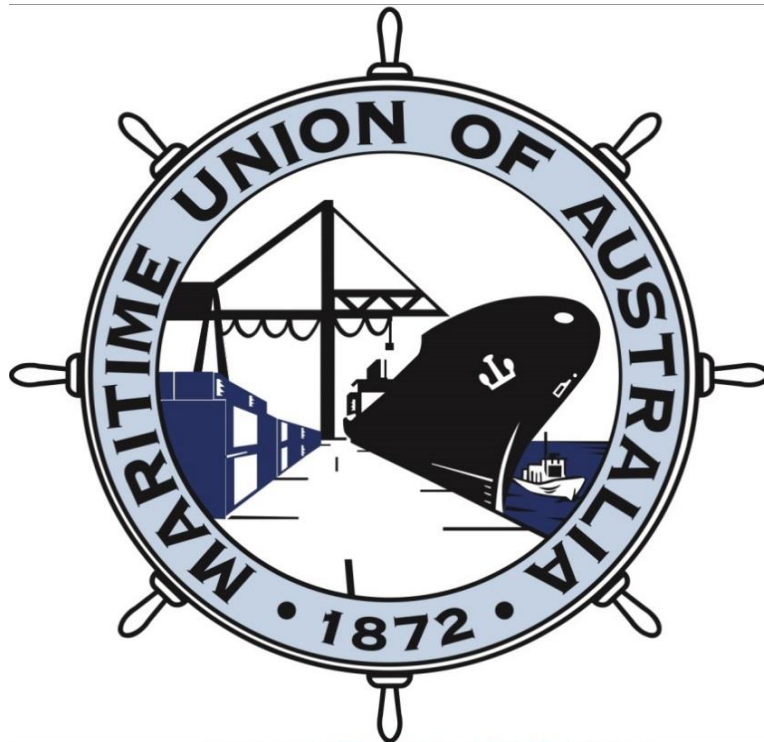


Submission by the Maritime Union of Australia

Response to the Department of Home Affairs Consultation Paper: *Protecting Critical Infrastructure and Systems of National Significance* of August 2020



16 September 2020

Submitted by email: ci.reforms@homeaffairs.gov.au

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Introduction

This submission has been prepared by Maritime Union of Australia (MUA). The MUA is a Division of the 120,000-member Construction, Forestry, Maritime, Mining and Energy Union and an affiliate of the 20-million-member International Transport Workers' Federation (ITF).

The MUA represents approximately 14,000 workers in the shipping, offshore oil and gas, stevedoring, port services and commercial diving sectors of the Australian maritime industry. The MUA is also part of an Offshore Alliance with the Australian Workers Union that jointly organises workers across the Australian offshore oil and gas industry.

The MUA represent workers across various areas of maritime operations. These include:

- Onshore workers in ports who are required to interact with domestic and international ships docking at Australian ports and with landside workers involved in road and rail transportation to and from ports. International ships include both cargo ships and passenger ships, mainly large cruise ships. These workers include:
 - Container stevedoring workers (including dockworkers who board cargo ships to undertake lashing of containers);
 - Break bulk ship stevedoring workers (including dockworkers who board break bulk ships to assist with loading and unloading in ship's hatches);
 - Cruise ship baggage handlers, operators of gangplanks or passageways used for the embarkation and disembarkation of passengers and wharf workers that load stores;
 - Ship mooring workers;
 - Port security workers.
- On-water services workers servicing cargo and passenger ships i.e. workers involved in towage, mooring, pilotage, bunkering, waste removal.
- Harbour/river ferry workers.
- Shipboard workers (ship's crew) including (i) marine crew; and (ii) in the case of passenger ships non marine crew (collectively defined as seafarers in this submission).
- Offshore oil and gas industry seafarers servicing oil and gas platforms.

Overview

The MUA acknowledges the importance of working in partnership with government to develop proportionate requirements that strike a balance between uplifting security, and ensuring businesses remain viable and services remain sustainable, accessible and affordable.

We agree that an uplift in security and resilience across critical infrastructure sectors may be necessary to ensure that businesses benefit from strengthened protections to the networks, systems and services we all depend on.

We are well aware of the need to build the resilience of critical infrastructure, especially in transport and logistics supply chains, due to incidents like:

- The Beirut ammonium nitrate induced explosion that destroyed its port and grain storage, not to mention thousands of residential properties and businesses with significant loss of life;
- The running aground of the *MV Wakashio* off Mauritius in August 2020 with severe consequences for the environment and the livelihood of fishers and tourism businesses;
- The sinking off Japan of the livestock carrier *Gulf Livestock 1* carrying NZ cattle to China in September 2020 with the loss of over 40 lives including 2 Australians;
- The disruption to Toll Holdings shipping and freight operations that affected thousands of customers due to cyber-attacks earlier in 2020;
- The revelations in the 2015 Coroner's Inquiry into deaths in Australian waters on the foreign registered ship the *Sage Sagittarius* transporting coal from Australia that revealed evidence of possible gun smuggling;
- The threat posed by the outsourcing to developing nations of critical aspects of Australia's port container stevedoring functions; and
- The impact of the 2020 COVID-19 pandemic on international shipping and port operations, including the human impacts due to ships being workplaces prone to infectious disease transmission and the inadequacy of global systems to support ship crew change and repatriation arrangements.

These are just a few recent incidents in transport and logistics supply chains that highlight the potential risks to Australian shipping and port security and infrastructure.

The key to any uplift in security and resilience is proportionality, particularly in relation to impacts on workforces and their human rights, transparency around the reasons for such an uplift, and the way it is managed and regulated.

