



REBUILDING QUEENSLAND'S COASTAL SHIPPING

FOR MORE AND BETTER JOBS, SAFER SHIPS,
AND A CLEANER ENVIRONMENT



A SUBMISSION TO THE INQUIRY INTO A SUSTAINABLE QUEENSLAND INTRASTATE SHIPPING INDUSTRY
TRANSPORT AND PUBLIC WORKS COMMITTEE • LEGISLATIVE ASSEMBLY OF QUEENSLAND

Submitted by email: tpwc@parliament.qld.gov.au

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1. Summary

Over 11,000 voyages are made by large ships along the Queensland coast and through the Great Barrier Reef each year, an increase of 24% in six years.¹ 23 million tonnes of cargo was carried between Queensland ports, which handled almost \$80 billion in trade.²

Yet the vast majority of these voyages take place on international Flag of Convenience ships³ using international crew on poor wages and conditions – although some of these ships have been working in Australia for a decade. We know that the Great Barrier Reef is in a fragile state.⁴ But the poor working conditions on international ships mean that seafarers are often chronically fatigued and this leads to accidents. When Flag of Convenience ships damage and pollute our reef and our coast, it is the Queensland and Commonwealth governments who are left to clean up the mess and pursue shady operators through the courts. The cost of these incidents is never properly covered, but the ships and companies continue to operate.

Meanwhile, hundreds of skilled Queensland and Australian seafarers are unemployed.

Rio Tinto ships millions of tonnes of bauxite from Weipa to Gladstone every year for its very profitable aluminum operations. These ships travel the entire length of the Great Barrier Reef. In 2010, Rio Tinto signed an agreement to carry 70-80% of its cargo on Australian-crewed ships. But by 2017-18, the percentage of bauxite cargos carried on Australian crewed ships had declined to about one-third. Rio Tinto used about 24 different international ships in 2017-18 to carry its Queensland bauxite, the equivalent of eight full-time ships. The Queensland government must take action to ensure that more of these ships are Australian crewed, with decent working conditions.

Origin Energy relies on coastal shipping for its LPG distribution network. It charters two small LPG tankers that have worked continuously in Australia since they were built in 2008. Yet for this entire time Origin has avoided having Australian working conditions and an Australian crew on board.

Orica has the *Wincanton* on long-term charter to carry ammonia from Newcastle to Gladstone to make explosives for the mining industry. Despite operating the ship in Australia since 2010, the company has never employed Australian crew on these ships.

The exports of LNG from Gladstone have made Australia into the world's largest LNG exporter. The equivalent of approximately 25 full-time ships will be required to carry the LNG. Yet none of these ships will be crewed by Australians.

Queensland highways are overloaded with trucks that add risk and volume to highway traffic. These cargos can and should be carried by ship – it is safer, cheaper, and better for the environment. Yet appropriate coastal shipping services are simply not available, despite years of favourable studies and inquiries.

Since the closure of the BP Bulwer Island refinery in Brisbane and others across Australia, Queensland is more and more reliant on fuel imports. Since the oil majors removed the last Australian tanker in 2016, these are all international Flag of Convenience ships. Any interruption to our fuel supplies would cause

¹ Department of Transport and Main Roads, *Great Barrier Reef and Torres Strait Shipping Statistics*, December 2017 and July 2018.

² BITRE, *Australian Sea Freight 2015-16*, May 2018, p.3, 19.

³ A Flag of Convenience ship is one that flies the flag of a country other than the country it is owned in. Shipowners are attracted by cheap registration fees, low or no taxes, freedom to employ cheap labour, and little regulatory oversight (see Part II).

⁴ Great Barrier Reef Marine Park Authority, *Reef Health*.

havoc across Queensland. But there are no Australian tankers available to keep Queensland supplied in the event of a geopolitical or economic crisis.

It makes no sense.

We are in this situation because we have allowed massive and highly profitable mining, energy and shipping companies to organise our shipping, transport and energy systems in their own best interests, to further increase their profits.

It is time for the Queensland Government to turn this situation around, to create jobs and a coastal transport and energy infrastructure that makes sense for Queensland, to protect our precious coastline, and to reduce dangerous carbon emissions. This submission outlines how this can be done through:

- Restoring a strengthened Restricted Use Flag (RUF) to explicitly provide for the economic regulation of foreign ships operating intrastate in Queensland, so that cabotage⁵ applies in Queensland. Queensland legislation could quarantine known large intra-state shipping routes for Australian ships (such as the Weipa-Gladstone bauxite route or coastal LPG supply) and provide for RUFs to be issued to ships for these routes if they meet certain threshold conditions (for example, carrying 80% by volume of the cargo on Australian-crewed ships).
- The Queensland government can play a role in advocating for reform of Australian coastal shipping legislation to ensure that regular shipping between Queensland and other Australian states takes place on Australian ships with decent working conditions.
- The Queensland government can support the creation of a Queensland coastal shipping service tailored to our needs.

This package of reforms would:

- Increase jobs
- Ensure that shipping off the Queensland coast and through the Great Barrier Reef is of the highest standard.
- Transfer dangerous cargos from roads to ships.
- Reduce emissions through ensuring that domestic ships conform to the highest emissions standards and by taking trucks off our roads.
- Align with the Queensland's government's Strategic Plan and priorities outlined in *Our Future State: Advancing Queensland's Priorities*, especially to:
 - Create jobs
 - Protect the Great Barrier Reef

2. About this report

This submission has been prepared through the joint effort of the Maritime Union of Australia (MUA) National Office and Queensland branch. The MUA represents some 13,000 Australian seafarers, stevedores, and other maritime workers, equating to more than 90% of Australia's maritime workforce. The MUA is an affiliate of the 20-million member International Transport Workers' Federation (ITF). MUA members work as

⁵ Maritime cabotage is a system for preferencing domestic ships in the carriage of domestic cargos or passengers. Maritime cabotage is applied quite differently in different nations around the globe, ranging from very liberal systems such as in Australia to quite tightly regulated systems such as applying under the Jones Act in the USA.

seafarers in coastal shipping, in the offshore oil and gas industry, as divers and on inshore workboats and ferries. MUA members also work across Queensland ports as stevedores and port workers.

The ITF Australian Inspectorate, who assist international seafarers on international ships visiting Australia, have also provided background material for this report, which we have compiled into one cohesive analysis for the benefit of the Inquiry. The ITF Australian Inspectorate will also make a separate submission and would like to appear separately before the Inquiry.

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PART I: Queensland coastal shipping today

3. Queensland coasts dominated by FOC shipping

Queensland's coastal shipping trade is an essential part of Queensland's infrastructure, economy, and energy supply. Yet for too long it has been outsourced to international ships and shipping companies. This increases the profits of a few large companies, at the expense of both workers and our beautiful maritime environment. Table 1 gives an indication of the huge number of ships passing through the Great Barrier Reef Vessel Traffic Control Service.

Table 1: Table of ship types that transited the Great Barrier Reef in 2017-18.

Ship type	Voyages
BULK CARRIER	6,600
TANKER	1,272
GENERAL CARGO	918
LIQUEFIED GAS TANKER	803
CONTAINER SHIP	657
PASSENGER	284
TUG	203
VEHICLES CARRIER	192
LANDING CRAFT	177
TUG/SUPPLY SHIP	158
LIVESTOCK CARRIER	107
PASSENGER/GENERAL CARGO	81
YACHT	62
Other	139
TOTAL	11,653

Source: Maritime Safety Queensland, Reef VTS statistics.

Queensland's ports handled \$78.7 billion in trade in 2015-16, with Brisbane handling almost \$40 billion.⁶ Queensland has far more intrastate trade than any other Australian state, with almost 23 million tonnes of goods going from one Queensland port to another.⁷ This is almost half of all domestic trade. By far the biggest route for domestic coastal freight in Australia is between Weipa and Gladstone, with 17 million tonnes of cargo, increasing 5% per year on average.⁸ The number of port call by ships is increasing steadily (Figure 1), with Brisbane the second busiest Australian port in terms of ports calls with 2,353 port calls, Gladstone the 5th busiest and Hay Point the tenth busiest with 1,145 port calls.⁹

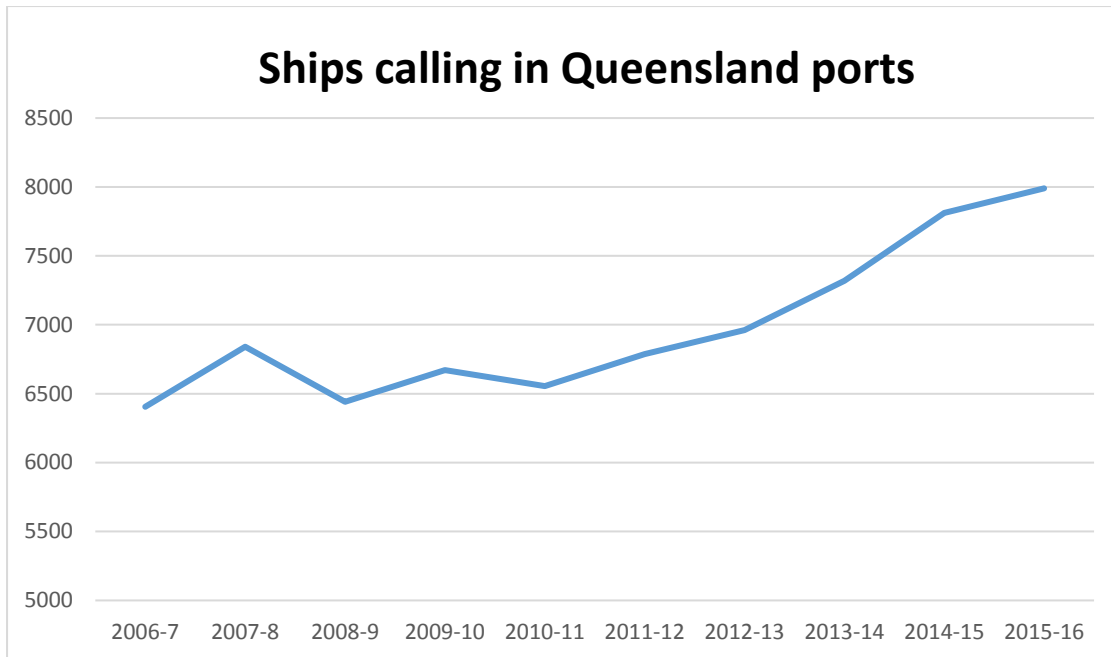
⁶ BITRE, *Australian Sea Freight 2015-16*, May 2018, P.3, 5.

⁷ BITRE, *Australian Sea Freight 2015-16*, May 2018, P.19

⁸ BITRE, *Australian Sea Freight 2015-16*, May 2018, P.31

⁹ BITRE, *Australian Sea Freight 2015-16*, May 2018, P.53

Figure 1: Increasing Queensland coastal trade – total ships calling in Queensland ports.



Source: BITRE, *Australian Sea Freight 2015-16*, May 2018, P.53.

4. Queensland seafarers left high and dry

We draw the Committee's attention to the individual submissions made to this Inquiry by a number of seafarers who are MUA members.¹⁰ These seafarers are highly skilled and experienced. Yet despite the extraordinary increase in shipping around Australia, they report that in the past 3-4 years it has become extremely difficult for Australian seafarers to find any work at all:

Joe Galvin of Trinity Park, Queensland, is a highly qualified seafarer with numerous tickets who is currently driving an Uber. He says:

"At the moment, however, there is hardly any work available. I ring up shipping companies and get told there is nothing, ring us back in a month. So I do, I ring back a month later, and get told, "Nothing." We get nothing but knockbacks because we cannot compete with seamen getting paid \$4 per hour."

Paul Gallagher, a seafarer with decades of experience, describes how:

"For most of my time in the industry, there was no problem securing employment and there was always plenty of work available.

That began to change around 2000. The industry was deregulated under the Howard Federal government. The engagement and roster system administered by AMSA (the Australian Maritime Safety Authority) was abolished, and replaced by company employment. We began to lose Australian crews on coastal shipping, as the Federal government began to issue 'single voyage permits' that allowed foreign vessels with foreign crews to operate in Australian waters. Australian ships went to anchor while more and more foreign ships began working in our waters.

In 1986, when I first went to sea, there were over a hundred Australian ships in operation. To the best of my knowledge, there are now twelve."

Seafarer Kevin Thomas describes the impact of these changes:

"It is very hard when you have had an income, been able to earn a living all of your life, and then suddenly, it just disappears. My career as a seafarer meant a lot to me. Even a kidney transplant did not stop me from returning to sea, I was determined to get back out there. But now, years of unemployment has taken a big toll on my mental health. My wife of 24 years, who has been with me throughout my seafaring career, has also suffered as a result. With unemployment has come a great deal of stress, anxiety, and depression. I have experienced being suicidal. There has, of course, been a financial toll too. For the last eighteen months my wife and I have been trying to sell our house so that we did not lose it instead. It looks like we have finally succeeded in doing so, but only by dropping the sale price by \$50-60,000, so that we can buy a smaller, one-bedroom house outside Gympie.

I believe it is important that something is done to try and restore jobs for seafarers in coastal shipping. There is plenty of work there, but Australian seafarers are not getting the opportunity to do it."

Seafarer Bruce Doleman responds eloquently to the view often expressed by highly profitable companies that Australian seafarers 'cost too much':

¹⁰ Submissions from Bruce Doleman, Dave Watson, Joe Galvin, John Lee, Kevin Thomas, Matt Leach, Michael Horsley, Paul Gallagher, and Ricardo Granieri.

“I have heard the usual complaints about Australian crewed ships “cost too much” to run. I do not have any sympathy for that view. Wages and conditions of Australian seafarers were hard won, but I think those conditions are fair when you take into account our hours of work, how much captive time we spend in our workplace, and the time we spend away from family and children. I do not believe the solution is to reduce the wages and working conditions of Australian workers so that they become ‘competitive’ with the wages and conditions of foreign seafarers.

My own brother-in-law is a Filipino seafarer, and I am well aware of the conditions under which he has to work. We need to look for different solutions if we are going to have a future for Australian seafarers.”

5. Rio Tinto: Eight years of broken promises

Rio Tinto operates one of the world's largest bauxite mines near Weipa in Far North Queensland, and ships the bauxite to refineries in Gladstone that process it into alumina, which is then smelted into aluminum in Gladstone, or exported to other smelters in Newcastle, Tasmania, and overseas. The bauxite mines, alumina refineries and the ships that link them are part of an integrated chain of production facilities that have been developed and continue to be operated by Rio Tinto, and are a long-standing part of the Queensland economy. Australia is the world's largest bauxite producer.

The Weipa bauxite mine has been in operation since 1960, and the first Gladstone alumina refinery (Queensland Alumina Ltd) opened in 1967. The Yarwun refinery was opened in 2004, significantly expanded in 2012, and continues to increase production each year with record levels in 2017.¹¹ Rio Tinto continues to invest in these mines and refineries: in December 2018 Rio Tinto made its first bauxite shipment from Weipa from the new \$2.6 billion Amrun mine, and in 2017 it applied for permission to carry out 10 years of works from 2025-2035 to support the Yarwun refinery.¹² Rio Tinto describes the Amrun mine as 'high-return'¹³ and one of only two 'major growth projects' globally.¹⁴ In addition to the new mine, the company lists the possibility of 'further bauxite expansion options in northern Australia'.¹⁵

Despite the fact that the bauxite ships are an integrated part of the Queensland economy, Rio Tinto makes very heavy use of international Flag of Convenience (FOC) ships which are mostly operated by international crew working in international working conditions. Crew are required to stay on board for 9 to 12 months at a time, working up to 91 hours per week, and up to 98 hours in 'exceptional circumstances' that can last 2 weeks. In these conditions, crew fatigue is a major problem. Crew who are ratings (ordinary seafarers) on an ITF labour agreement would receive about \$US 36 per day, but there is no minimum wage on international ships, and they have been discovered paying as little as \$1.25 per hour to seafarers in Australia.¹⁶ Despite these low wages, ITF inspectors recovered \$5 million in stolen wages in Australia alone in 2017 (see more details in Section 12). All of these conditions are illegal in Australia, yet due to Rio Tinto's use of FOC ships, this Australian supply chain is technically and legally not part of Australia.

After years of union campaigning to improve this situation, in April 2010 Rio Tinto finally signed a 'Framework Agreement for the Bauxite and Alumina Coastal Trades' facilitated by the Office of the Federal Minister for Infrastructure and Transport.¹⁷ The Framework Agreement committed Rio Tinto to carrying 70-80% of cargo by volume on ships with Australian crew in its domestic shipping supply chain by December 2012. Yet since this Agreement was signed, the volume of cargo carried on ships

¹¹ Tegan Annett, 'Robust plan': Yarwun eager to continue its rise', *Gladstone Observer*, 24 January 2018.

Production of alumina at Yarwun has increased from 2.2 million tonnes in 2012 to 3.2 million tonnes in 2017.

¹² Tegan Annett, 'REVEALED: Alumina refinery's growth plans', *Gladstone Observer*, 14 December 2017.

¹³ Rio Tinto, *2018 Half year results presentation*, 1 August 2018, p.4

¹⁴ Rio Tinto, *Third Quarter Operations Review*, 16 October 2018 p.2.

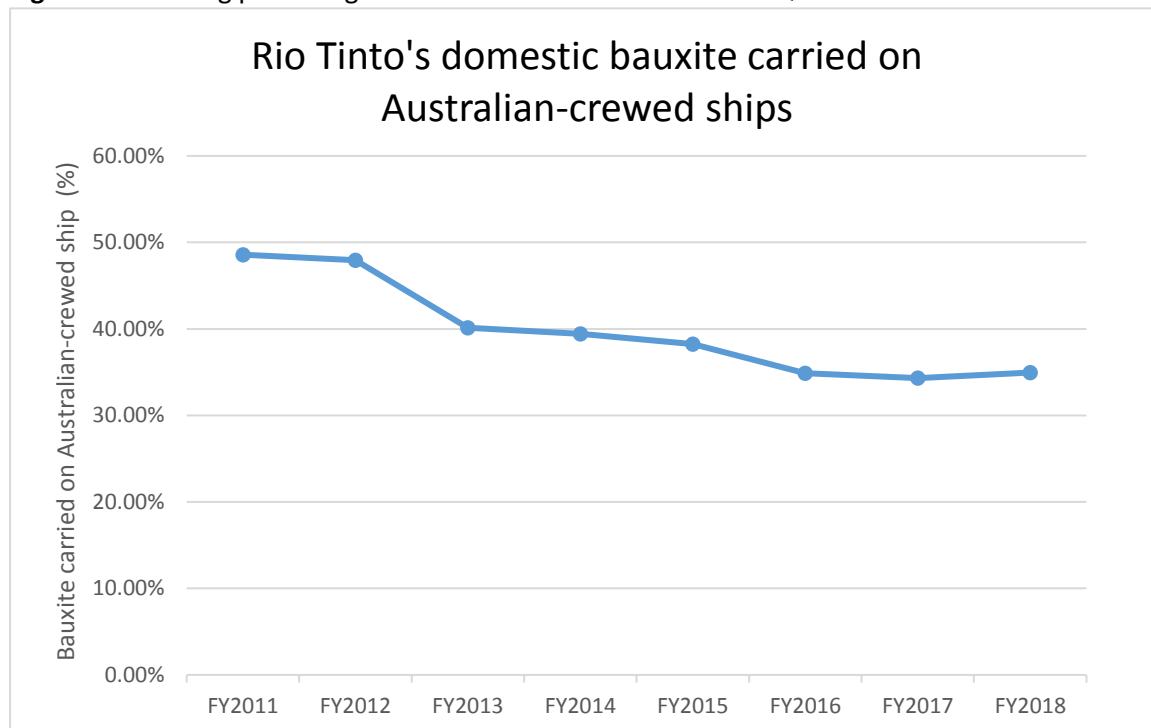
¹⁵ Rio Tinto, *2018 Half year results presentation*, 1 August 2018, p.24

¹⁶ Reported by the Fair Work Ombudsman to the Senate Rural and Regional Affairs and Transport References Committee, *Inquiry into the Increasing Use of so-called Flag of Convenience Shipping*, July 2017, p.24.

