

## Chapter 3

### **National and fuel security, the environment and working conditions on flag of convenience vessels**

3.1 The committee received evidence that raised a number of other concerns that this chapter will discuss in turn. Most seriously, some witnesses and submitters argued that the increased use of FOC shipping in Australian waters could create risks for Australia's national and fuel security, as well as to the health of the environment.

3.2 Additionally, evidence was also received about poor employment conditions aboard FOC ships, compounded by deficiencies in on-shore services for foreign workers working on FOC vessels in Australian waters. This matter is significant not only from a concern for the welfare of foreign workers, but also because of the potential for corruption and coercion, as well as how it affects safety aboard FOCs. These factors could have repercussions for the integrity of Australia's national security system, as well as its environmental health.

3.3 This chapter also briefly considers the case study of the *MV Sage Sagittarius*, which highlights some of the concerns the committee has with the way FOC vessels are overseen by the Commonwealth while they are active in Australian waters.

3.4 Lastly, this chapter also considers what mechanisms the Commonwealth has in place to oversee FOCs in Australian waters, having regard to national security, environmental and safety standards.

#### **National security**

3.5 The committee received evidence that argued the current arrangements for overseeing FOC shipping could create significant risks for our national security. Most significantly, the Department of Immigration and Border Control submitted that increased use of FOC vessels creates vulnerabilities in several ways, including masking the ownership of vessels operating in Australian waters:

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...<sup>1</sup>

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1 *Submission 21*, p. 4.

3.6 The International Transport Workers' Federation - Australia (ITF Australia) commended the Department of Immigration and Border Security's submission, and emphasised the potential security risks of FOC ships where the ownership could not be easily determined:

But, most importantly and most urgently, [our submission] goes to the impact that it has on national security and the vulnerabilities that the flag-of-convenience system provides for crime syndicates and for terrorist organisations. This is not us being a little bit excited about it... [rather] it goes to the border protection submission, where they state very clearly that the vulnerabilities created inside the flag-of-convenience system are of concern to our national security.... [W]hat we are doing with the demise of the Australian shipping is opening up our borders to seafarers, to owners and to possible criminal elements—described by the department of border security as having free entree not only into our ports but also through our ports and into our society.<sup>2</sup>

3.7 On the lack of oversight of FOC crews, several witnesses told the committee that Australian mariners were subject to world's 'best practice' background and criminal record checks, whereas many overseas workers on FOC vessels were not subject to criminal or background checks at all.<sup>3</sup> The MUA argued this was particularly concerning as there were increasing numbers of FOC vessels carrying dangerous materials, such as ammonium nitrate, between Australian ports:

The people that are replacing us do not have [sufficient] scrutiny. Many of them come from areas of precarious governance, such as the Philippines, Ukraine, Russia and many others, and it is just not possible to apply the same stringent, onerous criminal and security background checks to those seafarers, who are effectively working fulltime...<sup>4</sup>

3.8 The ITF Australia shared this concern, pointing to potential risks in the increasing number of overseas workers employed the local oil and gas industry:

While every part of Australia's transport logistic chain has been strengthened and regulated in the wake of a heightened counter-terrorism environment, the opposite is true for coastal shipping. All Australian national maritime workers accept the most stringent and onerous criminal and security background checks, while the international workers that shipowners use to replace domestic crews need only apply online for a low grade visa. This in itself should sound alarm bells in our security and crime agencies, particularly in the multi-billion dollar domestic oil and gas industry, but has developed into a political lever at the expense of security.<sup>5</sup>

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2 Mr Dean Summers, Coordinator, ITF, *Committee Hansard*, 4 December 2015, p. 21.

3 Mr Paddy Crumlin, National Secretary, MUA, *Committee Hansard*, 4 December 2015, p. 6; Mr Dean Summers, Coordinator, ITF, *Committee Hansard*, 4 December 2015, p. 21.

4 *Committee Hansard*, 4 December 2015, p. 2.

5 *Submission 22*, p. 6.

3.9 The ITF Australia drew out some of these themes at the hearing, suggesting that Australian workers were well positioned to take over sensitive roles in domestic freight shipping:

One of the most important things, though... is: if we are going to have coastal cargoes—if we have alumina from west to east or ammonium nitrate all around to the mining companies — let's do those on Australian ships. That is not a huge amount of shipping. We have professional people trained up and ready to go, and we have something else the rest of the world does not have, and that is an appetite among young people to go into this industry.<sup>6</sup>

3.10 Moreover, some witnesses and submitters highlighted the potential security risks posed by seafarers aboard FOC vessels being able to enter Australia without sufficient background checks or security risk assessments.<sup>7</sup> For instance, Mr Paddy Crumlin, National Secretary, Maritime Union of Australia,, suggested that:

They [can] walk out the gate with an international seafarer's identification card or a passport that tells you the minimum facts. They walk out the gate and are in the community. Some of them do not come back—that is the reality, of course. They integrate themselves into the local economy... It is more difficult in the United States for seafarers to leave their vessels - and that is an issue of seafarers' rights, too; do not get me wrong. But, in Australia, when you walk through that gate there is no reason you have to come back unless you have been herded or rounded up by the Federal Police. So they walk out the gate; that is the reality.<sup>8</sup>

## Fuel security

3.11 The committee received evidence that around 91 per cent of our national bulk fuel requirement is imported, which means Australia's fuel supply relies upon foreign ships, including those on FOC registers.<sup>9</sup>

3.12 Some witnesses considered that FOC shipping does not pose a significant risk to Australia's fuel security.<sup>10</sup> For instance, ICS submitted:

Foreign ships have a positive impact on fuel security since Australia is dependent on foreign ships for the transportation of imports of crude oil and

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6 Mr Dean Summers, ITF Australia, *Committee Hansard*, 4 December 2015, p. 24.

7 For example, see Australian Institute of Marine and Power Engineers, *Submission 9*, pp 10-11; International Transport Workers' Federation – Australia, *Submission 22*, pp 6, 25, 27.

8 *Committee Hansard*, 4 December 2015, p. 4.

9 Dale Cole and Associates, *Submission 3*, p. 4.

10 Shipping Australia Limited, *Submission 2*, p. 10; Company of Master Mariners, *Submission 4*, p. 2; International Chamber of Shipping, *Submission 8*, p. 4

petrochemical products, as well as the export of Australian LNG to overseas markets.<sup>11</sup>

3.13 However, some witnesses raised concerns in this matter. For instance, the Australian Institute of Marine and Power Engineers (AIMPE) noted that 'Australia has failed to maintain in tanks ashore the internationally recommended liquid fuel reserves of 90 days' supply'.<sup>12</sup> AIMPE submitted that soon no Australian seafarers will be employed on oil tankers, which will mean:

Australia's fuel security will then be entirely dependent on 'Flag-of-Convenience' tankers with foreign crews under the sovereignty of another nation and so not amenable to Australia's laws as to SECURITY assessments by ASIO and AFP, nor Australia's other laws on TAX, Safety, OH&S, legal-rights, Immigration and so on.

This leaves Australia's economy exposed to potential disruption of imported liquid fuels not just in time of war but also at any time by Islamic Jihadists.<sup>13</sup>

3.14 ITF Australia submitted to the committee that there should be a level of 'Australian connection or content' in the transportation of dangerous cargoes, including refined petroleum products.<sup>14</sup> This recommendation was based on the much safer record of Australian ships carrying fuel over recent years, which they outlined:

Not only are there much higher numbers of detentions of international tankers carrying domestic petroleum cargos than their Australian crewed and managed equivalents, an average of 12 tankers per year carrying international imports to Australia have been detained by AMSA.<sup>15</sup>

3.15 The committee notes the concerns about Australia's fuel security expressed in its 2015 inquiry into Australia's Transport Energy Resilience and Sustainability, which recommended that:

...the Australian Government undertake a comprehensive whole-of-government risk assessment of Australia's fuel supply, availability and vulnerability. The assessment should consider the vulnerabilities in Australia's fuel supply to possible disruptions resulting from military actions, acts of terrorism, natural disasters, industrial accidents and financial and other structural dislocation. Any other external or domestic circumstance that could interfere with Australia's fuel supply should also be considered.<sup>16</sup>

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11 *Submission 8*, p. 4.

12 Australian Institute of Marine and Power Engineers, *Submission 9*, p. 14.

13 Australian Institute of Marine and Power Engineers, *Submission 9*, p. 14.

14 International Transport Workers' Federation - Australia, *Submission 22*, p. 22.

15 International Transport Workers' Federation - Australia, *Submission 22*, p. 40.

16 Senate Regional and Rural Affairs, and Transport Committee, *Report of the Inquiry into Australia's Transport Energy Resilience and Sustainability* (2015), p. ix.

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## Environmental concerns

3.16 Some witnesses suggested that foreign ships do not pose a more significant risk to the environment than locally owned and operated vessels.<sup>17</sup> For instance, Shipping Australia Limited (SAL) submitted:

From an environmental perspective, SAL accepts that the percentage of open register ships trading to Australia is far greater than locally registered ships, but disagrees with uninformed perceptions that such vessels are hence a risk to our environment. As mentioned above foreign flagged vessels are generally newer and better maintained.<sup>18</sup>

3.17 However, the committee received other evidence that outlined the potential risks that increased use of FOCs could have for Australia's natural environment and biosecurity.<sup>19</sup> Most significantly, the Department of Immigration and Border Protection provided evidence that some FOC jurisdictions have much lower environmental and safety standards than Australia:

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. [These factors] can contribute to a decreased or limited crew capability and diminish a ship's general seaworthiness [and] 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.<sup>20</sup>

3.18 Rightship Pty Ltd pointed out that the standards governing environmental compliance are matters of international law, rather than what flag a vessel operates under.<sup>21</sup> However, it also noted that, of the vessels detained by AMSA on environmental grounds between January 2014 and August 2015, the majority (58 per cent) sailed under FOCs.<sup>22</sup>

3.19 ITF Australia also highlighted the more lax environmental standards of some FOC jurisdictions. It argued that the recent increase of international ships operating in Australian waters made pollution of our environment more likely, including by:

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17 Shipping Australia Limited, *Submission 2*, p. 4; Company of Master Mariners, *Submission 4*, p. 2; International Chamber of Shipping, *Submission 8*, p. 4; AMSA, *Submission 11*, p. 2.