Along with failure in energy systems, failure in any part of the transport and logistics system, particularly ships and ports, can have almost immediate consequential impacts through the supply chain, impacting on many businesses and households. As noted in the Consultation Paper, transport and energy disruptions can impact on essential medical supplies, food and groceries, fuel and other inputs to production such as gas, for both businesses and households, fertilisers for agriculture, mining equipment for mining and materials for manufacturing.

The Consultation Paper refers to insights revealed since the *Security of Critical Infrastructure Act 2018* (the SOCI Act) required entity reporting, including the need for an enhanced understanding of the

ultimate ownership of entities and improved visibility of entities' supply chain and outsourcing arrangements.

These are critically important issues in the globally integrated transport and logistics systems that delivers the nation's exports and imports, where the real ownership of ships and some port service providers is notoriously difficult to ascertain, though we note that the Consultation Paper advises that the Department will identify and map owners and operators of critical infrastructure through the public consultation process.

Our response to the consultation questions

Which entities will be covered?

Q1. Do the sectors above capture the functions that are vital to Australia's economy, security and sovereignty? Are there any other sectors that you think should be considered as part of these reforms (e.g. manufacturing)?

While we note that transport is a listed industry sector and the SOCI Act specifically refers to ports, we suggest that shipping, both domestic and international, be a particular focus of the enhanced security framework, because:

- Australia is almost totally dependent on ships (sea freight) for its freight trade, with air freight forming only a small proportion of Australia's international freight movements, much of that as an ancillary to passenger planes which is a service that is highly vulnerable to shut down in a pandemic and in other emergencies such as a fuel shortage;
- Australia is almost totally dependent on foreign owned and operated ships for its sea freight trade (only 4 [or 0.06 per cent] of the nearly 6,000 different ships annually involved in Australia's imports and exports, offshore oil and gas and large cruise ship trades are Australian registered ships);
- Most of Australia's sea freight trade in exportable commodities is undertaken using Free on Board (FOB) contracts resulting in the cargo purchaser taking responsibility for the shipping, with a resultant transfer of control over the shipping to a foreign entity;
- The vast majority of Australia's interstate domestic coastal freight is transported in foreign registered ships using a foreign crew under the licencing (lightly regulated) system provided by *the Coastal Trading (Revitalising Australian Shipping) Act 2012*;
- The majority of Australia's intrastate coastal shipping by volume is transported in foreign registered ships using a foreign crew in a totally unregulated environment; and
- The high number of seafarers entering Australia on foreign registered ships using only a Subclass 988 Maritime Crew visa which involves only the flimsiest of security checking (approximately 138,000, some entering Australia on multiple occasions, which is not that far below net overseas annual migration [around 180,000 in recent years]), many of whom remain in Australia in coastal trade for long periods (up to 9 months, and in the current COVID-19 pandemic for up to 14 months or longer), without the requirement for transfer to a genuine work visa.

We provide further background on shipping in **Attachment A**, which emphasises our comments above.

Q5. How should criticality be assessed to ensure the most important entities are covered by the framework?

It is our view that a human rights and human needs approach to criticality should be adopted. By this we mean that criticality be determined on the basis of the severity of the impact on citizens' rights to the necessities of life, such as water¹, food², shelter³, energy, health/medical care, transportation, communications and employment⁴ (that is, to sustain an income) from a disruption be the guiding factor in determining criticality, having regard to cost, quality, equity and environmental considerations.

Q6. Which entities would you expect to be owners and operators of systems of national significance?

We respond to this question with an emphasis on shipping. While ships are not interconnected in the same way as say an electricity energy system, they are strongly integrated into freight and logistics systems that operate globally on a set of just-in-time delivery time slots – for marine pilots to board ships in specified locations within a vessel traffic service (VTS) area; for ships to berth at a wharf; for trains and trucks to pick up freight from a stevedore; and for delivery of goods to end users. Any disruption to this time sensitive system can have a rapid domino effect across the freight logistics network.

There is a significant degree of both vertical and horizontal integration across the freight logistics chain. In relation to shipowner companies, they often have a corporate relationship with ship operators, who in turn have a relationship with ship charterers, while both ship operators and charterers have relationships with freight forwarding agents, crew supply agents and shippers.

For the purposes of this exercise we draw the Department's attention to the murky and opaque area of ship ownership and control. Identifying the beneficial owner of a ship i.e. the corporate entity with legal responsibility for compliance with a raft of statutory requirements relating to government taxes and charges, employment and labour standards, ship and crew safety and compliance with laws giving effect to many ILO and IMO Conventions, is problematic at best. The beneficial owner invariably differs from the registered owner (very often a shell entity established simply to comply with the requirements of ship registries, which itself is a procedure to disguise the beneficial or real owner).

A recent case on point is the *Unison Jasper*, a bulk carrier transporting alumina from Gladstone to the Tomago aluminium smelter in Newcastle. It was detained by the Australian Maritime Safety Authority (AMSA) due to the failure to ensure seafarers' employment and social rights under Article IV of the ILO Maritime Labour Convention were met, including payment of wages, crew repatriation and provision of fresh food.

¹ On 28 July 2010, through Resolution 64/292, the United Nations General Assembly explicitly recognized the human right to water and sanitation and acknowledged that clean drinking water and sanitation are essential to the realisation of all human rights.

² The right to food is recognized in the 1948 Universal Declaration of Human Rights as part of the right to an adequate standard of living, and is enshrined in the 1966 International Covenant on Economic, Social and Cultural Rights

³ The right to housing is clearly supported by international law, provided by the Universal Declaration of Human Rights. Article 25 of the Declaration provides, "Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including housing".

⁴ Article 23 of the Universal Declaration of Human Rights: "Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment."

This ship is chartered to the Danish shipping services company Lauritzen Bulkers A/S, which sublet the ship to a third party. The ship is owned by Emerald Shipping (HK) Co. Ltd, registered in Hong Kong, operated by Unison Marine Group and chartered by Pacific Basin. The ship sails with Chinese officers and Burmese crew.

