

DEPARTMENT OF HOME AFFAIRS

PARLIAMENTARY INQUIRY WRITTEN QUESTION ON NOTICE

Joint Standing Committee on Foreign Affairs Defence and Trade
Implications of the COVID-19 pandemic for Australia's foreign affairs,
defence and trade

6 August 2020

QoN Number: 01

Subject: Management of Australian Citizens returning to Australia

Asked by: David Fawcett

Question:

CHAIR:... Have you given any thought as to how the system can be managed such that those who have remained overseas for very valid reasons can still exercise their right as Australian citizens to return in a timely manner? That could be through agreements with airlines or, indeed, now that it's a self-funded quarantine, is there increased capacity available, given that travellers have to fund that themselves?

Mr Wilden: Absolutely, yes. We have every intent that any Australian who wants to come home should be able to come home. The issue really does come down to timeliness. I think you have framed the situation offshore accurately as complex. There are a lot of people who want to be offshore; there are a lot of people who don't want to come home. And there are people who want to come home, but are having difficulties because they have jobs, or businesses to close down or leases to get out of et cetera. I think that the ever-moving feast that has been flight availability has proven very challenging. Certainly, at the moment it is going to be tough for the short term because of the caps that the states and territories have put on. I'll provide on notice the exact numbers in case I misremember, but they're between 30 and 50 people per flight in most states, and each state has a different cap on how many people they'll take on any given day a week. That immediately puts a constraint on it.

Answer:

Based on advice from all states and territories on their quarantine, health and police capacity, the National Cabinet has agreed there is an ongoing need for international passenger arrival caps at our five major international airports in Sydney, Melbourne, Perth, Brisbane and Adelaide.

These caps are implemented by the Department of Infrastructure, Transport, Regional Development and Communications.

On 7 August 2020, the National Cabinet agreed that the following caps would apply until 24 October 2020:

- Melbourne – no international passenger arrivals;
- Sydney – limit of 350 passenger arrivals per day;
- Perth – limit of 525 passenger arrivals per week;
- Brisbane – limit of 500 passenger arrivals per week;
- Adelaide – limit of 500 passenger arrivals per week;
- Canberra and Darwin – passenger limits on each flight to be discussed with jurisdictions on a case-by-case basis; and
- Hobart – no international flights.

The number of passengers approved on individual airline flights varies depending on how many airlines are operating on that day and subject to the total number of passenger arrival caps outlined above.

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QoN Number: 02

Subject: Domestic Violence

Asked by: Andrew Wallace

Question:

Mr WALLACE: The issue of domestic violence and the legal consequences which may follow from it are, more often than not, dealt with by state and territory police forces and the state courts. What conversations are being had with the other jurisdictions to look at tougher sentencing regimes? You've talked about the educational side of things and pushing information out. What about deterrents?

Mr Wilden: Certainly we can come back on that. We'll have to that on notice, because Attorney-General's leads on those law and order legislative elements and the police, obviously, on the implementation and operation of them. So I'll take that on notice and we'll find out what work is currently underway and come back to the committee.

Mr WALLACE: Thank you.

Answer:

Under Australia's federal system of government, states and territories are responsible for the majority of laws related to family violence, such as the making of domestic violence orders (DVOs) and criminal offences (including attached sentencing regimes). Each jurisdiction manages its own criminal justice system, including criminal laws, policing, courts and corrections.

While these matters are the responsibility of the states and territories, combatting violence against women and children is a top priority of the Australian Government, including throughout the COVID-19 pandemic, which, as the Department of Home Affairs' submission to the Committee notes, has increased the incidence and severity of domestic violence.

The Department undertakes a broad remit of work to combat domestic and family violence, including monitoring relevant Commonwealth offences for which it has policy responsibility. Consistent with the Commonwealth's constitutional mandate, Division 474 of the *Criminal Code Act 1995* (Cth) criminalises the use of a carriage service, such as a mobile phone or the internet, to threaten to cause serious harm or

kill, menace or harass a person, or to distribute private sexual material (including intimate images or videos) without consent. These offences can and do apply in a family and domestic violence context. They attract maximum penalties ranging from 3–10 years' imprisonment, demonstrating the seriousness of the offending behaviour.