18 Shipping Australia Limited, *Submission 2*, p. 6.

19 Maritime Engineers Pty Ltd, *Submission 5*, p. 3; ITF Australia, *Submission 22*, p. 49; ITF, *Submission 24*, p. 6.

20 *Submission 21*, p. 4.

21 Under the International Convention for the Prevention of Pollution from Ships (MARPOL), see *Submission 17*, p. 6.

22 *Submission 17*, p. 6.

...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. Increasing ship traffic also increases the risk of maritime accidents including oil spills.<sup>23</sup>

3.20 The Australian Council of Mission to Seafarers outlined the broader effects of environmental accidents, as well as noting the potential cost to the Commonwealth for clean-up operations:

Health, safety and environmental risks are often linked as a single risk event in the maritime space, such as a vessel grounding. For example a ship running aground not only has physical damage to ship and to the reef but also pollution of the sea and coastline, the safety of ship and crew and those who go to assist, cost of clean-up operations, cost due to loss or delay of ship cargo on Australian industry and commerce and the emotional impacts on coastal communities, for example.<sup>24</sup>

3.21 The Maritime Union of New Zealand commented that the cost of repairing environmental damage caused by foreign vessels, as well as the difficulties of recouping costs from their owners, should be 'taken into account when the 'cost savings' of FOC shipping are touted'.<sup>25</sup>

3.22 Several submissions and witnesses reminded the committee of the environmental and financial cost of the *Shen Neng* running aground in Queensland on 3 April 2010, an accident caused by crew fatigue. This evidence highlighted the irreparable environmental damage this caused the Great Barrier Reef, as well as the clean-up costs of \$192 million funded by the Commonwealth.<sup>26</sup>

### **Working conditions and standards for overseas workers**

3.23 The committee also received evidence suggesting the increase in FOC shipping also raised some human and workplace rights issues for workers aboard FOC vessels, including the following matters, which will be discussed in turn:

- potential for exploitation and corruption, including minimal pay rates, poor safety conditions, and the bullying and abuse of crews;
- the lack of shore-based welfare; and
- safety issues.

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23 *Submission 22*, p. 49.

24 Australian Council of Mission to Seafarers, *Submission 16*, p. 7.

25 *Submission 24*, p. 6.

26 Australian Council of Mission to Seafarers, *Submission 16*, p. 7; ITF Australia, *Submission 22*, pp 11, 68;

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### ***Exploitation of crews and bullying***

3.24 The Australian Council of Mission to Seafarers told the committee that it was a minority of 'rogue ship owners' who exploited their crews:

The majority of flag state and FOC shipping companies do not abuse and exploit crews. They operate to high standards and treat their crews with respect and provide good living and working conditions.<sup>27</sup>

3.25 However, witnesses and submissions did emphasise that workers on FOC vessels often face workplace bullying which is compounded by precarious and dangerous safety.<sup>28</sup>

3.26 Mr Paddy Crumlin, MUA, told the committee that the seafaring trade was not particularly good at supporting its workers, who were often subject to poor conditions:

It is not an industry that is very good at that. It is a short-term industry that employs people from places like the Philippines and India. It churns those workers and, as indicated by the terrible situation on the Sage Sagittarius, this is a workforce under tremendous duress.<sup>29</sup>

3.27 Mr Crumlin cited evidence from a Newcastle-based organisation that offers support services for workers in the maritime sector:

It has done 1,000 counselling services to seafarers in and out of Australian ports and reports a high degree of mental stress, depression, bullying and harassment because effectively again there is no regulation and overview and nowhere for the seafarers to go so we are forced to give whatever charitable support we can on the basis of charitable donations from elsewhere.<sup>30</sup>

3.28 Mr Dean Summers, Coordinator, International Transport Workers' Federation (ITF), commented that some seafarers on FOC vessels could be very vulnerable to threats made against their families:

Seafarers are vulnerable, their families are vulnerable. The Burmese are the best example. If Burmese seafarers complain, their families get a knock on the door in the middle of the night under the military junta - hopefully, that is changing. So, it is extraordinarily different. And that is a deregulated system being imported into Australia through the shipping industry - being welcomed, being red carpeted, to come onto our coast.<sup>31</sup>

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27 *Submission 16*, p. 3.

