \$374 to \$10,390. It was reported that all crew members had been back-paid in full, but the FWO decided to pursue legal action 'because of the significant amount involved for vulnerable foreign workers'.³⁸

Fair Work Ombudsman

2.46 At Budget Estimates in May 2017, the Senate Education and Employment Legislation Committee (employment committee) heard evidence that confirmed the FWO actions in relation to the *MT Turmoil*, and its awareness that foreign seafarers were being paid as little as \$1.25 an hour. The FWO advised that it became aware of the wage breaches after notification from a number of crewmembers.³⁹

2.47 However, the FWO also confirmed that although the ships were chartered by BP and Caltex, there was no legal obligation for these two companies with regards to workplace relations regulation; this rested with Transpetrol. And, while the FWO may have in the past investigated vessels on an ad hoc basis, it did 'not have a coastal shipping campaign planned' to investigate other claims of underpayment.⁴⁰

2.48 The employment committee was informed that the shipping sector does not generate 'a lot of complaints' to the FWO, and that there was not 'some issue to address in this sector that warrants a greater investment by [the FWO]'. The FWO went on to state that:

There is a very strong union in that sector that is very capable of enforcing the rights and entitlements of [workers] should they wish to and who would support them to do that. I know that we have discussions with the MUA about issues in their sector and other bodies that represent the interests of the seafarers. It is something that we consider important and that we investigate accordingly when those issues come to hand.⁴¹

37 'Shipping company allegedly underpaid crew', *The West Australian*, 8 April 2017.

38 'Shipping company allegedly underpaid crew', *The West Australian*, 8 April 2017.

39 Senate Education and Employment Legislation Committee, *Proof Estimates Hansard*, 30 May 2017, pp. 44-45.

40 Senate Education and Employment Legislation Committee, *Proof Estimates Hansard*, 30 May 2017, p. 45.

41 Mr Michael Campbell, Fair Work Ombudsman, *Proof Estimates Hansard*, 30 May 2017, p. 46.

2.49 The case of the *MT Turmoil*, and the evidence provided by the FWO, highlight the issues involved with ensuring the payment of fair and legal wages to foreign crews, working on vessels operating under temporary licences.

2.50 In its interim report, the committee recommended that the temporary licencing scheme be immediately tightened for FOC vessels that undertake permanent coastal freight routes, and should therefore be paying crew Australian award wages. The Government did not support this recommendation, stating that the temporary licence scheme was overseen by DIRD, AMSA and the FWO, providing 'an appropriate level of assurance' and therefore changes were unwarranted.⁴²

2.51 Additionally, the interim report recommended that the government continue to work with the ILO to improve the rates of remuneration for international seafarers. The government noted this recommendation, stating that the government works closely with the ILO to 'ensure seafarers globally are afforded minimum rights and conditions of employment when engaged in international shipping'. The government also highlighted the ratification of the MLC, the work of the MLC in providing 'fair terms of employment', and the role of AMSA in monitoring and enforcing compliance with the MLC.⁴³

Welfare for seafarers

2.52 The committee's interim report discussed evidence that there were insufficient support and welfare services for crew on foreign vessels, and a lack of shore-based assistance and funding for that assistance.⁴⁴

2.53 A number of organisations provide assistance to seafarers through ship visits, drop-in centres and emergency support services. Services are also provided to improve on-board standards, health and wellbeing, to establish social networks and access to financial planning, and to address issues of isolation and depression. Organisations include the ITF Seafarers' Trust, the Mission to Seafarers, the Australian Seafarers' Welfare Council and SeafarerHelp.⁴⁵

2.54 Hunterlink, an Employer Assistance Provider, provides welfare services to international seafarers visiting Australian waters, via a free, 24-hour counselling helpline. A team of Hunterlink employees attended the *MV Sage Sagittarius* in the Port of Newcastle, following the death of Hector Collado. A member of the team

42 *Proof Senate Hansard*, 10 May 2017, pp. 101-102.

43 *Proof Senate Hansard*, 10 May 2017, pp. 102-103.

44 Further discussion on seafarer welfare assistance can be found in Chapter 3 of the committee's interim report.

45 ITF Seafarers' Trust at <http://www.seafarerstrust.org/>; Mission to Seafarers at <http://www.mts.org.au/what-we-do/>; Australian Seafarers Welfare Council at http://www.amsa.gov.au/seafarers_welfare/index.asp; SeafarerHelp at <http://www.seafarerhelp.org/?ref=iswan>

described the crew on board as intimidated, very fearful and very distressed about the events on board. They were also fearful at remaining on board with someone who may have participated in some way to the deaths of their crewmates.⁴⁶

2.55 DIRD advised that the government does not have the capacity to ensure the safety and wellbeing of seafarers, once they leave Australian waters.⁴⁷

2.56 The Merchant Navy Association advised the committee that it promotes the welfare of serving and ex-Merchant Navy seafarers, and seafarers generally, through social events and memorial attendance. The Association also advised that:

All too often we receive reports of exploitation and ill treatment of seafarers on FOC ships. It is essential that AMSA, the ITF and the unions are allowed to continue to monitor the safety and well being of seafarers employed on flag of convenience ships. Our concern is that not enough support and resources are given to these organisations to enable them to increase the scope of their inspections and necessary scrutiny.⁴⁸

2.57 The International Seafarers' Welfare and Assistance Network (ISWAN) is an internationally-supported seafarer welfare association. ISWAN provides global assistance 24 hours a day to seafarers, and administers an emergency welfare fund for seafarers in need. ISWAN summarised the key issues with seafarer welfare on its website:

Seafarers, who are responsible for transporting 95% of the world's goods, are frequently overlooked and forgotten about. With the fast turnaround of ship in ports, being on board for 10 months, reduced crew numbers and increased workloads, the lives of seafarers are often tough and hard. Seafarers face long periods away from family and friends with limited or no communication for weeks on end. Shore leave can be severely restricted, particularly for certain nationalities.⁴⁹

2.58 The work of these organisations and others is to be commended in improving the wellbeing of Australian and international seafarers. However, the ability of seafarers to access these services likely depends on the atmosphere and working conditions on a vessel.

46 Hunterlink National Employee Assistance Provider, <http://hunterlink.org.au/#> (accessed 5 July 2017); Owen Jacques, 'Death Ship: "They didn't want to be killed on board"', *Fraser Coast Chronicle*, 2 July 2017, <https://www.frasercoastchronicle.com.au/news/death-ship-they-didnt-want-be-killed-board/3195698/> (accessed 5 July 2017).

47 *Proof Estimates Hansard*, 23 May 2017, p. 113.

48 Merchant Navy Association, *Submission 10*.

49 International Seafarers' Welfare and Assistance Network, 'About ISWAN', <http://seafarerswelfare.org/about-iswan> (accessed 5 July 2017).

2.59 Additionally, and as highlighted by the committee's interim report, a lack of ongoing financial support for these organisations make it increasingly difficult for them to provide the necessary services to crew members in need.

Committee view and recommendations

Ships of Shame reports

2.60 The committee agrees with the evidence before it that a number of important developments have been made in the shipping industry since the *Ships of Shame* reports and in response to FOC vessels. However, the committee remains very concerned that there continues to be new and unresolved issues around the operation of FOC vessels in Australian waters.

2.61 It is arguable that the aims of the 1992 *Ships of Shame* recommendations remain just as important today in ensuring the safety and wellbeing of Australian and international seafarers, and in progressing effective regulatory reforms for dealing with FOC and other vessels in Australian waters. The evidence received by the 1992 inquiry parallels evidence received by this committee during its current inquiries, particularly in relation to seafarer work conditions.⁵⁰

2.62 In particular, the committee notes the continued occurrences of Australian and international seafarer underpayment, insufficient training, mistreatment and death at sea, as will be discussed later in this report. The committee also notes the continued negative environmental impacts and security concerns of deficient FOC vessels.

Temporary licences

2.63 The committee heard evidence that the temporary licence scheme was open to abuse by FOC vessels. The committee also understands that in some sectors of the industry, the five voyage minimum was potentially introducing administrative and cost burdens.

2.64 The committee appreciates that the licence scheme is being reviewed as part of coastal shipping reform. The committee encourages the government to ensure that, if any amendments are made to temporary licensing, appropriate safeguards are provided to ensure the ongoing viability of the Australian-flagged shipping industry and its employees.

2.65 It will always be challenging to balance the competing interests of different stakeholders in the industry, and to this end the committee encourages extensive stakeholder consultation and engagement prior to any further legislative amendments to shipping.

50 Discussion of incidences in and around Australian waters is in Chapter 3 of this report.

2.66 The committee was very concerned to hear that FOC vessels are exploiting loopholes in the temporary licensing scheme, particularly in order to reduce wages. Any amendments to the scheme should not further jeopardise the health, wellbeing and remuneration of international seafarers.

Payment of seafarers

2.67 The committee has been presented with numerous examples of where foreign seafarers have not been paid Australian award wages, despite the legal requirements stipulating that they should be. The government's response to the interim report stated that there is 'an appropriate level of assurance' in the oversight of wage payments, but the evidence does not support such a claim.

2.68 While the FWO is to be commended in prosecuting the owners of the *MT Turmoil* and ensuring appropriate wages were paid to the crew in full, the committee is concerned that there is no dedicated program to review the wage conditions on FOC vessels. The committee considers that seafarers working on vessels with poor conditions and authoritarian management and supervision would be unlikely to report instances of wage underpayment and mistreatment, despite workplace protections under the MLC that should support such actions.

2.69 The committee is very concerned that there appears to be no regular oversight of foreign vessels operating along the Australian coast, to ensure that foreign workers in particular are paid the appropriate wages. The case of the *MT Turmoil* highlights these concerns and is a new low in the payment of seafarers, with \$1.25 an hour far below what anyone would reasonably expect employees to be paid, in any industry.

2.70 Indeed, at Budget Estimates the Minister for Employment, Senator the Hon Michaelia Cash responded specifically to questioning over the *MT Turmoil*, stating that:

the government expects all employers or people who employ Australians or all those who are employed under Australian law to comply with the law. In the event that they do not, they should feel the full force of the law.⁵¹

2.71 While the committee is in full agreement with the Minister, it is not apparent to the committee that there is a clear policing of wage rates, or a system in place for workers to report wage underpayments, or lack of payments, to authorities. This lack of transparency makes it difficult to see how legal action can be progressed to rectify such issues.

2.72 The committee takes the view that an ongoing program that oversees the payment of wages on foreign vessels operating in Australia, is required as an important step in ensuring the health and wellbeing of seafarers and their families, and ensuring compliance with the law.

51 Senator the Hon Michaelia Cash, Minister for Employment, *Proof Estimates Hansard*, 30 May 2017, p. 46.

2.73 To this end, the committee recommends that the Fair Work Ombudsman undertake such a program.

Recommendation 1

2.74 The committee recommends that the Fair Work Ombudsman implement a program of inspection for ships with foreign seafarers, to verify that the wages paid on board accord with Australian legal requirements.

Recommendation 2

2.75 The committee recommends that the Australian Government provide adequate funding to the Fair Work Ombudsman to implement an inspection program of ships with foreign crews, to assess the payment of wages.

Chapter 3

Maritime incidents with FOC vessels

3.1 A number of case studies are presented in this chapter, depicting instances of Australian workers losing employment as vessels are re-flagged and international seafarers employed. There are also examples of international seafarers receiving inadequate wages and working in poor conditions.

3.2 This chapter details recent incidents in and around Australian waters, involving FOC vessels and serious instances of poor working conditions, disappearances and deaths at sea.

3.3 It details the challenges with jurisdictional responsibility for investigating these incidents when they occur in international waters, under an FOC flag. These issues were discussed by the State Coroner's Court of NSW, in its inquest into the deaths of Cesar Llanto and Hector Collado, which is also discussed in this chapter.