The Department has taken a leadership role in implementing national reforms to ensure that victims of domestic violence are protected across jurisdictions. The National Domestic Violence Order Scheme (NDVOS) commenced in November 2017 to enable a domestic violence order (DVO) issued in one Australian state or territory to be automatically recognised and enforced in all others. Through a mutual recognition scheme and inter-jurisdictional information-sharing, NDVOS improves the safety of victims experiencing violence by ensuring they are afforded the same legal protections regardless of where they relocate within Australia. At a 5 May 2020 meeting of the National Cabinet, Premiers and Chief Ministers agreed that DVOs would continue to be available and enforced during the COVID-19 pandemic.

The Department is also supporting the Attorney-General's Department-led reforms to the *Family Law Act 1975* (Cth) to improve protections against domestic and family violence. At the November 2019 Council of Attorneys-General (CAG) and Ministerial Council for Police and Emergency Management (MCPEM) meetings, jurisdictions agreed in-principle that federal family law Personal Protection Injunctions (PPIs) will be recognised through NDVOS and enforced by state and territory police, once Commonwealth criminal offences for breaches of these injunctions commence. At the same MCPEM meeting, Ministers also agreed in-principle that all jurisdictions would ensure that people subject to a 'Federal Family Violence Order' (the name by which a criminally enforceable PPI will be known) would be prohibited from acquiring, possessing and using a firearm.

At the CAG meeting on 27 July 2020, participants noted the continuing work undertaken by all jurisdictions to respond to the family violence impacts of COVID-19, and improve safety outcomes for families. The Women's Safety Ministers will continue to monitor the impact of COVID-19 and work together to implement the *National Partnership Agreement on COVID-19 Domestic and Family Violence Responses*.

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QoN Number: 03

Subject: Critical Infrastructure at Borders and Ports

Asked by: Julian Hill

Question:

Mr HILL: Our terms of reference talk about health, obviously, as a threat to Australian security in this context. Has the department commenced a review, with a critical infrastructure lens, of the current arrangements for our borders at ports?

Mr Grunhard: Particularly in regard to biosecurity and matters like you're referring to, I'm not aware of what reviews are in place, and I would have to confirm that for you. I'm very happy to do so on notice.

Mr HILL: It seems peculiar that, if you're responsible for those security aspects, you're not at all aware of whether the department's had a look at what the failures were. Isn't that something that you'd be interested in, as the senior officer?

Mr Grunhard: It's not a matter that would come under my particular legislative frameworks or our strategies. I know it is a matter of great interest to senior officers in the department, and I'm happy to provide you further information about that.

Answer:

The *Maritime Transport and Offshore Facilities Security Act 2003* establishes a framework to safeguard against unlawful interferences with maritime transport, regulated ports and offshore oil and gas facilities. The framework does not address a broader range of issues including biosecurity. The Department of Agriculture, Water and the Environment assesses and manages potential biosecurity threats at Australia's ports.

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QoN Number: 04

Subject: Operations at the Port of Sydney

Asked by: Julian Hill

Question:

Mr HILL: I'll touch on three issues and put a couple of questions, and then, if we can't get any anywhere, we'll move on. Three issues were raised—and I'd be curious if you see any as relating to your responsibilities—about the ABF's and Agriculture's management at the Port of Sydney, which resulted in 2,700 passengers getting off without any screening and spreading out across the country. The first point the Commonwealth admitted in its submission was that the passengers were allowed to disembark from the Ruby Princess before the ABF or Agriculture received any advice from New South Wales Health. The submission says:

... it would have been preferable if explicit confirmation had been sought from NSW Health as to their assessment.

I think 'preferable' is an understatement; any advice would be good.

The second issue is noted in paragraph 38:

The practice of Agriculture at the Port of Sydney was not to require biosecurity officers to interview the Master—

of the vessel. There's a clear requirement for that to happen, but, for whatever reason, they simply decided not to do that. It's not their practice, which is peculiar.

The practice doesn't accord with the requirements that have been set down.

The third failure of Agriculture was to administer sick passengers with illness checklists. Those checklists were required to be completed under the national protocol for managing COVID from cruise ships, but they weren't for the Ruby Princess. Astoundingly, the submission, which your department signed off on, in paragraph 40 said that they:

... considered that it would take an impractical amount of time to administer on cruise ships, particularly where there had been a significant outbreak of illness on board.

This just makes your head explode. Really? An 'impractical amount of time' to stop COVID-19 because the paperwork was too much?