Given this level of complexity in determining the real owner of the international ships that Australia relies on for critical freight logistics infrastructure, identifying the entity or entities that are the owners and operators of critical freight logistics systems will be a challenge, but is necessary and it is essential.

While there is no silver bullet to lift the corporate veil on international ship ownership, the MUA has recommended to the Deputy Prime Minister and Minister for Infrastructure, Transport and Regional Development that the *Navigation Act 2012* and Marine Order 11 (Living and working conditions on vessels) 2015 be amended to require shipowners to notify AMSA when a shipowner's vessel is chartered by an Australian corporation, or its subsidiary, and to also require the shipowner to provide sufficient details about the identity of the shipowner, including contact details to ensure ease of communication for legal compliance purposes. We have also proposed that the shipowner identify the employer of the seafarers on the chartered ship. We would anticipate that if such a new requirement was legislated, that AMSA would share that data with bodies like the Department of Home Affairs in administering the SOCI Act, the Fair Work Ombudsman (FWO) to assist in ensuring compliance with the *Fair Work Act 2009*, and stakeholders such as the International Transport Workers Federation (ITF) to assist in the performance of its functions to assist ship registries across the globe ensure compliance with minimum labour standards. We believe such an amendment would go some way to lifting the corporate veil on ship ownership, and would be helpful to the regulators for the functions proposed in the Discussion Paper.

We suggest that AMSA be identified as the proxy owner and operator of shipping systems of national significance, while the tripartite body within the Department of Home Affairs that manages the administration of the *Maritime Transport and Offshore Facilities Security Act 2003* (MTOFSA) be the operator of port systems of national significance.

How ever this may ultimately be structured, we strongly recommend that trade unions representing the shipping and ports workforce be a participant in the governance arrangements.

Initiative 1: Positive Security Obligation

Principles-based outcomes

Q10. Are the principles-based outcomes sufficiently broad to consider all aspects of security risk across sectors you are familiar with?

In addition to the four principles identified, we think there should be a fifth principle: Respect for human rights.

We believe that there is likely to be significantly greater cooperation and commitment to the objectives of protecting critical infrastructure and systems of national significance if the workforce within those assets or systems can participate in decisions about the adoption and utilisation of technologies that impact on work processes, supervision and surveillance, employment and employment standards and outsourcing, access to information, rights to privacy and rights to peaceful assembly.

We also think that such a principle should provide for whistle-blower protection.

Security obligations

Q11. Do you think the security obligations strike the best balance between providing clear expectations and the ability to customise for sectoral needs?

We urge the Department to ensure that the security obligations outlined have regard the Fair Work Ombudsman’s Best Practice Guide: Workplace Privacy⁵, and also that access to data does not impede employee, union delegate, health and safety representative and trade union permit holders from accessing company information required for collective bargaining, labour relations and work health and safety compliance and enforcement activities.

In particular it will be important that any changes to laws or regulations do not interfere with the rights of a permit holder under the *Fair Work Act 2009* to enter an employer’s premises to investigate a suspected contravention of the Fair Work Act or an industrial instrument such as a modern award or enterprise agreement, noting that while on the employer’s premises, the permit holder may inspect or copy documents which are directly relevant to the suspected contravention or associated with the members of the organisation the permit holder is from.

It would be inappropriate if information classed as sensitive under security obligation provisions impeded these activities.

Q16. The sector regulator will provide guidance to entities on how to meet their obligation. Are there particular things you would like to see included in this guidance, or broader communication and engagement strategies of the regulator?

The MUA supports the five elements of the regulatory model outlined in Figure 2 on P21 of the Consultation Paper. However, we think that in relation to element 3, Regulators work with their sectors to co-design/ appoint sector specific standards, that “sectors” specifically mandate the inclusion of the workforce and their representatives, particularly trade unions, to ensure the arrangements are genuinely inclusive and collaborative.

17. Who would you consider is best placed to undertake the regulatory role for sectors you are familiar with? Does the regulator already have a security-related regulatory role? What might be the limitations to that organisation taking on the role?

We suggest that AMSA be identified as the “regulator” for the shipping sector and that the tripartite consultative body within the Department of Home Affairs that manages the administration of the *Maritime Transport and Offshore Facilities Security Act 2003* (MTOFSA) be the regulator for the ports sector. Whichever bodies are identified as the regulator for these aspects of transport infrastructure, we strongly recommend that those regulators establish sector wide advisory and consultative arrangements that include asset owners and operators and the representatives of the workforce of those asset owners and operators and the companies in their supply chains.

19. How can Government better support critical infrastructure entities in managing their security

⁵ Fair Work Ombudsman, Best Practice Guide: Workplace Privacy, <https://www.fairwork.gov.au/how-we-will-help/templates-and-guides/best-practice-guides/workplace-privacy>

risks?

We strongly recommend that Government provide financial assistance to transport sector entities for the training of the workforce of those sector entities covering all aspects of the legislative framework, the regulatory framework, the role of the workforce in assisting with situational awareness and incident reporting and their rights relating to privacy, whistleblowing, and performance of functions under the Fair Work Act and work health and safety laws.

This may require an upgrading of the Department's Maritime Security Awareness Training Module.

Initiative 2: Enhanced Cyber Security Obligations

Situational awareness

24. What could you currently contribute to a threat picture? Would you be willing to provide that information on a voluntary basis? What would the cost implications be?

One benefit from the active participation of the workforce and its representative organisations in the regulatory framework is that they can play an important role in contributing to situational awareness, especially in incident reporting.