28 See Mr Dean Summers, Coordinator, ITF Australia, *Committee Hansard*, 4 December 2015, p. 19.

29 *Committee Hansard*, 3 February 2016, p. 3.

30 *Committee Hansard*, 3 February 2016, p. 3.

31 *Committee Hansard*, 3 February 2016, p. 13.

*Low rates of pay and non-payment of wages*

3.29 The ITF Australia outlined that wages aboard FOC vessels could be incredibly low and that there was no enforceable minimum wage:

It is important to understand that while the Maritime Labour Convention goes a long way to upholding human rights on board ships there is no mention of minimum wages. The ITF has a "recommended Minimum" but there is no mechanism to enforce or even to encourage bad operators to pay this rate. The best [that some seafarers] can hope for is a basic rate of about \$16 USD per day (Able Seaman, used as a benchmark).<sup>32</sup>

3.30 The committee was told that seafarers were often not paid their full wages, even at these very low recommended rates of pay:

...last year the ITF, our worldwide inspectorate, around the world recovered US\$60 million in wages stolen off seafarers. Seafarers do not get paid very much to start with, but they had all these seafarers employment agreements and ITF agreements that say they will pay these seafarers. Through a very complex and dedicated workforce of inspectors - around 130 inspectors around the world, focusing just on policing flag-of-convenience ships - we got US\$60 million back.<sup>33</sup>

3.31 Mr Summers, ITF, commented that there were other ways that foreign workers often had their wages reduced:

Seafarers work up to 12 months at a time without any break, but that is quite often - very often - exploited out to 15, 16, 18 months. Seafarers get paid low. If a seafarer gets paid his full whack, his full wages, he is a very, very lucky seafarer, because there is a chain of people ready to take their skim off the top of that along the way - the manning agents and what have you - and we have got documented evidence of that.<sup>34</sup>

3.32 The ITF Australia noted that poor workplace protections available to many FOC crew members meant they were often reluctant to provide evidence to AMSA's investigations or safety inspections:

...the employment relationships on FOC and international ships provide a strong disincentive for crew to come forward 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.<sup>35</sup>

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32 *Submission 22*, p. 80.

33 Mr Dean Summers, ITF, *Committee Hansard*, 3 February 2016, p. 18.

34 *Committee Hansard*, 3 February 2016, p. 13.

35 *Submission 22*, p. 51.



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*Minimal training, and low safety and workplace standards*

3.33 The implications of differing training and safety standards across jurisdictions were drawn out by some evidence received by the committee. For example, the MUA highlighted that some jurisdictions only have:

...very minimal training [for seafarers]. They do not have the same risk mitigation. They do not have the same approach that we have in this country, because we are a developed country...We have a more highly regulated approach to safety, higher community standards and higher community expectations than they have in [other jurisdictions]... Those standards in shipping could not happen under Australian regulation but do happen on those ships because we do not regulate them.<sup>36</sup>

3.34 The effects of fatigue were raised by a number of witnesses and submitters who commented on the damage caused in 2010 when the ship *Shen Neng* ran aground off the Queensland coast.<sup>37</sup> One witness noted:

...the chief mate of the *Shen Neng* [which caused \$194 million damage to the Great Barrier Reef] had slept for only 2.5 hours over the previous 39 hours [before the accident] due to the demands of the vessel.<sup>38</sup>

3.35 The committee also heard that Australia has much better provisions for managing fatigue than many other jurisdictions:

On FOC and international ships workers are allowed to work up to...90 hours per week in exceptional circumstances, which speaks for itself. Australian fatigue standards say that anything over 50 hours per week is problematic. Australian seafarers have a rostered system. We do work longer hours and that is compensated by a fly-in fly-out approach so that rest can be taken and you can meet the continuous nature of seafaring life whilst still having sufficient rest to be able to recuperate.<sup>39</sup>

*Shore-based welfare and legal assistance for overseas workers*

3.36 Some concerns were raised that there was insufficient welfare and support available to seafarers on foreign ships in Australian waters, including legal assistance. For example, the Australian Council of Mission to Seafarers submitted that the lack of recurrent funding for seafarer welfare organisations meant:

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36 Mr Paddy Crumlin, National Secretary, Maritime Union of Australia, *Committee Hansard*, 4 December 2015, p. 5.

37 See Mr Mick Kinley, Chief Executive Officer, Australian Maritime Safety Authority, *Committee Hansard*, 4 December 2015, p. 38; Australian Council of Mission to Seafarers, *Submission 16*, p. 2; ITF Australia, *Submission 22*, p. 61.