¹⁷ The Agreement was signed by Michael Harvey, Chief Operating Officer of Rio Tinto Shipping Pty Ltd and is dated 21 April 2010. The Maritime Union of Australia, the Australian Council of Trade Unions, the Australian Maritime Officers Union and the Australian Institute of Marine and Power Engineers are also parties to the Agreement.

with Australian crew by Rio Tinto has steadily declined to only 33% (Figure 2). As Rio Tinto scaled up its alumina and bauxite production, no corresponding new ships were brought on the coast.

Figure 2: Declining percentage of Australian crew on Rio Tinto’s Queensland bauxite vessels.



Source: Gladstone Ports Corporation, Origin and Destination of Cargos. Assumes 4 Australian-crewed ships each carry 1,638,000 tonnes of bauxite per year.

Rio Tinto carried their domestic bauxite on the ships listed in Table 3 in 2017-18:

- four Australian crewed ships owned by Rio Tinto which made an average of 43 Weipa-Gladstone voyages each year,
- twelve international-crewed ships (two owned by Rio Tinto) used heavily on this route which carried out over half of the bauxite voyages and each made 10-43 voyages per year, and
- another twelve international ships (one owned by Rio Tinto) that made an average of six voyages from Weipa to Gladstone each year.

Rio Tinto used the equivalent of 12 full-time ships for their Australian bauxite runs, but only employed Australians on four of those ships. It owns 9 bauxite ships which are active on the run. Full details of the main international ships used by Rio Tinto are in Table 4.

Figure 3: Rio Tinto’s Queensland bauxite shipping.

Rinto Tinto - 8 years of broken promises



Working conditions on different types of ships



Table 2: Ships used by Rio Tinto to carry bauxite from Weipa to Gladstone.

Ships		Average number of Weipa-Gladstone voyages per ship in 2017-18	Total Weipa-Gladstone voyages by these ships in 2017-18
Australian-crewed ships	RTM WEIPA (Rio Tinto owned) RTM TWARRA (Rio Tinto owned) RTM WAKMATHA (Rio Tinto owned) RTM PIIRAMU (Rio Tinto owned)	43	171 33% of voyages
Ships carrying out 25 or more voyages	<i>5 ships</i> RTM GLADSTONE (Rio Tinto owned) AZALEA WAVE* RAGA SARGAM TEN JIN MARU	33	165 32% of voyages
Ships carrying out 10-24 voyages	<i>7 ships</i> SANGEET TENDER SALUTE MAIZURU DAIKOKU SUIKAI RTM DIAS (Rio Tinto owned) NAVIOS GALAXY I GOLDEN SUE	16	114 22% of voyages
Ships carrying out up to 9 voyages	<i>12 ships</i> ILLAWARRA FORTUNE DOUBLE PRESTIGE HOUYO RTM FLINDERS (Rio Tinto owned) MARITIME CENTURY VENUS HERITAGE KATAGALAN WISDOM III LOWLANDS ENERGY DILOS WARRIOR HISPANIA GRAECA VENUS HISTORY GLOVIS DONGHAE	6	67 13% of voyages
Export only	RTM DHAMBUL (Rio Tinto owned) RTM DJULPAN (Rio Tinto owned) These two ships carried out 34 voyages from Weipa to China		
Total	9 Rio Tinto owned bauxite ships		514 voyages Equivalent of 12 full-time ships

Source: Maritime Safety Queensland, Qships.

Table 3: Rio Tinto’s non-Australian crewed bauxite carriers which carried out more than 10 voyages between Weipa and Gladstone in 2017-18.

Ship	Flag	Shipments Weipa-Gladstone	Group Owner	Operator	Technical Manager	ITF agreement	Crew	Notes
RTM GLADSTONE	Singapore	43	Rio Tinto	Rio Tinto Charterers	Anglo- Eastern	Singapore national	Filipino	
AZALEA WAVE	Liberia	38	Santoku Senpaku	Santoku Senpaku	Santoku Senpaku	ITF IBF Japan	Filipino	Crew not entitled to Fair Work Act cabotage payments due to vessel trading intra-state.
RAGA	Panama	32	Shoei Kisen	Shoei Kisen	Shoei Kisen	ITF IBF Japan	Filipino	Crew had issues with drinking water quality and with doing safety drills during their rest hours.
SARGAM	Japan	27	Kawasaki Kisen	Kawasaki Kisen	K Line Roro	Japan national		
TENJIN MARU	Japan	25	Offshore Operation	Offshore Operation		Japan national		
SANGEET	Japan	23	GL Liberty	Kawasaki Kisen	K Line Roro	Japan national		
TENDER SALUTE	Marshall Island	21	Daio Kaiun	NYK Line	Misuga Kaiun	IBF Japan	Filipino	Vessel allocated \$7.50 per crew per day for food.
MAIZURU DAIKOKU	Panama	17	Usui Kaiun	Mitsui OSK	Usui Kaiun	IBF Japan	Filipino	
SUIKAI	Panama	17	Toyo Sangyo	Mitsui OSK	Toyo Sangyo	IBF Japan	Filipino	
RTM DIAS	Singapore	14	Rio Tinto	Rio Tinto Charterers	Anglo- Eastern	Singapore national		
NAVIOS GALAXY I	Panama	11	Navios Maritime	Navios Corp	Navios Shipmanagement	PNO ITF agreement	Filipino	
GOLDEN SUE	Marshall Island	11	Golden Ocean	Golden Ocean	Sea Team Management	IBF Philippines agreement	Filipino	Missing Australian cabotage payments

Source: Maritime Safety Queensland, Qships; IHS Maritime; ITF.

The Framework Agreement covers Rio Tinto's national operations, including almost 14 million tonnes of bauxite carried from Weipa to Gladstone and the 4.5 million tonnes shipped from but also 1.5 million tons of alumina shipped from Gladstone to smelters in Newcastle and Tasmania (in 2011-12). The Australian-crewed *CSL Melbourne* was contracted by Pacific Aluminium (a wholly owned subsidiary of Rio Tinto) to carry the alumina. But when Rio Tinto ended the contract, 70 police officers were mobilised to forcibly remove the last five Australian crew from the vessel on 5 February 2016.¹⁸ Rio Tinto replaced the *CSL Melbourne* with the Liberian-flag, Greek-owned, and Filipino-crewed *Skyfall*, whose owners refused to even sign an ITF agreement, considered a basic level of protection for international seafarers, or to give any information or cooperation to the ITF ship inspectors.¹⁹ The terrible conditions on two other Ships of Shame chartered by Rio Tinto are outlined in Section 12.

Rio Tinto agreed that by 2012, 70-80% of its Australian shipping supply chain would be Australian-crewed. But in 2017-8:

- 67% of Rio Tinto's bauxite carried from Weipa to Gladstone in Queensland was carried on international flagged and crewed ships.
- 100% of Rio Tinto's alumina carried from Gladstone to its smelters in Newcastle and Bell Bay in Tasmania is carried on international flagged and crewed ships.

Seafarers on Rio Tinto ships even agreed to reduce the number of crew on board in order to reduce costs for Rio Tinto. Seafarer Matt Leach explains:

"In 2010 Rio Tinto undertook an agreement with the MUA that they would increase their use of Australian seafarers, so that 80% of their crews would be Australian. In turn and as part of the MUA's efforts to meet its commitment to Rio Tinto to help it reduce the cost of its Australian crewed vessels the MUA agreed to a reduction of crew from the previous allocation of 9 ratings and caterers to the current MUA crew of 7. The reduction in crew size on Rio Tinto vessels has significantly increased the workload for the Australian merchant seafarers engaged on these vessels. Despite this agreement Rio Tinto has not increased the number of Australian crewed vessels within their coastal trading fleet."

Seafarer John Lee describes the unequal working conditions on the different Rio Tinto ships:

"I remember working in Gladstone Port, on a Rio Tinto ship, and we would have masks, goggles and other gear to protect us from the dust, and in the next berth, on the RTM Cook, the foreign crews would have nothing."

After almost 9 years, it is perfectly clear that that Rio Tinto has no intention of honoring the Framework Agreement it signed in 2010.

Rio Tinto's betrayal of the Australian seafarers who should be working on its Queensland ships is despite the combination of higher prices, higher volumes and significant growth prospects in the company's aluminium sector. Prices for bauxite and aluminium have risen steadily since 2016, supported by demand from China and US import duties and sanctions (Figure 4). In 2018, Rio Tinto reported 'improved fundamentals for global aluminium industry'²⁰ and 'strong production at

¹⁸ Maritime Union of Australia, 'MUA questions whether \$50,000 of taxpayers money used to remove Australian crew will be refunded', 12 February, 2016.

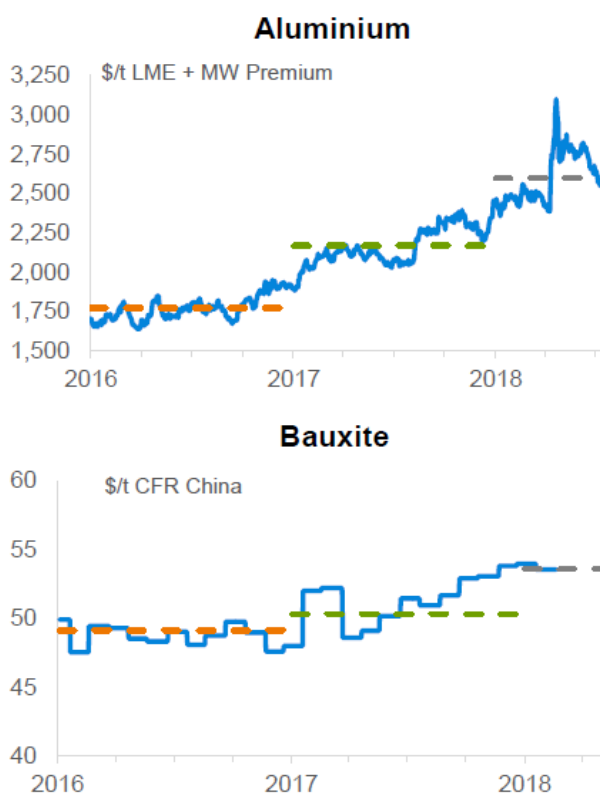
¹⁹ Zoe Reynolds, 'Armed police evict Australian crew,' *IHS Fairplay*, 5 February 2016.

²⁰ Rio Tinto, *2018 Half year results presentation*, 1 August 2018, p.22

Weipa'.²¹ Rio Tinto's aluminium sector had a profit margin of 35% for the first half of 2018,²² and over the past four years averaged \$US 1.2 billion in annual underlying earnings.²³

Profits are surging across Rio Tinto's operations, with company-wide profit increasing by \$US 4 billion from 2016 to 2017, rising to \$US11.3 billion. The *Gladstone Observer* optimistically proclaimed 'Wage growth expected after mining giant's huge profit,' quoting Chief Executive Jean-Sebastian Jacques saying that 'When companies make more and more profit at some point in time these people want to have a fair distribution of wealth'.²⁴

Figure 4: Prices for aluminium and bauxite as reported by Rio Tinto.



Source: Rio Tinto, *2018 Half year results presentation*, 1 August 2018, p.10. Rio Tinto list They list Bloomberg, Platts and Metal Bulletin as sources for the graphs.

It is time for the Queensland government to act and bring in legislation that would require Rio Tinto to treat its Australian supply chains with respect, instead of pretending they are in Liberia, the Marshall Islands, Panama, and Singapore.

Rio Tinto, and its predecessor Comalco, historically made much better use of Australian ships. A fleet of four ships carried bauxite from Weipa to Gladstone from the early 1980s: the *River Boyne*, *River Embley*, *Endeavour River* and *Fitzroy River*. These ships probably carried most of the bauxite required

²¹ Rio Tinto, *Third Quarter Operations Review*, 16 October 2018 p.1.

²² Rio Tinto, *2018 Half year results presentation*, 1 August 2018, p.7, p.32

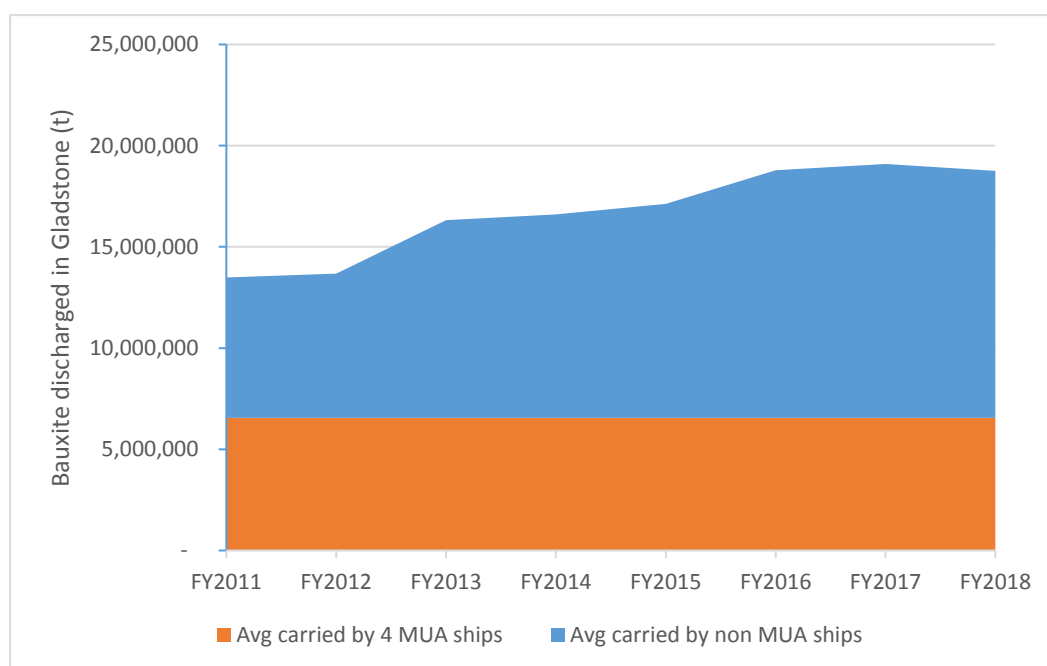
²³ Peter Ker, 'Rio Tinto tips wage inflation after profit, dividends surge', *Australian Financial Review*, 4 February 2018.

²⁴ Tegan Annett, 'Wage growth expected after mining giant's huge profit', *Gladstone Observer*, 8 February 2018.

when Queensland Alumina Ltd was the only refinery operating in Gladstone, however, their number was not increased with the significant increase in coastal bauxite shipments required when the Yarwun refinery was brought online during the Howard government in 2004, and during its subsequent expansions. The original four Australian bauxite carriers were retired and replaced with new ships between 2009 and 2012: the *RTM Weipa*, *RTM Wakmatha*, *RTM Piiramu* and *RTM Twarra*. After union campaigning, Rio Tinto brought the Australian crew across to four of its new ships, which were initially flagged in the UK, and later changed to Singaporean-flagged.

The decline in the percentage carried by MUA-crewed ships and the growth in bauxite carried to Gladstone are clear in Figure 5.

Figure 5: Growth in bauxite carried to Gladstone from 2010-11 to 2017-18, compared to the amount carried by MUA-crewed ships.



Source: MUA calculations based on figures from Gladstone Ports Corporation.

Recommendation: The Queensland government must take action to ensure that Rio Tinto’s Queensland supply chain operates on standard Australian employment conditions, including industry-wide blue water shipping conditions such as those in place on the *RTM Weipa*, *RTM Wakmatha*, *RTM Piiramu* and *RTM Twarra*. The MUA particularly supports Aboriginal employment programs to train crew. The MUA estimates that Rio Tinto uses the equivalent of approximately 12 ships in its Queensland supply chain, while only 4 of these are Australian-crewed.

Recommendation: the Queensland Government restore a strengthened Restricted Use Flag (RUF) to explicitly provide for the economic regulation of foreign ships operating intrastate in Queensland, so that cabotage applies in Queensland. The legislation could quarantine known large intra-state shipping routes for Australian ships (such as the Weipa-Gladstone bauxite route or coastal LPG supply) and not allow RUFs to be issued to ships for these routes unless they met certain threshold conditions (for example, demonstrating that they carried 80% of their cargos on Australian-crewed ships).

6. Origin Energy: 10 years of ignoring Australian wages and conditions in shipping

Origin Energy operates a Liquefied Petroleum Gas (LPG) distribution system that supplies Queensland and most of the Australian East Coast. It operates LPG port terminals in Cairns, Gladstone, Brisbane, Sydney, Hobart and Devonport. Origin also operates LPG terminals in Papua New Guinea, the Solomon Islands, Vanuatu and Fiji.²⁵

Table 4: LPG movements around Queensland.

Discharge of LPG	2018-17	Source
Cairns	24,854	Mainly Moreton Bay, Qld sometimes Port Botany
Townsville Shipments ended October 2017	4,534	Mainly Moreton Bay, Qld sometimes Port Botany
Gladstone	6,557	Mainly Moreton Bay, Qld, sometimes Port Botany
Brisbane	89,146	Mainly Moreton Bay, Qld sometimes Port Botany
Transhipments from Moreton Bay	115,544	VLGC vessel anchored in Moreton Bay, Qld
Transhipments to Moreton Bay	77,404	International or West Australia

Source: Ports North Annual Reports; Gladstone Port Corporation trade statistics; personal correspondence from Port of Townsville, 11 January 2019; email from Port of Brisbane on 7 December 2018.

Origin distributes LPG to its port terminals within Australia using coastal shipping on small LPG tankers. Two tankers, the *Gas Defiance* and the *Gas Shuriken*, have operated in Australia since they were built in 2008, but they have never operated with Australian working conditions on board or employed Australian crew. The tankers are flagged in the Marshall Islands and owned by Greek Company StealthGas, but appear to be on long-term charter to Origin Energy (Table 5). All the vessels' Temporary Licences for domestic trade are held by Origin Energy. In the 10 years the vessels have been based in Australia, they have made only occasional trips out of the country to a shipyard or to Origin's Pacific Island terminals. In late 2018 it appears that Origin Energy have replaced the charter of the *Gas Shuriken* with the *Epic St Agnes*. The charter of the *Gas Defiance* is due to expire in approximately January 2020.

²⁵ Origin, 2018 Annual Report, p. 14

Figure 6: Origin Energy LPG shipments.



The majority of LPG is loaded on to coastal LPG tankers in Moreton Bay via ship-to-ship transfers from Very Large Gas Carriers (VLGC). In 2018, LPG was imported on VLGCs from the Gulf of Mexico, Qatar, or Western Australia. When VLGC are not present in Moreton Bay, LPG is loaded in Port Botany. In 2017-18 there were six visits to Moreton Bay by VLGCs that were present for 239 days, or 65% of the year (Table 6). Sometimes more than one VLGC was present in the bay due to overlapping days.

LPG gas is produced in Victoria, South Australia and West Australia, and those states typically have a surplus of gas. In the past, Origin has brought gas from Hastings to Port Botany and Queensland. One VLGC (*Navigator Phoenix*) loaded gas at Kwinana in WA and carried it under Temporary Licence to Botany and Brisbane in 2017-18.

Unfortunately, Townsville stopped receiving LPG by ship in September 2017. The Port of Townsville has advised that LPG is now trucked to Townsville from Cairns – a costly and dangerous alternative. In 2016-17, Townsville received 15,555 tonnes of LPG by ship, a similar amount to Cairns and a very large amount to ship by road.²⁶

²⁶ Personal correspondence from Port of Townsville, 11 January 2019.

Table 5: Tankers carrying LPG in Queensland and East Coast Australia, 2017-18.