Workers on ships and at ports and along the supply chain have access to information that may be important in assisting with security preparedness. This can only be effective however, if the workforce and trade unions are included and acknowledged as a stakeholder in sectoral regulatory arrangements.

Initiative 3: Cyber assistance for entities

Establish the capability to disrupt and respond to threats

33. What sort of legal protections should officers (both industry and Government) undertaking emergency actions be afforded?

We have previously referred to the need for protection for the workforce in relation to:

- Privacy;
- Access to information to ensure the effective performance of functions under the Fair Work Act, work health and safety and maritime security Acts; and
- Whistle blower protection.

34. What safeguards and oversight measures would you expect to ensure the necessary level of accountability for these type of powers?

We suggest that one of the best safeguards is participation of the workforce and their trade unions in all aspects of the proposed framework, especially the regulatory arrangements.

Background on Australian and international shipping in Australia

Australia is dependant of foreign registered ships

Ten per cent of the world's sea trade passes through Australian ports and Australia relies on sea transport for 99 per cent of its international trade (by volume).⁶ In 2016–17, the value of Australia's exports by sea was \$252.1 billion and it imports \$193.1 billion by sea. This involved 28,584 ship arrivals by 5,981 individual foreign-flagged ships in 2019.⁷

Australia is the largest iron ore exporter with 57 per cent of the world market, the second largest coal exporter with 30 per cent of the global market and the eighth largest grain exporter with 4 per cent of the world market. Globally, Australia is the fourth largest user of ships.⁸

Ships and the ports they use are a critical component of the supply chains that support other wealth generating industries. Ships are critical to the import and export supply chains for all facets of manufacturing, resources and energy including refined petroleum products, agriculture, aquaculture, fishing, tourism (including the growing marine tourism and cruise sectors), wholesale and retail distribution, and construction.

Key manufacturing industries such as steel (requiring iron ore and coal), aluminium (requiring bauxite and alumina), petroleum (requiring crude oils and condensates), chemical and explosives production (requiring ammonium nitrate, acids etc), building products (requiring gypsum, mineral sands etc); food processing (requiring sugar, salt, food concentrates), as well as agricultural production (requiring fertiliser, fuels, grain seeds) and offshore extractive industries such as oil and gas, are reliant on ships for supply of key bulk commodity inputs and distribution of outputs, for their efficient operation.

Bulk commodity ships and other trading ships used in these supply chains create demand for a range of other marine services including towage, pilotage, bunkering, waste removal, provisioning, firefighting, salvage and marine rescue as well as requiring port services and stevedoring services.

Ships perform vital supply and support roles to the offshore oil and gas production sector.

Notwithstanding the cooperation of the stakeholders, particularly essential maritime sector workers, that kept supply chains functioning during the COVID-19 pandemic, from a wider supply chain standpoint, the pandemic has revealed critical risks in Australia's supply chains that arises from the nation's almost complete dependency on the use of foreign ships, not only in international inbound and outbound trade, but in domestic coastal trade.

The current global crew change crisis is the most immediate manifestation of this supply chain vulnerability. All of Australia's seaborne exports and imports rely on the international ships' crew drawn

⁶ Department of Infrastructure and Regional Development, Trends: Transport and Australia's Development to 2040 and Beyond, 2016, https://www.infrastructure.gov.au/infrastructure/publications/files/Trends_to_2040.pdf

⁷ Australian Maritime Safety Authority, *Port State Control Australia, 2019 Report*, p.2.

⁸ United Nations Conference on Trade and Development (UNCTAD), *Review of Maritime Transport 2019*, https://unctad.org/en/PublicationsLibrary/rmt2019_en.pdf

from countries around the world with only four Australian international trading ships that employ Australian seafarers, carrying LNG exports. Each one of the almost 6,000 other ships carrying Australian imports and exports is affected by the current crew change crisis that involves 300,000 seafarers working well beyond the end of their seafarer employment agreements (contracts of employment).

Critical vulnerabilities in the nation's supply chains were initially highlighted in a leaked Defence Department report from 2019 that revealed essential services would break down within months in a major crisis.⁹ The MUA has been arguing for some years that unless there are actions taken to address these risks, a future military conflict, natural disaster, economic crisis or pandemic that cuts or significantly impedes seaborne trade will result in catastrophic consequences for the economy. The union has urged that authorities facilitate release of the full report, commissioned by the Defence Department and produced by Engineers Australia.

In addition to strategies to reduce Australia's dependency of foreign registered ships, the MUA has advocated solutions that would make the nation more resilient to a crisis, such as creating domestic stockpiles of fuel and other essential products, increasing local manufacturing capacity, and creating a strategic fleet of Australian-owned vessels to carry essential goods.

Australia's Temporary Licensing system for foreign ships in coastal trade is a threat to supply chain security

A continuation of the Temporary Licencing (TL) system as provided in the *Coastal Trading (Revitalising Australian Shipping) Act 2012* (CT Act) and as administered by officers in the Department of Infrastructure, Transport, Regional Development and Communications (as the Minister's delegate) that permits the unfettered and unregulated use of foreign ships in Australian coastal trade is the antithesis of a functional and secure supply chain and robust system of human biosecurity.

Firstly, there are no quality assurance requirements on TL applicants, nor any background checks before they are issued with a TL to operate ships in Australia's coasting trade. Multiple entities can apply for a licence – a shipowner, a ship charterer, a ship's master, an agent of a vessel; or a shipper (cargo interest). TL applicants are not required to adhere to any standards of performance to be a TL holder.

Second, a TL holder can hold a licence for up to 12 months and through the flimsiest of due diligence processes can obtain authorisations for multiple voyages under that TL. There is no requirement on the TL holder to nominate the ship to be used for a voyage, in advance, so it can be vetted. Furthermore, every voyage can use a different ship, obtained at short notice on the international spot market. In fact, that is the norm adopted by TL holders to avoid the payment to crew of a special Award wage scale [slightly above the international benchmark set by International Transport Workers Federation collective agreement rates] that applies to the third and subsequent TL voyage.