When you look at these things in total—and this was a submission that your department had significant input to and that the Commonwealth signed off on—they sound like systemic failures. You're telling me that your responsibilities are for critical

infrastructure and that you're not at all concerned by these systemic failings.

Mr Grunhard: All of those that you raise are certainly very grave. I am aware that they are being looked at by the relevant officers to the extent that they are matters for the Department of agriculture or the Australian Border Force. But as to the extent of the information that the department holds about those matters, I'm very happy to take that on notice and get back to you.

Mr HILL: That's fair enough; you've given an explanation of your responsibilities. Whose role is it?

Mr Grunhard: The relevant officers within the ABF. As you note, the Department of agriculture also has a role. There's no doubt that New South Wales officials have some role. I'm certainly happy to clarify what information we can on notice.

Mr HILL: You're saying that relevant officers are within the ABF. Is there no-one in the actual department itself as opposed to the agency who has any responsibility for these issues?

Mr Wilden: We might take it on notice, because when we looked at the terms of reference we've provided to officers here today, we don't have coverage of Ruby Princess and those issues. Certainly the ABF manages the Home Affairs work at our ports of entry—be that in the maritime sector or in airports. So they have the lead there. Within the ABF, there are also the customs and the traveller policy areas. We just don't have the information at hand today, unfortunately, to be able to advise you which people in Home Affairs have the key intersections, but we're very happy to provide that on notice.

Answer:

The Australian Border Force (ABF) were responsible for, and only exercised, immigration and customs functions in relation to the Ruby Princess. The ABF had no biosecurity role in these matters and did not exercise any powers under the Biosecurity Act in relation to the disembarkation of passengers from the Ruby Princess.

Responsibility for the granting of pratique resides with biosecurity officers in the Department of Agriculture, Water and the Environment.

As the Report of the Special Commission of Inquiry into the Ruby Princess shows it is 'crystal clear' that the ABF had 'no relevant responsibility for the processes by which, by reference to health risks to the Australian community, passengers were permitted to disembark from the Ruby Princess'.

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6 August 2020

QoN Number: 05

Subject: Australians wishing to return to Australia

Asked by: Julian Hill

Question:

Mr HILL: ... Mr Wilden, regarding earlier, when you were talking with Ms Swanson about Australians looking to come back, are you able to tell us or can you take on notice how many Australians have expressed that they still want to get home but have not been able to, and which countries they are stuck in?

Mr Wilden: Yes, I can provide that on notice. Foreign Affairs holds that information, but I'll happily get that from them at a specific date, as close as I can to now, and provide that.

Answer:

On 14 August 2020, the following information was provided by the Department of Foreign Affairs and Trade:

Of the 24,600 Australians and their families across 178 countries currently registered with the Department of Foreign Affairs and Trade (the Department), 16,700 have indicated they wish to return home. The information is dynamic as Australians are able to register themselves based on their circumstances. To date approximately 50,000 have registered with the Department, and around 50% of those have already returned home.

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6 August 2020

QoN Number: 06

Subject: Effects on Crews on Ships

Asked by: Tony Sheldon

Question:

Senator SHELTON: Thank you for coming along today. With the role you outline of the National Coordination Mechanism and the surety of supply chains and, of course, cutting across issues like, I gather, resources and agriculture—we received evidence last week from Ports Australia, the Freight & Trade Alliance and the Australian Peak Shippers' Association about deep concerns about the effects on crews on ships. We gave an example of a Newcastle ship where a number of those crew are well over their time under the Maritime Labour Convention, which was written to actually protect both safety and security and human rights—which are critical issues that this committee is looking at—and to deal with the economic consequences of fatigue and the potential incidents that can occur from shipping. We went through a number of examples. In the case of the Newcastle port, there were a number of people who'd been on that ship for more than 14 months. Since then, there have been further ships and growing numbers of ships at our ports around Australia that have not been able to unload or move on and are now caught at our ports. They've not only breached the pre-COVID arrangements of nine to 11 months of a seafarer being on board, but are now exceeding 14 months. Just now, we've had two more examples today at Geelong and Fremantle. Our ships are held up in ports because of not having appropriate crewing levels. In one instance, one crew member has been there for 17 months. You understand that the office of the Commissioner of the Australian Border Force has been taking part in regular phone hook-ups with state and federal departments of health and transport to deal with the crew change issue and other issues related to COVID and maritime safety and security. Can you tell me what the maritime response group—which has been going since the start of the COVID crisis—has done to deal with the issue of crew changes and seafarer welfare?