Employment of Australian seafarers

3.4 Numerous examples have been presented to the committee of Australian seafarers losing employment, as companies engaging in shipping along the Australian coast employ FOC vessels and cheaper, overseas crew.

3.5 The committee's interim report detailed a number of situations that illustrated the problem of FOC shipping for Australian seafarers. This included the replacement of the Australian ship *MV Portland* and its crew with a foreign-flagged vessel and a foreign crew, operating under a temporary licence. Nearly 40 Australian seafarers lost employment, with the replacement foreign crew reportedly subject to very poor wages and insufficient training.¹

3.6 A number of further, similar examples have occurred since the events on the *MV Portland*, where Australian seafarers have been replaced by foreign crew, and where foreign crew have allegedly received wages far below Australian legal requirements.

Case studies

CSL Melbourne and CSL Brisbane

3.7 The bulk carrier *CSL Melbourne* was a vessel that shipped alumina along the Australian east coast for five years, for the Pacific Aluminium company, a subsidiary of Rio Tinto. Coming shortly after the incidents on the *MV Portland*, in February

1 Detailed discussion on the case of the *MV Portland* can be found in Chapter 2 of the committee's interim report.

2016 it was decided by Pacific Aluminium to send the *CSL Melbourne* to Singapore, where the Australian crew were to be dismissed and the vessel redeployed on international routes. The 16 crew refused to leave the vessel when it was docked in Australia, an industrial action deemed illegal by the Fair Work Commission.²

3.8 Following the crew's refusal to sail the vessel to Singapore, on 5 February 2016 police forced the crew from the ship.³

3.9 In early 2016 Pacific Aluminium received a temporary coastal licence, allowing it to use foreign crews on the east coast route. The ITF argued that the *CSL Melbourne* would be 'replaced on its coastal route by a Liberian-flagged ship operated by a Greek company, with Filipino crew'. The company conversely stated that the decision to reassign the ship was due to the loss of a long-term contract, and it would work to reassign Australian crew members to other vessels in the fleet.⁴

3.10 In September 2016, CSL Australia announced that Australian crew would be removed from the *CSL Brisbane*, and the vessel instead crewed by foreign workers, with the company seeking voluntary redundancies across the fleet. While the ship was dry docked in Singapore, the company advised that it would relinquish its Australian general licence for the vessel, and return the vessel to its international fleet sailing around Asia. In instances where the ship was required to return to Australian waters, the company would apply for a temporary licence.⁵

3.11 The vessel has since been renamed *Adelie*, and is registered to the Bahamas. Records indicate that between March and May 2017, the *Adelie* made at least five port calls to Geraldton in Western Australia.⁶

3.12 The MUA argued that Rio Tinto had failed to adhere to a 2010 agreement that it use Australian-flagged ships and crew on 70 per cent of its fleet carrying bauxite from Weipa in north Queensland to the port of Gladstone. The MUA estimated that

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- 2 Nick Toscano, 'Sacked crew on CSL Melbourne stir new shipping jobs fight', *The Age*, 3 February 2016, <http://www.theage.com.au/victoria/sacked-crew-on-csl-melbourne-stir-new-shipping-jobs-fight-20160203-gmkmm8.html> (accessed 17 November 2016).
 - 3 Elizabeth Colman, 'Angry politicians take up case of sacked CSL Melbourne crew', *The Australian*, 6 February 2016, <http://www.theaustralian.com.au/national-affairs/industrial-relations/angry-politicians-take-up-case-of-sacked-csl-melbourne-crew/news-story/0a4488b3b9752fbb74874f64f94584d3> (accessed 17 November 2016).
 - 4 Nick Toscano, 'Sacked crew on CSL Melbourne stir new shipping jobs fight', *The Age*, 3 February 2016.
 - 5 Mich-Elle Myers, 'Important Note to Members Regarding CSL Brisbane', *Maritime Union of Australia*, 1 October 2016, http://www.mua.org.au/important_note_to_members_regarding_csl_brisbane (accessed 9 June 2017).
 - 6 MarineTraffic, *Adelie, Bulk Carrier*, <http://www.marinetraffic.com/en/ais/details/ships/shipid:373415/mmsi:311038300/imo:9207807/vessel:ADELIE> (accessed 9 June 2017); Vessel Finder, *Adelie – Bulk Carrier*, <https://www.vesselfinder.com/vessels/ADELIE-IMO-9207807-MMSI-311038300> (accessed 9 June 2017).

70 per cent of Rio Tinto's fleet operating between Weipa and Gladstone were instead under FOCs, with crews from Burma, India or the Philippines paid \$3 to \$4 an hour. The MUA stressed that in challenging Rio Tinto's position, it was seeking better conditions for all seafarers, regardless of nationality.⁷

3.13 More generally, there have been claims that CSL sought to fill up to three dozen positions with foreign workers under the 457 visa program, thus failing to comply with legal obligations to prioritise local workers. The Australian Institute of Marine and Power Engineers argued that there were at least 250 unemployed marine engineers in Australia, and that these engineers should be employed over 'cheaper' foreign workers. CSL responded that while its advertised positions called for Australian citizens and permanent residents, it would 'give genuine consideration to all applications'.⁸

Incidents in Australian waters

3.14 While the use of FOC vessels is a problem for the global shipping industry, serious risks to seafarer safety and national security have been demonstrated by the operations of FOC vessels in Australian waters.

3.15 This was highlighted by the events around the *MV Sage Sagittarius*, an FOC vessel where two crew members died in a short period of time and under suspicious circumstances, and where a company investigator into these deaths also later died.⁹ A NSW Coronial Inquest into the two deaths recently found that both crew members had met with foul play, and highlighted the issues involved in investigating disappearances or deaths on foreign-flagged vessels.¹⁰

3.16 In recent years and since these matters were canvassed in the interim report, further incidents involving FOC vessels have occurred in Australian waters, often involving stranded, underpaid or missing crew or presenting risks to Australia's security. The following examples provide an account of the varied and numerous issues that FOC vessels present to Australian authorities.

7 Kaye Broom, 'Resisting Rio Tinto', *Red Flag*, 3 April 2017, <https://redflag.org.au/node/5755> (accessed 4 April 2017).

8 Fergus Hunter, 'Union fears shipping giant CSL will bring in dozens of cheaper foreign workers under 457 visas', *The Sydney Morning Herald*, 3 April 2017, <http://www.smh.com.au/federal-politics/political-news/union-fears-shipping-giant-csl-will-bring-in-dozens-of-cheaper-foreign-workers-under-457-visas-20170330-gv9wli.html> (accessed 5 April 2017).

9 Detailed discussion on the case of the *MV Sage Sagittarius* can be found in Chapter 3 of the committee's interim report.

10 State Coroner's Court of New South Wales, *Inquest into the disappearance and suspected death of Cesar Llanto and Inquest into the death of Hector Collado*, 31 May 2017, p. 84. The coroner's report is discussed in further detail later in the chapter.

Case studies

OS 35

3.17 On 10 July 2016, the Tuvalu-flagged vessel *OS 35* docked at Gladstone, Queensland. It was reported that the crew of 19 Syrian sailors were given permission to leave the ship at port, despite only one of the crew having a valid visa as the ship approached the port. In response, the Department of Immigration and Border Protection (DIBP) argued that while 18 crew did not have proper clearance when discovered by Border Force off the Queensland coast, the crew was assessed prior to arrival. All crew had passed security clearance by the time of arrival at the port.¹¹

3.18 The ITF argued that the only way the security clearances could have been obtained was through officials communicating with Syrian counterparts, and it was unlikely that Syrian officials were in a position to respond to Border Force so quickly.¹²

Five Stars Fujian

3.19 On 19 July 2016, the Chinese-bound Hong Kong-flagged cargo ship *Five Stars Fujian* and its crew was abandoned off the port of Gladstone. The ship was detained by Australian authorities after sitting idle for weeks. While holding about \$40 million worth of coal, the ship's crew had not been paid in months, and were paid \$2 an hour when wages were paid, in breach of ILO regulations.¹³

3.20 The crew were running out of food following the abandonment, and emergency supplies were provided by AMSA. On 12 August 2016 AMSA inspected the ship, and detained the vessel for deficiencies in relation to food supply and payment of wages.¹⁴

3.21 On 1 September 2016, AMSA released the vessel following confirmation from the vessel owners that the outstanding wages had been paid, and the vessel had sufficient fuel and provisions for the trip to China. AMSA further banned the operators from bringing the ship to any Australian port for a twelve-month period.¹⁵

11 Owen Jacques, '18 Syrian crew let off ship after rushed security checks', *Gladstone Observer*, 25 July 2016, <https://www.gladstoneobserver.com.au/news/19-syrian-sailors-allowed-into-gladstone-without-v/3067124/> (accessed 9 November 2016).

12 Owen Jacques, '18 Syrian crew let off ship after rushed security checks', *Gladstone Observer*, 25 July 2016.

13 Cargo ship crew 'abandoned' off central Queensland coast', *ABC News*, 16 August 2016, <http://www.abc.net.au/news/2016-08-16/crew-stuck-on-abandoned-ship/7748084>

14 Cargo Ship crew 'abandoned' off central Queensland coast', *ABC News*, 16 August 2016.

15 'Five Stars Fujian Released, Banned from Australia for a Year', *World Maritime News*, 2 September 2016, <http://worldmaritimeneeds.com/archives/201048/five-stars-fujian-released-banned-from-australia-for-a-year/> (accessed 14 June 2017).

Maratha Paramount

3.22 The cargo ship *Maratha Paramount* is Indian-owned and flagged to the Marshall Islands. As with the *CSL Melbourne*, the *Maratha Paramount* was chartered by Pacific Aluminium as a wholly-owned subsidiary of Rio Tinto. In October 2016, the vessel was detained in Gladstone and boarded by Australian authorities who were investigating claims that the crew had not been paid, and were living in squalid conditions.¹⁶

3.23 The vessel carried 22 Indian crew members who had not been paid for over two months. AMSA inspectors found that the captain had asked the crew to sign off on having received wages, despite not having received them. Additionally, there was very little food on board the vessel, and the drinking water was discoloured.¹⁷

3.24 AMSA issued the vessel with two deficiency notices, for failing to pay wages for two months, and for failing to provide the crew with clean facilities. The ship was released by Australian authorities and was subject to a follow-up inspection when it arrived in the Newcastle port. The ITF called for the suspension of the *Maratha Paramount's* temporary licence, which allowed it to travel domestically between the Gladstone and Newcastle ports.¹⁸

Deaths and disappearances at sea

3.25 In instances where a seafarer disappears or dies while working on an FOC vessel in Australian waters, it is often difficult to discern which investigatory or oversight body may have jurisdiction to examine the case. A disconnect between the ship's physical operating location, and its flag nation, both creates and exacerbates this problem.

3.26 A number of incidents in Australian waters have highlighted both the serious risks to crew working on FOC vessels, and the lack of jurisdiction for further investigation into serious instances of injury, disappearance or death involving FOC ships.

3.27 The following examples provide evidence of jurisdictional issues, and the lack of investigational responsibility taken on by the registered flag nation, in instances of disappearance and death at sea.

16 Nick Toscano, 'Very little food, drinking water is brown': Ship probed over pay and conditions', *Sydney Morning Herald*, 12 October 2016, <http://www.smh.com.au/business/workplace-relations/very-little-food-drinking-water-is-brown-ship-probed-over-pay-and-conditions-20161012-gs0tv3.html> (accessed 8 May 2017).

17 Cathy Van Extel, 'Ships of shame: Bulk carrier chartered by Rio Tinto subsidiary caught failing to pay crew', *ABC News*, 12 October 2016, <http://www.abc.net.au/news/2016-10-12/ships-of-shame-bulk-carriers-failing-to-pay-crew/7924982> (accessed 8 May 2017).

18 Nick Toscano, 'Very little food, drinking water is brown': Ship probed over pay and conditions', *Sydney Morning Herald*, 12 October 2016.