Third, there is only minimalist checking of the foreign crew engaged by the chartered TL ship, and what checking is undertaken through the application process for a Maritime Crew Visa (MCV) that can be obtained online, almost instantaneously, by the applicant seafarer. The MCV is a transit visa designed for seafarers on international ships that are only in a port for short periods during loading and unloading

⁹ ABC 7.30 Report, 28 April 2020, Confidential report predicted how long it would take for essential services to break down during a major crisis, <https://www.abc.net.au/7.30/confidential-report-predicted-how-long-it-would/12195072>

operations as part of an international voyage. Yet the *Coastal Trading (Revitalising Australian Shipping) Act 2012* (CT Act) exempts the transit aspects of the MCV and allows it to be used as an ongoing work visa, but without any of the checks and balances of a genuine work visa. Up to 300,000 different foreign seafarers from across many nations have been employed on the 17,000 plus TL voyages undertaken since the CT Act commenced on 1 July 2012. No adequate and rigorous checks are undertaken on their security risk, qualifications, their immunisation record or health status. Prior to COVID restrictions, international data shows that around 25 per cent of seafarers utilise shore leave while in port in accordance with their rights under the International Labour Organisation (ILO) Maritime Labour Convention (MLC), enabling them to mingle freely in port cities for several hours while their ship is in port.

The foreign ship dependency encouraged by the CT Act, and its administration by the Government, creates a major biosecurity risk to Australia. It is time for a review of the CT Act and its interaction with the *Customs Act 2001* (and by implication the MCV system) as well as Australia's biosecurity arrangements. We address the Customs Act and biosecurity arrangements later in this Attachment.

Transitioning away from foreign ship dependency, where it is most notable in trades such as refined petroleum products (RPP) which is 100 per cent dependant on foreign ships crewed by foreign seafarers – in both the nation's imports of RPP and crude oil but also in the distribution of RPP from import storage centres and from Australia's remaining four refineries to ports around Australia – must be a high national strategic priority. There is not one Australian RPP ship on the Australian General Shipping Register i.e. not one RPP tanker flying the Australian flag.

This situation exists notwithstanding that:

- At any point in time, there are around 45 oil tankers sailing for Australian ports and approximately 90 petroleum tankers arriving in Australia each month;
- Australia derives around 90% of its fuel requirements from imports;
- Analysis of published data on ships issued with Temporary License under the *Coastal Trading (Revitalising Australian Shipping) Act 2012* (CT Act) reveals that there is sufficient domestic cargo volume to commercially sustain at least 3 domestic RPP tankers in interstate coastal trade; and
- Australia does not comply with the oil stockholding guidelines of the International Energy Agency (IEA) that requires a 90-day obligation based on the previous year's imports. In November 2018, Australia had 53 days of stocks.

But Australia's foreign ship dependency is not confined to the RPP trade. In Australia's coastal bauxite trade, 100 per cent is transported in foreign ships, though about 33 per cent of that trade is undertaken on foreign ships that utilise Australian crew. Similarly, nearly 100 per cent of Australia's alumina trade feeding domestic aluminium smelters is transported in foreign ships. Australia's iron ore trade servicing its domestic steel works is transported in foreign ships, as is most construction materials like cement, potash and gypsum. All domestic sugar is transported in foreign ships as is fats, protein meals, grains, oilseed and pulse cargoes.

Any future disruptive event such as a cyber security attack, another pandemic or a geopolitical conflict that impedes foreign ship availability could impact severely on supply chain resilience and capability and quickly bring the economy to a standstill, including civilian food, manufacturing, RPP and other production, health sector supplies, household essentials and Defence capability.

Establishing a national strategic fleet and restoring a balanced cabotage regime

Maritime industry leaders like Maritime Industry Australia Ltd (MIAL) and Ports Australia¹⁰, as well as economic, national security and Defence policy experts and opinion leaders now recognise the important role that Australian ships need to play in building supply chain resilience, in energy security, in border security and for better integration of merchant or commercial shipping with Navy shipping to meet the Defence Force's maritime requirements.

The policy solution that is now under consideration is development of a national strategic shipping fleet. The proposal to establish a national strategic fleet in Australia has been gaining momentum since it was first advocated by MIAL in 2016 when legislation regarding the regulation of coastal shipping was being considered by the Federal Parliament.¹¹

Over the following three to four years the proposal for a national strategic fleet has achieved considerable bi-partisan political support and has attracted policy attention in national security circles and in consideration of policy to address Australia's fuel security. It has been and remains under consideration in Government and Parliamentary Inquiries.¹²

There are very real threats to Australia's economic security, sovereignty and border security if urgent and positive steps are not taken to stem the decline of Australian shipping and maritime industries and to commit to rebuild Australian shipping. The establishment of a national strategic fleet is the most immediate requirement to address the supply chain sovereignty issue.