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

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

Since the presentation of the 1992 report on *Ships of Shame* we contend that in general very little has changed or been improved in the provision of suitable shore based facilities for the provision of welfare services for seafarers in Australia. These services apply mostly to foreign national seafarers who make up the majority of ships' crews worldwide on flag state and FOC shipping.<sup>40</sup>

3.37 Moreover, the ITF Australia suggested that precarious employment conditions aboard FOC ships often meant seafarers were reluctant to seek help from other organisations that could assist them:

Seafarers are typically recruited by a crewing agency for a single voyage contract for 9 months... to one year... 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'.<sup>41</sup>

3.38 The ITF Australia noted that there are very few organisations currently providing shore-based assistance, and most of these are operating with unsustainable losses.<sup>42</sup> Given this, the ITF Australia stated they were looking at ways to fund on-shore support for FOC crews, including through Commonwealth funding or industry levies:

But in the FOC system, the FOC ships do not pay their way when it comes to seafarers' welfare. Their seafarers need to get ashore and they need to have access off the ship—they need to have this...

[Additionally] I think there should be a study [into recurrent funding from the Commonwealth for shore-based welfare]. And we are talking through the Maritime Labour Convention with AMSA about the possibility of levies [on businesses and industry]...<sup>43</sup>

3.39 The submission made by the ITF Australia also noted that, quite apart from it being available, overseas seafarers find it difficult to access legal assistance in Australia for several reasons, including: inability to access appropriate shore leave to seek assistance; language barriers, the difficulties associated with not having a fixed address in Australia; the logistical difficulties of attending medical assessments and court dates in Australia; and the complexities of the Australian legal system.<sup>44</sup>

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40 *Submission 16*, p. 3.

41 *Submission 22*, p. 51.

42 *Submission 22*, p. 107.

43 Mr Dean Summers, Coordinator, ITF Australia, *Committee Hansard*, 4 December 2015, p. 26.

44 *Submission 22*, pp 105-106.

3.40 Further to this, the Company of Master Mariners noted the difficulties faced by overseas workers looking for legal assistance in Australia, particularly due to the differing provisions between states and territories, and argued these differing frameworks should be harmonised.<sup>45</sup>

### **Case study: the *MV Sage Sagittarius***

3.41 Some of the concerns about the increasing use of FOC shipping in Australian waters discussed in this chapter can be illustrated by events aboard the *MV Sage Sagittarius* in 2012. As these matters are currently subject to coronial inquiry, this report will limit itself to highlighting how:

- seafarers aboard FOC vessels can be exposed to cultures of exploitation, bullying and corruption, and find it difficult to access onshore support services in Australia; and
- individuals aboard FOC vessels can easily escape detection and tracking by Australian agencies, particularly individuals who may be engaging in illegal or dangerous activities.

### **Background**

3.42 The *MV Sage Sagittarius* operates under a FOC. Although it is owned by a Japanese company, it operates under the flag of Panama and its crew is predominantly drawn from the Philippines.<sup>46</sup> In 2012 the vessel was engaged in shipping coal between Australian and Japan.<sup>47</sup> Over six weeks in 2012 two crew members, the chief cook Mr Cesar Llanto and the chief engineer Mr Hector Collado, died under suspicious circumstances.<sup>48</sup>

3.43 Following this, after the ship had returned to Japan, Superintendent Kosaku Monji was found dead aboard the ship while he was investigating the first two deaths. The Japanese Transport Safety Bureau examined the circumstances of Mr Monji's death, and found it was the result of an accident. However, it should be noted the

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45 *Submission 4, p. 4.*

46 Mario Christodoulou, Alison McClymont and Linton Besser, 'Sage Sagittarius: Letters reveal bullying and gun smuggling on vessel dubbed ship of death', *ABC online*, 1 June 2015 at [www.abc.net.au/news/2015-06-01/letters-reveal-bullying-gun-smuggling-on-ship-of-death/6510516](http://www.abc.net.au/news/2015-06-01/letters-reveal-bullying-gun-smuggling-on-ship-of-death/6510516) (accessed 1 December 2015).

47 Mario Christodoulou, Alison McClymont and Linton Besser, 'Sage Sagittarius: Letters reveal bullying and gun smuggling on vessel dubbed ship of death', *ABC online*, 1 June 2015 at [www.abc.net.au/news/2015-06-01/letters-reveal-bullying-gun-smuggling-on-ship-of-death/6510516](http://www.abc.net.au/news/2015-06-01/letters-reveal-bullying-gun-smuggling-on-ship-of-death/6510516) (accessed 1 December 2015).

48 'Sage Sagittarius: Senate Inquiry to examine flags of convenience shipping after suspicious deaths', *ABC Online*, 18 June 2015 at [www.abc.net.au/news/2015-06-18/senate-inquiry-to-examine-flag-of-convenience-shipping/6557214](http://www.abc.net.au/news/2015-06-18/senate-inquiry-to-examine-flag-of-convenience-shipping/6557214) (accessed 1 December 2015).