Case studies

K Pride

3.28 In May 2015, the Panamanian-flagged coal vessel *K Pride* was off the coast of Papua New Guinea and travelling to Newcastle when a 54-year-old seafarer fell overboard and was presumed dead. It reportedly took 3 hours before fellow crew noticed the seafarer missing, and, while the incident reportedly happened on 14 May 2015, local union officials were not notified until 25 May 2015.¹⁹

3.29 The ITF noted that as the incident occurred in international waters, it was unlikely to be investigated by Australian authorities, despite the vessel heading to Australia and travelling regularly between Newcastle and Korea with Australian cargo.²⁰

3.30 The Korean owner of the vessel, SK Shipping, told media that there would be an investigation, involving Australian police. However, the AFP said they were not involved, and referred the matter to the NSW Police Force.²¹

3.31 NSW Police later boarded the ship while it was docked in Newcastle, to interview crew as part of an investigation. AMSA also boarded the vessel for a 'routine follow-up Port State Control inspection'.²²

3.32 It appears to the committee that no further details on this matter have been released, or findings of any investigation announced. Notwithstanding the Australian investigatory efforts, the committee notes that as the vessel was in international waters, the primary investigative responsibility lay with the flag nation of Panama.

Spring Hydrangea

3.33 On 30 April 2016, the Japanese-owned Panamanian-flagged iron ore bulk carrier *Spring Hydrangea* was in international waters, off the Pilbara coast in Western Australia. A Filipino crew member, Mr Robert Bantol, went missing, and this was

19 Giselle Wakatama, 'Man presumed dead after falling overboard from coal ship en route to Newcastle', *ABC News*, 26 May 2015, <http://www.abc.net.au/news/2015-05-26/man-overboard-from-coal-ship-en-route-to-newcastle/6497266> (accessed 6 June 2017).

20 Giselle Wakatama, 'Man presumed dead after falling overboard from coal ship en route to Newcastle', *ABC News*, 26 May 2015.

21 Giselle Wakatama, 'Man presumed dead after falling overboard from coal ship en route to Newcastle', *ABC News*, 26 May 2015.

22 Gabriel Wingate-Pearse, 'K Pride: police search ship in Newcastle after crew member lost off Papua New Guinea', *Newcastle Herald*, 28 May 2015, <http://www.theherald.com.au/story/3109510/police-search-ship-after-crew-member-lost/> (accessed 9 June 2017).

reported to AMSA. AMSA undertook sea and air searches to no avail, and medical advice concluded that Mr Bantol could not have survived.²³

3.34 Given the location of the vessel, the obligation for investigation rested with the flag nation, in this instance Panama. While on 2 May 2016 the Panama Maritime Authority reportedly commenced an investigation, the ship was sold soon after, its flag nation changed to Liberia in West Africa, and its name changed to the *MV Monegasque Eclat*, frustrating the prospect of any further investigation into the disappearance.²⁴

3.35 The family of Mr Bantol urged Australian authorities to investigate, arguing that Mr Bantol was supporting a young family and would not have jumped overboard. Despite this and other calls for an Australian investigation into the disappearance, the Minister for Justice the Hon Michael Keenan MP advised that it was up to the AFP to determine what cases they investigate. However, the AFP advised the media that it wasn't involved in the matter, and both the ATSB and Western Australia Police confirmed they were not investigating the disappearance.²⁵

3.36 It was later reported that the Japanese shipping company that owned the vessel had refused to investigate the disappearance, and was refusing to pay compensation to the seafarer's wife and two children.²⁶

SBI Samba

3.37 On 12 January 2017, the *SBI Samba*, a Greek-owned bulk carrier flagged to the Marshall Islands, was off the Australian coast at Hay Point, Queensland when a 47-year-old Filipino crew member went missing. There was approximately four hours between the time when the crewman was last seen and then reported missing. Following the missing person report, AMSA undertook an extensive search of the area. The search ceased when it was determined that the seafarer could not have survived.²⁷

23 Joseph Dunstan, 'Union calls for investigation into disappearance of worker on iron ore carrier off WA coast', *ABC News*, 23 May 2016, <http://www.abc.net.au/news/2016-05-23/union-calls-for-afp-investigation-worker-disappearance/7437006> (accessed 9 June 2017).

24 Thomas Oriti, 'Flag of convenience ships a major security risk in Australian waters, union warns', *ABC News*, 9 June 2016, <http://www.abc.net.au/news/2016-06-07/flag-of-convenience-ships-continue-to-pose-threat/7487992> (accessed 9 June 2017).

25 Joseph Dunstan, 'Union calls for investigation into disappearance of worker on iron ore carrier off WA coast', *ABC News*, 23 May 2016.

26 Shakira Sellen, 'Man disappears from bulk carrier heading to Hay Point', *Daily Mercury*, 13 January 2017, <https://www.dailymercury.com.au/news/man-disappears-from-bulk-carrier-heading-to-hay-po/3131571/> (accessed 23 January 2017).

27 Shakira Sellen, 'Man disappears from bulk carrier heading to Hay Point', *Daily Mercury*, 13 January 2017.

3.38 During the second day of the search, the *SBI Samba* reportedly left the search area of its own accord, to head to port and load cargo, leaving Australian authorities to continue the search. The ITF demanded an immediate investigation into the seafarer's disappearance.²⁸

3.39 The shipping company claimed that it would leave the 'missing person' investigation to the AFP, who in turn advised that the Queensland Police were leading the investigation. Queensland Police boarded the vessel at the port at Hay Point, ruling that the death was not suspicious. The crewman is thought to have disappeared after 'consuming a toxic substance', on which the police were unable to elaborate.²⁹

Coronial Inquest

MV Sage Sagittarius and Coronial findings on jurisdiction

3.40 The NSW Coronial Inquest into the deaths of Cesar Llanto and Hector Collado, who died under suspicious circumstances while working on board the Panamanian-flagged *MV Sage Sagittarius*, identified concerns with jurisdictional responsibility when deaths occur at sea. In relation to FOC vessels, the Deputy State Coroner, Magistrate Sharon Freund, found that:

there is no apparent connection between the nationality of the owner of the Vessel, the ordinary geographical operations of the Vessel, nor the nationality of the crew of the Vessel and its flag. The Panamanian Flag is a "flag of convenience" which allows the ship owners to operate principally under the regulatory framework of the flagged nation.³⁰

3.41 As part of the Inquest findings, the Deputy State Coroner found that:

there are very significant practical impediments created by a disappearance or a death on board a foreign flagged vessel. Many thousands of foreign seafarers, including many Filipinos, work on foreign flagged vessels that venture into Australian waters in the course of trade.³¹

3.42 The Deputy State Coroner noted that the 'Ships of Shame' report detailed the 'significant practical impediments to investigating suspected lawlessness that may take place on a foreign flagged vessel', but that:

28 Owen Jacques, 'Lost sailor may have "consumed toxic substance"', *Mackay Daily Mercury*, 17 January 2017, <https://www.dailymercury.com.au/news/lost-sailor-may-have-consumed-toxic-substance/3132626/> (accessed 23 January 2017).

29 Owen Jacques, 'Lost sailor may have "consumed toxic substance"', *Mackay Daily Mercury*, 17 January 2017.

30 State Coroner's Court of New South Wales, *Inquest into the disappearance and suspected death of Cesar Llanto and Inquest into the death of Hector Collado*, 31 May 2017, p. 10.

31 State Coroner's Court of New South Wales, *Inquest into the disappearance and suspected death of Cesar Llanto and Inquest into the death of Hector Collado*, 31 May 2017, p. 84.

It is essential...that such investigations take place and be done thoroughly. Lawlessness, wherever it takes place, should always be investigated. Persons at fault should be brought to account wherever the jurisdiction.³²

3.43 The Coronial Inquest found that while the AFP and the NSW Police Force did their best in investigating the disappearances and deaths on the *MV Sage Sagittarius*, investigators faced difficulties for a number of reasons. These included:

- a bifurcation of investigations, as the AFP investigated the disappearance of Mr Llanto under the *Crimes at Sea Act 2000* while the NSW Police Force had investigative jurisdiction for Mr Collado;
- actual or perceived time pressures on investigators, as the vessel was a commercial coal loading ship with commercial engagements, which also prevented the re-engagement of witnesses; and
- the relevant witnesses were Filipino nationals who required an interpreter, and some felt intimidated or scared enough based on their experiences on the vessel to withhold evidence.³³

3.44 DIBP confirmed to the committee that the Australian Customs and Border Protection Service (ACBPS) and later Australian Border Force (ABF) did not have any jurisdiction to investigate the deaths of Mr Collado and Mr Llanto.³⁴

Responses to jurisdictional issues

3.45 In responding to the incident on the *SBI Samba*, Mr Dean Summers of the ITF spoke strongly about the issue of seafarer deaths at sea and the investigatory process:

Too many times foreign seafarers have lost their lives and their employer [sic] use the excuse Man Over Board to avoid a proper investigation. These tragedies go under-reported, demonstrating to the world that these employers think international seafarers are a disposable commodity.

Under the lawless FOC system, the country where the ship is registered has the responsibility to investigate. If this happens at all in FOC countries like North Korea, Panama, Mongolia and the Marshall Islands, the reports are scant and incidental.³⁵

32 State Coroner's Court of New South Wales, *Inquest into the disappearance and suspected death of Cesar Llanto and Inquest into the death of Hector Collado*, 31 May 2017, pp. 84-85.

33 State Coroner's Court of New South Wales, *Inquest into the disappearance and suspected death of Cesar Llanto and Inquest into the death of Hector Collado*, 31 May 2017, p. 85.

34 Department of Immigration and Border Protection, answers to questions taken on notice, 13 June 2017 (answered 21 June 2017).

35 Shakira Sellen, 'Man disappears from bulk carrier heading to Hay Point', *Daily Mercury*, 13 January 2017.

3.46 The Coronial Inquest into the deaths of Hector Collado and Cesar Llanto recommended a number of measures that would go some way to improving the investigation of deaths at sea.

3.47 The Deputy State Coroner recommended the establishment of a permanent standing group with members from at least the AFP, NSW Police Force, AMSA and ATSB, 'for the purposes of liaising, contact and assistance in connection with any investigation of the death or suspicious death on board, or disappearance from, an international vessel in or bound for Australian waters'. The standing group would have a principal contact officer from each agency, who would regularly liaise with the group to ensure the appropriate sharing of forensic and other evidence between agencies during an investigation.³⁶

3.48 In responding to questions taken on notice, DIBP acknowledged that a number of reviews and inquiries had identified issues with lack of communication between agencies in such circumstances. While DIBP was not considered as part of the Inquest recommendations, DIBP advised that the ABF has:

created a Border Intelligence Fusion Centre (BIFC) which brings together representatives from:

- Australian Federal Police
- Australian Criminal Intelligence Commission
- Attorney General's Department
- Department of Education, Employment & Workplace Relations
- Department of Foreign Affairs & Trade
- Department of Environment & Energy; and
- Department of Infrastructure and Regional Development.³⁷

3.49 The BIFC, established on 1 July 2016, provides 'real time profiling and targeting intelligence analysis and advice to support the ABF in making intelligence informed operational decisions'. DIBP also argued that the commencement of the department, from 1 July 2015, allowed for border and visa threats to be considered simultaneously, rather than in isolation.³⁸

36 State Coroner's Court of New South Wales, *Inquest into the disappearance and suspected death of Cesar Llanto and Inquest into the death of Hector Collado*, 31 May 2017, pp. 87-88.

37 Department of Immigration and Border Protection, response to questions taken on notice, 13 June 2017 (received 21 June 2017).

38 Department of Immigration and Border Protection, response to questions taken on notice, 13 June 2017 (received 21 June 2017).

Committee view and recommendations

3.50 The committee is very disturbed by the many examples of job losses, poor working conditions, inadequate wages and deaths and disappearances at sea, both presented here and in other examples provided in evidence throughout the course of the inquiry.