In the absence of a coordinated policy response, the key threats to the nation are:

- That Australia will lose its entire merchant trading fleet, increasing its dependency on foreign-owned and controlled ships for supply of fuels for Defence, industry and citizens; for the export of mining resources and primary agricultural outputs that sustain the Australian economy; and for importation of inputs to production and finished goods. A single disruption to foreign ship supply in the event of a conflict in the Asia Pacific region or another pandemic that crippled international ship availability would have immediate and catastrophic consequences for the Australian economy;
- That the downward spiral in the number of Australian trading ships operating under medium to long term contracts of affreightment (COA) to service the manufacturing and agricultural industries, with a consequential increase in reliance on the spot shipping market, means Australia will lose complete control of ship scheduling and opportunities to create efficiencies in coastal trading through the use of a balanced mix of Australian ships (on the AGSR) with a General License issued under the CT Act and foreign ships with a Temporary Licence as was

¹⁰ Ports Australia, Ports Australia Welcomes Action On Australian Shipping And Maritime Skills, 7 May 2019, <https://www.portsaustralia.com.au/blog/ports-australia-welcomes-action-on-australian-shipping-and-maritime-skills>

¹¹ Maritime Industry Australia Ltd (MIAL) *Coastal Trading Green Paper: A Maritime Transition* of 2016 which proposed the creation of a national strategic shipping fleet, defined as ships that offer strategic national interest benefits to the nation

¹² For example, Bateman Sam, Australian Strategic Policy Institute, *Does Australia need a merchant shipping fleet?*, March 2020; the Senate Rural and Regional Affairs and Transport References Committee *Inquiry into the policy, regulatory, taxation, administrative and funding priorities for Australian shipping*, due for report in June 2020; the MUA report *Putting the 'Justice' in 'Just Transition' Tackling inequality in the new renewable economy*, November 2019; and the MUA report prepared by John Francis, *Australia's Fuel Security: Running on Empty*, November 2018

intended by the CT Act when introduced in 2012, that creates opportunities to smooth out freight rates and utilise triangulation and cargo aggregation to reduce ballast legs, which keeps freight rates lower;

- That the maritime skills base will reach unsustainable levels. Maritime skills are necessary for a maritime dependant island nation with a strong demand for maritime skills in shipping related services like towage, pilotage, mooring, bunkering and harbourmaster; and in onshore roles in ship regulation, safety, training, freight forwarding, marine insurance, marine chartering, ship financing etc; along with the capacity to support Navy alternative crewing models, essential for merchant navy support for the Defence Forces;
- Mainstreaming the use of non-national seafarers in routine coastal trading, who enter and remain indefinitely in Australia under a Maritime Crew Visa that can be secured online in less than 24 hours and which contains none of the checks and balances of a typical work visa creates a grave maritime security risk and is the largest single threat to Australia's border protection regime, and also places unnecessary pressure on Australia's biosecurity regime;
- That Australia's greenhouse gas and particulate emissions targets will be more difficult to achieve if it loses control of the regulation of all coastal trading ships as will be the case if the entire merchant fleet is lost and replaced with foreign ships, invariably flag of convenience (FOC) ships operating from registries that have considerably less regard for environmental standards; and
- That Australia's ability to protect its coastal, ocean and marine environments will be diminished in the event that all coastal trading is undertaken by foreign ships, whose registries do not adopt the same standards of ship and crew skills and qualifications to ensure that those ships meet Australia's stricter marine pollution standards.

The MUA has proposed that national strategic fleet ships be defined (in the CT Act) as ships which are of national strategic importance to the nation, and provide a social and or community service benefit to the nation and would include:

- A core fleet of clean petroleum product and oil tankers (liquid bulk ships) involved in domestic and international supply chains and providing national fuel security, and also temporary oil/RPP storage capacity to supplement onshore storage facilities;
- A core fleet of dry bulk commodity ships, necessary to service Australian heavy manufacturing industry;
- A core fleet of ships capable of transporting containerised cargo, essentially coastal feeder ships to service hubs ports;
- A core fleet of multi-purpose ships to deliver machinery and other non-standard (over size/over mass [OS/OM]) cargoes required in particular for the agricultural and mining industries:
 - Some of these ships are necessary to service regional and remote ports/communities and by necessity have a community service obligation (CSO);
- Emergency towage vessels (ETVs - marine rescue and salvage ships) operated by AMSA;
- Emergency response ships e.g. the *Aurora Australis* (if transitioned to an emergency response role when it completes its Antarctic duty).
- Research, supply and oceanographic ships such as those operated by or chartered to the CSIRO, the Australian Antarctic Division of the Department of Environment and Energy, and marine authorities such as the Great Barrier Reef Marine Park Authority;
- Border Force ships;
- Certain Defence/Navy ships such as auxiliary fleet ships (particularly non-combat ships such as Navy training ships, auxiliary oiler replenishment (AOR) ships, supply ships etc.);

- Training ships such as those operated by the Australian Maritime College (AMC); and
- Offshore wind installation and maintenance ships:
 - Offshore wind turbine installation and maintenance ships are included because of their strategic significance in developing and maintaining Australia’s renewable energy resources required to meet Australia’s greenhouse gas emissions target. These ships are in limited supply internationally, and only a small proportion are equipped to build the large turbines further offshore that are proposed for Australia. They are purpose-built ships with more deck space than a typical offshore oil and gas support ship, they cope with more severe weather and as a result can reduce overall installation durations. They require support to ensure that Australia can access the limited global supply of these specialist ships for offshore wind turbine installation.

Under the MUAs conception of a national strategic fleet, the ships that fall under the definition (with the exception of those providing a public/community service such as emergency towage vessels, research, supply and oceanographic ships, Australian Border Force ships and certain Defence/Navy ships) would trade commercially for the majority of the time, so the distinguishing feature of such ships is that they can be called upon by government in times of emergency to undertake functions that keep supply chains functional and secure.

In return for the capacity of government to call upon such ships in times of emergency to undertake specific functions, governments would provide industry policy support for such ships, which could take the form of taxation incentives, training support, priority berthing slot access to trading ports, and or discounts on fees and charges e.g. those levied by the Australian Maritime Safety Authority (AMSA) and landlord ports.

In parallel with establishment of a national strategic fleet, urgent reform of CT Act is required to restore balance in the coastal trading licencing regime to preference Australian ships with Australian crews in core trades.