Mr Wilden: I don't have any information on the particular issues in discussion. I'm aware that it is an item of concern, obviously, that we have people who would normally through maritime crew visas be able to come onshore but, due to health constraints at the moment, don't. I'm also aware of the issues with ports with

capacity to unload. But I'll have to take on notice the specific question about what the commissioner's subgroup has been discussing and where they've got to.

Answer:

The Secretary of the Department of Infrastructure, Transport, Regional Development and Communications (Department of Infrastructure) convenes a weekly teleconference with maritime industry stakeholders to discuss issues and impacts arising from COVID-19. This forum has been meeting since 3 February 2020.

The Department of Infrastructure is leading engagement with Commonwealth partner agencies, state and territory governments, port operators and maritime industry representative bodies to put in place arrangements to enable crew changes while managing COVID-19 risks.

The Australian Border Force (ABF) and the Department of Home Affairs (the Department) provide advice and assistance to industry on the process for travel exemptions and visa arrangements. The ABF and the Department are working with maritime industry representative bodies to address concerns related to visa and exemptions for maritime crew. Clear communications on crew requirements and application processes, to assist maritime crew, support crew and agents travel to and from Australia, have been made.

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QoN Number: 07

Subject: Economic Crisis for Exports and Imports

Asked by: Tony Sheldon

Question:

Senator SHELDON: On this question of a looming economic crisis about our exports and imports because of the increasing threat of a lack of movement of crew changeovers that we're going to find that more and more ships in our ports. Again, I'm saying this in the context of your National Coordination Mechanism and your role there: are you aware that there was a meeting of the International Maritime Organization which endorsed a 12-step set of protocols that make plain what governments need to do to ensure safe crew changes? Also, are you aware that last month the United Kingdom hosted the international maritime virtual summit on crew changes, which addressed the implementation of these protocols, but not a single Australian agency, including Home Affairs, took part in its summit. The summit included a number of countries: of course the UK as a sponsor, Canada, United States, UAE, Saudi Arabia, Indonesia and many others. Can you explain why we aren't participating in the significant issues that, quite frankly, look like they're going to have a significant impact on our economy?

Mr Wilden: I can't personally. Those matters wouldn't normally as a matter-of-course come into the NCM, but I'll discuss with my colleagues in Aviation and Maritime Security in the Border Force, who look after our customs function, to find out if they were aware of that, and we can advise if they were aware, if they were invited and, if not, why not.

Senator SHELDON: And, why didn't they turn up.

Mr Wilden: My first step is I'll find out where they aware and invited, and then, if they weren't engaged to do it, to find out and to advise you of why—absolutely.

Answer:

Based on departmental records, the Department of Home Affairs did not receive an invitation to the Maritime Virtual Summit on Crew Changes, a Ministerial Summit held on 9 July 2020.

The Department did not receive an invitation to the summit, as this is a matter for the Department of Infrastructure, Transport, Regional Development and Communications.

The Deputy Prime Minister and Minister for Infrastructure, Transport and Regional Development received an invitation to the summit and registered an apology. Further questions on the summit should be directed to The Department of Infrastructure, Transport, Regional Development and Communications.

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QoN Number: 08

Subject: National Coordination Mechanism

Asked by: David Fawcett

Question:

CHAIR: ... I notice that AMSA, Australian Maritime Safety Authority, has issued an updated instruction, which is causing a lot of the identification and inability of ships to sail that Senator Sheldon is talking about, and that quite rightly is taking steps to address the human rights impacts on crews but also the safety implications for ships and port infrastructure. I guess the issue for a National Coordination Mechanism is that we have one state in Australia, being Queensland, where they do have protocols in place to enable crew changes, and what would be useful is if the NCM, in coordinating supply chain issues and resilience et cetera, could facilitate the coordination across the different state and territory jurisdictions to adopt the Queensland model, or their equivalent of it, so that those crew changes could occur so we don't see the disruptions to the supply chain that would be caused by ship at a port where crew changes were not permitted by the state government.