3.51 To have seafarers disappearing and dying in and around Australian waters, and while in transit to Australian ports, is unacceptable. While it will take a global effort to prevent deaths at sea and improve the working conditions of international seafarers, Australia can and should be doing its part to improve conditions where it can, and when these tragedies occur in our waters.

3.52 Australian authorities have provided extensive assistance in search and rescue operations, as soon as disappearances at sea are reported to them. However, the apparent disconnect between a ship's flag state and its physical location has resulted in a situation where there are no follow-up investigations. In effect, there is a lack of accountability for events that take place on board FOC vessels.

3.53 The job losses of Australian seafarers, and their replacement by foreign crews, is removing trained, skilled and specialised local workers from coastal shipping and key freight routes, and reducing Australia's ability to reinvigorate its maritime industry.

Jurisdictional issues

3.54 The case studies presented clearly show the critical issues with jurisdictional responsibility into investigating disappearances and deaths at sea. While flag states have a responsibility to investigate all incidences on their vessels, it is only too apparent that this is not happening.

3.55 Further, Australian authorities do not always have clear authority to investigate matters in international waters, even if an FOC vessel regularly enters Australian waters and transports Australian products.

3.56 The government needs to address this serious issue. As noted by the NSW Deputy State Coroner, lawlessness should always be investigated, regardless of jurisdiction, and accountability enforced.

3.57 The committee hopes that the creation of the permanent standing group of relevant authorities, as recommended by the Deputy State Coroner, and the BIFC, go some way to addressing the serious jurisdictional issues that are encountered when investigating deaths that occur in Australian waters.

3.58 The committee takes the view that, alongside the important work of the standing group, there would be benefit from having clear guidelines and procedures put in place to direct authorities on how to respond to deaths at sea, and how to engage efficiently and effectively with a vessel's flag state.

3.59 The committee strongly urges the Australian Government to consider whether governing legislation for federal investigative authorities could be amended, to provide clearer guidance on jurisdictional responsibility, and to best ensure that deaths at sea can be appropriately investigated from beginning to completion. The government should progress issues over state jurisdiction through COAG

Recommendation 3

3.60 The committee recommends that the Australian Government implement clear guidelines and procedures to direct authorities on how to respond to deaths that occur on shipping vessels travelling in or to Australian waters, including how to engage with a vessel's flag state in a timely manner to progress appropriate investigations.

Recommendation 4

3.61 The committee recommends that the Australian Government consider any possible amendments to legislation governing federal investigative authorities, to provide clarity on jurisdictional responsibility for investigating deaths at sea, when they occur on shipping vessels travelling in Australian waters. The Australian Government should progress jurisdictional issues with the states and the Northern Territory at COAG to ensure satisfactory outcomes.

Chapter 4

Security concerns and the visa clearance process

4.1 This chapter considers the potential security risks associated with FOC vessels and their crew. Security concerns have been raised with regards to FOC vessels and crew carrying dangerous goods around the Australian coastline, and regarding the sufficiency of security measures at Australian ports.

4.2 This chapter considers the clearance processes for international maritime crew to enter Australian waters and ports, and considers the efficacy of the Maritime Crew visa (MCV). MCV processes are considered with particular reference to Captain Venancio Salas of the *MV Sage Sagittarius*, who in previous years was travelling around the Australian coastline, despite being an alleged gun-runner.

National security concerns

4.3 The committee canvassed a number of issues in its interim report with regards to national security. Evidence received by the committee indicated that FOC vessels expose Australia to national security risks, through a number of factors such as:

- reduced transparency of ownership, leading to increased FOC use for illegal activity;
- opening Australian borders to infiltration by criminal elements; and
- a lack of appropriate background checks for FOC crew, particular for crew transporting dangerous goods.¹

4.4 The committee remains concerned about the national security risks presented by FOC vessels, particularly those carrying dangerous goods in Australian waters.

4.5 In its submission to the committee, DIBP argued that certain features of FOC registration, regulation and operation make them more open to exploitation from organised crime syndicates or terrorist groups. This created a lack of transparency around ownership, and therefore a lack of accountability, and insufficient regulation and enforcement of standards by the flag state.²

4.6 DIBP went on to state that complex financial and ownership arrangements can complicate identification of the individuals and organisations involved in FOC operations, making FOC vessels 'more attractive for use in illegal activity, including by organised crime or terrorist groups'. Illegal activity can include 'exploitation of

1 Detailed discussion on the risks to national security presented by FOC vessels can be found in Chapter 3 of the committee's interim report, pp. 21-23.

2 Department of Immigration and Border Protection, *Submission 21*, p. 3.

natural resources, illegal activity in protected areas, people smuggling and facilitating prohibited imports or exports'.³

4.7 The OTS noted in May 2017 that it was 'confident in Australia's current approach to maritime security'. Ms Sachi Wimmer, Executive Director, OTS, advised that Australia's approach was:

comprehensive and it involves a number of agencies and measures. It is designed to apply to all vessels, irrespective of flag state, which enter Australian ports...there is no information from the intelligence community at the moment to indicate any kind of specific threat of unlawful interference with Australia's maritime transport sector. As I said before, we monitor that very closely.⁴

4.8 This position was also put forward in DIRD's submission to the inquiry, which stated that the Australian Government's approach to maritime security had thus far prevented an attack in Australia, and that there was no information (in 2015) to indicate 'a specific terrorist threat to Australia's maritime transport system'.⁵

4.9 The OTS confirmed that it was not specifically looking at FOC vessels and the risks they may present to coastal trade, but rather the larger threat environment. Under its enabling legislation, the OTS does not receive information about ships that have been involved in criminal activities, but rather focuses on the security threat environment.⁶

4.10 DIBP advised the committee that all ships entering Australia must notify Border Force, and provide an Impending Arrival Report (IAR) not more than 10 days and no later than 96 hours prior to the estimated time of arrival of a vessel at its first Australian port. The IAR allows for the assessment of risk, determined by the location and movement of cargo, and provides extensive information on the vessel. Information includes a vessel identifier, the last overseas port of departure, estimated date and time at each port, a list of crew, and whether the vessel has any cargo to discharge.⁷

4.11 However, DIBP did note that only those commercial vessels looking to enter Australian waters had to complete IARs. Vessels, including FOC vessels, in

3 Department of Immigration and Border Protection, *Submission 21*, p. 4.

4 Ms Sachi Wimmer, Department of Infrastructure and Regional Development, *Proof Estimates Hansard*, 23 May 2017, p. 106.

5 Department of Infrastructure and Regional Development, *Submission 7*, pp. 8-9.

6 Ms Sachi Wimmer, Department of Infrastructure and Regional Development, *Proof Estimates Hansard*, 23 May 2017, pp. 106-107.

7 Department of Immigration and Border Protection, answers to questions taken on notice, 13 June 2017 (received 21 June 2017).

international waters were not required to report to DIBP on their status or their intentions.⁸

4.12 Concerning FOC vessels, DIBP confirmed that all vessels entering Australia are critically assessed, regardless of FOC status, using open and classified information to determine risk. DIBP stated that it would be aware if an FOC vessel presented a serious risk to border security. Some of the processes involved in determining risk were detailed to the committee:

we have a reasonably extensive network of Department of Immigration and Border Protection officers based overseas...working in close collaboration in our effort to partner and share tactical information to strengthen our ability to reduce the threat offshore, before the threat hits us at the border. We are trying to aim for offshore disruption. It delivers a far more effective and efficient process.⁹

Dangerous goods

4.13 The House of Representatives shipping inquiry in 2008 received evidence about ships transporting dangerous goods around the Australian coast. The shipping inquiry heard evidence that ammonium nitrate in particular was carried by foreign-flagged vessels, if the ships adhered to international safety standards. The inquiry noted that:

For security purposes, it would be preferable that dangerous goods such as ammonium nitrate be transported by vessels registered in Australia, yet the availability of ammonium nitrate must not be hampered. Therefore, it will be necessary to continue allowing foreign vessels to transport shipments of ammonium nitrate until there are sufficient Australian vessels available for its transportation.¹⁰

4.14 Since the shipping inquiry in 2008, there has been an ongoing, continued decline in vessels registered to Australia, and foreign-flagged vessels continue to be the most feasible means for transferring dangerous goods around the Australian coast.

4.15 The ITF has noted that there are no Australian crews involved with shipping fuel around the Australian coast, down from 11 fuel tankers in 1995. The ITF argued that this:

flies in the face of any credible national security plan. Unlike Australian seafarers, foreign crews have no background checks yet they are carrying

8 Mr Clive Murray, Department of Immigration and Border Protection, *Proof Committee Hansard*, 21 June 2017, p. 2.

9 Mr Clive Murray, Department of Immigration and Border Protection, *Proof Committee Hansard*, 21 June 2017, p. 15.

10 House of Representatives Standing Committee on Infrastructure, Transport, Regional Development & Local Government, *Rebuilding Australia's Coastal Shipping Industry: Inquiry into coastal shipping policy and regulation*, October 2008, p. 48.

petroleum products, ammonium nitrate and LNG around the Australian coast.

More than half of Australia's fuel comes through the Straits of Hormuz to Singapore and the narrow Straits of Malacca, an area already notorious for its piracy. Add to that the potential flashpoint in the South China Sea and it's clear we should be refining at home and shipping fuel around the coast using Australian vessels and crews.¹¹

4.16 The committee questioned DIBP over how it assesses the risk of FOC ships that are entering Australian waters carrying dangerous and high-consequence cargo. DIBP advised that it undertakes a risk-based approach to all vessels entering Australia, whether or not the vessel operates under a FOC. DIBP uses the Vessel Threat and Risk Assessment System (VTRAS) to determine risk based upon 'a range of data inputs and indicators'. The risk assessment determines if any further action is required to address a threat, and 'the most appropriate risk treatment strategy'.¹²

4.17 DIBP further advised that in the 2016-17 financial year (to 21 June 2017), 15 715 commercial vessels had arrived in Australia. Of these, 1072 had been searched by Border Force.¹³

Port security

4.18 The legislation committee asked the OTS about security zones and regulation at Australian ports. In response, the OTS confirmed that not all ports are regulated by the OTS, and maritime security zones do not necessarily cover an entire port. It was confirmed that regulation:

would depend on the operations of the port. There are some ports that have permanent zones established with a ship-to-shore interface. There are some ports where the zones are turned on and off depending on the arrival and departure patterns of vessels. There are other ports...that are not security regulated ports. It really depends on the operation of the port and the type and frequency of traffic which is coming in and out of that port.¹⁴

4.19 The OTS further confirmed that while its legislation establishes maritime security zones:

11 Australian Council of Trade Unions, 'FWO Should Be Seeking Job and Fuel Security for All Australians', *Media Release*, 13 April 2017, <https://www.actu.org.au/media/1033237/actu-release-170413-fwo.pdf> (accessed 30 June 2017).

12 Department of Immigration and Border Protection, answers to questions taken on notice, 13 June 2017 (received 21 June 2017).

13 Department of Immigration and Border Protection, answers to questions taken on notice, 13 June 2017 (received 21 June 2017).

