

Chapter 1

Introduction and background

Referral

1.1 On 18 June 2015, the Senate moved that the following matters be referred to the Rural and Regional Affairs and Transport References Committee for inquiry and report by the first sitting day of 2016 (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

Conduct of the inquiry

1.2 The committee advertised the inquiry on its website and in *The Australian* newspaper. The committee also invited some organisations to make submissions by 21 September 2015. The committee received 25 submissions, which are all available on the committee's website.² A list of these submissions can be found at Appendix 1 of this report.

1.3 The committee held public hearings in Canberra on 4 December 2015, 3 February 2016, 23 February 2016, 16 March 2016 and 30 March 2016. A list of witnesses who appeared at these hearings is at Appendix 2 of this report. Hansard transcripts of evidence from all hearings are available on the committee's website.

1.4 On 2 February 2016, the committee tabled an interim report in the Senate, seeking an extension to the final reporting date to 25 February 2016, which is

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

2 See www.aph.gov.au/Parliamentary_Business/Committees/Senate/Rural_and_Regional_Affairs_and_Transport

available on the committee's website.³ On 22 February 2016 the Senate granted a further extension of the reporting date to 22 June 2016.⁴

1.5 This inquiry has raised certain issues that should be ongoing concerns for the Commonwealth, particularly regarding how FOC vessels are monitored and overseen whilst operating in Australian waters. Given this, the committee has decided to table this report as an interim report, in the hope that the work of this inquiry can continue in the new Parliament following the 2016 election.

Acknowledgements

1.6 The committee thanks all individuals and organisations that participated in the inquiry by making submissions and giving evidence at public hearings.

1.7 The committee would particularly like to recognise the attendance of crew members of the *MV Portland* who appeared at the hearing on 3 February 2016, and thank them for sharing their stories.

Background

What is Flag of Convenience Shipping?

1.8 Every ship engaged in international trade has a nation registration that determines the laws all persons and activities aboard it are subject to, regardless of where in the world the ship is operating. The term 'Flag of Convenience' (FOC) ship refers to:

...those vessels engaged in international navigation but which are not registered in the state with which the ship is most closely associated.⁵

1.9 There are several reasons why FOC registration is used, most of which have the effect of reducing operating costs, including:

- reducing the tax burden that ship owners are subject to;
- making the vessel subject to less stringent labour legislation required for crews, thereby reducing wages and the financial burden of enforcing higher working conditions and safety standards;
- minimising current exchange and investment controls that ship owners are subject to; and
- avoiding costs from meeting more stringent safety or inspection regimes for vessels.⁶

3 *Journals of the Senate, No. 135 – 2 February 2016*, p. 3662.

4 *Journals of the Senate, No. 138 - 22 February 2016*, p. 3748.

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

6 Cindy Lazenby, 'SOS: The Call Sign of the 'Ships of Shame'' in *Deakin Law Review*, Volume 4, No 1 (1998), p. 75. Note Lazenby also lists 'political reasons' for the use of FOC shipping, i.e. in order to bypass trade blockades and to avoid capture in times of conflict, although the examples she draws on to illustrate this are largely historical and so irrelevant to this inquiry.

1.10 Globally, the registration of FOC ships is clustered predominantly in a handful of countries that offer favourable incentives to shipowners, including tax concessions, nominal fee structures and less stringent safety regimes. According to the United Nations Conference on Trade and Development (UNCTAD) the largest fleets (by gross tonnage) that operate under open registers are, in descending order of size: Panama, Liberia, the Marshall Islands, Singapore, the Bahamas, Malta, Cyprus and the Isle of Man (UK).⁷

1.11 According to evidence received by the committee, between 50 and 65 per cent of global shipping is now carried out by FOC vessels.⁸

Contested terminology

1.12 The submission made by Shipping Australia Ltd argued that the term 'flag of convenience' is anachronistic and has negative connotations, which means that many stakeholders now prefer the term 'open register' shipping.⁹ The International Chamber of Shipping also noted this, stating that:

The term used by the United Nations and IMO Member States to describe those flag States which permit the registration of ships that may be beneficially owned in another country is 'open register'. However, the shipping industry, as represented by ICS, actually believes that distinctions between open registers and so-called 'traditional' maritime flags are not relevant today, particularly when making generalisations about the effective implementation of international regulations governing safety, environmental protection and employment standards.¹⁰

1.13 However, most submissions used the term FOC rather than 'open register'. Although most submissions did not provide an explanation for this use, the Australian Institute of Marine and Power Engineers stated:

The entire point of the term 'Flag of Convenience' ship is to identify that the ship is NOT carrying the flag of the nation in which it is owned: this emphasis would be lost if one were to accept the submission by Shipping Australia Ltd to instead call them 'open register' ships.¹¹

1.14 This report uses the FOC terminology, consistent with the terms of reference for the inquiry and the overwhelming majority of submissions received.

7 UNCTAD, *Review of Maritime Transport* (2014) cited in International Chamber of Shipping, *Submission 8*, p. 2.

8 Note the Maritime Engineer's Pty Ltd submitted that 50 per cent of global shipping is currently undertaken under FOCs, *Submission 5*, p. 2; compared with the International Chamber of Shipping submission that suggested 64 per cent of the world merchant fleet is now registered under the eight largest open register flag states, with a further 1 per cent operating under other open register flags, *Submission 8*, p. 2.

9 *Submission 2*, p. 3.

10 *Submission 8*, p. 2.

11 *Submission 9*, p. 4.

The decline of Australian shipping and increasing use of FOC vessels

1.15 As an island nation, shipping is central to Australia's economy and national security. Australia is currently the fourth biggest user of ships in the world, not only as part of its international trade networks, but also its coastal shipping and domestic transport infrastructure.¹² Working alongside Australian-flagged vessels, ships sailing under the flags of other nations have an integral role in servicing Australian shipping networks, and thereby our domestic economy. As the Department of Infrastructure and Regional Development stated in 2014:

Australia is heavily dependent on shipping, with 99 per cent of international trade volumes transported by ship and Australian ports managing 10 per cent of the world's sea trade.¹³

1.16 Over the past two decades, international sea freight to and from Australia has increased around 2.5 times, with Australia's ports currently handling around \$400 billion of trade a year.¹⁴

1.17 However, over the same period, the Australian-flagged shipping sector has been reducing in size.¹⁵ In part, this shift can be attributed to the increasing use of FOC shipping, which one witness suggested had 'increased by 78 per cent since 2002' in Australian waters.¹⁶

1.18 Some evidence received by the committee suggested that this trend could compromise Australia's economic interests, the health of our labour market and skills base, as well as reducing work opportunities for young Australians in the maritime sector. In particular, the committee understands that the local shipping industry already finds it difficult to be competitive, given that FOC vessels are subject to far fewer burdens than Australian ships, including being subject to lower taxes, less stringent working condition and employment standards, and more lax safety regimes.

1.19 This situation appears to be exacerbated by the exploitation of loopholes in the temporary license provisions in Australian maritime law. These issues relating to

12 Mr Paddy Crumlin, National Secretary, Maritime Union of Australia, *Committee Hansard*, 4 December 2015, p. 2.

13 Department of Infrastructure and Regional Development, *Approaches to Regulating Coastal Shipping in Australia*, Options Paper (April 2014).

14 Mr Paddy Crumlin, National Secretary, Maritime Union of Australia, *Committee Hansard*, 4 December 2015, p. 2.

15 Shipping Australia Limited, *Submission 2*, p. 1; Dale Cole and Associates, *Submission 3*, pp 9-10; Company of Master Mariners, *Submission 4*, p. 6; Australian Institute of Marine and Power Engineers, *Submission 9*, p. 17; Minerals Council of Australia, *Submission 15*, p. 3; International Transport Workers' Federation – Australia, *Submission 22*, p. 6. The Maritime Union of New Zealand (MUNZ) also submitted that the New Zealand coastal shipping trade had similarly declined since the 1990s, *Submission 24*, p. 4.

16 Mr Paddy Crumlin, National Secretary, Maritime Union of Australia, *Committee Hansard*, 4 December 2015, p. 2.

the outlook for the Australian employment and labour market are discussed further in chapter 2 of this report.