Japanese investigators were not aware of the two earlier fatalities while they were looking into Mr Monji's death.<sup>49</sup>

3.44 It has been alleged that the captain of the ship, Mr Venancio Salas Jr, was a perpetrator of bullying, had been violent towards some crew members, and operated a business selling handguns to crew members.<sup>50</sup>

***A culture of bullying and intimidation, and difficulties in accessing onshore support***

3.45 There have been allegations that a culture of bullying was rife among crew members, with little support available to victims both aboard the vessel and ashore.

3.46 Mr Dean Summers, ITF, described a culture of bullying aboard the ship, as well as outlining how the efforts of a crew member to seek onshore support had potentially led to the first death aboard the *MV Sage Sagittarius*:

The events on that vessel are now a matter of fact through a coronial inquest. The first fatality on board that vessel was a man overboard, and we now know from the inquest that that man was the chief cook who had told the captain a few days before that if he did not stop harassing, bullying and hitting the messmen he would go to Dean Summers of the ITF in his next port in Newcastle, only days away. That evening, the chief cook went missing over the side and was reported man overboard. His body was never recovered...

...[Following the decision for the AFP to investigate this death] ...On [the ship's] way through the heads of Newcastle, the chief engineer was coshed on the back of the head and fell some 12 metres in the engine room to his death. This also is a matter of fact through the inquiry. It is still ongoing, but those facts have already been established.<sup>51</sup>

3.47 Mr Paddy Crumlin, MUA, drew out the implications of the case further. Importantly, as well as bullying and the reluctance of crews to seek onshore support, he also highlighted the Commonwealth's lack of oversight of individuals aboard FOC vessels:

If you look at the *Sage Sagittarius*, there was all sorts of criminality involved there. Maybe those people wanted a better deal for their labour and that is the reason that some of these things happened to them. People go missing at sea all the time. The Australian Federal Police would not even have investigated the *Sage Sagittarius* if it were not for the ITF consistently drawing it to their attention... We could have murder, mayhem, bullying

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49 'Sage Sagittarius: Senate Inquiry to examine flags of convenience shipping after suspicious deaths', *ABC Online*, 18 June 2015 at [www.abc.net.au/news/2015-06-18/senate-inquiry-to-examine-flag-of-convenience-shipping/6557214](http://www.abc.net.au/news/2015-06-18/senate-inquiry-to-examine-flag-of-convenience-shipping/6557214) (accessed 1 December 2015).

50 'Sage Sagittarius: Senate Inquiry to examine flags of convenience shipping after suspicious deaths', *ABC Online*, 18 June 2015 at [www.abc.net.au/news/2015-06-18/senate-inquiry-to-examine-flag-of-convenience-shipping/6557214](http://www.abc.net.au/news/2015-06-18/senate-inquiry-to-examine-flag-of-convenience-shipping/6557214) (accessed 1 December 2015).

51 Mr Dean Summers, Coordinator, ITF Australia, *Committee Hansard*, 4 December 2015, p. 19.

and sexual assault [aboard FOC vessels ] - and we do have it - in our ports every day and we would know nothing about it because there is no screening, filtering or overview.<sup>52</sup>

### ***The lack of oversight on FOC vessels and crews in Australian waters***

3.48 The committee received evidence about the *MV Sage Sagittarius* illustrating that Commonwealth and state government agencies have insufficient oversight of FOC vessels and crews operating in Australian waters. The committee was particularly interested in the potential for insufficient oversight of individuals who may be engaged in suspicious or illegal activity.

3.49 The committee received evidence showing that the captain of the *MV Sage Sagittarius* continued to be employed on FOC vessels working in Australian waters following the events of September 2012. This is despite his admission that he operated a business selling handguns to his crew in his evidence to the NSW Coronial inquest.<sup>53</sup>

3.50 Mr Summers, ITF, outlined this situation to the committee, commenting that at the time of the deaths aboard the ship in late-2012, the Captain and two of his crew were on a 'watch list' for the Department of Immigration and Border Protection:

As we went through the inquiry, layers and layers of all the ills of the FOC system were exposed. The master on board that ship, who we know was very close to the Filipino military, rocketed from deck boy to captain in a very few years, had a little sideline of selling semiautomatic handguns. Everybody on that ship had to buy a semiautomatic handgun because that was the captain's side business. The captain and two of his cohorts were on a watch list by Australian Immigration and Border Protection, at the time Immigration, with a tick against their name. We only found out this information through the coronial inquest and we still cannot find out what a watch list means.<sup>54</sup>

3.51 Mr Benjamin Evans, Assistant Secretary, Strategy Branch, Department of Immigration and Border Protection, provided evidence around what a 'watch list' is:

A watch list is a list of foreign nationals about whom we might have a concern. I say 'might have a concern' rather than 'definitely have a concern'. It could be that a person has come to attention for being involved in the use in the past of a fraudulent passport. It could be that we believe they might have a criminal record. It could be that they have previously come to the attention of a law enforcement partner overseas... The purpose of the watch list is to allow us to make a decision as to whether we will issue a person a

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52 *Committee Hansard*, 4 December 2015, p. 7.