14 Mr Richard Farmer, Department of Infrastructure and Regional Development, *Proof Estimates Hansard*, 23 May 2017, pp. 111, 113.

they are requested by the industry participant that we regulate as to when they will be established and where they will be established. If they have made a judgement that at particular times they do not need one, there will not be any MSIC controls around access to any areas of the port.¹⁵

4.20 In its submission to the inquiry, DIRD advised the committee that foreign-flagged ships must comply with a port's security requirements. In addition, ports must have a security assessment and security plan in place that is approved by the Secretary of the department. The security plan:

includes a range of security measures informed by a security assessment, to protect both the facility and the visiting ship by setting out how they will interact. Examples of security measures include maritime security zones, access and escorting arrangements for crew, and CCTV monitoring.¹⁶

Foreign crew clearance processes

Maritime Security Identification Cards and Maritime Crew visas

4.21 Maritime Security Identification Cards (MSICs), administered by DIRD, allow unmonitored access for authorised card holders to ports and port facilities, who require access at least once a year. MSICs are issued to people who require access to the security zones of security regulated ports and security regulated ships, and who have cleared a security and criminal history check. MSIC holders still require permission from the relevant authority, owner or operator to access secure areas and zones.¹⁷

4.22 MCVs, administered by DIBP, allow non-military, foreign crew on international voyages to temporarily enter Australia by sea (MCV holders must also depart by sea). The visa is valid for three years, but cannot be used to stay in Australia. MCV holders cannot work in Australia. They can only undertake the work which meets the normal operational requirements of the vessel.¹⁸

4.23 The key functions of the MSIC against the MCV were explained to the committee by DIBP:

The MCV does not allow people to enter the maritime security zone of a port unescorted. Only the holders of...the MSIC, can be in the maritime security zone unescorted. I want to be clear that the purpose of the MCV is

15 Ms Sachi Wimmer, Department of Infrastructure and Regional Development *Proof Estimates Hansard*, 23 May 2017, p. 114.

16 Department of Infrastructure and Regional Development, *Submission 7*, p. 10.

17 Department of Infrastructure and Regional Development, *Applicants and cardholders*, 5 June 2017, <https://infrastructure.gov.au/security/identity/ASIC-MSIC-applicants-cardholders-information/index.aspx> (accessed 6 July 2017).

18 Department of Immigration and Border Protection, *Maritime Crew visa (subclass 988)*, <https://www.border.gov.au/Trav/Visa-1/988-> (accessed 6 July 2017).

to enter Australia. It is an immigration check for individuals, allowing them to remain in Australia for up to five days as part of a foreign crew on a foreign-flagged vessel. The MCV does not give work rights or allow unescorted access to the maritime security zones of an Australian port. The purpose of the MSIC is to allow an individual to have unescorted access to the maritime security zone. MSIC checks are different from the MCV checks because of the access the MSIC gives to those security zones mentioned.¹⁹

4.24 During Budget Estimates in May 2017, the legislation committee asked the OTS about MSICs and MCVs, with the OTS confirming that:

yes, we do regard the MSIC as a higher level of protection for those wishing to interfere with maritime operations, recognising that those who are on MCVs would not normally hold an MSIC and that you have to be escorted through any sensitive area of a port.²⁰

4.25 The legislation committee raised its concerns that while the MSIC may provide an appropriate level of protection, an MCV still allows seafarers to access port areas, potentially while transporting dangerous goods, without the higher level of scrutiny of an MSIC.

4.26 The legislation committee also noted that while an MCV holder requires escorted access around ports at all times, this would be difficult to implement in practice. The point was also made that the immigration clearance process does not evaluate a person's intentions or employment history.²¹

4.27 The legislation committee asked the OTS whether it held concerns that the MSIC and the MCV were regulated through different agencies, noting the national security implications if clearance processes were not harmonised. The OTS advised it was not concerned, as the programs serve different purposes.²²

Refused MCVs and detained applicants

4.28 For 2016-17 (to end of April 2017), there were 255 132 applications for MCVs. DIBP advised the committee that there had been an increase in the refusal rate for MCVs. In 2012-13, there were 2943 refusals. For 2016-17 (up to 30 April 2017), there had been 13 102.²³

19 Mr David Wilden, Department of Immigration and Border Protection, *Proof Committee Hansard*, 13 June 2017, p. 1.

20 Mr Mike Mrdak, Department of Infrastructure and Regional Development, *Proof Estimates Hansard*, 23 May 2017, p. 109.

21 *Proof Estimates Hansard*, 23 May 2017, p. 110.

22 *Proof Estimates Hansard*, 23 May 2017, p. 110.

23 Department of Immigration and Border Protection, response to questions taken on notice, 13 June 2017 (received 21 June 2017); *Proof Committee Hansard*, 21 June 2017, p. 10.

4.29 The increase in refusals was a result of 'improved internal risk settings', allowing for greater scrutiny of applicants by visa processing officers. Applicants refused MCVs were likely to be non-genuine seafarers, and unlikely to comply with the visa conditions, with a minority refused 'because they do not meet the public interest criteria or special return criteria'.²⁴

4.30 The committee also received evidence from DIBP regarding how many MCVs have been refused, while a vessel was at sea and travelling to Australia. If an MCV is refused while the vessel is in transit, DIBP ensures that the applicant is still offshore at the time of the refusal, and then restricts the movements of that person to the vessel. In 2016-17 (to 27 June 2017), 11 individuals had been Restricted on Board on arrival, due to unsuccessful MCV applications.²⁵

4.31 In the event DIBP has significant concerns about an individual who is restricted to a vessel, it has the ability to request that a vessel stand-off, although more generally the applicant is restricted to the vessel while at port. While stand-offs would allow ABF to board a vessel, conduct a crew muster and make a determination of risk, it was unable to advise the committee of how often this occurs as it does not keep electronic records of stand-offs.²⁶

4.32 The committee was advised by DIBP about how many MCV recipients had been detained and placed in detention. DIBP advised that:

As at 21 June 2017, eight people who arrived in Australia on a Maritime Crew visa were detained in an immigration detention facility. During the period 1 July 2012 to 21 June 2017, 138 people have been detained after arriving on a Maritime Crew visa.²⁷

Advanced Passenger Processing and MCVs

4.33 MCV applications for foreign commercial vessel staff must be lodged with DIBP, with processing times between 1 and 3 days (up to 4 weeks for a paper application).²⁸ The committee heard evidence from DIBP regarding trials of Advanced Passenger Processing (APP) to commercial shipping vessels and their crew. APP

24 Department of Immigration and Border Protection, response to questions taken on notice, 13 June 2017 (received 21 June 2017).

25 Department of Immigration and Border Protection, answers to questions taken on notice, 21 June 2017 (answered 5 July 2017).

26 *Proof Committee Hansard*, 21 June 2017, pp. 10-11; Department of Immigration and Border Protection, answers to questions taken on notice, 21 June 2017 (answered 5 July 2017).

27 Department of Immigration and Border Protection, answers to questions taken on notice, 21 June 2017 (answered 5 July 2017).

28 Department of Immigration and Border Protection, *Maritime Crew visa (subclass 988)*, <https://www.border.gov.au/Trav/Visa-1/988->

provides authorities with advanced notice of passengers and crew arriving in Australia and verifies whether they hold appropriate authority to travel and enter Australia.²⁹

4.34 In 2015 the department implemented the APP for outward travel, for departing air passengers and crew. The APP was then to be implemented for cruise ship passengers and crew. The committee was advised that outward APP for cargo vessel crew has been 'more challenging' due to stakeholder diversity and technological constraints.³⁰

4.35 However, a four-month trial of APP on cargo vessels concluded on 31 May 2017, with the outcomes of the trial currently being considered 'to determine whether to mandate the use of the APP system in the cargo ship environment'. If applied to cargo vessels, it will require 'significant stakeholder engagement to educate, train and support' stakeholders in its use, given the complexities of maritime travel.³¹

4.36 The use of APP on cargo ships will give DIBP 'more information and a more timely opportunity to do assessments against risk and make sure that everybody on board has a visa'.³²

Captain Salas and the *MV Sage Sagittarius*

4.37 Captain Venancio Salas Junior was in command of the bulk carrier *MV Sage Sagittarius* at the time Cesar Llanto disappeared off the vessel, and Hector Collado fell to his death.

4.38 As identified by the Coronial Inquest, at the time of the deaths there were a number of complex issues occurring on board the vessel, including harassment, bullying, a culture of silence and blacklisting, and the sale of guns by Captain Salas to crew members. Given these circumstances, the majority of the crew were reluctant to provide evidence to investigating authorities.³³

4.39 In giving evidence to the Coronial Inquest, Captain Salas admitted that he had assaulted a crew member on several occasions, and that he facilitated the purchase of guns. Captain Salas organised for crew to complete gun applications, collected money for the guns (with the guns to be collected in the Philippines), and 'kept a small

29 Department of Immigration and Border Protection, answers to questions taken on notice, 8 November 2016 (answered 28 November 2016).

30 Department of Immigration and Border Protection, answers to questions taken on notice, 8 November 2016 (answered 28 November 2016).

31 Mr David Wilden, Department of Immigration and Border Protection, *Proof Committee Hansard*, 13 June 2017, p. 2.

32 Mr Jim Williams, Department of Immigration and Border Protection, *Proof Committee Hansard*, 13 June 2017, p. 7.

33 State Coroner's Court of New South Wales, *Inquest into the disappearance and suspected death of Cesar Llanto and Inquest into the death of Hector Collado*, 31 May 2017, p. 19.

commission for his administrative efforts'. Additionally, Captain Salas admitted to stopping the vessel on the way to Australia, in order to trade alcohol for fresh tuna, in breach of company protocol.³⁴

4.40 Overall, the Deputy State Coroner found that:

The conduct of Captain Salas, most of which was conceded by him during the course of his oral evidence, speaks volumes about the manner in which he ran his ship which in my view was through bullying and intimidation.³⁵

Captain Salas in Australian waters

4.41 The committee's interim report presented evidence that there was insufficient oversight by Commonwealth and state authorities of FOC vessels and their crew, operating in Australian waters. This was highlighted by the case of Captain Salas and his alleged gun-running activities, and the lack of communication between Australian authorities.

4.42 Over the course of this inquiry, the committee maintained a strong interest in Captain Salas and his movements around the Australian coast. In particular, the committee asked DIBP on several occasions to clarify how it was that Captain Salas was in Australian waters, but was not appropriately 'flagged' as a security concern, despite the events and investigations in 2012.

4.43 The Coronial Inquest commenced in May 2015. Captain Salas returned to Australian waters in December 2015, as Master of the *Kypros Sea*. Over January and February 2016, the *Kypros Sea* travelled between a number of Australian ports, primarily Gladstone and Weipa.³⁶

4.44 The committee raised its concerns about the fact there was no alert on Captain Salas, to bring him to the attention of the Inquest. DIBP confirmed that 'an officer who forms a view that an individual should be on alert for some future intervention is authorised...to place an individual on alert' for their next entrance to Australia. However, in the case of Captain Salas, this did not occur.³⁷

4.45 DIBP argued that it was aware that Captain Salas was in Australian waters, due to pre-arrival reporting requirements. However, at the time the NSW Police were

34 State Coroner's Court of New South Wales, *Inquest into the disappearance and suspected death of Cesar Llanto and Inquest into the death of Hector Collado*, 31 May 2017, pp. 21, 31-32.

35 State Coroner's Court of New South Wales, *Inquest into the disappearance and suspected death of Cesar Llanto and Inquest into the death of Hector Collado*, 31 May 2017, p. 32.

36 Department of Immigration and Border Protection, response to questions taken on notice, 13 June 2017 (received 21 June 2017).

37 Mr Jim Williams, Department of Immigration and Border Protection, *Proof Committee Hansard*, 21 June 2017, p. 8.

assisting the Coroner, DIBP was not advised or made aware that Captain Salas was a person of interest to the Inquest.³⁸

4.46 DIBP argued that it had undertaken appropriate investigations into Captain Salas following the incidents of 2012. In September 2012, a comprehensive search of the *MV Sage Sagittarius* was completed, with no evidence of firearm smuggling detected. In 2014 and 2015, Customs and Border Protection boarded vessels on which Captain Salas was travelling, with nothing found that breached border controls.³⁹

4.47 DIBP stated that:

When we talk about alerts, it relates to specific interest that an agency wants us to act on, to take some form of action or activity. When that incident first occurred [in 2012] there was a full operation. Subsequent to that and without being on alert, as an example, around January or February [2016], again, when Captain Salas arrived on the coast, we ran the data through the system and the officers picked up the connection through our intelligence holdings of this previous history that Salas has. That initiated a further interdiction and examination of the cabin... We continued to have an interest once it came to our attention through the unfortunate deaths on board, the suspicious deaths; notwithstanding he was not on a formal alert per se.⁴⁰

4.48 The presence of Captain Salas in Australian waters in 2016 was brought to the attention of the Coronial Inquest by a journalist, Mr Owen Jacques, and not by any relevant authorities. DIBP clarified that:

the journalist did bring to the attention of the New South Wales police that were support [sic] of the coroner that, indeed, the vessel was on the coast. They then spoke to the coroner who suspended the inquiry that day and, then we were contacted to issue the subpoena, which we did. We facilitated his coming ashore because he was actually being replaced—another master had already come onboard so he was due to go back home. We did an interdiction. We searched his bags. We did that prior to him appearing at the coronial but, to my recollection, prior to that we were not aware that he was required to appear.⁴¹

4.49 DIBP later confirmed with the committee a timeline of events involving Captain Salas, after the deaths on board the vessel in 2012 and the investigation into

38 Mr Terance Price, Department of Immigration and Border Protection, *Proof Committee Hansard* 13 June 2017, p. 4.

39 Department of Immigration and Border Protection, response to questions taken on notice, 13 June 2017 (received 21 June 2017).