Utilisation of Australian ships that use a consistent core complement of Australian crews who can be subject to close health monitoring, tracking and tracing, and who can be trained in all the best practice COVID-19 control measures, is an essential and urgent post COVID-19 requirement, to ensure supply chain integrity and continuity. A crew health monitoring protocol could in future be a condition of registration on the Australian General Shipping Register (AGSR) requiring that ships and crews meet stringent infectious disease control requirements, that could be monitored by AMSA as part of its Flag State Control (FSC) responsibilities under the Navigation Act (Cth).

A number of modest amendments to the CT Act, which could readily attract bi-partisan support could be quickly enacted to restore a balanced and functional cabotage regime in Australian coastal shipping, enhance the resilience of the supply chain, minimising security risks and ensure that infectious disease transmission opportunities from foreign seafarers through Australian ports is minimised, thereby significantly strengthening Australia’s human biosecurity arrangements. The amendments to the CT Act that are required are:

- An amendment to the Object clause in the CT Act that removes current ambiguity as found by the Federal Court (see for example the Judgement in the Full Federal Court *CSL Australia Pty Limited v Minister for Infrastructure and Transport [2014] FCAFC 10 26 February 2014*) and which clarifies that the primary Object of the CT Act is to maintain and increase the use of Australian ships in coastal trade.

- An amendment to remove those subsections of the Object clause that have provided the Minister (or Minister’s Delegate) with the opportunity to take into consideration freight rates when deciding an application in accordance with s34(2)(f) of the CT Act, and to replace a freight rate consideration with a trade volume consideration.
- A restructure of Division 2 Temporary Licences of Part 4 of the CT Act so that the procedure for the issue of TLs is based on commercial negotiations, not on decision making by Departmental officials as the Minister’s Delegate. The primacy of the role of shippers (cargo interests) is replaced by a primacy on the role of ship providers, particularly GL and modified general licence (MGL) holders.
- Establishing a nomination process for General Licence (GL) holders to indicate the voyages, cargoes or routes that they wish to contest, aimed at reserving for GL ships, national interest trades e.g. the expedition cruise sector.
- There be provision for a new licence type (in addition to a GL and a TL) for foreign registered ships operating under a demise charter with full Australian crews (similar in some respects to the former Transitional General Licence – TGL); designated as a modified general licence (MGL).
- That separate licencing provisions for large cruise ships be introduced requiring a repeal of the Ministerial exemption for large cruise ships¹³ and adoption of a more flexible licensing system to meet the commercial arrangements for the large cruise sector that incentivises these cruise ships that wish to home port in Australia, as well as those including multiple Australian port visits in their itineraries, to become registered as GL or MGL ships:
 - Incentives could be complemented by conditionality around meeting biosecurity standards, including appropriate health assessments, seafarer labour and WHS standards, compliance with the laws giving effect to ILO and IMO Conventions and appropriate seafarer representation rights in return for exclusive access to the Australian international cruise market.
- All licences be issued to the ship, not the applicant as at present (currently supported in the case of TLs by multiple voyage authorisation of ships where there is scope to game the system), and it is proposed there be no minimum or maximum voyage requirements.
- There be provision for commercial arbitration to help facilitate fair commercial outcomes.
- There be a procedure for establishing price reviews/price monitoring by the Australian Competition and Consumer Commission (ACCC) or another body to eliminate price gouging in ship trades where there is only one ship supplier.
- A strengthening of the licencing procedure for General Licences (GL), including that GL ships and crews meet stringent infectious disease control requirements, to be monitored by the Australian Maritime Safety Authority as part of its Flag State Control (FSC) responsibilities.

Public investment in ships

A number of options are available for initial investment in strategic fleet ships that will operate commercially, such as refined petroleum product (RPP) tankers. One option is for the Commonwealth Government to provide an initial investment (for example a capital grant as part of an industry policy package) and own or charter the ships, leasing them to shippers (cargo owners) and or ship operators to recoup that investment over time. Another option is for the Commonwealth Government to underwrite the operating cost differential between a foreign registered and an Australian registered ship, at least

¹³ Coastal Trading (Revitalising Australian Shipping) Act 2012, *Section 11 exemption for cruise vessels 2019*, <https://www.legislation.gov.au/Details/F2018L01523#:~:text=This%20instrument%20provides%20an%20exemption,carriage%20of%20passengers%20between%20any>

until the trade is well established and profitability is established. Alternatively, the Commonwealth could establish a Government Business Enterprise (GBE) under the *Public Governance, Performance and Accountability Act 2013* to purchase/charter and lease commercial ships under the Strategic Fleet. Whatever transpires as the most suitable financing and funding option, the Commonwealth will be required to commit public resources to the strategic fleet.

Public ownership or a public stakeholding in commercial shipping operations is not new in Australia. The Commonwealth previously owned Australian National Line (ANL), it established the Australian River Company Ltd which owned coastal bauxite ships for a period of time, the WA Government has previously operated State Ships and the Qld Government is considering an investment (possibly as a co-investment) in a new Qld coastal shipping venture, aimed at building supply chain resilience in Qld coastal trade where other transport modes often face disruption due to floods and other weather events.

The Commonwealth also leases (charters) ships to perform a range of non-commercial Government functions such as emergency towage and marine rescue (e.g. the *Coral Knight* based in Cairns and operated by AMSA), research, supply and oceanographic ships such as those operated by or chartered to the CSIRO, the Australian Antarctic Division of the Department of Environment and Energy for example the *Aurora Australis*, and marine authorities such as the Great Barrier Reef Marine Park Authority. The Government also operates Australian Border Force ships.

All these examples demonstrate a commitment of public finance to essential government functions. It is our view that reducing sovereign risk in supply chains through the development and maintenance of a national strategic fleet in critical links in the supply chain, such as transportation capability in RPP is a legitimate and essential basis for allocation of public funds.