Ship	Capacity (MT)	Flag	Crew	Group owner	Operator	TL holder	Total Loadings	Loadings in AUS	Loadings in QLD	Total Discharges	Discharge in AUS	Discharge in QLD	Discharge with TLs
Gas Defiance 9359557	4,901	Marshall Islands	Filipino (15)	Greece (StealthGas)	Greece (Stealth Maritime)	Origin Energy	44	43 (98%)	35 (80%)	55	53 (96%)	42 (76%)	9
Gas Shuriken 9359569	4,901	Marshall Islands	Filipino (15)	Greece (StealthGas)	Greece (Stealth Maritime)	Origin Energy	38	38 (100%)	28 (74%)	53	41 (77%)	33 (62%)	18
Thang Long Gas 9343704 <i>July to November</i>	3,514	Vietnam	Filipino (16)	Vietnam (Petrovietnam)	Vietnam (Gas Shipping JSC)	Origin Energy	10	10 (100%)	10 (100%)	25	8 (32%)	8 (32%)	0
Inge Kosan 9525194 <i>March to June</i>	3,604	Isle of Man	?	Denmark (J Lauritzen)	Denmark (Lauritsen Kosan A/S)	Origin Energy	5	5 (100%)	1 (20%)	22	1 (5%)	1 (5%)	1
New charter operating in Australia from November 2018													
Epic St Agnes 9707182	4,919	Singapore	Unknown (15)	Singapore (Epic Gas Shipholding Pte)	Singapore (Epic Pantheon)	Origin Energy							

Source: The data was retrieved from IHS Maritime Portal (maritime.ihs.com, accessed 08/01/2019) and verified against Temporary Licence voyages (for dates reported) on the Department of Infrastructure, Regional Development and Cities Temporary Licence Voyage Reports database (infrastructure.gov.au/maritime/business/coastal_trading/licencing/voyage_reports, accessed 08/01/2019). Origin Energy did not make reports to the Department for any voyage carried out from 29 December 2016 to 3 January 2018, and then for periods of 2018. The Shipping Business Unit has verified that it does not hold any data for these periods. Where shipments were not recorded in Voyage Reports database loadings and discharge have been constructed from ship movements in the IHS maritime database. Percent values given are as a fraction of total loadings and discharging's respectively. TLs are required for domestic cargos carried between states but not for intra state cargos.

Table 6: Very Large Gas Carriers in Moreton Bay 2017-18.

Ship	Capacity (MT)	Flag	Crew	Group owner	Operator	Days in Moret on Bay	Previous port
BW Njord	82,320	Marshall Islands	Filipino (10) Indian (8) Romanian (1) Sri Lankan (1) Ukranian (a)	Bermuda (BW LPG Holding)	Norway (BW LPG Ltd)	38	Southtex STS (USA)
George N	59,016	Liberia	Indian (19)	Germany (General Ore Int. Corp.)	Germany (Neu Gas Shipping Int.)	44	Gulfmex No 2 STS (USA)
BW Njord	82,320	Marshall Islands	Filipino (10) Indian (8) Romanian (1) Sri Lankan (1) Ukranian (a)	Bermuda (BW LPG Holding)	Norway (BW LPG Ltd)	94	Ras Laffan (Qatar)
Navigator Phoenix	21,768	Liberia	Filipino (9) Indian (4) Russian (2) Latvian (1)	UK (Navigator Holdings)	UK (Navigator Gas)	19	Kwinana (WA)
Berge Nantong	80,599	Hong Kong	Unknown	Hong Kong (Unique Shipping HK)	Norway (BW Gas AS)	44	Southtex STS (USA)

Source: The data was retrieved from IHS Maritime Portal (maritime.ihs.com - accessed 08/01/2019) and verified against (for dates reported) on the Department of Infrastructure, Regional Development and Cities Temporary Licence Voyage Reports database (infrastructure.gov.au/maritime/business/coastal_trading/licencing/voyage_reports – accessed 08/01/2019).

In 2017-18 *Gas Defiance* and *Gas Shuriken* spent the majority of their time in Queensland and were responsible for 89% of LPG discharges in QLD ports. Both ships have been the primary vessels delivering LPG to Queensland ports for the last decade. These ships also regularly deliver LPG to Hobart and Devonport in Tasmania.

LPG is also shipped from QLD ports to PNG and the South Pacific. The *Tang Long Bay* was responsible for all these shipments between July and November 2017 before leaving Australia. The *Gas Shuriken* and *Gas Defiance* then conducted four of these shipments between November 2017 and February 2018, before the *Inge Kosan* arrived and conducted all shipments to the Pacific from March to June 2018. Both the *Tang Long Bay* and *Inge Kosan* made LPG discharges at QLD ports between their shipments to PNG and the Pacific.

Origin's profits increased by \$2.4 billion from 2016-7 to 2017-8.²⁷ The LPG division made \$91 million in EBITDA in 2017-18 (profit before interest, taxes, depreciation and amortisation), a slight increase

²⁷ Origin, 2018 Annual Report, p. 15

from the previous year.²⁸ Despite pressure on the domestic LPG market, the company has increased its LPG sales from 386 Kt in 2013-4 to 450 Kt in 2017-8.²⁹

Our knowledge about the tonnages of LPG moved by Origin's ships is incomplete because Origin Energy has been lax in making reports of its inter-state Temporary Licence voyages to the Department of Infrastructure, Regional Development and Cities. Under the *Coastal Trading Act*, these reports are required to be made within 10 days of the completion of a voyage. There is a list of 22 inter-state voyages made by the *Gas Shuriken* and *Gas Defiance* in 2017 and 2018 in Appendix A, for which there is no record in the Temporary Licence Voyage Reports.³⁰ Origin Energy did not make reports to the Department for any voyage carried out from 29 December 2016 to 3 January 2018, and then for periods of time in 2018.

²⁸ Origin, *2018 Annual Report*, p. 29.

²⁹ Origin, *2018 Annual Report*, p.185.

³⁰ The Shipping Business Unit, who administer the Temporary Licence Voyage Report system, have confirmed that the data is missing on their databases, and that it is not just an administrative error on the SBU website.

7. Orica: 9 years of ignoring Australian wages and conditions in shipping

Orica manufactures ammonium nitrate explosives for the mining industry at its Yarwun plant near Gladstone. When the plant was expanded in 2007 it became the largest industrial grade ammonium nitrate plant in the world.³¹ The plant requires large quantities of liquid ammonia, which are supplied mainly from Australia – from other Orica facilities in Newcastle and in Western Australia.

Orica relies on coastal shipping to keep its plant supplied. It has the specialised ammonia tanker *Wincanton* on long-term charter, and the ship has been operating in Australia full-time since January 2010. *Wincanton* is registered in the Marshall Islands, owned by a Norwegian company, crewed by workers from the Philippines, but yet has never visited those countries. It has only made three visits to international ports in the last nine years which appear to be for certification and maintenance at shipyards in Singapore and China.

Orica also makes occasional use of the larger ships the *Viking River* and *Nordic River* to import ammonia from Dampier to Gladstone (Table 7).

While the amount of ammonia used by Orica has increased and decreased with mining activity, the demand has been consistent and substantial over many years. 163,095 tonnes of ammonia was imported into Gladstone in 2017-18, and all of this came from Australian ports.

Orica's reported that its ammonium nitrate sales were up 5% in the 2018 financial year, with strong demand in Asia and Australia. Ammonium nitrate sales in Australia, the Pacific and Asia had earnings before tax of \$382 million.³²

³¹ Orica expansion equates to largest plant in the world, *Gladstone Observer*, 28 March 2007.

³² Orica, *Annual Report 2018*, p.15.

Table 7: Ammonia shipments to Gladstone, 2017-18.

Ship	Capacity (MT)	Flag	Crew	Group owner	Operator	Temporary licence holder	Voyages	Ports	Total Tonnage
Wincanton 9212462	8,538	Marshall Islands	Filipino (15)	Norway (Pareto Business Management)	Singapore (Petradec Services Asia)	Orica	20	Newcastle-Gladstone	107,905
Viking River 9336660	38,120	Panama	Indian (24)	Japan (MGF Holdings)	Japan (Kawasaki Kisen Kaisha)	Monson Agencies Australia	2	Dampier-Gladstone	23,501
Nordic River	38,135	Panama	Indian (34)	Japan (MGF Holdings)	Japan (Kawasaki Kisen Kaisha)	Monson Agencies Australia	1	Dampier-Gladstone	17,999

Source: The data was retrieved from IHS Maritime Portal (maritime.ihs.com - accessed 08/01/2019) and verified against permits (for dates reported) on the Department of Infrastructure, Regional Development and Cities Voyage Reports database (infrastructure.gov.au/maritime/business/coastal_trading/licencing/voyage_reports – accessed 08/01/2019).

8. Developing a Queensland coastal shipping service

This submission has outlined steps the Queensland government could take to ensure that existing domestic shipping infrastructure operates to provide the best jobs, conditions, and environmental standards for Queensland. This section addresses important steps the Government could take to support the development of a specialised Queensland coastal shipping service that could consolidate cargos from road, rail and international ships into a regular and efficient service for Queensland's coastal communities.

The *Inquiry into Coastal Sea Freight* carried out by the Queensland Parliament's Transport, Housing and Local Government Committee in 2014 details the benefits to the Queensland economy of a regular intrastate sea freight service, including:

- A reduction in road and rail congestion and a reduction in road infrastructure maintenance, and improvements in road safety:
 - It was estimated that 200,000 annual TEUs of containers travelling on rail and road between Townsville and Brisbane could potentially be transported by coastal shipping. At the time it was estimated that there are 10 trains per week servicing one of the major grocery retailers between Rockhampton and Cairns from Brisbane, equating to around 1,200 TEU per week that could be delivered by ship.
 - 60,000 tonnes of fertilizer which travels from Townsville to Brisbane per annum, which could be transported by ship.³³
- Lower carbon emissions and improved environmental sustainability arising from a potential shift from road transport to both rail and ships, which have a far lower energy intensity than trucks;
- Greater freight system resilience, particularly for Northern Queensland. Roads can be cut off due to storms, while ships can continue to operate;
- Improved marine tourism and cruise shipping through development of ports and shipping infrastructure; and
- Better integration between commercial shipping and defence and border security shipping.

In 2015 the Qld Cabinet indicated that it is open to continuing discussions with stakeholders to identify measures that support the development of coastal shipping services in Queensland.³⁴ The MUA seeks to be a part of any such discussions. We note that the current government commissioned a follow-up report which is not publically available. We urge the government to continue to pursue the development of a coastal sea freight service, and to incorporate it into the current development of the Queensland Freight Strategy.

The following potential cargos have already been identified for a sea freight service:

- Over Size Over Mass and project cargo to Gladstone, Mackay and Townsville from Brisbane;
- General freight movements north and south, including community supply cargoes for Mackay and Townsville from Brisbane and return containers for export, and import TEU cargoes for Townsville and Brisbane for regional distribution;
- Freight for the Northern Territory and Northern Australia; and
- Out turn freight from coastal ports.³⁵

³³ Report of the Qld Parliament's Transport, Housing and Local Government Committee Report No. 59, '*Inquiry into Coastal Sea Freight*' P30 (referencing TMR, Sea Freight Action Plan, July 2014)

³⁴ Queensland Government Response to Transport, Housing and Local Government Committee's Report No. 59 - Inquiry into Coastal Sea Freight, of December 2014, decided in June 2015

³⁵ Qld Sea Freight Action Plan *Coastal Shipping Addendum* May 2014
<https://www.parliament.qld.gov.au/documents/committees/THLGC/2014/INQ-CSF/bp-11Nov2014-attchA-part2.pdf>;
 Report of the Qld Parliament's Transport, Housing and Local Government Committee Report No. 59, '*Inquiry into Coastal Sea Freight*' P30

The Qld Department of Transport and Main Roads (TMR) found that a scheduled coastal shipping service may provide the agricultural sector with an option to containerise exports of sugar, grain, cotton, fruit, vegetables and beef through regional ports and transshipped at the Port of Brisbane for on-carriage to international and/or domestic markets.³⁶

During stakeholder consultation conducted with the projects logistics industry during the development of the Sea Freight Action Plan it was identified that specialist heavy lift international shipping lines could discharge project cargo at the Port of Brisbane and utilize the services of an intrastate coastal shipping service to move project cargo to suitably located regional ports to maintain the tight timeframes that these specialist vessels operated within as part of their schedule of global port calls.³⁷

The TMR reported that it has worked with commercial shipping interests who undertook a business case evaluation of potential deployment of a coastal vessel on the Queensland coast to facilitate containerised freight movements from the ports of Townsville and Mackay, with transshipment at the Port of Brisbane onto international shipping services.³⁸

The Sea Freight Action Plan identified potential general freight movements moving north from Brisbane as being either:

- Imported goods being transshipped through Brisbane for on forwarding north, by road or rail;
- Locally stored goods (imported and domestic from southern locations) being consolidated then shipped north; and
- Locally produced goods being shipped north.³⁹

AgForce has identified an opportunity to transport fertiliser by sea freight that is currently moved by B-double as far north as almost Cairns. AgForce believes there is an opportunity for large volumes of fertiliser to be moved by coastal ships subject to sea freight rates.⁴⁰

A coastal shipping service would produce lower emissions than land-based modes of transport. The relatively smaller ship sizes contemplated for use will not require additional dredging of the ports proposed. The vessel could be commissioned and crewed to a high standard and weekly port visits would present a low risk shipping option in keeping with the strong Government commitments to protect the Great Barrier Reef.⁴¹

Recommendation: The Queensland government continue to pursue the development of a Queensland coastal shipping service as it has previously explored in the *Queensland Sea Freight Action Plan*.

³⁶ Ibid P33

³⁷ Ibid P32

³⁸ Ibid P33

³⁹ Ibid P35

⁴⁰ Ibid P35

⁴¹ Ibid

9. Australian Fuel Security: Running on empty?

Since the closure of the BP Bulwer Island refinery in Brisbane and others across Australia, Queensland is more and more reliant on fuel imports. Across Australia, 90% of crude and refined petroleum is imported. Since the oil majors removed the last Australian tanker in 2016, these are all international Flag of Convenience ships. Any interruption to our fuel supplies would cause havoc across Queensland. But there are no Australian tankers available to keep us supplied in the event of a geopolitical or economic crisis.

Queensland requires 25% of national fuel imports, which are mainly sourced in Korea, Singapore and Japan. This is the equivalent of 15 full-time tankers.⁴² There were 1,274 movements of tankers through parts of the Great Barrier Reef, the second most common type of ship after bulk carriers (Table 1). These tankers would overwhelmingly be carrying fuel imports.

Fuel imports could be consolidated onto a fleet of Australian import tankers that could be required to have the highest safety and environmental standards and keep Queensland running in the event of a geopolitical or economic crisis. It should be noted that the previous fleet of Australian refined petroleum tankers were never detained in their time operating on the coast from 2004 to 2015. In contrast, in the same period, international and FOC tankers were detained 122 times.⁴³

After a recommendation from the Parliamentary Joint Committee on Intelligence and Security in their *Advisory report on the Security of Critical Infrastructure Bill 2017* in March 2018 recommended that the Department of Environment and Energy carry out a liquid Fuel Security review, which is ongoing. This follows the recommendations from the *Inquiry into Australia's Transport Energy Resilience and Sustainability* by the Senate Rural Affairs and Transport References Committee in 2015, which also recommended a risk assessment of Australia's fuel supply and the development of a Transport Energy Plan.⁴⁴

Recommendation: The Queensland government make representations to the current Commonwealth Liquid Fuel Security Review to support the development of a national strategic fleet of tankers that could provide a reliable supply of fuel imports to Queensland and Australia.

10. Australian participation in LNG exports

The LNG exports from Gladstone have made Australia the world's largest LNG exporter. Approximately 25 full-time ships are required to carry these cargos, yet none are Australian.

Recommendation: We urge the Queensland Government to examine, in consultation with interested stakeholders, how it can build on the Object and operation of the *Australian Jobs Act 2013* to phase in minimum levels of Australian seafarer employment on LNG tankers carrying LNG from Qld LNG liquefaction plants. This could occur under a contemporary Continuity of Operations Agreement (COA) such as was negotiated in 1986, and which remains operational, for Woodside's North West Shelf LNG project.

⁴² John Francis, *Australia's Fuel Security: Running on Empty? A report prepared for the Maritime Union of Australia*, November 2018.

⁴³ The Australian tankers had a combined 36 years of operation and 95 Port State Control inspections. International Transport Workers' Federation – Australia, *The High Cost of Cheap Shipping: Submission to the Inquiry into the increasing use of so-called Flag of Convenience Shipping in Australia*, September 2015, p. 42-4.

⁴⁴ Senate Rural Affairs and Transport References Committee, *Inquiry into Australia's Transport Energy Resilience and Sustainability*, June 2015.

PART II: What is wrong with Flag of Convenience Shipping?

11. What is Flag of Convenience shipping?

For centuries, seafarers have endured extremely difficult working conditions on the ships that employ them. Steps forward in improving these conditions were made with the formation of seafarers' unions in the late 1800s, especially in the UK, USA, India and Australia.⁴⁵ Seafarers' unions were able to greatly improve working conditions on ships, but found this process undermined when ship owners in traditional maritime countries began to flag the ships that they still owned in open registries in countries with no real connection to the vessel, owner or crew. The ITF's Flag of Convenience (FOC) campaign was established to address this problem in 1948. Since that time, shipping has become increasingly internationalised, and global trade has increased dramatically.

Most of the world's estimated 1.3 million seafarers are from Philippines, China, India, Turkey, the Ukraine and Indonesia.⁴⁶ Yet most ownership of ships remains in traditional maritime countries such as Germany, Greece, Japan, the UK, Norway, Denmark, Japan, Korea, the US, China and Singapore.⁴⁷ In between seafarers and ship owners are frequently layers of international sub-contracting that obscures the fundamental employment relationship between them and can make accountability very difficult.

The world's largest ship registers are FOCs: Panama with 21% of the world's fleet by tonnage, Liberia with 12%, and the Marshall Islands with 9%. Together with other major Flag of Convenience registers in the Bahamas, Malta, and Cyprus these flags make up over 53% of the world's deadweight tonnage.⁴⁸

A Flag of Convenience ship is one that flies the flag of a country other than the country of "Beneficial Ownership". Shipowners are attracted by cheap registration fees, low or no taxes, freedom to employ cheap labour, and little regulatory oversight in what has become an international race to the bottom. The ITF maintains that the "Flag of Convenience" system provides clear opportunities for irresponsible and often vicious ship owners and operators to exploit seafarers and to seek competitive advantage from denying crew their human and workers' rights.

It is not uncommon for ships to be owned in one country, have their cargos managed by a different company in another country, have the ship and its crew managed from a third country, have the ship flagged in a fourth country, with crew recruited and employed by agencies in multiple other countries.

The ITF believes there should be a 'genuine link' between the real owner of a vessel and the flag the vessel flies, in accordance with the United Nations Convention on the Law of the Sea (UNCLOS). There is no "genuine link" in the case of FOC registries.⁴⁹

⁴⁵ David Walters and Nick Bailey, 2013, *Lives in Peril: Profit or Safety in the Global Maritime Industry?* New York: Palgrave MacMillan, p.173-176.

⁴⁶ David Walters and Nick Bailey, 2013, *Lives in Peril: Profit or Safety in the Global Maritime Industry?* New York: Palgrave MacMillan, p.86-87.

⁴⁷ UNCTAD, Review of Maritime Transport 2014, p.39.

⁴⁸ UNCTAD, Review of Maritime Transport 2014, p.44.

⁴⁹ See ITF, 2010, *Mexico City Policy: ITF policy on minimum conditions on merchant ships*, Statement of Principles and Definition of a flag of convenience, p.12. Policy statement on sub-standard Shipping by the Marine Transport Committee

The problem of FOCs is confounded by the inability and unwillingness of the flag state to enforce international minimum social standards on their vessels, including respect for basic human and trade union rights, freedom of association and the right to collective bargaining with bona fide trade unions.

The Senate Rural and Regional Affairs and Transport References Committee's *Inquiry into the Increasing Use of so-called Flag of Convenience Shipping* examined the problem of FOC shipping in Australia. Its final report in 2017 explained:

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.⁵⁰

The Committee recommended:

of OECD, 2002, cited in the Report of the Secretary General: Consultative Group on Flag State Intervention. Oceans and the Law of the Sea. United Nations, March 2004.

⁵⁰ Senate Rural and Regional Affairs and Transport References Committee, *Inquiry into the Increasing Use of so-called Flag of Convenience Shipping*, July 2017, p.66.