40 Mr Terance Price, Department of Immigration and Border Protection, *Proof Committee Hansard* 13 June 2017, p. 10.

41 Mr Terance Price, Department of Immigration and Border Protection, *Proof Committee Hansard* 13 June 2017, p. 4.

alleged smuggling of firearms, of which no evidence was found by Customs. The timeline provided that:

- Captain Salas signed off the *MV Sage Sagittarius* and legally departed Australia via Sydney Airport on 14 September 2012;
- the AFP and NSW Police did not indicate any need for Captain Salas to remain in Australia to progress investigations, and Customs and Border Protection had no lawful grounds to prevent his travel;
- Captain Salas was granted an MCV on 19 July 2013, valid for three years;
- Captain Salas next returned to Australia in August of 2014, as Master of the *Kypros Sea*;
- during 2014 and 2015 there was no request for an alert to be placed on Captain Salas;
- On 16 February 2016, the AFP and NSW Police, on behalf of the NSW Coroner's Court, sought assistance from Border Force to issue a subpoena to Captain Salas for him to appear before the NSW Coroner;
- Border Force raised an alert the same day to notify the AFP immediately, to prevent Captain Salas leaving Australia and not complying with the subpoena;
- the subpoena was issued on 17 February 2016 at the Port of Gladstone, with Captain Salas appearing before the Inquest on the same day, and leaving Australia on 18 February 2016;
- the AFP and NSW Police did not request any further alerts be placed on Captain Salas, and Border Force could not legally prevent his travel;
- the ABF alert was deactivated on 18 February 2016 and this was the last occasion Captain Salas was in Australia.⁴²

4.50 Under questioning from the committee, DIBP further detailed the processes in place at the time, confirming to the committee that under the newly-formed DIBP, such events would not happen today:

In those days, the Customs officers were performing two functions: one was around border control of goods which concerned the allegation around firearms; equally, they were performing a function on behalf of the department of immigration which concerned the migration provisions, which was to establish and verify the bona fides of the individuals – the master and others...I cannot explain at this point what actions they may or may not have taken, but I can say [Captain Salas] was not placed on alert. Would it happen today? No, it would not happen today.⁴³

42 Department of Immigration and Border Protection, response to questions taken on notice, 13 June 2017 (received 21 June 2017).

43 Mr Clive Murray, Department of Immigration and Border Protection, *Proof Committee Hansard*, 21 June 2017, p. 8.

4.51 Under the conditions in place today, and based on the information concerning Captain Salas, DIBP advised that it was possible that Captain Salas would not now be granted an MCV to travel to Australia.⁴⁴

Committee view

4.52 The committee continues to be troubled by the fact that dangerous goods are transported to and around Australia by foreign crews. It is also very concerned that there are ports in Australia with no security in place. The committee viewed evidence during its inquiry that showed a foreign vessel at a port in a major municipal area, with no security checkpoints at the port entrance, around the port, or for boarding the vessel.

4.53 The committee was surprised to learn that maritime security zones at Australian ports were requested by industry participants, and not determined by the OTS. Additionally, evidence presented to the committee made it clear that some ports did not have adequate, or indeed any, security checks in place when FOC and other vessels were at port.

4.54 The committee notes that under the *Maritime Transport and Offshore Facilities Security Act 2003*, the Secretary of DIRD has considerable authority to establish maritime and port security areas. The committee encourages DIRD to ensure that all ports are regularly assessed to ensure proper security regulations are in place, and are not dependent on third parties requesting the establishment of a secure area.

Captain Salas and immigration alerts

4.55 The committee was very concerned that Captain Salas was able to travel in Australian waters, without a formal alert or 'red flag' in place, alerting authorities to the fact he was in Australian ports during the time of the Coronial Inquest. It was a journalist that set the subpoena in motion and ensured that Captain Salas gave evidence to the Inquest.

4.56 The committee asked DIBP on many occasions during its inquiry to clarify how Captain Salas was not on alert after the tragic events of 2012, and what processes were in place at that time to allow that to occur.

4.57 The committee remains concerned that Captain Salas was able to travel so freely around Australia without an alert against him, but notes DIBP advice that under the current risk assessment framework, Captain Salas might not now be granted an MCV. The committee hopes that the systems in place for DIBP and other authorities are now effective enough to ensure that a similar situation to that of Captain Salas does not occur again.

44 Mr Clive Murray, Department of Immigration and Border Protection, *Proof Committee Hansard*, 21 June 2017, pp. 8-9.

4.58 The committee notes that the creation of DIBP has allowed immigration and border control activities to become more harmonised. This should enable them to better assess and reduce risks to Australian security. The increased rate of MCV application rejections over the last year shows that the assessment of risk and intent of applicants is working to prevent non-genuine seafarers from entering Australia. The committee appreciates the work of DIBP in protecting Australia's borders.

Chapter 5

The Australian shipping industry

5.1 This chapter examines the overall shipping industry in Australia, and the various reviews and reforms that have recently been announced that will examine, in part, the role of coastal shipping in Australia.

5.2 Further commentary is provided on the Government's response to the committee's interim report, particularly regarding the Government position that no further reviews into the maritime industry are necessary, as they would be 'unlikely to change the current decline of the Australian shipping industry'.¹

Current shipping industry

5.3 A number of issues have been raised with the current status of the Australian shipping industry. It has been argued that Australia is not using its port and shipping infrastructure as effectively as it could, and that:

freight volumes domestically and internationally have been growing rapidly, but a larger and larger share of this freight is being transported in trucks and trains, adding to Australia's congestion problems...Increased congestion on our vast oceans shouldn't be a costly problem, but road and rail congestion, which weighs increasingly on Australians' quality of life, certainly is.²

5.4 While FOC vessels may have an impact on the Australian shipping industry, economic conditions also play a major role in the viability of the shipping industry. The industry has an 'inherent inflexibility in responding to changing economic conditions' and is 'subject to the vagaries of international trade'. It has been reported that demand for shipping fell following the global financial crisis. However, this fall in demand was accompanied by advances in technology and the development of 'mega-ships', thus reducing the need for smaller vessels.³

1 *Senate Hansard*, 10 May 2017, p. 3345.

2 Adam Creighton, 'Let's get the most out of infrastructure spending', *The Australian: Special Report*, 24 February 2017, <http://www.theaustralian.com.au/national-affairs/opinion/lets-return-to-rational-infrastructure-spending/news-story/382a9f28ea94401d76ff4066ffacd945> (accessed 24 February 2017).

3 Michael Murray, 'Explainer: why Hanjin's ships are stranded around the globe', *The Conversation*, 14 September 2016, <https://theconversation.com/explainer-why-hanjins-ships-are-stranded-around-the-globe-65337> (accessed 29 May 2017).

5.5 In Australia, this reliance on larger vessels is reflected by the fact that in 2016, the growth in cargo volumes was 'typically being delivered by a combination of more port visits and larger ships'.⁴

Decline in general licences

5.6 A 2016 review by the Strategic Marine Group (SMG) of commodity shipping along the Australian east coast found that prominent businesses were using loopholes in the CT Act. The review found that the current legislative environment entrenches 'foreign control of Australia's maritime supply chain', and moves economic benefits off-shore.⁵

5.7 SMG found that there was a sufficient volume of coastal commodity movements to justify the use of dedicated Australian vessels, with an average of 163 voyages conducted per month on the east coast, using temporary licences. The number of general licences being issued was declining, and foreign-flagged and crewed ships were 'being introduced on a quasi-permanent basis'. The review determined that general licences were declining due to a number of factors, including:

- the financial costs associated with using Australian crews;
- the cost to shipping companies of infrastructure in and around ports, especially when compared with the lower cost of infrastructure access for road and rail transport;
- shipping no longer being a mainstream business, given structural changes in Australian industries such as steel and sugar;
- insufficient capital for Australian ship owners to acquire ships that would challenge foreign vessel use; and
- little incentive for ship owners to utilise general licences.⁶

5.8 The review concluded that Australian shipping could be revitalised, but it would require bipartisan political support and the correct policy settings, including legislation to make Australian international shipping more commercially attractive.⁷

4 Australian Maritime Safety Authority, *Port State Control – 2016 Report*, p. 7.

5 Peter Bremner, 'Industry Opinion: Aussies at a disadvantage with coastal bulk trades', *Lloyd's List Australia*, 22 November 2016, <https://www.lloydslistaustralia.com.au/lla/market-sectors/dry-bulk-and-commodity-trades/INDUSTRY-OPINION-Aussies-at-a-disadvantage-with-coastal-bulk-trades-543312.html> (accessed 23 November 2016).

6 Peter Bremner, 'Industry Opinion: Aussies at a disadvantage with coastal bulk trades', *Lloyd's List Australia*, 22 November 2016.

7 Peter Bremner, 'Industry Opinion: Aussies at a disadvantage with coastal bulk trades', *Lloyd's List Australia*, 22 November 2016.

5.9 A bipartisan approach has also been supported by Maritime Industry Australia (MIA), which argued that 'industry is frustrated by the way legislation may change each time there is a change of government'.⁸

5.10 Both the MIA and Shipping Australia have stated that the 2012 legislative amendments, including the CT Act, have increased administrative complexity and that 'not only are foreign vessels not trading on Australian routes, but there has not been any movement of Australian ships to enter the field'. The need to pay Australian wages to foreign crew under certain circumstances was seen as 'a major disincentive' to foreign vessels moving cargo between Australian ports.⁹

Environmental concerns

5.11 A number of concerns have been raised about the global risk FOC vessels present to the environment.

5.12 With regards to carbon emissions, reports have argued that without regulation, over the next 30 years emissions from shipping will rise to nearly 17 per cent of the world's total, and shipping:

which carries much of the world's goods, is the only economic sector not now subject to any treaty on climate change, country-by-country emissions controls or reduction targets of any kind – even though it emits around 3-4% of global gas emissions and has a carbon footprint the size of Germany's.¹⁰

5.13 Reducing the impact of FOC vessels on the environment is particularly problematic. Developing countries operating less-restrictive FOC registries receive substantial financial benefit from offering less regulatory control. A number of shipping-dependent countries operating FOC schemes have been pressured to 'water down, delay or dismiss action on reducing pollution or emissions'.¹¹

5.14 WWF-Australia submitted to the committee that ships operating in Australian waters should adhere to the highest standards:

Key aspects of acceptable environmental standards for shipping include a range of measures starting with the seaworthiness of ships and the

8 Andrew Kidd Fraser, 'Owners press again for coastal reform', *The Australian: Special Report*, 24 February 2017, <http://specialreports.theaustralian.com.au/710712/owners-for-coastal-reform/> (accessed 24 February 2017).

9 Andrew Kidd Fraser, 'Owners press again for coastal reform', *The Australian: Special Report*, 24 February 2017.

10 John Vidal, 'Shipping 'progressives' call for industry carbon emission cuts', *The Guardian*, 19 October 2016, <https://www.theguardian.com/environment/2016/oct/19/shipping-progressives-call-for-industry-carbon-emission-cuts> (accessed 7 November 2016).