53 Claire Aird, 'Sage Sagittarius inquest: Captain sold guns on board coal ship where three died, court hears', ABC Online, 29 May 2015 at [www.abc.net.au/news/2015-05-29/inquest-seafarers-death-captain-instructed-complaint-destroyed/6506390](http://www.abc.net.au/news/2015-05-29/inquest-seafarers-death-captain-instructed-complaint-destroyed/6506390) (accessed 15 April 2016).

54 *Committee Hansard*, 4 December 2015, p. 20.

visa in the first place. It may be that, for the reasons a person is on a watch list, we will say that we might issue a visa anyway, but we are aware of that person.<sup>55</sup>

3.52 The committee understands that Mr Salas and the two relevant crew members were working in Australia on maritime crew visas at the time of the deaths aboard the *MV Sage Sagittarius*, and that Mr Salas was given a subsequent visa to work on the *MV Kyrpos Sea* working between Gladstone and Weipa during 2015 and early 2016.<sup>56</sup> Despite Mr Salas holding this visa, as well being listed on a Commonwealth agency's 'watch list', it appears to the committee that, at crucial times, his presence in Australian waters was not picked up, processed or shared appropriately by Commonwealth and state agencies.

3.53 The committee reached this conclusion in part through the evidence of Mr Owen Jacques, Online News Editor and Investigative Journalist, Australian Regional Media, who told the committee that, while covering the story in early-2016, he had determined Mr Salas was working on an FOC vessel in Australian waters using publically available websites and personal contacts in the maritime sector.<sup>57</sup> Mr Jacques was surprised to find there was not more awareness that Mr Salas was working in Australian waters, in spite of the fact he was a person of interest in the NSW Coronial Inquest:

In February this year, I published a report that the former captain of the *Sage Sagittarius* had returned to Australian waters, and that happened to coincide with a coronial inquest occurring in New South Wales... [While attending a hearing of the inquest in Sydney, during a morning break in proceedings] I approached the counsel assisting and simply said that I had published this information and asked: was he aware that Captain Venancio Salas was back in Australian waters? He indicated to me that he was not aware of that, and he said that they would look into it. That was essentially the extent of the conversation I had with the counsel assisting, but I learned later that the captain had been—I am not sure whether it was that afternoon or the following day that he caught up with him—subpoenaed and then brought down to face the inquest.<sup>58</sup>

3.54 As mentioned above, these events are currently being investigated by the NSW Coroner. The committee will remain interested in following the findings of this investigation.

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55 *Committee Hansard*, 4 December 2015, p. 28.

56 *Committee Hansard*, 16 March 2016, pp 1, 3-4.

57 See Mr Owen Jacques, *Committee Hansard*, 16 March 2016, pp 2-3.

58 *Committee Hansard*, 16 March 2016, p. 1.

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## Oversight of FOCs by the Australian government

3.55 The committee received evidence from several Commonwealth agencies about their oversight of FOC vessels, having regard to national security and the safety and environmental standards of vessels.

### *National security matters*

3.56 Dr Benjamin Evans, Department of Immigration and Border Protection, told the committee that his department's concern was limited to illegal activities, rather than concerns over crew welfare or conditions:

The reason we are concerned about the way in which flag states behave is because of the way in which our powers are separated. Once a vessel is in an Australian port we have the power to board it, to search it, to question the crew and to look at their passports, because it is in an Australian port. If a ship is on the high seas and we have suspicion it is engaged in an illegal activity, such as unregulated fishing, to board that ship to determine whether it has engaged in an unregulated activity, we need the permission of the flag state to do that. That is under the international law of the sea.

So the arrangement is that we, the department, through Maritime Border Command, have to make contact with the flag state and seek permission to board the ship. If the flag state is uncooperative or unresponsive a lot of the times it is not possible for us to board the ship at sea to determine whether there have been any activities of concern going on. So our concern around flag states, because of the remit of the department and our interests, goes less to matters of safety and payment of crew. All of those things are important, but the government has decided that other departments deal with that.<sup>59</sup>

3.57 Regarding the identity of FOC seafarers, Dr Evans told the committee that the Commonwealth's ability to oversee their identity and conduct risk assessments was robust:

My view is that the maritime crew visa is as robust as the rest of our visa system. Our entire visa system does rely on information that is provided by the applicant for the visa. However, some of the information that that applicant provides they do not control—for example, a passport. You do not get to choose the information that is on your passport; governments issue passports. But, as I have said a couple of times—and I believe it is an important point, so if you would indulge me to repeat myself—we use other sources of information; we do not rely solely on what the applicant tells us. There are watch lists that relate to documents as opposed to people. Around the world, law enforcement and border agencies put the details of fraudulent documents into a system that is internationally available or into systems that we share with each other so that, when we get an application,

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59 *Committee Hansard*, 4 December 2015, p. 28.

we can check the document and the details of the person against external sources.<sup>60</sup>