“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.”⁵¹

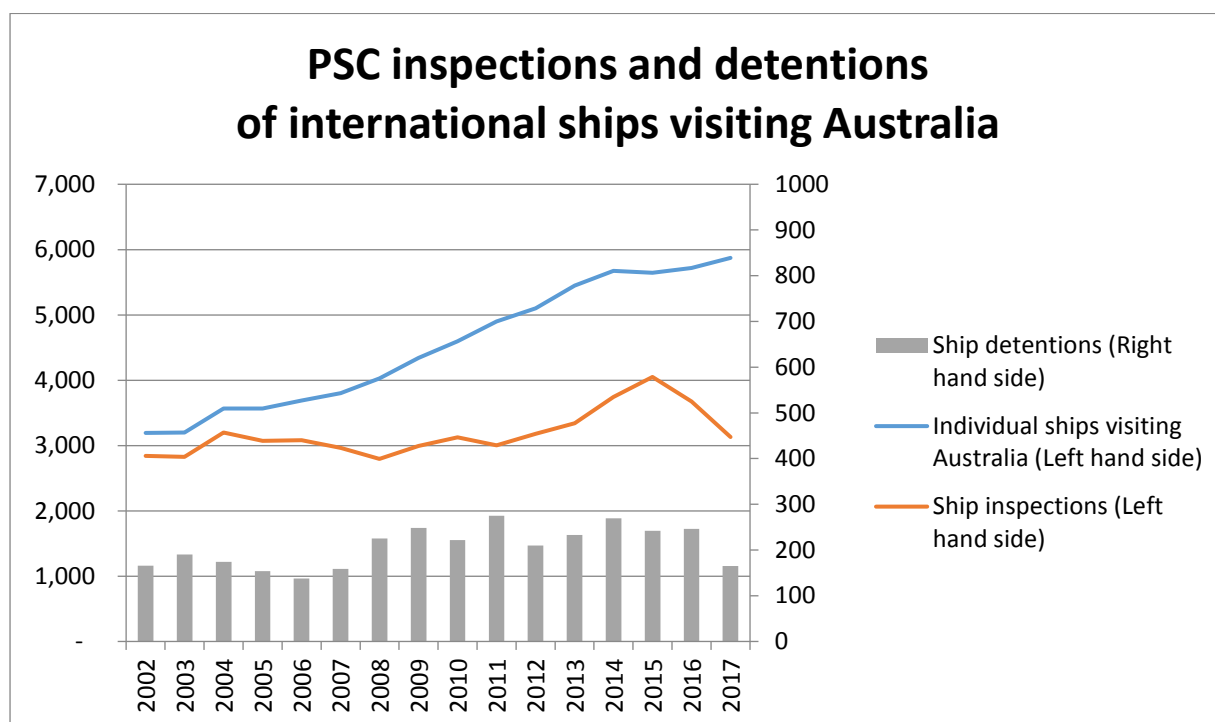
The Australian Coalition government responded in June 2018 to say that it does not support this recommendation.⁵²

Inspection of FOC shipping in Australia

The proportion of ships visiting Australia which the Australian Maritime Safety Authority (AMSA) inspects is dramatically declining. In 2002, 89% of the international ships visiting Australia in that year were inspected by AMSA at some point during that year. By 2017, this had declined to 53% of ships (Figure 7). A sharp drop in both the inspections that AMSA carries out and the detentions of international ships has taken place since 2015.

The result is that 2,745 individual international ships visited Australia in 2017 without AMSA inspecting them during that year.

Figure 7: Port State Control inspections and detentions of individual international ships visiting Australia compared to total ship visits, since 2002.



Source: Compiled by the MUA from AMSA, Port State Control Annual reports, 2002-2017.

Detainable deficiencies mean that AMSA judges that the problem is severe enough to hold the ship in port until the problem is fixed, despite the considerable cost and inconvenience to the ship owner (a detention). It is a higher grade of problem than ordinary ‘deficiencies’. Detentions are made:

⁵¹ Senate Rural and Regional Affairs and Transport References Committee, *Inquiry into the Increasing Use of so-called Flag of Convenience Shipping*, July 2017, Recommendation 7.

⁵² Australian Government, *Australian Government response to the Senate Rural and Regional Affairs and Transport References Committee Report: Inquiry into the Increasing Use of so-called Flag of Convenience Shipping*, June 2018, p.8.

“To ensure that the ship will not sail until it can proceed to sea without presenting a danger to the ship or persons on board, or without presenting an unreasonable threat of harm to the marine environment whether or not such action will affect the scheduled departure of the ship.”⁵³

However, it should be noted that ships are not inspected when they first arrive in the Australian EEZ, but only after they have transited a significant portion of Australian waters and coastline to arrive in an Australian port. In Queensland this would often include large stretches of the Great Barrier Reef.

The Australian Port State Control inspectorate does an excellent job. Nevertheless, they deal with a very challenging industry. On one hand, Port State Control inspection is an innovative and effective response to a deregulated and globalised industry, and it is effective at getting technical problems addressed quickly. On the other hand, there is an inherent limitation to the kinds of issues these kinds of inspections can address, particularly employment, organisational and management issues that arise from the basic structural problems with FOC shipping.⁵⁴

A number of ships which have had significant accidents (for example, the *Rena*, wrecked in New Zealand) were well known to Port State Control authorities before the accident happened.⁵⁵ The employment relationships on FOC and international ships also provide a strong disincentive for crew to come forward to act as witnesses or to provide information to AMSA. International crew must be prepared to make immense personal sacrifices to cooperate with AMSA and Commonwealth prosecutions as doing so may pose a risk not only to their future employment, but even to the safety of themselves and their family.

12. Working conditions on FOC ships

The history of the ITF’s FOC campaign, the fact that shipowners and shippers are still overwhelmingly based in wealthier countries, and the current enormous levels of global inequality mean that seafarers from developing countries can often earn higher wages in international shipping than they are able to if they were employed in domestic industries. This can make international seafaring an attractive way of earning and saving money.

Yet despite the potential for wages that may be attractive to seafarers from impoverished countries, employment for international seafarers is exhausting, precarious, and subject to fragmented management and regulation. Seafarers work extremely long hours and are frequently away from home for a year at a time, and most seafarers, particularly ratings, have no permanent contract, and must seek a new one each time they go to sea. It is a very hazardous industry with a significant level of fatalities, serious injuries, and work-related diseases. These conditions are not only a risk to seafarers working in the industry, they are a risk to ship safety and the environment.

⁵³ AMSA, Port State Control 2014 Report, p. 19.

⁵⁴ David Walters and Nick Bailey, 2013, *Lives in Peril: Profit or Safety in the Global Maritime Industry?* New York: Palgrave MacMillan, p.213; International Transport Workers’ Federation – Australia, *The High Cost of Cheap Shipping: Submission to the Inquiry into the increasing use of so-called Flag of Convenience Shipping in Australia*, September 2015, p.95-99.

⁵⁵ Details of the *Rena*’s inspections before the ship was wrecked are in International Transport Workers’ Federation – Australia, *The High Cost of Cheap Shipping: Submission to the Inquiry into the increasing use of so-called Flag of Convenience Shipping in Australia*, September 2015, p.70-72.

The Maritime Labour Convention, implemented in 2013, is an enormous step forward, but contains no minimum wage, a requirement only to record hours of rest (not work) which can lead to extraordinary working hours, no requirement to record seafarers' next of kin, and very significant gaps in the monitoring of fatalities, injuries and diseases among seafarers.

The ITF has been successful in having more than 12,000 ships with almost 300,000 crew regulated by international collective agreements but still need an ongoing active network of 141 dedicated inspectors in 58 countries to police the agreements. One indication of the extent of violations is that this Inspectorate recovered \$38 million USD in stolen wages globally in 2017. Apart from stolen wages, the world wide inspectorate regime deals with an increasing list of breaches of human and workers' rights, such as inadequate supplies of food and water, seafarers abandoned without a way of getting home, no compensation for workplace injuries, and deaths of seafarers remaining uninvestigated, and even unreported.

Fatigue

Maritime authorities around the world have recognised that fatigue is a contributing factor to many maritime accidents and environmental disasters. ITF agreements limit seafarers to 64 or 77 hours of work per week. Yet international labour and shipping conventions allow seafarers to work up to 91 hours per week, and 98 hours in 'exceptional circumstances' of up to two weeks.⁵⁶ Despite these regulations, a 2014 Inspection Campaign on hours of rest by the Pacific and North Atlantic basin Port State Control shipping inspectorates (Tokyo MoU and Paris MOU, including Australia) found 'unsatisfactory compliance' with even these standards. They highlighted that 'investigations into a number of recent incidents throughout the Asia-Pacific region have identified fatigue and insufficient rest of watchkeeping personal as key contributing factors to those incidents. There has been a significant loss of human life and damage to the marine environment resulting from many of these incidents.'⁵⁷

A recent study supported by AMSA found that seafarers working in Australian waters were working on average 61 hours per week, and that almost 30% of participants were working more than 69 hours per week. 20% reported experiencing chronic fatigue.⁵⁸ 1,026 seafarers participated in the study, 94% of these were working on international-flag ships, and 3% reported being Australian nationals. Brisbane Marine Pilots and Seafarers' Welfare Centres in Brisbane assisted in distributing the surveys, so a significant number of the respondents were on vessels working in Queensland.⁵⁹

Fatigue is strongly linked to ship safety. A survey of 66 vessel incidents by the UK Marine Accident Investigation Branch found that the fundamentals of accidents 'remain depressingly consistent: fatigued crews due to under-manning'.⁶⁰ Most of the recommendations from an ATSB investigation into Queensland

⁵⁶ This is regulated by a combination of the International Maritime Organisation's Standards for the Training and Certification of Watchkeeping (STCW) Convention and the International Labour Organisation Maritime Labour Convention. For details see International Transport Workers' Federation – Australia, *The High Cost of Cheap Shipping: Submission to the Inquiry into the increasing use of so-called Flag of Convenience Shipping in Australia*, September 2015, p. 76-77.

⁵⁷ Paris MoU, Unsatisfactory compliance with hours of rest, 22 January 2014. Tokyo MoU, Unsatisfactory compliance with hours of rest, 18 May 2015. The Tokyo MoU is a coordinating body for ship inspection agencies from around the Pacific basin. The Paris MoU plays the same role in the Atlantic.

⁵⁸ Andrei, Daniela, Michelle Grech, Rudy Crous, Junxian Ho, Thomas McIlroy, Mark Griffin, Andrew Neal, *Assessing the determinants and consequences of safety culture in the maritime industry*, 2018, p.28, 34.

⁵⁹ Andrei, Daniela, Michelle Grech, Rudy Crous, Junxian Ho, Thomas McIlroy, Mark Griffin, Andrew Neal, *Assessing the determinants and consequences of safety culture in the maritime industry*, 2018, p.16-21.

⁶⁰ MAIB, 2004, *Bridge Watchkeeping Safety Study*, Southampton: Department for Transport.

coastal pilotage following the grounding of the piloted tanker *Atlantic Blue* in the Torres Strait related to fatigue and fatigue management.⁶¹

Fatigue was shown to be a key causal factor in at least the following maritime disasters:

- the *Exxon Valdez* (Alaska, 1989)
- the *Cita* (Scilly, 1997)
- *Jambo* (Scotland, 2003)
- the *Pasha Bulker* (Newcastle, 2007)
- *Thor Gita* (death on board)
- the *Shen Neng 1* (Australian Great Barrier Reef, 2010).⁶²

Safe Work Australia says that working more than 50 hours per week can lead to fatigue, and “may lead to errors and an increase in incidents and injuries”.⁶³

Australian blue-water ships operate within Australian working hours and standards for the safe management of fatigue. However, there is an additional cost to Australian shipowners for operating ships within these much safer parameters, and Australian ships have two permanent crews that alternate ‘swings’, instead of overworked and fatigued seafarers working on sequential 9-12 month contracts. Unfortunately, the hours of work which international seafarers are compelled to undertake exerts significant downward cost and safety pressures on Australian ships. The safety and environmental implications will be examined further in Section 13.

Precarious employment

Most international seafarers work for 9 to 12 months continuously with few days off, operating hazardous heavy machinery. Seafarers are effectively unemployed between voyages and then must seek a new contract in order to return to work. A bad report from a captain can make finding another contract difficult as agencies may communicate with each other. It is reported that a blacklist is circulated in the Philippines of seafarers who engage in union activity or call the ITF. The result is that ‘seafarers of all ranks report that they fear for their jobs’.⁶⁴

The precarious employment of international seafarers acts as a powerful disincentive for reporting problems on board their ships or cooperating with national investigating agencies. For example, the NSW Deputy State Coroner, Magistrate Sharon Freund, reported that the inquest into two suspicious deaths of Filipino seafarers on the Panamanian-flagged coal carrier the *Sage Sagittarius* in Australian waters faced difficulties because witnesses ‘felt intimidated or scared enough based on their experiences on the vessel to withhold evidence’.⁶⁵

The AMSA- supported study described above found that chronic fatigue in seafarers was linked to vigilance demands, seafarers’ job security, sleep problems, and their ability to rest and recover. The authors say that ‘seafarers are more likely to develop chronic fatigue if there is inadequate recovery between multiple duty periods or days. Chronic fatigue is cumulative and gets worse after extended periods of time of incomplete

⁶¹ ATSB, 2012, *Safety issue investigation into Queensland Coastal Pilotage*.

⁶² Project Horizon, 2012, *Project Horizon – a wake-up call*, p. 6-7.

⁶³ Safe Work Australia, *Guide for Managing the Risk of Fatigue at Work*, November 2013.

⁶⁴ David Walters and Nick Bailey, 2013, *Lives in Peril: Profit or Safety in the Global Maritime Industry?* New York: Palgrave MacMillan, p.92-4.

⁶⁵ 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.

recovery.’ The authors say that it is ‘noteworthy’ that job security ‘is contributing quite substantially to the variance of chronic fatigue scores’.⁶⁶

The precarious employment of international seafarers is in stark contrast to Australian seafarers in the blue water trades. Many of these workers have permanent contracts and return to the same ship after each period of leave. They are therefore well acquainted with the ship, with other crew on board, with the company’s management system and expectations, and with the regulatory authorities they may encounter on a voyage.

Low wages and stolen wages

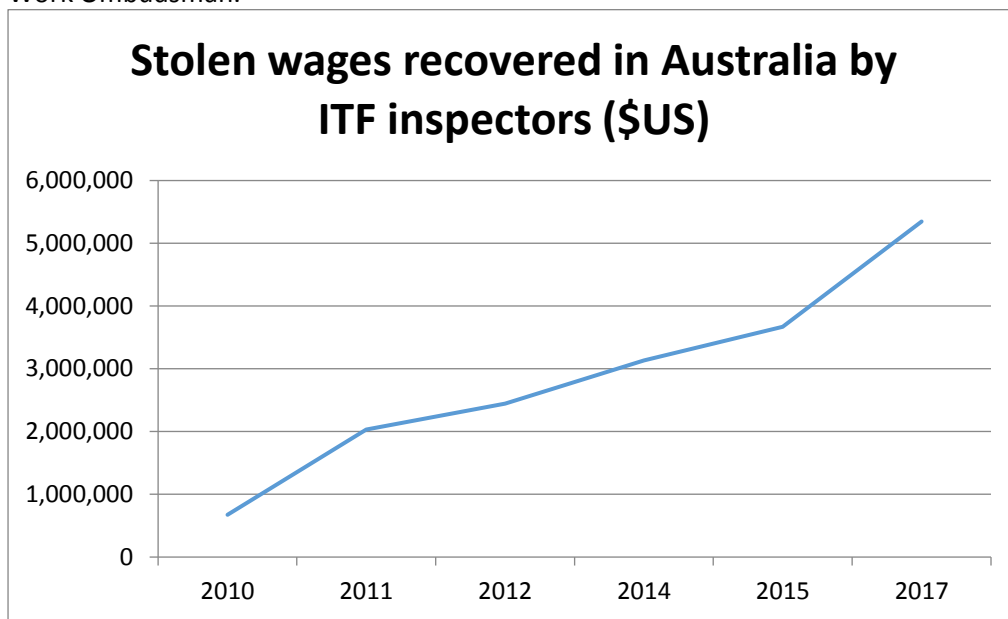
Wages on FOC and international ships are far below those on Australian ships, and far below what is required for Australian workers to survive. ITF agreements have been effective in improving seafarers’ wages on the over 12,000 FOC ships where ITF agreements apply, and on these ships seafarers can expect wages of \$36 per day plus other benefits. Yet while the Maritime Labour Convention goes a long way to upholding human rights on board ships it does not include a minimum wage level. The ITF has a “recommended Minimum” but there is no mechanism to enforce or even to encourage bad operators to pay this rate. The ILO Basic Wage is about \$16 USD per day (Able Seaman, used as a benchmark). Ships in Australia have been discovered paying as little as \$1.25 per hour to seafarers in Australia.⁶⁷

Despite low wages, wage theft is a significant problem. In 2017 the ITF collected over \$US 5 million in stolen wages for international seafarers in Australia. This has increased from about \$US 600,000 in 2010 (Figure 8). A significant portion of these stolen wages were recovered from ships in Queensland.

⁶⁶ Andrei, Daniela, Michelle Grech, Rudy Crous, Junxian Ho, Thomas McIlroy, Mark Griffin, Andrew Neal, *Assessing the determinants and consequences of safety culture in the maritime industry*, 2018, p. 53-4.

⁶⁷ Reported by the Fair Work Ombudsman to the Senate Rural and Regional Affairs and Transport References Committee, *Inquiry into the Increasing Use of so-called Flag of Convenience Shipping*, July 2017, p.24.

Figure 8: Stolen wages recovered from shipowners and managers for international seafarers by ITF inspectors in Australia. These are separate from any wages recovered for seafarers by AMSA or the Fair Work Ombudsman.



Source: International Transport Workers’ Federation, FOC Campaign annual reports, ITF London.

The very low level of wages on FOC ships exerts considerable downwards pressure on wages in Australian shipping. The low wages of seafarers have become so normalised that companies operating ships on Australian domestic routes routinely say that it is ‘too expensive’ have Australian crew, wages and conditions on board.

Current Australia law requires that the Australian Seagoing Industry Award 2010 Part B (SIA Part B) applies as a minimum on all commercial ships on their third and subsequent domestic voyage on Temporary Licence issued under the *Coastal Trading Act 2012*. The principle is that it is unfair for Australian domestic transport systems (road, rail, or ship) to be in direct competition with companies operating on 3rd world conditions of wages and hours of work. The Fair Work Ombudsman is tasked with enforcing these conditions, although we believe they are not effectively enforced.

However, because the payment of the Award Part B is tied to holding a Temporary Licence, these top-up payments are not required on intra-state voyages which do not require a Temporary Licence. The ITF has regularly encountered this issue on ships chartered by Rio Tinto. Therefore, workers are participating in Queensland supply chains on very low international wages and conditions.

Fatalities and injuries

All studies indicate that seafaring is a very hazardous job. However, these studies have mainly been based in traditional maritime countries, where seafarers have a fatality rate much greater than the average worker.

Since the rise of FOCs and the shift to a global labour market for seafarers, it has become much harder to determine casualty rates as many countries simply do not produce reliable statistics. As a result, no reliable

global numbers for fatalities in the international shipping industry exist. Flag states, particularly FOCs, have not generally cooperated in gathering information.⁶⁸

When deaths do occur, often no proper investigation takes place. Jurisdiction is complex and including the flag state law, the law of the place of the accident, and/or the law governing the seafarer's contract.

Deaths of international seafarers in Australian waters are frequently not investigated, or are poorly investigated, despite pressure from the ITF Australian inspectorate and the MUA.

Sage Sagittarius

The *Sage Sagittarius* is a bulk carrier which transports coal from Australia to Japan. The vessel is owned by the Japanese company Nippon Yusen Kaisha (NYK) Line and operated by the Japanese Hachiuma Steamship, with a Panamanian flag and Filipino crew.⁶⁹

In less than 40 days in 2012, three men died while employed on board the ship. The first two deaths were the subject of an NSW Coronial Inquest.⁷⁰ The third death happened in Japanese waters.⁷¹

The Panama Maritime Authority was nominally responsible for investigating the three deaths. However the Panamanian investigation was poor on many different levels and simply provided a mechanism for the shipowner to provide its own account of the deaths, which was not corroborated with other sources. The Panamanian investigators did not interview the crew, and the report was minimal.⁷²

The investigations by Australian police were hampered because crew feared 'physical injury whilst on board the vessel or through concerns of their employment being terminated if they discussed problems on the vessel.'⁷³

Counsel Assisting the NSW Coronial Inquiry explained:

'It is very clear the crew members did not feel free to disclose everything they knew to the investigating police who conducted the interviews on board the vessel... One reason for their refusal to do that may have been because of the climate of either fear and or intimidation that existed on board the vessel.'⁷⁴

The investigations suffered another setback when most of the crew were flown back to the Philippines two days after the second incident, leaving no witnesses and no suspects to examine.⁷⁵ Thereafter investigating police had enormous and ongoing difficulties locating and contacting the crew members.⁷⁶

⁶⁸ David Walters and Nick Bailey, 2013, *Lives in Peril: Profit or Safety in the Global Maritime Industry?* New York: Palgrave MacMillan, p.18-23, 36-37.