1.20 The committee also heard that certain aspects of FOC shipping could pose challenges for our national and fuel security, as well as for the health of our environment. The challenges posed by FOC shipping to Australia's security system are discussed at greater length in chapter 3 of this report.

1.21 Additionally, evidence that drew the committee's attention to the poor conditions experienced by some seafarers on FOC vessels, and the lack of adequate support services for them in Australian ports is also discussed in chapter 3.

Recent incidents involving FOC shipping of interest to this inquiry

1.22 Some recent events relevant to FOC shipping in Australian waters have informed the issues examined by this inquiry. In particular this report includes two case studies to illustrate concerns raised by evidence to the committee, namely:

- the use of FOC vessels by Alcoa on their Kwinana (Western Australia) to Portland (Victoria) route, which has meant the loss of a substantial number of jobs for local seafarers on the *MV Portland* (discussed at chapter 2); and
- suspicious deaths aboard the FOC vessel the *MV Sage Sagittarius* in 2012, which are currently being investigated by the New South Wales Coroner (discussed in chapter 3).

The *Ships of Shame* reports (1992, 1995)

1.23 An important context for this inquiry is previous work looking into matters relevant to FOCs, particularly the reports of the House of Representatives Standing Committee on Transport, Communications and Infrastructure (HoR Committee), most notably *Ships of Shame* (1992) and *Ships of Shame – A Sequel* (1995).

1.24 Following the loss of six international bulk carriers off the West Australian coast in close succession between January 1990 and August 1991, the HoR Committee undertook an inquiry into ship safety in Australia's territorial waters.¹⁷ The initial 1992 report set out the scope of the committee's work:

This report is about a minority of ships, bad ships, ships that endanger the lives of those who serve on them. Ships that are the source of major risks to the marine environment and marine facilities of the nations they visit. Ships on which seafarers are abused and exploited by officers and management alike. Ships that well deserve to be known as 'ships of shame'.¹⁸

1.25 Regarding FOC shipping specifically, this report stated:

17 House of Representatives Standing Committee on Transport, Communications and Infrastructure, *Ships of Shame: inquiry into ship safety*, Parliamentary Paper No 494 (1992), p. xv.

18 House of Representatives Standing Committee on Transport, Communications and Infrastructure, *Ships of Shame: inquiry into ship safety*, Parliamentary Paper No 494 (1992), p. ix.

The Committee is not opposed to FOCs or second registries as a matter of principle. If FOCs and second registries conduct their operations in accordance with international convention requirements the Committee sees no reason why they should not exist. The Committee's concern is with the unsatisfactory level of compliance of some FOCs with international conventions rather than the competitive pressure they may place on traditional flags.¹⁹

1.26 The inquiry produced two further reports: a progress report in 1994; and a final report in 1995.²⁰ The final report found that there had been some positive signs regarding the safety of mariners over the three years of the inquiry, both in Australian waters and internationally, particularly:

- the introduction of Safety Management systems with their potential to transform the sea-going culture into one which is more safety conscious and efficient;
- the development of strict criteria governing the operation of Classification Societies [non-governmental organisations that establish and maintain technical standards for ships], both at International Maritime Organization and through International Association of Classification Societies which should result in a reduction in practises such as Transfer of Class; and
- the move by [the International Maritime Organization (IMO)] in the revised Standards of Training Certification and Watchkeeping Convention towards auditing, approval and public acknowledgment of administrations demonstrably compliant with the [International Convention on Standards of Training, Certification and Watchkeeping for Seafarers].²¹

1.27 However, the 1995 report also noted there were still serious abuses occurring in the global shipping sector, most significantly:

Sub-standard ships and practises still exist; crews are still being beaten, harassed, abused and deprived of basic human rights.

19 House of Representatives Standing Committee on Transport, Communications and Infrastructure, *Ships of Shame: inquiry into ship safety*, Parliamentary Paper No 494 (1992), p. 52.