*The Department of Infrastructure and Regional Development*

3.58 Ms Sachi Wimmer, Executive Director, Office of Transport Security (OTS), Department of Infrastructure and Regional Development, described the concerns and responsibilities of the OTS:

Because our legislation deals with the physical security, we do not assess, for instance, each individual crew member. That is very much for Border Force to do. They deal with issues like that on board. Our regime is preventative security. It is about ship security zones. It is about whether people can have an MSIC or an ASIC. It really does not deal with the issues that they have raised there.<sup>61</sup>

3.59 More specifically, Ms Wimmer told the committee:

The thing that we are concerned about is: are they actually implementing the ship security plan that they should have? Their flag state requires them to have it and the international ship security certificate requires them to have a security plan, which is an international requirement. That is as far as our interest goes. We are also, because of our legislation's purpose, very focused on security; criminality is not part of our remit.<sup>62</sup>

3.60 Ms Wimmer also outlined how the Department of Immigration and Border Security shares relevant information with the OTS:

The way it works is that [the Department of Immigration and Border Protection] collect information on vessels arriving in Australian ports, or anticipated to arrive in Australian ports. Ninety-six hours before a vessel arrives in an Australian port, information needs to be collected and it is collected by the ABF. That includes things like the international ship security certificate, they have to list their last 10 ports of call and they need to outline any additional security measures that they had implemented at those last 10 ports of call. That is collected by the Australian Border Force, and in fact you can see their forms on their internet site. They pass some of that information to us, as they are required to help us assess how we respond, if we need to respond at all, which is very rarely.<sup>63</sup>

*The Australian Maritime Safety Authority*

3.61 The Australian Maritime Safety Authority (AMSA) is responsible for 'Ensuring safe vessel operations, combatting marine pollution, and rescuing people in

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60 *Committee Hansard*, 4 December 2015, p. 35.

61 *Committee Hansard*, 23 February 2016, p. 21.

62 *Committee Hansard*, 23 February 2016, p. 20.

63 *Committee Hansard*, 23 February 2016, p. 20.



distress' in Australian waters.<sup>64</sup> The submission made by SAL argued that AMSA is effective in overseeing FOC ships working in Australian waters:

The Australian Port State control system, administered and applied by the Australian Maritime Safety Authority is effective in enforcing ship safety and crew welfare provisions of international conventions. It provides an effective safeguard to detect deter and if necessary detain or banish non-compliant ships from Australian waters, irrespective of flag.<sup>65</sup>

3.62 Other evidence received by the committee suggested that there is no way for the Commonwealth to ensure that FOC vessels meet the same safety standards as Australian-owned ships. For example, AIMPE submitted that AMSA can only exercise its powers:

...whilst the [FOC] ship is actually within the bounds of an Australian port, and AMSA's powers are the much more narrow/limited 'Port-State' Inspection powers [rather than more stringent powers for inspection of Australian vessels]. Consequently whilst many people think that AMSA inspects Australian ships and [FOC] ships to the same standard this is incorrect: AMSA does NOT have the legal jurisdiction to examine and test a [FOC] ship with the same powers that AMSA can examine and test an Australian ship.<sup>66</sup>

3.63 Regarding the monitoring of fatigue aboard FOC ships, AMSA conceded that the current system was clumsy and that more work was needed by international organisations to address it:

On the issue of fatigue with shipping, we are actually leading a lot of work at the International Maritime Organization's Sub-Committee on Human Element, Training and Watchkeeping with having the IMO guidelines revised and having them put into more of a fatigue risk-management basis.

At the moment, we have a very crude fatigue management. It is just about hours of work or hours of rest. Fatigue is far more complex than that, so we are pushing that work.<sup>67</sup>

3.64 The MUA noted that it was difficult for AMSA to inspect cargo handling gear, because relevant laws differed across Australian jurisdictions:

A lot of ports that these ships go to have not got their own cargo-handling gear. So they will go into Western Australia and it will come under the Western Australian code, and then they will go to South Australia and it will come under the South Australian code. They go to Melbourne and around the coast, and all of them have different [inspection regimes]... It is a danger to not only those seafarers but also, particularly, the Australian

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64 AMSA, *Annual Report 2014-15*, p. ii.

65 *Submission 2*, p. 1.

66 *Submission 9*, p. 11.

67 Mr Michael Kinley, CEO, AMSA, *Committee Hansard*, 4 December 2015, p. 46.

stevedoring workers using those ships, as I said, registered in Liberia. They have to go up there and make sure that they are fit for purpose and safe and that they do not kill themselves or someone else in them. Yet for each of those state regulators there is the plethora of regulation, and no-one seems to care.<sup>68</sup>

3.65 The following chapter outlines the committee's views and recommendations.

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68 Mr Paddy Crumlin, National Secretary, Maritime Union of Australia, *Committee Hansard*, 4 December 2015, p. 8.