11 John Vidal, 'Shipping 'progressives' call for industry carbon emission cuts', *The Guardian*, 19 October 2016.

seamanship of crews through to compulsory pilotage, adequate navigational aids such as electronic charts and vessel management systems, and adequate portside waste reception facilities. All these measures must be supported by an effective regulatory, compliance and enforcement regime such as the port state control measures undertaken by inspectors from the Australian Maritime Safety Authority.¹²

5.15 It was also argued by WWF-Australia that the use of crews with little to no experience with Australian coastal conditions increases the likelihood of groundings and other environmental shipping incidents, but this risk could be reduced by employing local, appropriately trained pilots.¹³

5.16 DIRD advised the committee that, given Australia's dependence on sea transport and port operations, it was at continual risk of pollution to the marine environment. Australia is a party to a number of IMO conventions dealing specifically with ship-related marine pollution, including the International Convention for the Prevention of Pollution from Ships and several conventions addressing oil pollution and damage.¹⁴

National transport strategies

5.17 A number of opinions have been expressed on the necessary steps needed to reinvigorate and support the Australian shipping industry. Differences in stakeholder opinions, depending on their role in the industry, will continue to make any meaningful progress in improving the industry challenging.

5.18 As was canvassed in the committee's interim report, a number of stakeholders have argued for stricter cabotage provisions in Australia.¹⁵ However other stakeholders, such as shipping owners and their representatives, argue for a lessening of the restrictions and administrative burdens put in place with the CT Act in 2012.

National freight and supply chain strategy

5.19 On 24 November 2016, the government announced the development of a national freight and supply chain strategy. The strategy will be developed after an independent inquiry examines ways to improve productivity and efficiency in the

12 WWF-Australia, *Submission 14*, p. 1.

13 WWF-Australia, *Submission 14*, p. 2.

14 Department of Infrastructure and Regional Development, *Submission 7*, pp. 11-12.

15 Detailed discussion on the issue of cabotage can be found in Chapter 2 of the committee's interim report.

Australian freight supply chain. The inquiry, due for final reporting in March 2018, will then inform the development of the strategy.¹⁶

5.20 Following the announcement of the strategy, the Minister for Infrastructure and Transport, the Hon Darren Chester MP, noted the importance of the Australian shipping sector to the economy. He highlighted that containerised port freight was forecast to double while non-containerised freight would grow by three quarters over the next 14 years. The Minister stated that the national strategy would look at the whole supply chain, and would therefore include ports and shipping together with other transport modes.¹⁷

5.21 The Minister went on to argue that coastal shipping reform would be progressed, to implement a 'regulatory regime which prioritises safe shipping and the protection of our unique marine environment'. Minister Chester stated he had consulted with shippers, shipping representatives and maritime unions, to ensure collaborative approaches between government and key stakeholders in delivering benefits to the maritime sector.¹⁸

5.22 The committee encourages the inquiry into the national freight and supply chain strategy to consider the important role that Australian shipping plays in the freight supply chain. Ensuring the viability of the sector and those it employs will require the government to consider the vital functions of Australian shipping alongside terrestrial modes of transport, and the danger that FOC vessels pose to both workers and the supply chain.

Coastal shipping reform

5.23 On 21 March 2017, the Minister for Infrastructure and Transport, the Hon Darren Chester MP, announced possible reforms to coastal shipping. The Minister noted that approximately 15 per cent of Australia's domestic freight is moved by ship, 'but with Australia's extensive coastline and broad network of ports, there is the potential for shipping to play a larger role in the national freight task'.¹⁹

5.24 The Minister stated that the aim of the reforms was to ensure that shipping had an increasing role in the national freight network, and to reduce the regulatory

16 Department of Infrastructure and Regional Development, *National Freight and Supply Chain Strategy*, 26 May 2017, <https://infrastructure.gov.au/transport/freight/national-strategy.aspx> (accessed 26 May 2017).

17 The Hon Darren Chester MP, 'Consensus will launch maritime reform', *The Australian: Special Report*, 24 February 2017, <http://specialreports.theaustralian.com.au/710712/consensus-will-launch-maritime-reform/> (accessed 24 February 2017).

18 The Hon Darren Chester MP, 'Consensus will launch maritime reform', *The Australian: Special Report*, 24 February 2017.

19 The Hon Darren Chester MP, Minister for Infrastructure and Transport, 'Call for comment on proposed coastal shipping reforms', *Media Release DC063/2017*, 21 March 2017.

burdens and administrative issues currently being experienced by shipping companies and local businesses.²⁰

5.25 A discussion paper was released, seeking comment from stakeholders on the key amendment proposals. The reforms will seek to address issues around the temporary licence scheme, and will consider removal of the five voyage minimum requirement for a temporary licence, among other things. The discussion paper also highlights potential seafarer training initiative options.²¹

5.26 In supporting the implementation of an effective coastal shipping industry in Australia, Shipping Australia argued for the removal of the five-voyage minimum required for temporary licences, but also called for the removal of 'the application of the Fair Work Act to coastal freight'.²²

Committee view

5.27 Removal of the five voyage minimum requirement for temporary licences will likely be welcomed by a number of industry stakeholders, who have previously argued that this requirement was overly burdensome on industry and restrictive to competition. However, the committee notes that removal of the five voyage minimum would likely further increase the presence of FOC vessels in Australian waters. With no minimum requirements, FOC vessels could sporadically trade along the Australian coast, with minimal oversight.

5.28 Removing the five voyage minimum would also make it increasingly harder for appropriate wages to be paid to foreign crews, who currently should receive Australian wages from the third voyage in Australian waters onwards, if the voyages occurred within a 12-month period. With no minimum voyage number, there may be less oversight of vessels and more opportunity for the exploitation of foreign workers in Australian territory. This would also place a further burden on the work of Australia's regulatory and oversight bodies, such as the FWO, to ensure that seafarers in Australian waters are treated adequately and paid legal wage rates.

5.29 If the minimum voyage requirement is removed, it would be necessary for the government to implement other reforms to address the issues around regulatory oversight and the potential for foreign crew exploitation.

20 The Hon Darren Chester MP, Minister for Infrastructure and Transport, 'Call for comment on proposed coastal shipping reforms', *Media Release DC063/2017*, 21 March 2017.

21 Department of Infrastructure and Regional Development, *Coastal Shipping Reforms: Discussion Paper*, March 2017, p. 4.

22 Rod Nairn, 'Unleash coastal shipping and let Australians benefit', *Shipping Australia Limited*, Media release, 9 February 2017, <https://shippingaustralia.com.au/unleash-coastal-shipping/> (accessed 22 June 2017).

Industry consultation

5.30 As part of the introduction of the CT Act and the 'Stronger Shipping for a Stronger Economy' package, in 2012 the Hon Anthony Albanese MP, Minister for Infrastructure and Transport, proposed the establishment of the Maritime Workforce Development Forum (Forum), to 'progress key maritime skills and training priorities'.²³

5.31 The Forum was subsequently established and made recommendations in 2013 in relation to maritime crew training. A package of \$5 million was allocated for training incentives and standards, census of the workforce and models to identify future training requirements. The funding allocation was recognition that '47 per cent of our seafarer workforce is aged 50 years or older'.²⁴

5.32 The Forum included 'eight private sector representatives covering rail, ports, shipping, engineering and logistics as well as representatives of the Royal Australian Navy and two union representatives'. However, in 2013 the Forum was disbanded, thereby removing a key advisory body for government on issues of maritime employment and training, diversification of the skill base, and efficient port usage.²⁵

5.33 The committee holds the view that any development of policy for the reinvigoration of the Australian shipping industry must involve key industry participants. There were claims that in the development of the Shipping Legislation Amendment Bill 2015, which sought to make broad changes to shipping regulation, there was a lack of industry consultation.²⁶

5.34 The current Minister has committed to continued engagement with the shipping industry in the development of the national freight and supply chain strategy, and groups that represent a broad range of perspectives would help facilitate that consultation.

5.35 To improve consultation, it would be beneficial to reconvene the Forum, or a similar entity, to provide advice to government in the development of any further proposed legislative changes and prior to any new policy announcements.

23 The Treasury, *Tax Incentives for the Shipping Industry*, <http://www.treasury.gov.au/ConsultationsandReviews/Consultations/2012/Tax-incentives-for-the-shipping-industry> (accessed 3 July 2017).

24 The Hon Anthony Albanese, Minister for Infrastructure and Transport, 'Training Australia's future maritime workforce', *Media Release*, 19 July 2013.

25 The Hon Anthony Albanese, 'Prime minister for infrastructure' fails industry by scrapping maritime workforce forum', *The Australian*, 22 November 2013, <http://www.theaustralian.com.au/business/in-depth/prime-minister-for-infrastructure-fails-industry-by-scrapping-maritime-workforce-forum/news-story/914a8fb9f9e238caf-d9c1126a87a0f5e> (accessed 3 July 2017).

26 Senate Rural and Regional Affairs and Transport Legislation Committee, *Shipping Legislation Amendment Bill 2015 [Provisions]*, October 2015, pp. 20-21. The Bill failed to pass the Senate.

Recommendation 5

5.36 The committee recommends the re-establishment of the Maritime Workforce Development Forum, or a similar advisory body. The advisory group would comprise a variety of key maritime industry stakeholders and provide advice to government on new Australian shipping policies and workforce development and training opportunities.

Port infrastructure

5.37 To ensure the viability of the shipping sector, Australian ports must have the infrastructure to accommodate a variety of vessels and cargo, as ship structures change and develop. The need for appropriate port and landside infrastructure and berth availability was identified by the 2008 shipping inquiry, which recommended the creation of a national port development plan, to help direct funding to critical port projects and enable potential growth in coastal shipping.²⁷

5.38 The development of appropriate port infrastructure will present challenges to the industry, especially in light of declining investment in Australian-flagged vessels. The former chief executive of Ports Australia, Mr David Anderson, noted the need for integrated planning around port and freight precincts, and particularly for the maintenance and protection of shipping channels. Mr Anderson argued that:

If shippers cannot access vessels that are optimal for the task, or vessels cannot be fully loaded, or port managers cannot use berths or tugs effectively because unnecessary restrictions are placed on dredging activity, then the implications for the cost of our trades is readily apparent...shipping channels do not occupy the place they deserve on the public policy landscape.²⁸

5.39 However, the discussion paper released for the inquiry into the national freight and supply chain priorities notes that port dredging to accommodate larger ships will introduce a number of environmental concerns. Additionally, larger ships will also 'create greater peaks in demand for landside infrastructure around already congested ports'.²⁹

27 House of Representatives Standing Committee on Infrastructure, Transport, Regional Development & Local Government, *Rebuilding Australia's Coastal Shipping Industry: Inquiry into coastal shipping policy and regulation*, October 2008, pp 53-56.

28 David Anderson, 'Ships' lanes to wharves are critical infrastructure', *The Australian: Special Report*, 24 February 2017, <http://specialreports.theaustralian.com.au/710712/ships-lanes-to-wharves-infrastructure/> (accessed 24 February 2017).

29 Department of Infrastructure and Regional Development, *Inquiry into National Freight and Supply Chain Priorities – Discussion Paper*, May 2017, p. 13, <https://infrastructure.gov.au/transport/freight/files/national-freight-supply-chain-priorities.pdf> (accessed 26 May 2017).

Government response to interim report – maritime sector reviews

5.40 In its response to the committee's interim report, the Government highlighted a number of reviews already conducted into Australia's maritime industry, in support of its position that no further reviews into the maritime sector were necessary.