20 House of Representatives Standing Committee on Transport, Communications and Infrastructure, *Ship safety review inquiry: progress report*, Parliamentary Paper No 420 (1994); and *Ships of Shame – A Sequel: inquiry into ship safety*, Parliamentary Paper No 479 (1995). Note that the Commonwealth responded to the final report of the committee in 1995. See 'List of Committee Reports by Subject – Ship safety' at www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_committees?url=report_register/bykeylist.asp?id=1719 (accessed 19 January 2016).

21 House of Representatives Standing Committee on Transport, Communications and Infrastructure, *Ships of Shame – A Sequel: inquiry into ship safety*, Parliamentary Paper No 479 (1995), p. xiii.

Flag States are still avoiding their responsibilities, cargo owners still charter and operators still run sub-standard ships.²²

Progress made since the Ships of Shame report

1.28 Much of the evidence received by the committee suggested that global and Australian shipping industry standards have improved significantly since the 1992 *Ships of Shame* report. Some examples of positive developments cited were:

- the International Safety Management Code, which provides a standard for the safe management of ships and the prevention of pollution and environmental damage;²³
- improvements to the Australian maritime regulation and compliance framework, including the Port State control system administered by the Australian Maritime Safety Authority (AMSA);²⁴
- the 2006 Maritime Labour Convention improving seafarers' rights and working conditions;²⁵
- the general global improvements to the quality of ships, training for crews and the adherence of vessels to international conventions;²⁶ and
- other improvements to the treatment and working conditions of seafarers.²⁷

1.29 The Australian Maritime Safety Authority submitted that a range of other factors had improved Commonwealth monitoring of foreign vessels and the more effective targeting of inspections:

Based on this information [provided by modern communications systems], AMSA has virtually 'real-time' maritime awareness of all ships within Australian waters. This allows far greater monitoring of ship activities than ever before and this information is used to assist in the targeting of ships for inspection based on not only historical data such as inspection history but also based on recent operational activities.

National and regional co-operative arrangements have developed significantly over the last decade. These co-operative arrangements have

22 House of Representatives Standing Committee on Transport, Communications and Infrastructure, *Ships of Shame – A Sequel: inquiry into ship safety*, Parliamentary Paper No 479 (1995), p. xiii.

23 Shipping Australia Limited, *Submission 2*, p. 7.

24 Shipping Australia Limited, *Submission 2*, p. 1; Company of Master Mariners, *Submission 4*, p. 5; Australian Maritime Safety Authority, *Submission 11*, p. 17; Maritime Industry Australia Limited, *Submission 12*, p. 7.

25 Company of Master Mariners, *Submission 4*, p. 5; International Transport Workers' Federation – Australia, *Submission 22*, p. 95.

26 Australian Maritime Safety Authority, *Submission 11*, p. 18; Maritime Industry Australia Limited, *Submission 12*, p. 8.

27 Maritime Industry Australia Limited, *Submission 12*, p. 8.

delivered substantial communication channels with other organisations and countries that bring better information to enable refined and very responsive targeting techniques. These communication channels allow Australia to pursue matters with foreign administrations when a ship is outside Australian waters.²⁸

1.30 Despite noting these improvements, the committee received evidence concerning other areas relevant to the increasing use of FOC shipping that have either not improved, or issues that have emerged since the *Ships of Shame* reports were produced, which the Commonwealth needs to consider. These issues are discussed in the following chapters of this report.

Structure of this report

1.31 This report consists of four chapters:

- This chapter sets out administrative matters relating to the inquiry, as well as the background issues relevant to FOC shipping. It also notes some general improvements to conditions in the maritime sector since the release of the *Ships of Shame* reports in 1992-1995;
- Chapter two discusses employment issues arising from the recent increasing use of FOCs. These issues include: the loss of many Australian jobs; the decline of the local shipping sector; the damage to our national skills base; and the shrinking number of future job opportunities for young Australians in the maritime sector; and
- Chapter three discusses concerns raised to the committee about potential ways that FOC shipping could pose risks to our national and fuel security, and the environment. It also discusses the poor employment conditions, low wages and other factors that foreign crews aboard FOC vessels are subject to, as well as the lack of support for them onshore in Australian ports
- Chapter 4 sets out the committee's views and recommendations.