⁶⁹ IHS Fairplay, Sea-web, viewed on 10 September 2015

⁷⁰ 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.

⁷¹ Japan Transport Safety Board, Marine Accident Investigation Report, September 27, 2013.

⁷² Panama Maritime Authority, Directorate General of Merchant Marine, Report: M/V "Sage Sagittarius" R- 020-2013

⁷³ Statement of DSC Hall, 23 August 2013, paragraph 176

⁷⁴ Transcript of Proceedings into the Coronial Inquiry into the Death of Hector Collado and suspected death of Cesar Llanto, 28 May 2015, page 6

⁷⁵ Crew Reports, Australian Customs Service Records, dated 2 September 2012 – 18 September 2012.

⁷⁶ Statement of Federal Agent Scott Raven, 5 January 2014, paragraph 149

During the Australian investigation it became apparent that while the *Sage Sagittarius* was travelling regularly to Australia, the captain was selling automatic handguns to the crew and possibly others, and that several of the crew were subject to a customs 'alert'.⁷⁷ Nevertheless, they were issued with Maritime Crew Visas. It appears that all crew except the three deceased bought automatic handguns from the vessels' master.

Ships of Shame in Queensland

The Australian ITF inspectorate have assisted numerous international ships' crew subject to unscrupulous employers in Queensland.

- The Panamanian-registered *AOM Milena* was chartered by Rio Tinto to carry bauxite from Weipa and Gove to Gladstone. In July 2015, the ITF boarded the ship in Gladstone and found that the crew had not been paid since April, they were running short of food, and were being forced to live and work in filthy conditions. The crew were allocated \$50 per day to buy food for 21 people. The ship was owned in Japan, operated from Portugal, and the crew were from the Philippines.⁷⁸
- The Hong Kong-flagged coal carrier *Five Stars Fujian* and its crew was abandoned off the port of Gladstone on 19 July 2016. The ship's crew were supposed to receive wages of \$2 per hour, but had not been paid in months, and were running out of food. The ITF worked with Gladstone Seafarers' Welfare Committee and AMSA to provide emergency supplies to the crew. On 12 August 2016 AMSA inspected the ship, and detained the vessel for deficiencies in relation to food supply and payment of wages. The vessel was released on 1 September 2016, 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.⁷⁹
- The Marshall Island-flagged cargo ship *Maratha Paramount* was chartered by Rio Tinto's wholly-owned subsidiary Pacific Aluminium in October 2016. The ITF alerted AMSA inspectors, who boarded the vessel in Gladstone and found that the vessel's 22 Indian crew members had not been paid for over two months, there was very little food on board the vessel, and the drinking water was discoloured. Moreover, the captain had required the crew to sign off on having received wages, despite not having received them.⁸⁰ By that time the vessel had been in Australia for 2 months and had visited eight Australian ports.
- On 12 January 2017, a 47-year-old Filipino crew member went missing from a Marshall Island-flag bulk carrier, the *SBI Samba*, at sea near Hay Point, Queensland. Four hours after the crew member was last seen, he was reported as missing to AMSA, who undertook an extensive search of the area. The search ceased when it was determined that the seafarer could not have survived. During the second day of the search, the *SBI Samba* left the search area to head to port and load cargo, leaving

⁷⁷ Transcript of Proceedings into the Coronial Inquiry into the Death of Hector Collado and suspected death of Cesar Llanto, 29 May 2015, page 35, 38

⁷⁸ Maritime Union of Australia, *Seafarers on Rio Tinto Chartered Vessel Unpaid for Months: Exploitation to increase under fed gov coastal shipping laws*, 7 July 2015.

⁷⁹ Senate Rural and Regional Affairs and Transport References Committee, *Inquiry into the Increasing Use of so-called Flag of Convenience Shipping*, July 2017, p.34; Cargo ship crew 'abandoned' off central Queensland coast', *ABC News*, 16 August 2016; 'Five Stars Fujian Released, Banned from Australia for a Year', *World Maritime News*, 2 September 2016.

⁸⁰ Senate Rural and Regional Affairs and Transport References Committee, *Inquiry into the Increasing Use of so-called Flag of Convenience Shipping*, July 2017, p.35; Nick Toscano, 'Very little food, drinking water is brown': Ship probed over pay and conditions', *Sydney Morning Herald*, 12 October 2016; Cathy Van Extel, 'Ships of shame: Bulk carrier chartered by Rio Tinto subsidiary caught failing to pay crew', *ABC News*, 12 October 2016.

Australian authorities to continue the search. The ITF demanded an immediate investigation into the seafarer's disappearance, but are not aware of a satisfactory investigation having taken place.⁸¹

- In 2019 the North Queensland Coroner will be carrying out an investigation into the disappearance of seafarer Arnel Gillo from the livestock carrier *Galway Express* before it arrived in Townsville on 20 March 2018.⁸²

13. Environmental risks of FOC ships

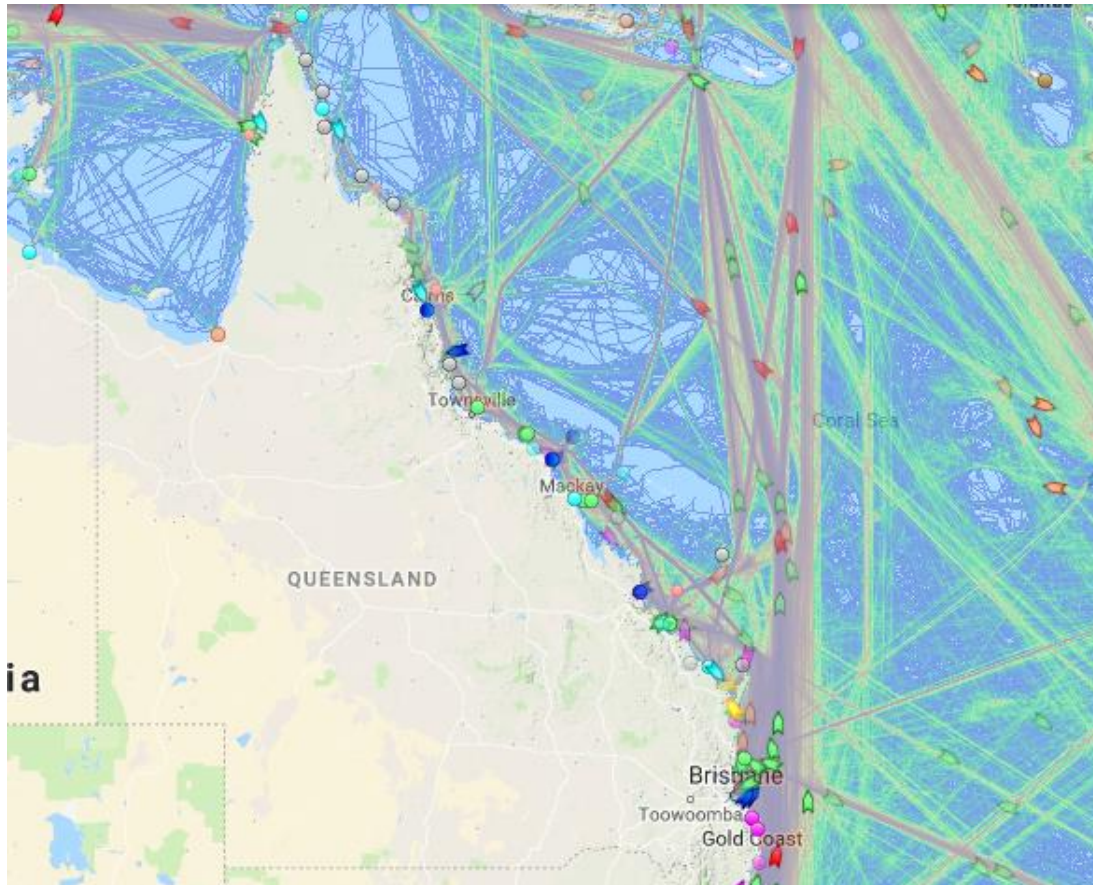
It is well known that the Great Barrier Reef is under increasing pressure from a wide variety of sources. Official assessments cite climate change as the greatest threat to the reef, but shipping combines with other impacts to reduce the resiliency of the reef.

The total arrivals of international ships into Australian ports has increased 62% since 2002, with 28,502 individual port calls in 2017.⁸³ Despite improvements in ship design and AMSA's best efforts to inspect ships, the result is an increase in the sources of operational pollution, such as the release of biocides from toxic chemicals used in anti-fouling paints of all ships, dumping of wastes including oily wastes, and the transfer of invasive alien species through ballast water. Virtually all ships carry heavy, damaging and toxic bunker oil as fuel. Despite a plethora of environmental conventions and legislation, the limit of liability for shipowners responsible for bunker oil spills is still far too low to compensate for the damages such spills can cause. Increasing ship traffic also increases the risk of maritime accidents including oil spills. Areas at greatest risk are highlighted in Figure 9. Note the very high level of traffic along the Queensland coast, which continues to increase.

⁸¹ Senate Rural and Regional Affairs and Transport References Committee, *Inquiry into the Increasing Use of so-called Flag of Convenience Shipping*, July 2017, p.38-9; Shakira Sellen, 'Man disappears from bulk carrier heading to Hay Point', *Mackay Daily Mercury*, 13 January 2017; Owen Jacques, 'Lost sailor may have "consumed toxic substance"', *Mackay Daily Mercury*, 17 January 2017.

⁸² Zoe Reynolds, *Crew overboard subject to Australian police investigation*, IHS Fairplay, 16 April 2018.

⁸³ AMSA, Port State Control 2002 report and 2017 report.

Figure 9: Shipping density in Queensland waters in 2017.

Source: Marine Traffic, Density Map.

The Flag of Convenience system significantly increases the environmental risks of vessels, in the following ways:

- Crew are working while very fatigued
- Vessels are much harder to regulate
- When accidents happen, it can be very difficult to find vessel owners and hold them accountable for damages.⁸⁴

The difficulty in hold vessels accountable for the environmental damage they cause is illustrated by three recent cases:

- Eight years after creating the largest single damage to the Great Barrier Reef, the clean-up and remediation of the *Shen Neng 1* impact site has not yet begun, with toxic materials scattered over a 400,000m² area. The Commonwealth sued shipowners in the Federal Court for \$194 million in damages, but had to settle out of court for \$39 million.
- In 2009 the *Pacific Adventurer* spilt 270 tonnes of bunker oil, affecting 38 miles of Queensland's coastline near Brisbane. The cost of the clean up was estimated by the Queensland government to be over \$30 million. The shipowner eventually paid \$26 million.
- In July 2015, an oil spill took place in the waters of the Great Barrier Reef Marine Park, with oil washing up on beaches north of Townsville to Hinchinbrook Island and the Palm Island group. The

⁸⁴ T Shaughnessy & E Tobin, *Flags of Inconvenience: Freedom and Insecurity on the High Seas*, p. 20

clean up took two weeks and cost \$1.5 million.⁸⁵ Maritime agencies have put in considerable effort to identify and prosecute the ship responsible, alleged to be the Panamanian-flagged and Korean-owned *Regina*, but so far so payment has been received.

Further details on these cases are included in this section.

In 2014, AMSA found reason to detain an international ship on average every 32 hours, an action that is only taken to prevent ‘danger to the ship or persons on board’ or ‘an unreasonable threat of harm to the marine environment’. 40 detainable deficiencies directly related to pollution prevention. A total of 385 detainable deficiencies were found on 269 international ships in 2014, and many of these were for problems which could result in incidents with a significant environmental impact (for example: hours of rest, fire safety, safety of navigation, dangerous goods, structural conditions, alarms).⁸⁶

The *Rena* shipwreck disaster in New Zealand showed the real difficulty for Port State Control (PSC) in improving safety management systems on board ships. PSC inspectors were on board the ship six times in the preceding 12 months, including three times in Australia, and the same problems kept recurring, going back to the safety management systems on board.

The Commonwealth Department of Infrastructure, Regional Development and Cities has seen fit to significantly reduce the Protection of the Sea levy while toxic materials still sit on the Great Barrier reef and the money for clean up does not exist. It has also left the levies that pay for safety inspections and nautical markers for ocean hazards (Aids to Navigation) at 2004 levels, without a provision for cost-of-living increases.

Oily wastes and ‘Magic Pipes’

According to AMSA, the most common type of oil spill investigated by Australian regulatory agencies is the “intentional and illegal discharge of bunker fuel oil and waste oils at sea.”⁸⁷ Statistics released by AMSA in Annual Port State Control Reports depict there is an increasing portion of “mystery fuel oil spills” in which the source of the pollution is unknown.⁸⁸ This is not only problematic for the enforcement of MARPOL but also in the recovery of clean up costs and environmental remediation.

These so called “mystery fuel oil spills” are often due to the illegal installation of “magic pipes.” Magic pipes dispose of the water, oil and other pollutants produced by the engine and other machinery in the course of regular operation and maintenance directly into the sea, bypassing the Oily Water Separator. This oily water mix is supposed to be stored in holding tanks in the vessel until the crew can dispose of it properly. However, there are exceedingly strict rules in Australia (in accordance to *Protection of the Sea (Prevention of Pollution from Ships) Act 1983*) on how much waste can be released, transported, where and under what conditions it can be unloaded. Fees for disposal are also commonplace. The Organisation for Economic Cooperation and Development estimated that an average annual cost of meeting MARPOL regulations could be in excess of \$USD 30,000 for an average cargo ship to \$USD 150,000 per year for a large tanker.⁸⁹ These costs represent between 3.5-6.5% of a ship’s overall operating expenses.⁹⁰

⁸⁵ David Chen, Great Barrier Reef: Panama company charged, faces up to \$17m fine for spilling tonnes of oil, *ABC News*, 22 Jun 2017.

⁸⁶ AMSA, Port State Control 2014 Report, p. 20.

⁸⁷ AMSA, Bunker and Fuel Weathering and Fingerprinting, <amsa.gov.au>

⁸⁸ AMSA Port State Control Annual Reports

⁸⁹ OECD. Cost savings stemming from non-compliance with international environmental regulations in the maritime sector. *Maritime Transport Committee. Organisation for Economic Co-operation and Development*, 2003, p. 5.

⁹⁰ *Ibid.*, p. 5.

According to AMSA, MARPOL deficiencies account for approximately 4% of all detentions. The main item detained for was found to be the inoperable use of Oily Water Separators (OWS). Examples of this include the detention of Hong Kong flag ship, *Coral Chief*⁹¹ in 2014 and the Marshall Island flag bulk carrier, *Braveheart*⁹² in 2013. The use of an OWS gives evidence to AMSA inspectors that MARPOL and Australian regulations have been met.⁹³

Dumping of rubbish

Marine Debris is defined as “any persistent, manufactured or processed solid material discarded, disposed of or abandoned in the marine and coastal environment.”⁹⁴ Marine debris is exceedingly harmful to marine life, through the entanglement and ingestion of such wastes as nettings, plastic bottles, packaging materials, cigarette butts, etc.⁹⁵

Under the Commonwealth *Protection of the Sea (Prevention of Pollution of Ships) Act 1983*, and the various state and territory legislation, Australian marine regulatory agencies are able to prosecute ship owners and ship-masters in response to the illegal dumping of garbage.

In November 2014, *Xin Tai Hai*, a Panama flag of convenience bulk carrier was prosecuted and fined \$AUD 20,000 for dumping “various large plastic bags” containing plastics, garbage and food wastes.⁹⁶

In May 2015, the owners of *Asteria Leader*, a Japanese flagged vehicle carrier, and the *CSCL Brisbane*, a Hong Kong flagged container carrier, were both prosecuted and fined for dumping garbage and waste, \$AUD5000 and \$AUD6000 respectively.⁹⁷

In July 2015, the owner of the *ANL Kardinia* a Hong Kong flagged container carrier was prosecuted and fined \$4000 for the illegal dumping of garbage and food waste.⁹⁸

According to AMSA, no Australian flagged vessel has been prosecuted for ship sourced garbage pollution since 1997.⁹⁹

Toxic anti-fouling paint

The use of anti-fouling biocide on the underwater portion of ships hulls that contains the toxic compound Tributyltin (TBT) has been banned from use as of September 2008 in Australia.¹⁰⁰ While effective for its intended use, TBT had been found to cause a wide ranging and deleterious effects on aquatic biota where it bio-accumulates quickly, enters food webs and biomagnifies as it is incorporated into marine food webs.¹⁰¹

⁹¹ AMSA Ship Detention List – May 2014

⁹² AMSA Ships Detention List – May 2013

⁹³ AMSA, op. cit., <amsa.gov.au>

⁹⁴ United Nations, *Environment Program*, 2009.

⁹⁵ Department of the Environment, *Marine Debris*, <environment.gov.au>

⁹⁶ AMSA, *Prosecutions for ships sourced garbage pollution, Commonwealth and State Legislation from 1997, 2015*. <https://www.amsa.gov.au/environment/legislation-and-prevention/prosecutions/garbage/table.asp>. Accessed in September 2015. It appears that AMSA no longer publishes this table.

⁹⁷ Ibid.

⁹⁸ Ibid.

⁹⁹ Ibid.

¹⁰⁰ The relevant Conventions and Acts are: the International Convention on the Control of Harmful Anti-fouling Systems on Ships, 2001; Protection of the Sea (Harmful Anti-Fouling Systems) Act, 2006.

¹⁰¹ A Roach & S Wilson, ‘Ecological impacts of tributyltin on estuarine communities in the Hastings River, NSW, AUS,’ *Marine Pollution Bulletin*, vol. 58, 2009, p. 1780-1786.

While Australia has ratified this convention and introduced domestic legislation to enforce it, many countries have not or do not enforce such regulations, leaving TBT as a continuous problem for some time to come.¹⁰²

Evidence from the 2009 GBRMPA report shows that highly elevated concentrations of anti-fouling paint particles to the Great Barrier Reef (GBR) have been closely associated with ships' groundings.¹⁰³

Over 600 shipping related incidents (e.g mechanical failures which have, or could have, resulted in ship groundings or pollution) have been recorded in the GBR region since 1987.¹⁰⁴ Examples of these include the 1999 grounding of *New Reach*¹⁰⁵ at Heath Reef, the 2000 grounding of *Bunga Teratai Satu*¹⁰⁶ at Sudbury Reef, the *Doric Chariot*¹⁰⁷ grounding south of the Piper Reef and the 2010 grounding of the *Shen Neng 1* off the Douglas Shoal. Concentrations of TBT measured at the Sudbury Reef, Douglas Shoal and detected at the Heath Reef grounding sites were elevated above the Australian Anti-Fouling and In-Water Cleaning Guidelines, 2013.¹⁰⁸

Moreover, numerous near miss shipping incidents go unreported. A recent survey of pilots in the GBR found that 'The number of [shipping related incidents] which they claimed to have experienced was about 10 times the number of reports of such events in records held by AMSA.'¹⁰⁹

According to De'ath et al., reefs in the GBR have lost almost 50% of coral cover since the mid-1980s.¹¹⁰ Every step must be taken to protect the remaining coral. Unfortunately, despite the advent of compulsory pilotage in 2001 and the Great Barrier Reef and Torres Strait Vessel Traffic Service (REEFVTS), severe accidents still occur (See *Shen Neng 1* below) and worse still, the recovery of reefs from ship groundings is often very slow and in many cases, can take decades.¹¹¹

Bunker oil spills

One of the worst examples of marine pollution occurs when bunker fuel or crude oil is spilled in quantity, devastating living organisms in the sea and along the coast. Heavy or crude oil and petroleum products are known for their volatile carcinogenic nature. They can damage to red blood cells, suppress the immune system, strain the spleen, cause pneumonia and interfere with the reproductive systems of humans and animals.¹¹²

Bunker oil, as defined by the International Conventional on Civil Liability for Bunker Oil Pollution Damage 2001 is "any hydrocarbon mineral oil, including lubricating oil, used or intended to be used for the operation

¹⁰² As of 2010, 47 parties were signatory to the convention, representing 74.4% of the world's gross tonnage. See CEP/UNEP, 'Report of the Regional Workshop on the Anti-Fouling Systems Convention,' 2010, p. 5.

¹⁰³ Great Barrier Reef Marine Park Authority [GBRMPA] Report, 2009

¹⁰⁴ Ibid.

¹⁰⁵ 16 May 1999, *New Reach*, Panama flagged ship, ran aground on Heath Reef. ATSB report, 147

¹⁰⁶ 2 November 2000, *Bunga Teratai Satu*, Malaysian flagged ship ran aground on the Sadbury Reef, Torres Strait. ATSB report, 162.