5.41 The reviews listed by the government in its response included the:

- Strengthening Economic Relations between Australia and New Zealand report by the Productivity Commission, completed in December 2012;
- Tasmanian Shipping and Freight inquiry report by the Productivity Commission, completed in March 2014;
- Competition Policy Review (the Harper review) completed in March 2015; and
- Regulation of Australian Agriculture inquiry report by the Productivity Commission, completed in March 2017.³⁰

5.42 These reports all briefly discuss Australian coastal shipping in some way. The reports present a consensus view that the coastal shipping reforms of 2012, and the preference for Australian-flagged vessels to undertake domestic voyages, has increased regulation and costs, increased administrative burdens, and restricted competition.³¹

5.43 However, beyond coastal shipping reform, it appears to the committee that the reviews into the maritime sector identified by the government response do not directly address the issues raised by this committee in its interim report, specifically issues around the diminishing Australian shipping industry, loss of jobs for Australian workers, mistreatment of foreign workers, and the serious border security and environmental risks presented by FOC vessels.

5.44 In stating that further reviews would be 'unlikely to change the current decline in the Australian shipping industry', the government response fails to recognise that there are ongoing issues with the Australian maritime sector that have not been addressed. While proposed amendments to shipping legislation in 2015 attempted to make improvements regarding coastal shipping regulation, it did so at a cost to Australian jobs and local businesses, and seafarer wellbeing.

30 Senator the Hon Simon Birmingham, Minister for Education and Training, *Proof Senate Hansard*, 10 May 2017, p. 101.

31 Strengthening Economic Relations between Australia and NZ (2012): <http://www.pc.gov.au/inquiries/completed/australia-new-zealand/report/trans-tasman.pdf>; Tasmanian Shipping and Freight inquiry (2014): <http://www.pc.gov.au/inquiries/completed/tasmanian-shipping/report/tasmanian-shipping.pdf>; Competition Policy Review (2015): http://competitionpolicyreview.gov.au/files/2015/03/Competition-policy-review-report_online.pdf; Regulation of Australian Agriculture (2017): <http://www.pc.gov.au/inquiries/completed/agriculture/report/agriculture-overview.pdf>

Summary and recommendations

5.45 The issues with FOC vessels operating in Australian and international waters are considerable, and it is going to take a concerted global effort to address these concerns. The prevailing international business environment has a preference for cheap labour and the payment of no or minimal tax, with both conditions supported by many FOC arrangements.

5.46 The lack of a genuine link between a ship's flag and the owner of a vessel presents real challenges internationally in terms of accountability and assessment of risk. The reduced transparency that comes from using FOC registration may present a business benefit to ship owners and operators, but it greatly decreases the ability of national authorities to verify who is entering the country, and therefore to determine threats to national security.

5.47 While Australia should take the steps necessary to protect its coastal shipping industry and the people it employs, until there is an international approach to address the deficiencies in FOC shipping, and enforce international conventions and regulatory oversight, it will remain an uphill battle.

5.48 The committee maintains the position put forward in its interim report that shipping plays an essential role in Australia's national transport infrastructure framework, and that the increasing occurrence of FOC vessels operating in and around Australia will continue to be detrimental to the local shipping industry, and place Australia at a competitive disadvantage.

5.49 It is clear that FOC vessels present numerous risks to seafarer safety and wellbeing. The case studies presented in this report are not exhaustive, yet demonstrate these risks. This is in addition to the considerable job losses experienced by local crew members, who are being replaced by foreign workers at an alarming rate. The replacement of Australian workers with foreign crew will continue to deplete the maritime skills base in Australia, and make it harder to reinvigorate the industry in the future.

5.50 The committee argues that reduced costs in shipping should not be sought by paying inappropriate wages to foreign crew. If a business is endeavouring to reduce its overhead and increase its profits, it should not be through the payment of wages that do not meet Australia's minimum wage standards.

5.51 It is unacceptable that seafarers are disappearing and dying in Australian waters, and that no one is held to account for these events. The case of the *MV Sage Sagittarius* highlighted how FOC vessels can operate with a workplace environment of bullying and harassment, with tragic results. While the Coronial Inquest determined that both Hector Collado and Cesar Llanto died as a result of foul play, no one has been charged with their deaths, and this is unlikely to change.

5.52 The committee acknowledges the improvements made in addressing security risks at sea, with the combination of immigration and border protection processes two

years ago when DIBP came into effect. The committee was given assurances that the events of 2012 concerning Captain Salas would not now occur, given the processes and notification systems currently in place.

5.53 The tightened parameters around MCVs have seen a considerable increase in rejected MVC applications over the last year, providing some level of comfort to the committee that risks to Australia's border security from FOC vessels are being addressed. The implementation of APP on cargo ships will further assist DIBP in better assessing the risks of foreign crew.

5.54 Yet, the lack of an Australian-flagged fleet means that dangerous goods such as ammonium nitrate continue to be transported to Australia by FOC and other foreign vessels. It is imperative that immigration and border protection processes remain robust in light of the risks that these goods present to Australian ports.

Government response to the interim report

5.55 The committee is particularly concerned that the government response did not indicate any way forward for ensuring the future viability of the Australian shipping industry, and the employment of Australian seafarers.

5.56 The committee takes the view that, by not agreeing to review the current state of the maritime sector in Australia, the government is failing to address the serious security, economic, human rights and environmental vulnerabilities in the sector that were identified by the interim report.

5.57 The reviews highlighted by the government response were not specific to the maritime sector but rather focus on other topics where shipping, while relevant to the matters being considered, had ancillary importance to the main issues being discussed.

5.58 There has been no comprehensive, whole-of-government review into the potential economic, security and environment risks posed by FOC vessels and their crew, in the modern maritime industry setting. As has been shown by the evidence provided to this inquiry, these remain very real and current risks to our nation.

5.59 In its interim report, the committee's recommendations also advocated for reduced red tape for vessel and port operators, through a harmonisation of national shipping operations, and consultation with industry to identify shared objectives for the future of the maritime sector.

5.60 The committee again calls on the government to give serious consideration to FOC vessels and their interactions with Australian coastal shipping. The committee maintains that these vessels present serious security risks to the Australian coast, which need to be properly addressed.

Recommendation 6

5.61 The committee recommends that the Australian Government undertake a focussed and targeted review of the Australian maritime industry, with a view to growing and supporting the Australian maritime industry and developing policies that appropriately manage the operation of flag of convenience vessels in Australian waters.

Recommendation 7

5.62 The committee recommends that the Australian Government undertake a comprehensive whole-of-government review into the potential economic, security and environmental risks presented by flag of convenience vessels and foreign crews.

Senator Glenn Sterle

Chair

Dissenting Report by Government Senators O'Sullivan, Back and Bushby

1.1 The Government understands the importance of the shipping sector to the Australian economy. Shipping plays an essential role in Australia's freight strategy, particularly given our position as an island nation. It is imperative that Australia's shipping services remain open and competitive at an international level. However, the Australian shipping industry will need to address issues with a small and ageing fleet, and relatively expensive labour and product movement costs.

1.2 As stated in the committee's report, not all ships flying under a foreign flag do so as part of a flag of convenience registration. When discussing foreign-flagged vessels, use of the 'flag of convenience' terminology should be considered with some caution and not automatically applied to all vessels registered to a foreign country.

1.3 While the committee heard some concerning evidence about the crew on some flag of convenience vessels operating in Australian waters, overall the inquiry received compelling evidence that Australia's transport security regime was robust. This was particularly the case in more recent years with the formation of the Department of Immigration and Border Protection (DIBP).

1.4 There are substantial risk assessments completed for all foreign vessels entering Australian waters, and for their crews via the Maritime Crew visa (MVC) application process. The considerable increase in MCV refusals in recent years highlights the strengthening of immigration clearance processes under the DIBP. The committee was particularly encouraged to hear that the events concerning Captain Salas would not occur under the current security frameworks.

1.5 The ongoing and thorough regime of Port State Control (PSC) inspections conducted by the Australian Maritime Safety Authority (AMSA) ensures that the international vessels operating around Australia's coast comply with safety, environmental and labour standards. As AMSA continues to work with flag states to improve safety measures of vessels, Australia becomes part of the global effort to improve ship safety for seafarers of all nationalities.

1.6 Australia ratified the Maritime Labour Convention (MLC) in December 2011, and it applies to all international vessels in Australian ports. The MLC provides significant protections to seafarers regarding their working rights, living conditions and wages, while supporting the economic interests of shipowners.

1.7 Australia implements the MLC through the *Navigation Act 2012* and other legislation, therefore safeguarding compliance with its provisions. The ongoing implementation of the MLC shows that the government supports a comprehensive framework for protecting the working rights of seafarers.

1.8 As highlighted by the committee's interim report, the inquiry continued to hear evidence that the *Coastal Trading (Revitalising Australian Shipping) Act 2012* does not work as intended, particularly in relation to the five voyage minimum

required for a temporary licence. The licencing scheme itself is burdensome, and the minimum voyage requirement is resulting in costly and unintended consequences.

1.9 The inquiry noted that the government was progressing development of a national freight and supply chain strategy. It was also considering reforms to coastal shipping. The proposed coastal shipping reforms will play a key part in reducing the regulatory burden and administrative issues currently being experienced in the shipping sector. The government is therefore already well progressed in ensuring that safe and efficient shipping has an increasing and ongoing role in Australia's national freight network.

1.10 We disagree with the recommendation of the committee for the Fair Work Ombudsman (FWO) to implement an inspection program, to verify the wages paid to foreign seafarers. It is clear that the FWO already undertakes such tasks, as evidenced by its successful case against the *MT Turmoil*. The FWO also made clear that the shipping sector does not cause the FWO considerable levels of concern, and that no further investment into this area was warranted.

1.11 The committee noted that the Maritime Labour Convention of 2006 allows seafarers to make a complaint directly to AMSA or any other seafarer welfare organisation about wages. Such complaints must be made 'without recourse or concern'. Further, it is clear that AMSA does receive complaints under the current regulatory framework, and these are thoroughly examined and forwarded to the FWO for further investigation where required.

1.12 The committee's recommendation for the FWO to implement another program of inspection for seafarer wages is unnecessary and would increase the regulatory burden in an already heavily-regulated sector.

Senator Barry O'Sullivan

Deputy Chair

**Senator David Bushby B.EC., LLB,
G.Dip Bus (Shipping)**

Senator for Tasmania

Senator Chris Back

Senator for Western Australia

Appendix 1

Additional information received

- Answers to questions taken on notice by the Department of Immigration and Border Protection on 8 November 2016. Received on 28 November 2016.
- Answers to written questions taken on notice by the Department of Immigration and Border Protection on 23 November 2016. Received on 28 November 2016.
- Answers to questions taken on notice by the Department of Immigration and Border Protection on 13 June 2017. Received on 21 June 2017.
- Answers to questions taken on notice by the Department of Immigration and Border Protection on 21 June 2017. Received on 5 July 2017.

Tabled documents

- Documents tabled by the Department of Immigration and Border Protection at a public hearing on 21 June 2017 in Canberra.

Appendix 2

Public hearings and witnesses

Tuesday, 13 June 2017, Canberra, ACT

- CHANDLER, Mr Andrew, Acting First Assistant Secretary, Traveller, Customs and Industry Policy Division, Department of Immigration and Border Protection
- POIDEVIN, Ms Dominique, Acting First Assistant Secretary, Intelligence Division, Department of Immigration and Border Protection
- PRICE, Mr Terance, Regional Commander, Queensland, Department of Immigration and Border Protection
- WILDEN, Mr David, First Assistant Secretary, Department of Immigration and Border Protection
- WILLIAMS, Mr Jim, Assistant Commissioner, Border Management Division, Department of Immigration and Border Protection

Wednesday, 21 June 2017, Canberra, ACT

- HANSFORD, Mr Hamish, Assistant Secretary, Community Protection and Border Policy, Department of Immigration and Border Protection
- MURRAY, Mr Clive, Assistant Commissioner, Strategic Border Command, Department of Immigration and Border Protection
- WILLIAMS, Mr Jim, Assistant Commissioner, Border Management Division, Department of Immigration and Border Protection