We are also advocating for additional public funding for emergency towage and marine rescue (a second ETV to service the offshore energy sector) and for the establishment and maintenance of a marine emergency response capability to be available in times of national emergency such as was required during the 2019/2020 bushfire season. We are proposing that the Commonwealth purchase three eminently suitable emergency response ships that are already, or about to become available, that could form part of the national strategic fleet for emergency response and for other purposes such as seafarer training and charter for commercial coastal trading when not required for emergency response duties. These are:

- The *Aurora Australis*, a ship with considerable emergency response capability, when it completes its final mission under charter to the Australian Antarctic Division (AAD) sometime in 2020 to be replaced by the *RSV Nuyina*, which is under construction under a Federal contract and is due for completion later in 2020. The *Aurora Australis* has previously been chartered to the Navy for humanitarian missions; and
- Two ocean going RO-RO cargo ships owned by Toll Marine which were previously used in the Bass Strait trade (replaced with new-builds in 2019), and are now laid-up awaiting a buyer.

We urge the Department to review the evidence given to the Joint Standing Committee on Foreign Affairs, Defence and Trade Inquiry into the implications of the COVID-19 pandemic for Australia's foreign affairs, defence and trade by Maritime Industry Australia Ltd on 15 September 2020 to gain a contemporary view of how a strategic fleet could operate.

Proposed reform of the *Customs Act 1901* and consequential reform of the *Coastal Trading (Revitalising Australian Shipping) Act 2012 (CT Act)*

The following reforms are advocated:

- Amend s49A(1)(b) of the Customs Act (Ships and aircraft deemed to be imported) by reducing the time period from the current 30 days that a ship can be deemed not to be imported and not entered for home consumption, to 5 days, but accompany that amendment with a new s49A(1)(b)(i) specifying that an extension be permitted, on application, beyond 5 days, for up to 45 days, with a further extension to 90 days in exceptional circumstances, for a specified purpose, being one of the following six purposes:
 1. Foreign registered ships undertaking interstate coastal voyages authorised by a Temporary Licence issued under the CT Act.
 2. Foreign registered ships undertaking repairs, maintenance or dry docking.
 3. Foreign registered mother ships at anchorage in a roadstead in coastal waters awaiting barge loading.
 4. Foreign registered ships docked or at anchorage holding inventory such as refined petroleum product awaiting access to an onshore storage facility or oil awaiting refining (a national fuel security measure aimed at increasing Australia's fuel storage capacity).
 5. A foreign registered ship involved in production and processing e.g. fish products.
 6. A foreign registered ship held at an anchorage point or wharf for biosecurity reasons or having been arrested by the Australian Maritime Safety Authority (AMSA) for breaches of the *Navigation Act 2012* and Marine Orders made under that Act.
- Amend s49A(4) of the Customs Act, requiring, upon issuing a Notice that deems the ship to not be imported or to be imported (and entered for home consumption), that a s49A(4) Notice to be published in real time on the Australian Border Force (ABF) website to improve transparency.
- Simultaneously Repeal s112 in the CT Act, which would have the effect of enabling ships to undertake voyages authorised by a TL to operate in intrastate coastal trade with foreign crew on an MCV for a maximum of 45 days, with extension to 90 days in exceptional circumstances, and not indefinitely for up to three years as is the case now.

Complementary changes to the Subclass 988 Maritime Crew visa

In parallel with amendments to the Customs Act, the MUA proposes that the Commonwealth introduce a new class of Maritime Crew Visa (MCV) or impose new conditions (Special Conditions) on the existing MCV that match the six ship operating circumstances set out below. Those 6 Special Conditions are:

1. Foreign registered ships undertaking interstate coastal voyages authorised by a Temporary Licence issued under the CT Act.
2. Foreign registered ships undertaking repairs, maintenance or dry docking.
3. Foreign registered mother ships at anchorage in a roadstead in coastal waters awaiting barge loading.
4. Foreign ships docked or at anchorage holding inventory such as refined petroleum product awaiting access to an onshore storage facility or oil awaiting refining (a national fuel security measure aimed at increasing Australia's fuel storage capacity).
5. A foreign registered ship involved in production and processing e.g. fish products.
6. A foreign registered ship held at an anchorage point or wharf for biosecurity reasons or having been arrested by the Australian Maritime Safety Authority (AMSA) for breaches of the *Navigation Act 2012* and Marine Orders made under that Act.

The MUA proposal is that in circumstances that match the 6 Special Condition, a new MCV or Special Conditions version of the MCV could apply to a foreign national seafarer for up to 90 days, available to be accessed only once by a foreign national seafarer in any 5 year period.

The intention is that the existing MCV would operate as originally intended i.e. for up to 5 days as a temporary entry visa for seafarers on international ships that make short port calls as part of a continuing international voyage.

In all other circumstances, the MCV system must be altered so that in the absence of a suitable and available Australian seafarer, foreign national seafarers must hold a Temporary Skill Shortage (TSS) visa (subclass 482) if an employer sponsor wished to recruit them for employment in Australia for a period up to 45 days but not exceeding 90 days.

The MUA also proposes that specified seafarer occupations (for example, those listed in AMSA Marine Order 73 made under the *Navigation Act 2012*) be listed on the Migration (LIN 19/048: Specification of Occupations—Subclass 482 Visa) Instrument 2019 requiring the sponsoring employer of seafarers in listed occupations to conform with the labour market testing requirements set out in the Migration (LIN 18/036: Period, manner and evidence of labour market testing) Instrument 2018, supplemented with a Letter of Concurrence procedure as provided under the Canadian Special Measures Policy for the Maritime Sector.