¹⁰⁷ 26 July 2002, *Doric Chariot*, Greek registered ship, ran aground south of Piper Reef affecting 1500 square metres of coral with anti-fouling paint. ATSB found grounding due to pilot's significant fatigue. ATSB, report 182.

¹⁰⁸ Department of Sustainability, Environment, Water, Population and Communities, 'Anti-Fouling and In-Water Cleaning Guidelines,' June 2013, *Department of Agriculture, Fisheries and Forestry, Australian Government*.

¹⁰⁹ ATSB, Safety Issue Investigation into Queensland Coastal Pilotage, 2012.

¹¹⁰ G De'ath, K Fabricius, H Sweatman & M Putotinrn. Shifting base lines declining coral cover and the erosion of reef resilience: comment on Sweatman et al. 2011, *Coral Reefs*, 30, 2012, p. 653-660.

¹¹¹ Precht, W.F. 1998 The art and science of reef restoration. *Geotimes* 1, 16-20

¹¹² AMSA, The effects of Maritime oil spills on Wildlife including non-avian Marine life.

or propulsion of the ship, and any residues of such oil.”¹¹³ Virtually all of the 5,674 international ships that visited Australia in 2014 carried bunker oil for their engines and other machinery.

Marine pollution caused by bunker oil spills are exceedingly detrimental as it is more persistent than refined petroleum and therefore, more likely to have a more harmful impact on the marine environment and marine wildlife. Initially, only spill from tankers carrying petroleum as cargo were covered by the International Convention on Civil Liability for Oil Pollution Damage (CLC) 1992 or the International Convention on the Establishment of an International Fund for Compensation of Oil Pollution Damage (FUND) 1992. The International Convention on Civil Liability for Bunker Oil Pollution Damage 2001 was introduced as a result of this gap.

Pollution from bunkers is usually the result of grounding and can have a significant impact on the environment. Examples include the *Korean Star*,¹¹⁴ *Nella Dan*,¹¹⁵ *Anro Asia*,¹¹⁶ *the Sanko Harvest*,¹¹⁷ and the *Pacific Adventurer*.

Under the Bunker Convention, the shipowner bears liability for pollution damage caused in the state party's territory and for the preventative measures taken in relation to the spill. The upper limit of the liability is based on the limits established under the IMO Convention on Limitation of Liability for Maritime Claims (LLMC) 1976. This was problematic in that the upper limit of liability is inadequate to cover reasonable cost recovery and compensation for bunker oil spills.

After the bunker spill from the Hong Kong flag container ship, *Pacific Adventurer*, Australia and other states such as the UK argued that the limitation on liability should be increased by 147%. Eventually, it was agreed that the upper limit of the LLMC convention should be increased by 51%, which came into effect in June 2015. This remains an inadequate upper limit.¹¹⁸

Bunker oil spill: Pacific Adventurer

The *Pacific Adventurer* lost overboard 31 containers holding ammonium nitrate¹¹⁹ off Cape Moreton, Queensland. The containers punctured the ship's bunker tank. Approximately 270 tonnes of bunker oil leaked from the tanks, affecting 38 miles of Queensland's coastline near Brisbane. Queensland Premier Anna Bligh labelled it 'the worst environmental disaster Queensland has ever seen'.

At the time of the incident, March 2009, the liability limit for this incident (per the size of the ship) was approximately AUD \$17.5 million. The initial estimate of the clean up costs made by the Queensland Government was over AUD \$30 million. Owners Swire Shipping were eventually required to pay AUD \$17 million and agreed to provide an extra AUD \$9 million in compensation for the oil spill to a court-administered fund and a trust established to help improve marine protection and marine safety.¹²⁰

The Protection of the Sea Levy charged by AMSA to ships was increased by 3 cents per tonne in 2010 to cover costs associated with the *Pacific Adventurer* disaster. On 1 July 2014, the Levy was lowered back to the

¹¹³ See Bunker Convention 2001, Art. 1(5).

¹¹⁴ MV *Korean Star*, Panamanian flag of convenience bulk carrier that was wrecked on 20 May 1988 near Cape Cuvier, Western Australia.

¹¹⁵ MV *Nella Dan* grounded at Macquarie Island on 3 December 1987.

¹¹⁶ *Anro Asia*, Singapore flagged ship, grounded in Bribie Island, October 1981.

¹¹⁷ *Sanko Harvest*, Panama flagged FOC struck a reef off Esperance, Western Australia, February 1991.

¹¹⁸ See INCE & Co., Pushing the limits: IMO announces increase in the limits of liability for ship-owners, 2012

¹¹⁹ Ammonium nitrate in the presence of fuel oil (AN/FO) is a widely used bulk industrial explosive mixture.

¹²⁰ AAP, Swire agrees to pay \$25m for clean-up costs, *Sydney Morning Herald*, 8 August 2009.

2010 level of 11.25 cents per tonne. The increase also paid for a \$10 million pollution response reserve and an upgrade of AMSA's pollution response stockpile.¹²¹

The Australian Transport Safety Bureau (ATSB) investigation found that the lashings on the containers were loose and in poor condition so that when the ship encountered poor weather and synchronous rolling the lashings failed, resulting in the loss of 31 containers of ammonium nitrate fertiliser (a dangerous good under the International Maritime Dangerous Goods Code).¹²²

AMSA had inspected the vessel in October 2008 (Darwin) and December 2008 (Newcastle) and identified 11 defects, which were rectified. However, the problem with the lashing equipment was not identified. Subsequently, AMSA introduced more rigorous cargo securing inspections and conducted a focussed campaign on cargo securing.¹²³

Great Barrier Reef grounding: Shen Neng 1

On the 3rd of April 2010, the *Shen Neng 1*, a Chinese flagged bulk coal carrier, ran aground on the Douglas Shoal on the Great Barrier Reef after loading coal in Gladstone and while traversing on a well-known shipping route.¹²⁴ The subsequent environmental disaster highlights many weaknesses in Australia's environmental protection measures, international environmental conventions, international standards for fatigue and safety management, practices for recording accidents, and common corporate strategies for avoiding responsibility. The damage to the reef has still not been remediated. After legal action against the ship's owners, the Commonwealth has settled out of court for a sum that is a fraction of the actual clean up costs.

The impact of the grounding ruptured the ship's bunker fuel tanks, releasing approximately 4 tonnes of fuel oil into the surrounding waters. Toxic antifouling paint was also embedded into the sea floor. The ship carved a 3 kilometre-long, 400,000 square metre scar onto the Douglas Shoal, which the CEO of the Great Barrier Reef Marine Park Authority (GBRMPA), Dr. Russell Reichelt referred to as the "largest known damage to the Great Barrier Reef caused by a ship."¹²⁵

After an investigation, the Australian Transport Safety Bureau (ATSB) found that a major cause of the grounding was an ineffective fatigue management system (See Section 12). The chief mate had only slept for 2.5 hours in the 38.5 hours prior to the disaster, and was responsible for loading the cargo in Gladstone prior to the ship getting underway. The ATSB found that the recorded hours of work and rest on the ship did not reflect actual hours worked, and that the crew 'was only completing the form so that an inspector (auditor or surveyor) could see that the hours were being recorded.'¹²⁶ Further, the ship's managers argued that there was no problem with the fatigue management procedure on board as it was approved by Chinese

¹²¹ Department of Infrastructure and Regional Development, Budget Statements 2014-15, Australian Maritime Safety Authority, Section 3: Explanatory tables and budgeted financial statements.

¹²² ATSB, Independent investigation into the loss of containers from the Hong Kong registered container ship Pacific Adventurer off Cape Moreton, Queensland on 11 March 2009, Marine Occurrence Investigation No. 263.

¹²³ ATSB, Independent investigation into the loss of containers from the Hong Kong registered container ship Pacific Adventurer off Cape Moreton, Queensland on 11 March 2009, Marine Occurrence Investigation No. 263, p. 46.

¹²⁴ Australian Maritime Safety Authority, Shen Neng 1, retrieved 28 July

(https://www.amsa.gov.au/environment/major-historical-incidents/Shen_Neng1/index.asp)

¹²⁵ Isobel Roe, Barrier Reef spill: Commonwealth launches court bid to recover costs from Shen Neng One, ABC News, May 2015

¹²⁶ Australian Transport Safety Bureau, Independent investigation into the grounding of the Chinese registered bulk carrier Shen Neng 1 on Douglas Shoal, Queensland 3 April 2010, April 2011, p. 27.

maritime authorities. The ATSB concluded that the vessels Safety Management System 'did not support the requirements, or the intent, of the STCW convention in relation to fatigue management'.¹²⁷

Dr. Reichelt further revealed in a May 2015 press release "despite ongoing attempts to have the ship's owners pay for damages, the Commonwealth was unsuccessful in securing funds for the ship owner or its insurer to clean-up and remediate the site." The action was for "damages from the ship's owner for the cost of remediation of the shoal," with a trial in April 2016 in Brisbane.¹²⁸

The Federal Government settled out of court with the coal carrier. After initially claiming \$194m in damages, the government settled the case for \$39.3m, which includes \$35m for removing polluted rubble and \$4.3m for the costs of the immediate response. Part of the considerations in reaching an agreement is standard limitations on the amount that can ships are liable for under the *Convention on the Limitation of Liability for Maritime*, which is about \$35m, and the *Commonwealth Limitation of Liability for Maritime Claims Act 1989*.¹²⁹

Russell Reichelt, the chairman of the Great Barrier Reef Marine Park Authority (GBRMPA), said in a statement: "It is clearly unsatisfactory that it has taken more than six years to reach this point of settlement with the owners of *Shen Neng 1*, the Shenzhen Energy Transport Company."

According to a report prepared for the Great Barrier Reef Marine Park Authority there is no data on the potential impact of the Sheng Neng 1 for 77% of the 400,000 m² impact footprint. They suggest because of the scale physical damage sustained by the reef, it is unlikely to be able to restore itself at the rate a reef normally would, and that 'morphological features are likely to remain for decades'.¹³⁰

Reef restoration work has still not begun. The GBRMPA reported in October 2018 that contracting was underway for planning, advisory, and management services.¹³¹ Environmental monitoring is expected to begin in 2019 (prior to any restoration works).

The length of time it has taken to begin work cleaning up has likely exacerbated the impact on the reef. The rubble containing toxicant tributyltin as well as copper and zinc has likely been spread during storms and mixing events; fine dispersed rubble will never be recovered. Anti-fouling chemicals and tributyltin have now been found outside the immediate footprint of the incident.¹³²

The Commonwealth originally claimed \$194 million in damages from Shenzhen Energy Transport Co. In a hearing on 23 July 2015, the Commonwealth filed an interlocutory application for discovery of a wide range of documents relating to the ship's operation, including logbooks, correspondence, maintenance records, and relevant parts of the safety management system, in the days leading up to the disaster and following it.¹³³

¹²⁷ Australian Transport Safety Bureau, Independent investigation into the grounding of the Chinese registered bulk carrier *Shen Neng 1* on Douglas Shoal, Queensland 3 April 2010, April 2011, p. 28.

¹²⁸ Great Barrier Reef Marine Park Authority, *Shen Neng 1 grounding: Statement*, 27 May 2015.

¹²⁹ Gaskell, N. 2016. Liability and Compensation Regimes : Oil and HNS pollution of the High Seas. Website: <https://cil.nus.edu.sg/wp-content/uploads/2016/04/Panel-4-Presentation-by-Nick-Gaskell.pdf>

¹³⁰ Costen, A. Ims, S. and Blount, C. 2017, *Douglas Shoal Preliminary Site Assessment Report*. Document R.1.59918002, Version 1. Report prepared by Cardno Ltd for the Great Barrier Reef Marine Park Authority, Townsville. P.40.

¹³¹ Great Barrier Reef Marine Park Authority 2018, *From Blueprint to action: Great Barrier Reef Blueprint for resilience: progress report*, GBRMPA, Townsville.

¹³² Costen, A. Ims, S. and Blount, C. 2017, *Douglas Shoal Preliminary Site Assessment Report*. Document R.1.59918002, Version 1. Report prepared by Cardno Ltd for the Great Barrier Reef Marine Park Authority, Townsville. P.40.

¹³³ *Commonwealth of Australia v Shenzhen Energy Transport Co Ltd* [2015] FCA 757 (23 July 2015).

The Commonwealth was refused access to these documents, and ordered to pay legal costs to Shenzen Energy Transport Co. The basis was that the Convention for Liability for Maritime Claims 1976 and the associated *Limitation of Liability for Maritime Claims Act 1989* (Cth) ‘clearly limits the liability for claims to “distinct occasions”’, eg. the moment of the grounding.¹³⁴

For its part, Shenzen Energy Transport Co said that the grounding ‘was caused solely by the negligent navigation of the Chief Officer of the vessel’, Xuegang Wang. This is the officer who had slept for only 2.5 hours in the 38.5 hours prior to the disaster due to going on watch only a few hours after being responsible for loading the ship’s cargo.¹³⁵ He was subsequently jailed for 3 months.¹³⁶ The captain of the ship was personally fined \$25,000.¹³⁷

Subsequent to the disaster, the *Shen Neng 1* owners changed the name of the ship to the *Jia Chang* and, then changed the management company and DOC Holder responsible for safety management on board the ship. By the time the ATSB report was released in April 2011, with the recommendations directed to Tosco Keymax International Ship Management Company, that company was no longer associated with the ship. Instead, the DOC Holder had become ‘Tianjin Cosbulk Ship Management’ (China) in February 2011, and was then changed to ‘Cosco Wallem Ship Management’ (China) in March 2011.

The ship’s owner was at the time, and remains, the Shenzen Group Energy Co Ltd, based in Guangdong, China. The ship’s insurer was at the time, and remains the ‘London P&I Club’, which is based in London and is the insurer for approximately 1,285 international ships.¹³⁸ The renamed ship continued to travel to Australia a few times per year in 2011-2014.

Great Barrier Reef Oil Spill: Regina

A significant oil spill took place in the waters of the Great Barrier Reef Marine Park, with oil washing up on beaches north of Townsville to Hinchinbrook Island and the Palm Island group in July 2015. The clean up took two weeks and cost \$1.5 million.¹³⁹

No ship reported the spill, so there was a comprehensive effort to identify the ship. Maritime Safety Queensland led the joint agency investigation in cooperation with the Great Barrier Reef Marine Park Authority, Queensland Parks and Wildlife Service and the Australian Maritime Safety Authority.

[REDACTED]

¹³⁴ *Commonwealth of Australia v Shenzhen Energy Transport Co Ltd* [2015] FCA 757 (23 July 2015).

¹³⁵ *Commonwealth of Australia v Shenzhen Energy Transport Co Ltd* [2015] FCA 757 (23 July 2015).

¹³⁶ Rae Wilson, Three months' jail for Chinese bulk carrier damage to Reef, *Sunshine Coast Daily*, 26 Oct 2012.

¹³⁷ William Rollo, Captain fined \$25k over Shen Neng oil spill, 14 November 2012, *ABC News*

¹³⁸ The London P&I Club, Overview 2015. Calculated based on figures in report (pg.3) of 54 million entered tonnage of ships with an average size of 42,000 DWT.

¹³⁹ David Chen, Great Barrier Reef: Panama company charged, faces up to \$17m fine for spilling tonnes of oil, *ABC News*, 22 Jun 2017.

¹⁴⁰ JOINT STATEMENT, Minister for Main Roads, Road Safety and Ports and Minister for Energy, Biofuels and Water Supply, The Honourable Mark Bailey, Minister for Environment and Heritage Protection and Minister for National Parks and the Great Barrier Reef, The Honourable Steven Miles, *Cape Upstart oil spill charges welcomed*, Thursday, June 22, 2017.

[REDACTED]

14. Security risks of FOC ships

The security threats of Flag of Convenience shipping were outlined by the Department of Immigration and Border Protection in their submission to the Senate Inquiry on the *Increasing use of so-called Flag of Convenience shipping in Australia* in 2015. The DIBP made the startling revelation that:

The Department notes that while a significant proportion of legitimate sea trade is conducted by ships with FOC registration, there are features of FOC registration, regulation and practice that organised crime syndicates or terrorist groups may seek to exploit.

These features are:

¹⁴¹ Globex Shipping SA v Mack [2018] QSC 138

¹⁴² Globex Shipping SA v Magistrate Mack (No 2) [2018] QSC 172, point 35. At point 26 of the case reading the judge admits that there “is no reason to assume the applicant does not have resources enabling it to comfortably bear its own costs.” In other words, the judge knows the applicant is a big corporate entity but still decides to order Matthew Slatcher to pay their legal costs.

¹⁴³ Australian Maritime Safety Authority v Globex Shipping S.A. [2018] FCA 1477. However, the matter is also listed again in Townsville Magistrates Court for 11 March 2019.

¹⁴⁴ IHS Maritime commercial ship database.

- a lack of transparency of the identity of shipowners and consequent impediment to holding the owner to account for a ship's actions; and
- insufficient flag state regulatory enforcement and adherence to standards.

A lack of transparency through concealed ownership in some FOC registration regimes is caused by a flag state not requiring disclosure of ownership as a condition for registering ships (some flag states actively advertise secrecy as a benefit of registering ships to their flag). Further, timely verification and validation of a ship's registration can often be delayed where flag state registries are managed by third parties or if flag states do not respond to enquiries.

In addition, FOC registered ships often have complex financial and ownership arrangements (such as ownership through shell companies) that make it difficult to identify the individuals and organisations involved in their operations.

Reduced transparency or secrecy surrounding complex financial and ownership arrangements are factors that can make FOC ships more attractive for use in illegal activity, including by organised crime or terrorist groups.

This means that FOC ships may be used in a range of illegal activities, including illegal exploitation of natural resources, illegal activity in protected areas, people smuggling, and facilitating prohibited imports or exports.

Some flag states require adherence to minimum required standards of shipboard practice instead of best practice. These flag states may also have poor governance and compliance regimes and fail to adhere to international maritime conventions and standards.

Limited compliance regimes and lack of adherence to international conventions and standards can contribute to a decreased or limited crew capability and diminish a ship's general sea-worthiness. Both factors can contribute to a heightened risk to the environment or other shipping, potentially leading to a compromise to biosecurity, for example through poor ballast water management or by causing marine pollution.

In summary, the Department concluded that:

The regulatory, registration and compliance practices of the so-called FOC states have the potential to create vulnerabilities for Australia's enforcement of laws in its maritime domain.

These vulnerabilities add to the attractiveness of FOC shipping to entities such as organised crime syndicates and other entities seeking to illegally exploit natural resources both within and outside the AEEZ.

In contrast, all Australian Maritime workers are required under maritime security legislation to undergo the most invasive and intrusive background checks in order to get a Maritime Security Identification Card (MSIC) and strict ongoing checks apply to all Australian maritime workers. This can often take up two months and consider an applicant's entire history before a decision is made to issue the card or not.

For FOC and international ships visiting Australia, even in the coastal trade, the employer need only apply on line for an immediate Maritime Crew Visa. Scant checks are run through domestic data bases and visas can be issued in a matter of hours.

Often ships' agents send entire crew lists to the government for tick off days before arrival.

In many cases FOC ships trading exclusively in the domestic trade rotate international crew through our airports for years, such as in the cases of the *Gas Defiance*, *Gas Shuriken* and *Wincanton*.

It is this double standard which alarms the security agencies and outrages unions and Australian maritime workers. IF MSIC cards are critical to port security, why are only Australian residents required to have them?

PART III: Rebuilding Queensland's Coastal Shipping

15. Policy measures to rebuild Queensland's coastal shipping

Queensland needs to take back control of its domestic shipping to ensure that it supports jobs, transport and energy systems that make sense for Queensland, and allow for the best possible protection of our coastal environment. Due to significant volumes of trade between Queensland and other states, such action needs to be coordinated with the Commonwealth government. The recommendations we make below for the Queensland Government are synchronised with the coastal shipping reforms which the MUA is in discussions with the Federal Opposition about, and which they have promised to consider within the first 100 days of a Labor government. In Section 21, we outline how we think the Queensland government could best support Commonwealth shipping reform.

The most direct action for Queensland to take is to restore the 'Restricted Use Flag' (RUF) provisions that used to exist under the *Transport Operations (Marine Safety) Act 1994* before it was abolished in February 2016.¹⁴⁵ The restored RUF provisions also need to be updated and strengthened to ensure they reflect the coastal trade that we know is taking place.

The package of reforms that we recommend is premised on:

- The principle of maritime cabotage that provides preferential treatment to general licenced ships in both the national and Qld sea freight and passenger ship markets, applied in a way that supplements general licenced ships through granting of temporary licences to foreign registered ships enabling foreign ships to access coastal sea freight trades and to coastal passenger shipping itineraries in specified circumstances, based on fair competition between Australian registered and/or crewed ships and foreign registered ships;
- The principle that interstate and intrastate transportation of cargo and passengers by sea is an integral part of the domestic transport and logistics industry on the one hand, and tourism industry on the other, and that any non-national seafarer labour engaged on temporary licensed ships or on ships to which a new Qld RUF applies in those industry sectors, be required to hold a work visa requiring labour market testing and payment of market rates of pay; and
- Consistent application of the economic regulation of coastal shipping in both interstate and intrastate trades, so that there is effectively one coastal shipping regulatory system applying throughout Australia.

These policy positions are structured to address the problem that:

- Ship charterers, such as the large Australian companies highlighted earlier in this report, rather than shipowners now effectively control the Australian coastal shipping market having, in the main, replaced the role of traditional shipowners. The majority of these charterers, including large participants such as Rio Tinto and BHP Billiton, have now moved offshore meaning that Australian ships are now more likely to be controlled from Singapore than from Melbourne.
- The vast majority of shipowners and shippers of cargo have developed offshore entities to facilitate their trading and shipping activities. This results in a number of the associated trading, marketing, supply and vessel chartering contracts being performed offshore. This, together with various tax

¹⁴⁵ The RUF was abolished in the the *Queensland Transport Operations (Marine Safety) and Other Legislation Amendment Bill 2015* on 16 February 2016. The previous RUF provisions were a form of economic regulation of Queensland intrastate coastal ships that permitted a foreign flagged ship to apply for an RUF permitting intrastate commercial voyages for a period not exceeding 28 days. A RUF was a form of temporary registration, issued through the consent of the General Manager (Maritime Safety Queensland), or delegate.

advantages, means the monies associated with these transactions will continue to remain offshore with little flow on benefit to the Australian economy, noting that the shift to offshore transactions results in regulatory complexities.¹⁴⁶

Recommendation: Restore and strengthen the previous Restricted Use Flag (RUF) provisions to explicitly provide for the economic regulation of foreign ships operating intrastate in Queensland, so that cabotage applies in Queensland. The legislation could quarantine known large intra-state shipping routes for Australian ships (such as the Weipa-Gladstone bauxite route or coastal LPG supply) and provide for RUFs to be issued to ships for these routes if they meet certain threshold conditions (for example, agreeing to carry 80% by volume of the cargos in a specified national interest trade on Australian-crewed ships).

This option could be achieved by the Queensland Government operating alone. It requires no complementary provisions in Commonwealth legislation. The RUF would complement the Restricted Use Authority (RUA) provision in the *Transport Operations (Marine Safety) Act 1994* (TOMSA) and *Transport Operations (Marine Safety) Regulation 2016* (Regulation).

The following amendments would be required to the TOMSA and Regulation, as follows:

- To expand s3 of TOMSA, in particular ss5 so that the objective to “manage the operation and activities of ships” includes the following:
 - To maximise the use of vessels registered in the Australian General Shipping Register in coastal trade; and
 - To facilitate the long-term growth of the Australian shipping industry; and
 - To enhance the utilisation, efficiency and reliability of Australian ships as part of the national transport and logistics system; and
 - To promote competition between Australian providers of coastal ships and fair competition with road and rail modes in domestic freight transport; and
 - To promote a narrowing of the cost gap between Australian ships and international ships in coastal trade; and
 - To quarantine national interest trades, routes or market segments for Australian ships.
- Known large intra-state shipping routes, such as the Weipa-Gladstone bauxite trade and the LPG trade from Brisbane to Gladstone, Townsville, and Cairns could be specifically identified in the legislation, under the objective ‘To quarantine national interest trades, routes or market segments for Australian ships.’ The legislation could set out specific objectives for such identified routes, and provide for RUFs to be issued to ships for these routes if they meet certain threshold conditions (for example, agreeing to carry 80% by volume of the cargo in a specified national interest trade, route, or market segment on Australian-crewed ships).
- To give effect to the revised objectives across the shipping industry and to identify new trades as they develop, the new RUF provisions would include an application and approval process for foreign flagged vessels to operate in the Queensland intrastate trade under specified conditions.
 - It is envisaged that the proposed application and approval process would broadly mirror the TL application process being proposed for the CT Act for both cargo ships and passenger ships, to be performed by a proposed Australian Coastal Ship Licencing Authority.
 - The Queensland Government could agree to contract with the Australian Coastal Ship Licencing Authority to perform the licensing process for Queensland intrastate ships.

¹⁴⁶ Strategic Marine Group Pty Ltd *Coastal Shipping Research & Analysis The economics of coastal shipping*, August 2016 (unpublished)

- For the purposes of creating a new form of RUF, the meaning of ships in TOMSA would require expansion by creating an additional category of ship that is not a Qld Regulated Ship, nor an Other Qld Regulated Ship but a Foreign Flagged Qld Regulated Ship (defined as a ship not on the AGSR, but either a Regulated Australian Vessel (RAV) as defined in the *Navigation Act 2012* or a Domestic Commercial Vessel (DCV), but not a recreational ship), which voyages intrastate.

Queensland freight policy

The Qld Government needs to ensure that the sea mode of freight and passenger transport continues to receive high priority in multi-modal transport planning, in infrastructure prioritisation and in budget funding allocations.

Recommendation: The *Queensland Freight Strategy* currently being developed needs to be reviewed in light of the findings of this Inquiry, to ensure that it adequately reflects the needs and importance of coastal shipping.

16. Road and rail subsidies unfairly disadvantage shipping

It is estimated that across Australia, roads received \$25 billion in public funding and rail received \$8.3 billion in public funding in 2013-14.¹⁴⁷ In contrast, no Commonwealth or State taxation revenue is currently allocated, directly or indirectly, to the domestic shipping industry.¹⁴⁸

Ports are paid for by port fees paid by ships. Therefore, ships require no infrastructure funding from Government. The Queensland Government actually makes a substantial revenue from the ports that remain publicly owned (all except the Port of Brisbane).

These facts significantly undermine the arguments of industry participants such as the Queensland Transport and Logistics Council that if shipping was competitive with the landside of transport, a coastal shipping service would already exist.¹⁴⁹

Both the Brisbane and Townsville ports have pointed to road and rail freight subsidies as affecting the viability of a sea freight service. The Port of Brisbane said:

‘There have been a number of attempts to establish coastal services for containerised products and break-bulk products on the Queensland coast without success. This is due to a number of factors, predominately the continued subsidisation of road and rail by successive State and Federal Governments. As a result, shipping has not been able to compete on an equal playing field.’¹⁵⁰

The Port of Brisbane explained that:

¹⁴⁷ ABS (2015, c, e, h), BITRE estimates. See Teresa Lloyd, “The Strategic Fleet and the National Interest”, *Lloyds DCN*, October 2018.

¹⁴⁸ A very small amount of government revenue is currently forgone where ship owners and ship operators have accessed Commonwealth shipping taxation incentives, and in the case of Victoria, where some port charges favour coastal shipping relative to foreign shipping.

¹⁴⁹ Queensland Transport and Logistics Council, *Inquiry into Coastal Sea Freight*, 2014.

¹⁵⁰ Report of the Qld Parliament’s Transport, Housing and Local Government Committee Report No. 59, *Inquiry into Coastal Sea Freight* December 2014, P26

'The externalities of trucking have not been paid for by the industry, where the engineering impacts of one heavy vehicle can be the equivalent to 5000 cars. As a result of subsidisation of the heavy vehicle industry, particularly long-haul markets, a coastal cargo mode cannot compete, even when distances present a competitive advantage.

While subsidies in the rail sector have had less of an impact on coastal shipping, Government policy changes at the time created competitive neutrality between road and rail modes; it is this competitive neutrality that has come at the expense of the coastal shipping sector.'¹⁵¹

The Queensland *Inquiry into Coastal Sea Freight* accepted that 'rail freight and road freight receive direct and indirect subsidies from the Queensland and Federal governments and that this is likely to put a sea freight service at a competitive disadvantage.' It considered 'the appropriateness of various subsidies to a range of points in the supply chain' and concluded that:

Government should be open to discussions with the shipping industry, regional ports and freight customers regarding ways in which the government might be able to provide assistance to facilitate the establishment of a regular coastal sea freight service.

'The Committee suggests, that if financial assistance is to be provided, it should be preceded by an assessment of any infrastructure barriers to a coastal shipping service, for example the need for loading facilities at regional ports which could be made available as common use infrastructure. Port infrastructure requirements are discussed in the next section of this report.'¹⁵²

There are a range of industry policy support measures that can be taken by both the Qld and Commonwealth governments that would help level the playing field for shipping to enable fair competition for market share in coastal freight, including:

- Port fees, levies and charges (state)
- Ship fees, levies and charges (mainly Commonwealth).
- Port access prioritisation (state)
- Towage services (state).
- Government funding of fit for purpose port infrastructure (state).
- Cadet and Traineeship training support, and support for access to IMO Convention mandated sea time for seafarer qualifications (state and Commonwealth).
- Corporate and employee taxation measures (Commonwealth).
- Use of procurement to provide baseload freight demand (state).
- Support for domestic ship maintenance programs (state).
- A coordination role for government – national supply chain coordination and partnering (state) to address barriers to entry.

Recommendation: That the Qld Government establish a Task Force to identify the most effective and efficient forms of industry assistance that could be made available to coastal ship owners and operators aimed at redressing the competitive disadvantage which coastal shipping endures due to the subsidization of the road and rail freight modes of transport.

¹⁵¹ Ibid P41

¹⁵² Ibid P46

Unfair subsidies contribute to poor wages and conditions

It should be noted that the Port of Brisbane advocated for allowing coastal shipping to compete with road and rail on price by accessing international labour costs for seafarers.¹⁵³ This is the unspoken and unacceptable compromise made by a significant portion of the Australia's coastal shippers, and a choice that government policy has facilitated.

This situation is untenable, represents lazy policy and is detrimental to Australia's national interest because it:

- Destroys Australian shipping industry employment, skills and maritime expertise;
- Destroys the maritime skills base required by a maritime dependant nation;
- Eliminates investment in Australian ships;
- Reduces Australian tax revenue; and
- Creates a national security risk by creating a total dependency on foreign ships, mainly from the global shipping spot or charter market.

17. Coastal shipping: Social and economic benefits for Queensland

The primary economic benefit that will arise from Qld Government support for the growth of a sustainable intrastate shipping industry in Qld is the supply chain efficiencies that will flow to Qld businesses, enabling those business to grow, to value add and to realise their market potential, particularly in export markets, increasing overall business viability and profitability.

The flow on effects to the Qld economy that will arise from this increased business activity, include:

- New demand for financial, legal, insurance and ship brokering/chartering services;
- Attraction of foreign investment in ships and related maritime business;
- The diffusion of new technologies into the economy;
- Reduced outflow for purchase of foreign shipping services;
- Improved freight modal choice for shippers and freight modal integration and coordination for all supply chain participants;
- Increased demand for goods and services;
- An increase in maritime employment and maritime workforce capability.

New demand for financial, legal, insurance and ship brokering/chartering services

Qld Government support for development of a coastal shipping industry will attract considerable investment in ships and related shipping services and shipping infrastructure, such as towage, pilotage, wharfage, ship provisioning, and ship maintenance and repair.

Each new or chartered ship (which could, in the case of new ships, range in price from \$10m to \$200M) requires financing, legal services for purchases and for charter party contracting, insurance, brokering and chartering services. These services can be performed by Qld businesses.

¹⁵³ Ibid P41

A 2015 report from Price Waterhouse Coopers found that with just a modest increase in Australian ships, the maritime industry would make an additional contribution to the economy of \$4.25 billion in output, \$867 million in tax revenue and over 9,000 additional jobs.¹⁵⁴

Attraction of foreign investment

Subject to proposed changes to the Commonwealth licencing provisions in the *Coastal Trading (Revitalising Australian Shipping) Act 2012*, which the MUA urges the Qld Government to support (Section 21), the proposed new licence type – the Modified General Licence (MGL) – will we believe be attractive to a considerable number of ship operators. The MGL allows for foreign ships to be licenced under prescribed conditions, which could enable Australian shipowners to invest in foreign ship tonnage, thereby attracting new foreign investment in the Qld economy.

Reduced outflow of payments to foreign corporations for shipping services

In 2016/17, freight transport services were Australia's 8th largest goods and services import, costing the nation \$8.7B, yet it did not rate among Australia's top 25 goods and services exports.¹⁵⁵

This indicates the huge potential to build an export service industry that could replace a large proportion of that multi-billion-dollar import bill the nation is paying for the shipping services required to export its resource and agricultural commodities and to import its manufactured goods.

This cost of transport services to the nation will increase if more Australian ships are replaced in the coasting trade by foreign registered ships.

The diffusion of new technologies into the economy

New investment in ships and related shipping services and infrastructure, including stevedoring support for those ships, has the potential to accelerate the introduction of new ship and wharfside technologies into the Australian maritime industry, providing an impetus for a new wave of modernisation in the Australian maritime industry. The MUA refers the Committee to two papers commissioned by the Commonwealth Department of Infrastructure and Regional Services as part of its Inquiry into National Freight and Supply Chain Priorities that outline a range of new maritime technologies in place, or being trialed, in various nations, as examples of new maritime technology that Australia could potentially benefit from.¹⁵⁶

Improved modal choice and coordination for freight shippers

Qld support for growth in Australian coastal shipping will have a significant impact on modal choice for shippers, who will have access to an efficient third option in addition to road and rail freight services on the longer haul legs of their supply chains, and for bulkier freight types.

Better modal integration and coordination will impact all shippers by providing a more seamless freight modal interface for the transportation of products to end users, be they located in other regions of Qld, interstate or overseas.

¹⁵⁴ Price Waterhouse Coopers *The Economic Contribution of the Australian Maritime Industry*, February 2015, Prepared for the Australian Shipowners Association (ASA – now Maritime Industry Australia Ltd [MIAL]).

¹⁵⁵ Department of Foreign Affairs and Trade, *Australia's top 25 imports, goods and services, 2016/17 and Australia's top 25 exports, goods and services, 2016/17* – <https://dfat.gov.au/trade/resources/trade-statistics/trade-in-goods-and-services/Pages/australias-trade-in-goods-and-services-2017.aspx> - (20 Dec 2018)

¹⁵⁶ Bell, Michael, Professor of Ports and Maritime Logistics, Institute of Transport and Logistics, University of Sydney Business School, *Australia's freight and supply chain performance against international comparators*, November 2017 and *Australia's freight productivity, its effect on the national economy and opportunities for improvement*, November 2017

Increased demand for goods and services

Additional maritime business activity and a consequent growth in maritime employment creates demand for a range of goods and services, that has a direct impact on businesses outside the maritime industry, and on tax revenue for government.

An increase in maritime employment and maritime skills

Implementing the recommendations in this submission would result in an increase of hundreds of direct jobs for seafarers, which in turn would generate significantly more jobs ashore in ship management and maintenance.

The increase in jobs would support the expansion of the maritime skills base which is essential to all Australian port operations, operations that handled \$420.7 billion¹⁵⁷ in imports and exports in 2015-16. These maritime skills are critical not just for Australian and international cargo ships, but for pilotage, for port harbourmasters, for towage, for marine rescue and salvage, for bunkering, for maritime regulators, for maritime training, for marine law, marine certification, and marine insurance – all skilled occupations that Australia requires as a maritime dependent nation.

18. Protecting the Great Barrier Reef: Environmental benefits of coastal shipping

It was noted earlier that over 11,000 ships transit the Great Barrier Reef annually (Section 3). The more that this traffic is transferred to Australian ships, the greater control the Australian and Queensland government has of the standards on board these ships. This could be used to:

- Ensure that ships comply with the highest levels of engine emissions standards, and ban the use of exhaust scrubbers which transfer fuel emissions into the sea or generate toxic waste.
- The use of alternative low-emissions fuels could be explored, such as LNG from the already-existing terminals in Gladstone. The *Searoad Mersey II* was Australia's first LNG powered domestic vessel, and it began operation in 2016 between Melbourne and Tasmania.
- Ensure that crew are on reasonable rosters and working in decent conditions to prevent dangerous errors due to fatigue, which can caused environmental catastrophes.
- Ensure that vessel operators can be held accountable in case of environmental damage.
- Transfer freight from trucks to ships, which is far more efficient and generates lower emissions.

The *North East Shipping Management Plan* was developed due to concern about the impact of shipping on the Great Barrier Reef, and to examines the best ways of mitigating it. It informed the Reef 2050 Long Term Sustainability Plan. It found that measures in place have had a significant effect, and recommended that the following additional measures be taken, in order of effectiveness:

- Increasing the areas where ships require pilots on board (which has happened)
- Increasing resources for Port State Control Inspections, with a particular focus on areas of navigational risk.
- Requiring electronic chart display systems (ECDIS)
- Requiring ships to have bunker oil tanks in protective locations.
- Ship reporting and routeing in the Coral Sea
- Using ship tracking technology

¹⁵⁷ BITRE, *Australian Sea Freight 2015-16*, May 2018, P.v.

- Additional emergency towage.¹⁵⁸

The report raises concerns about the cumulative impacts of shipping, particularly when combined with other activities. It also says ‘fatigue has been a causal factor in several significant incidents in the region’.¹⁵⁹

The Plan clearly says that Port State Control vessel inspections are the second-most effective action to safeguard the Reef. In this context, the 23% decline in national vessel inspections from 2015 to 2017 is alarming (Figure 7). The Committee should investigate whether inspections in Queensland ports have followed these national trends, and why they have taken place.

The 2017 Annual Report of the Reef 2050 Plan showed only three actions that were significantly delayed or where there was no progress, two of which related to improving shipping standards. They were:

‘EBA7—Consider development of a new vessel class which ensures bulk goods carriers travelling in the World Heritage Area meet stringent safety standards

Initial research into the development of a new vessel class indicates that bulk carriers do not present a higher risk than any other vessel class, and that operational parameters are the best way to introduce higher safety standards. Maritime Safety Queensland and the Australian Marine Safety Authority are working to identify appropriate potential vetting parameters.

‘EBA8—Fully vet 100 per cent of bulk carriers traversing the Great Barrier Reef to an appropriate standard by an independent industry endorsed ship-vetting provider

Defining an ‘appropriate standard’ is contingent on the action above (EBA7). This action will be progressed when EBA7 is resolved.¹⁶⁰

The 2018 mid-term review of the plan recognised the threats to the reef from:

‘Damaging incidents from shipping and boating:

- groundings
- vessel waste discharge
- spills
- vessel strikes
- damage to sea floor
- noise pollution

However, the actions to be taken under the 2050 Plan to ensure safer shipping were watered-down as follows:

‘EBA6 Implement commitments for best-practice commercial vessel operation including those aimed at:

- undertaking further research and investigating appropriate measures to reduce cumulative impacts from shipping.

‘MTR EBA1 Maritime industry to adopt ship vetting practices for bulk carriers to ensure they meet high safety standards. Vetting practices should take into account the quality of the ship, competence of the crew, ship emissions and general protection of the marine environment considerations.¹⁶¹

¹⁵⁸ North East Shipping Management Group, *North East Shipping Management Plan*, October 2014, p. ix, p.35. The North East Shipping Management Group is chaired by the CEO of AMSA and also includes the Department of Infrastructure and Regional Development, the Great Barrier Reef Marine Park Authority, Department of the Environment, Department of Agriculture, Department of Industry, and Maritime Safety Queensland.

¹⁵⁹ North East Shipping Management Group, *North East Shipping Management Plan*, October 2014, p.25, p.40.

¹⁶⁰ Australian Government and Queensland Government, *Reef 2050 Plan 2017 Annual Report*, 2018, p.9.

¹⁶¹ Australian Government and Queensland Government, *Reef 2050 Long Term Sustainability Plan*, July 2018, p.63-4

The revised actions have significantly reduced ambition and would not have any effect on reducing crew fatigue.

Recommendation: Review the actions set out in the *Reef 2050 Plan* and the *North East Shipping Management Plan* to manage shipping impacts on the Great Barrier Reef. We are concerned that no action was taken on recommendations EBA7 and EBA8 from the original *Reef 2050 Plan* to improve the quality of ships transiting the reef, and that these recommendations have been watered down in the July 2018 version of the Plan. The *North East Shipping Management Plan* says that one of the most important measures to reduce risk is Port State Control inspections, yet we note a 23% decline in the number of Port State Control inspections carried out nationally since 2015, while the number of ship visits continues to increase.

Recommendation: Address the concerns of the Great Barrier Reef Marine Park Authority in relation to shipping articulated in their Great Barrier Reef Outlook Report 2014, specifically that restoration and rehabilitation of damaged areas of the reef following shipping groundings is underresourced, and that the GBRMP's 'objectives and implementation with regards to shipping have not been clearly articulated.' (p.207).

19. Queensland ports should support domestic shipping

Port fees and a port access regime

We urge the Qld Government work with the various Qld port authorities and private owners to consider the potential to move to differential port pricing charges that distinguish between Australian ships and foreign ships.

This is one of the most important initiatives that a State government can take in helping facilitate coastal shipping, and especially coastal intrastate shipping.

There is already an example of differential pricing in Victoria, where there is an exemption from its Channel Deepening Infrastructure fee for ship movements between Tasmania and the Port of Melbourne, directly relevant to the three Australian operators of Bass Strait freight and passenger services.

We therefore submit that the States and NT confer with a view to establishing a nationally consistent port fees and charges, and access, regime for Australian coastal shipping, applicable to both cargo and passenger ships.

We also propose that the Qld Government adopt measures to complement a regulatory framework that supports Australian shipping by ensuring that ships granted a general licence or modified general licence to operate in coastal trading (see Section 21) have priority berthing slot access to congested bulk ports like Gladstone. Such a measure would reduce port time delays and avoid the higher demurrage costs incurred by ships issued with these licences when delayed at port, due to their higher operating costs relative to foreign ships.

We also ask the Qld Government to support changes to the three levies charged by AMSA to reduce the amount paid by domestic ships and increase the amount paid by international ships.

Port infrastructure to support coastal shipping

We urge the Qld Government more actively implement recommendation 7 of *Inquiry into Coastal Sea Freight* which recommended that the Queensland Government continue to work with Queensland ports to ensure that port services required for a coastal sea freight service are incorporated into their port master plans and in particular, to ensure that berthing and loading/unloading facilities are guaranteed at each port

and that the cost of port services are kept to a minimum. This recommendation was supported by the Qld Government in June 2015.

We note however that in the most recent port master plan, being the draft master plan for the Port of Townsville, released for public consultation on 5 November 2018, there is no reference to coastal shipping, nor to the port services or wharfside infrastructure that might facilitate an expansion of coastal shipping or development of a coastal shipping service.

While the draft master plan for the Port of Townsville refers to the need for fit for purpose sea channels, swing basins and wharfage that facilitates ship access to ports, it appears to do so in the absence of any contemporary analysis of the ship types and ship technologies that are likely to use the port over the next 5 to 20 years, with a specific focus on coastal shipping, including intrastate shipping.¹⁶²

We also note with regret that the end of LPG shipping to Townsville means that these dangerous cargos will now travel from Cairns by truck.

It is our submission that the Qld Government should confer with other State Governments and the NT to undertake a stocktake of all current intra-state shipping activity, along with emerging opportunities for increasing coastal intrastate shipping activity, to examine port usage and port infrastructure requirements so that port master planning better accommodates the needs and future opportunities for intrastate coastal shipping.

Port governance and regulatory oversight

That the Qld Government establish principles for port governance that are applicable to both government owned corporations and private port owners or lessees.

We submit that current port governance arrangements are exclusionary and are not appropriately structured to capture the expertise of all relevant stakeholders such as shipowners and the workforce in ensuring ports are more strategic, more efficient and more productive.

In particular we are concerned that the expertise and contributions of the port and port services workforces are not adequately integrated into port governance arrangements.

Recommendation: Review port fees, port access and port infrastructure to ensure that they support coastal shipping. The higher cost structure of coastal shipping and unfair subsidies to road and rail should be compensated for by lowering port fees for coastal ships and allowing them berthing priority in order to reduce demurrage costs and ensure a reliable high-quality service. The Queensland government should support similar changes to the three Commonwealth AMSA shipping levies.

Recommendations: Ensure that port workforces are represented within port governance structures.

20. Procurement to support domestic shipping

We urge the Qld Government, as a large purchaser of goods and services to support the operations of government, to review its Procurement Policy 2018 to include provisions relating to the transportation and logistics aspects of supply and disposal with a view to ensuring that suppliers are required as a condition of

¹⁶² Advision/Department of Transport and Main Roads, Priority port master planning, Evidence base documentation, Priority Port of Townsville, December 2016 - <https://www.tmr.qld.gov.au/business-industry/Transport-sectors/Ports/Sustainable-port-development-and-operation/Master-planning-for-priority-ports/Master-planning-for-the-priority-Port-of-Townsville>

supply to consider the most efficient and cost effective transport mode in sourcing and supplying goods to the end user.

Notwithstanding the “Qld first” element of the Procurement Policy, many supplies will by necessity be sourced from interstate or overseas, providing opportunities to use coastal shipping in the freight logistics chain in supplying those goods, be they construction materials, plant and equipment, vehicles, machinery, paper and other office supplies, food and beverages, uniforms etc.

The Procurement Policy needs to establish guidance for suppliers that use shipping in the supply of goods, so there is a clear commitment to use Australian ships with Australian crews for the intrastate legs of their supply chains in transporting goods to Qld.

We also advocate that the roles and responsibilities of the Office of the Chief Advisor – Procurement be amended to include a reference to the use of Australian content in the transportation and logistics elements of the supply chains for supplying procured goods.

The application of a revised Qld Procurement Policy that deliberately commits to Australian shipping could help provide the base load demand for shipping that was identified in the Inquiry into coastal sea freight. In terms of sustainable freight volumes, the report noted that:

‘The commercial viability of a sea freight service will depend on identification of a long term reliable base load of freight which could sustain such a service. Any sea freight provider considering establishing a coastal sea freight service will need to undertake an assessment of the types of freight suitable to be transported by sea and the sustainable freight volumes that would warrant a modal shift.’¹⁶³

Recommendation: That the Queensland Government review its Procurement Policy 2018 to ensure that it includes the use of Australian coastal shipping.

21. Supporting Commonwealth shipping reforms

We urge the Queensland Government to use its influence to support the reforms to Commonwealth shipping and associated legislation outlined in Appendix B. Queensland can act alone to implement an improved RUF system as outlined in Section 15, but these actions will be far more effective if they are accompanied by Commonwealth initiatives.

We also urge the Queensland Government to take the following initiatives in COAG fora:

- Ensure that discussion of freight policy includes shipping and ports policy, and is supportive of the Australian shipping industry.
- Encourage research on megatrends in freight and logistics as economies become more decentralised and service-oriented.
- Build a contemporary maritime workforce development strategy that builds on the Commonwealth’s 2013 Maritime Workforce Development Strategy.
- Work to improve the current seafarer qualification framework, especially those for Domestic Commercial Vessels, which does not match the skills required to operate these vessels.

Recommendation: That the Queensland Government use its influence to support reforms to Commonwealth shipping and associated legislation that will support the Australian coastal shipping industry.

¹⁶³ Report of the Qld Parliament’s Transport, Housing and Local Government Committee Report No. 59, ‘Inquiry into Coastal Sea Freight’ P29

Freight, transport and infrastructure policy

It is critical to national freight and transport planning that Qld play an active role in Commonwealth Government forums such as the National Transport Commission and COAG fora, such as the Transport and Infrastructure Ministerial Council, and to promote the Council's national reform priorities, given the importance of shipping and ports to the Qld economy, particularly policy on:

- Integrating national rail, road, aviation, port and maritime supply chains, given the almost complete absence of the sea/shipping mode in Commonwealth transport policy, research, planning, coordination or funding deliberations;
- Improving the capacity of infrastructure and transport systems to respond to new and emerging challenges and pressures;
- Improving the environmental performance of infrastructure and transport systems – including mitigating adverse environmental effects, such as transport emissions, given that shipping is the least energy intensive of all transport modes; and
- Removing barriers to innovation, and capitalising on new and emerging technologies.
- Amend current shipping and seafarer tax incentives to make them more supportive of Australian shipping.

We are happy to provide further details on all these matters on request.

We believe the Qld Government is also well placed take a lead in Commonwealth fora in seeking to better link freight transport and infrastructure planning to national industry policy priorities, so for example, that a focus on new regional opportunities in agricultural production and processing for export is integrated with port planning and best freight mode priorities. We note in fact that the Qld Government has advocated for a National Agricultural Supply Chain Strategy, that the Cooperative Research Centre for Developing Northern Australia is currently undertaking a North Queensland agricultural market and supply chain study and that the Commonwealth's Northern Australia Infrastructure Fund has 9 Qld projects at the due diligence and execution phases, at October 2018.

22. Inquiry terms of reference and our recommendations

The inquiry Terms of Reference are below. We have referred to the relevant sections under each TOR and pasted our recommendations under the relevant TOR below.

In undertaking this inquiry, the Committee should consider:

- (a) The regional economic development and labour market benefits of a sustainable intrastate shipping industry in Queensland;**

See Section 17 Coastal shipping: Social and economic benefits for Queensland.

- (b) Current intrastate coastal shipping task and identify any barriers and options to strengthen the intrastate shipping industry;**

See PART I: Queensland coastal shipping today, and all sub sections.

The barriers to strengthening the coastal shipping industry are:

- 1) the dominance of Flag of Convenience shipping in all areas of coastal shipping. These problems are outlined in *PART II: What is wrong with Flag of Convenience Shipping?*
- 2) The lack of government support for shipping relative to road and rail, and relative invisibility of shipping in government freight policy at all levels, addressed in *Section 16. Road and rail subsidies unfairly disadvantage shipping*

Options for strengthening the intrastate coastal shipping industry are:

Recommendation: The Queensland government must take action to ensure that Rio Tinto's Queensland supply chain operates on standard Australian employment conditions, including industry-wide blue water shipping conditions such as those in place on the *RTM Weipa*, *RTM Wakmatha*, *RTM Piiramu* and *RTM Twarra*. The MUA particularly supports Aboriginal employment programs to train crew. The MUA estimates that Rio Tinto uses the equivalent of approximately 12 ships in its Queensland supply chain, while only 4 of these are Australian-crewed.

Recommendation: Restore and strengthen the previous Restricted Use Flag (RUF) provisions to explicitly provide for the economic regulation of foreign ships operating intrastate in Queensland, so that cabotage applies in Queensland. The legislation could quarantine known large intra-state shipping routes for Australian ships (such as the Weipa-Gladstone bauxite route or coastal LPG supply) and provide for RUFs to be issued to ships for these routes if they meet certain threshold conditions (for example, agreeing to carry 80% by volume of the cargoes in a specified national interest trade on Australian-crewed ships) (more details in *Section 15. Policy measures to rebuilding Queensland's coastal shipping*).

Recommendation: The *Queensland Freight Strategy* currently being developed needs to be reviewed in light of the findings of this Inquiry, to ensure that it adequately reflects the needs and importance of coastal shipping.

Recommendation: The Queensland government continue to pursue the development of a Queensland coastal shipping service as it has previously explored in the *Queensland Sea Freight Action Plan*.

Recommendation: That the Queensland Government review its Procurement Policy 2018 to ensure that it includes the use of Australian coastal shipping.

Recommendation: That the Qld Government establish a Task Force to identify the most effective and efficient forms of industry assistance that could be made available to coastal ship owners and operators aimed at redressing the competitive disadvantage which coastal shipping endures due to the subsidization of the road and rail freight modes of transport.

Recommendation: We urge the Queensland Government to examine, in consultation with interested stakeholders, how it can build on the Object and operation of the *Australian Jobs Act 2013* to phase in minimum levels of Australian seafarer employment on LNG tankers carrying LNG from Qld LNG liquefaction plants for either export or domestic markets. The MUA believes this could occur under a contemporary Continuity of Operations Agreement (COA) such as was negotiated in 1986, and which remains operational, for Woodside's North West Shelf LNG project.

- (c) **Queensland’s contribution to, and the need for, an Australian inter-state shipping industry, and identify ways in which Queensland could contribute to improving the Australian inter-state shipping industry;**

See *PART I: Queensland coastal shipping today*. There is an element of inter-state trade in almost all the shipping sectors identified (including Rio Tinto’s bauxite, Origin Energy’s LPG, Orica’s ammonia). This is the rationale for our recommendation that the reintroduction of a strengthened RUF be closely tied to Commonwealth shipping reforms, and that the measures taken be closely linked.

Recommendation: That the Queensland Government use its influence to support reforms to Commonwealth shipping and associated legislation that will support the Australian coastal shipping industry.

Recommendation: The Queensland government make representations to the current Commonwealth Liquid Fuel Security Review to support the development of a national strategic fleet of tankers that could provide a reliable supply of fuel imports to Queensland and Australia.

- (d) **Opportunities for future common user port infrastructure, and any adjustments to the provision of port services, to support the viability of a regular intrastate freight shipping service;**

See *Section 19. Queensland ports should support domestic shipping*.

Recommendation: Review port fees, port access and port infrastructure to ensure that they support coastal shipping. The higher cost structure of coastal shipping and unfair subsidies to road and rail should be compensated for by lowering port fees for coastal ships and allowing them berthing priority in order to reduce demurrage costs and ensure a reliable high-quality service. The Queensland government should support similar changes to the three Commonwealth AMSA shipping levies.

Recommendations: Ensure that port workforces are represented within port governance structures.

- (e) **Working conditions and safety practices on current coastal shipping vessels, comparing international vessels to Australian vessels;**

See *PART II: What is wrong with Flag of Convenience Shipping?*

- (f) **Any practices that are being used to erode working conditions, such as entitlements and legislative protections that currently apply to employees in the industry;**

See *PART II: What is wrong with Flag of Convenience Shipping?*

- (g) **Options for legislative, regulatory or policy reform that could strengthen the intrastate shipping industry, and ensure that Queensland’s labour market would benefit from this expanded industry, considering current Commonwealth legislation, reviews and constitutional limitations;**

See response under b) above

(h) **Options for legislative, regulatory or policy reform to maintain the safety, rights and protections of workers in Queensland ports and maritime industry; and**

See response under b) above

(i) **Options to minimise any potential impacts on the Great Barrier Reef from a strengthened intrastate shipping industry**

We maintain that increasing Australian coastal shipping will improve the quality of ships transiting the reef, reduce crew fatigue that can lead to damaging pollution incidents, and significantly increase the accountability of ship operators. See *Section 18. Protecting the Great Barrier Reef: Environmental benefits of coastal shipping*.

Recommendation: Review the actions set out in the *Reef 2050 Plan* and the *North East Shipping Management Plan* to manage shipping impacts on the Great Barrier Reef. We are concerned that no action was taken on recommendations EBA7 and EBA8 from the original *Reef 2050 Plan* to improve the quality of ships transiting the reef, and that these recommendations have been watered down in the July 2018 version of the Plan. The *North East Shipping Management Plan* says that one of the most important measures to reduce risk is Port State Control inspections, yet we note a 23% decline in the number of Port State Control inspections carried out nationally since 2015, while the number of ship visits continues to increase.

Recommendation: Address the concerns of the Great Barrier Reef Marine Park Authority in relation to shipping articulated in their Great Barrier Reef Outlook Report 2014, specifically that restoration and rehabilitation of damaged areas of the reef following shipping groundings is underresourced, and that the GBRMP's 'objectives and implementation with regards to shipping have not been clearly articulated.' (p.207).

23. Appendix A: LPG voyages where there is no Voyage report on file

Table 8. List of interstate shipments of LPG for Origin Energy in 2017-18 where there is no Temporary Licence Voyage Report available.

Load date	Load port	discharge port	Boat	Port or ship loaded from
1/07/2017	Brisbane	Hobart	Gas Shuriken	BW Njord
1/07/2017	Brisbane	Devonport	Gas Shuriken	BW Njord
2/08/2017	Brisbane	Hobart	Gas Shuriken	BW Njord
2/08/2017	Brisbane	Devonport	Gas Shuriken	BW Njord
22/08/2017	Brisbane	Port Botany	Gas Shuriken	George N
27/08/2017	Brisbane	Hobart	Gas Shuriken	George N
27/08/2017	Brisbane	Devonport	Gas Shuriken	George N
01/09/2017	Brisbane	Botany	Gas Defiance	George N
17/09/2017	Brisbane	Port Botany	Gas Shuriken	George N
23/09/2017	Brisbane	Botany	Gas Defiance	George N
07/10/2017	Brisbane	Hobart	Gas Defiance	BW Njord
07/10/2017	Brisbane	Devonport	Gas Defiance	BW Njord
21/10/2017	Brisbane	Botany	Gas Defiance	BW Njord
09/11/2017	Brisbane	Botany	Gas Defiance	BW Njord
17/11/2017	Brisbane	Hobart	Gas Defiance	BW Njord
17/11/2017	Brisbane	Devonport	Gas Defiance	BW Njord
02/12/2017	Brisbane	Botany	Gas Defiance	BW Njord
20/05/2018	Botany	Brisbane	Gas Defiance	Port Botany
31/05/2018	Brisbane	Port Botany	Gas Shuriken	Berge Nantong
10/06/2018	Brisbane	Hobart	Gas Shuriken	Berge Nantong
10/06/2018	Brisbane	Devonport	Gas Shuriken	Berge Nantong
21/06/2018	Brisbane	Port Botany	Gas Shuriken	Berge Nantong

Source: Shipments constructed from movements in the IHS Maritime database and cross-referenced with the federal government Temporary Licence Voyage Reports database.

24. Appendix B: Commonwealth shipping reforms the MUA is seeking support for

Considerable policy development work has already been undertaken to identify the amendments that would be required to the CT Act, particularly to the s3 Object of Act and to Part 4 Licences, to resolve deficiencies in the CT Act and to implement a more robust form of maritime cabotage in Australia.

In summary, those amendments would:

- Revise the Object of the Act to remove ambiguity as identified in several Federal Court judgements¹⁶⁴ and to make it explicit that the primary Object of the CT Act is to provide preferential treatment for Australian ships in coastal trade i.e. to strengthen maritime cabotage in Australia;
- Remove emergency licences as a licence type that can be issued under the CT Act and include a new form of licence, a modified general licence, for foreign registered ships operating under a demise charter that are not registered on the Australian General Shipping Register (AGSR) but which carry a full Australian crew.
- Establish the Australian Coastal Ship Licencing Authority which will promote the Object of the Act, manage and supervise ship licences, and other supporting functions
- Strengthen the application process for a general licence (GL) and provide for granting of a modified general licence, consistent with the revised Object clause and the proposed establishment of an Australian Coastal Ship Licencing Authority, one important new provision being inclusion of a procedure for withdrawal of a GL or MGL ship from a coastal trade; and
- Strengthen the application process for, issuing of temporary licences (TL), for cargo ships and for passenger ships, consistent with the revised Object clause and the proposed establishment of an Australian Coastal Ship Licencing Authority.

In addition, it is proposed that a number of complementary reforms be made to the regulatory arrangements for Australian coastal shipping, including:

- Strengthening the “maritime crew visa” arrangements for seafarers, the centrepiece of which is a proposal for a new “maritime crew visa” applicable to foreign seafarers engaged on foreign ships issued with a TL. These proposals are based on the new Canadian requirements centred on its Labour Market Impact Assessment (LMIA) requirements, now being enforced in relation to ships applying for a licence under the Canadian Coasting Trade Act. Details available on request.
- Removal of the application of Part B of the Shipping Industry Award and removal of application of the NES provisions in the *Fair Work Act 2009* for foreign seafarers on TL ships so that there are no additional labour requirements over and above the application of ITF Agreements to foreign seafarers on TL ships. This provision is predicated on introduction of a new maritime crew visa for foreign seafarers on TL ships that provides for labour market testing and payment of market rates, defined as Australian enterprise agreement rates for the type of ship.
- Repeal of the Australian International Shipping Register (AISR) provisions in the *Shipping Registration Act 1981* (and repeal of associated Regulations and Determinations).

¹⁶⁴ See judgement of Full Federal Court in *CSL Australia Pty Limited v Minister for Infrastructure and Transport [2014] FCAFC 10* 26 February 2014. See in particular Para 31 and the views of Justice Rares at Para 375