Mr Wilden: We'll certainly feed that back into the central NCM process as a request from the committee and we'll come back on notice with a response

Answer:

The National Coordination Mechanism (NCM) is able to facilitate engagement with relevant Commonwealth agencies and state and territory jurisdictions, to discuss a national approach for maritime crew changes. This issue is, however, currently being managed within existing mechanisms.

The Department of Infrastructure, Transport, Regional Development and Communications (DITRDC) is working across government and industry to maintain shipping operations while health, economic and social risks are managed appropriately and pragmatically.

The NCM notes that DITRDC meets with maritime industry stakeholders weekly to discuss issues and impacts arising from COVID-19. Enabling crew changes has been a key focus over recent months. As a result, the Queensland Government has

implemented arrangements enabling crew changes to occur while managing COVID-19 risks. Other states are currently working to facilitate similar arrangements.

In addition, DITRDC advised that, on 1 July 2020, the Australian Maritime Safety Authority (AMSA) issued a Marine Notice limiting maximum continuous periods of sea service without leave to 14 months, accepting extensions of contract where there is agreement between the seafarer, the ship owner and the flag state.

AMSA continues to investigate complaints relating to seafarer welfare and repatriation and to respond appropriately, where deficiencies are identified, including the detention of vessels.

The NCM will assist AMSA and DITRDC regarding maritime crew changes upon request through a relevant NCM sector meeting.

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QoN Number: 09

Subject: Protocols surrounding Pilots for incoming Vessels

Asked by: Meryl Swanson

Question:

Ms SWANSON: I just want to follow up on that line of questioning from Mr Sheldon and also on something from Mr Hill. I'm interested in the security and health of the shipping pilots. At the Newcastle port, a pilot is taken out to every ship that comes into Newcastle, and they then pilot the ship in. Do you have information—and, if not, can you get it for me—on the sorts of protocols there are? That is an area I haven't heard a lot about and I am really interested, because I think it might have been more good luck than good fortune that we haven't had any COVID infections as a result of pilots piloting ships in.

Mr Wilden: It doesn't fall within the Home Affairs bailiwick to manage that, but I'm certainly happy to find out and advise the committee if I can get the answer. If not, I'll advise you about the appropriate people to get that from. It may be AMSA or the department of agriculture, but I will come back on notice.

Ms SWANSON: I am curious about that. I just wonder where it would fall, because it doesn't strike me as an ag issue, given that they are pilots. Anyway, if you could do that, I would appreciate it.

Answer:

The Department of Infrastructure, Transport, Regional Development and Communications; Department of Health; and the Department of Agriculture, Water and the Environment (DAWE) as well as the Australian Border Force and the Australian Maritime Safety Authority (AMSA) have worked together to develop protocols and fact sheets for the maritime industry as set out below.

The *Biosecurity Act 2015* imposes requirements on arriving vessels to provide information about human health issues prior to arriving in Australia. This information is provided through DAWE's Maritime Arrivals Reporting System.

On 14 April 2020, AMSA issued a safety alert for maritime pilots on novel coronavirus (COVID-19). The advice includes suggested screening questions for

pilotage providers and precautionary safety measures for pilots while on vessels. The information is available at <https://www.amsa.gov.au/news-community/campaigns/safety-alert-novel-coronavirus-covid-19> on AMSA's website.

The Department of Health issued information for marine pilots on 5 February 2020, with the last update on 6 August 2020. The advice outlines arrangements for arriving international vessels and mitigations that maritime pilots can take to reduce their risk of contracting COVID-19. The information is available at <https://www.health.gov.au/resources/publications/coronavirus-covid-19-information-for-marine-pilots> on the Department of Health website.

Maritime pilots are employees of state based companies and/or state and territory governments. They are subject to relevant state and territory work health and safety obligations including any state and territory COVID-19 requirements.

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QoN Number: 10

Subject: Port Security

Asked by: Meryl Swanson

Question:

Ms SWANSON: ... I also want to flag the explosion that's happened in Beirut. I heard about it as I was driving along in the car with my daughter, and she said, 'What do you think that is, Mum?' I said: 'It's a port. There's probably fertiliser stored somewhere. It's probably ammonium nitrate.' And sure enough it was. We have an extraordinary amount of ammonium nitrate stored very close to the port of Newcastle. Is this also within your bailiwick, if I can use your expression? Is this something that you can give me more information on, as it involves the security of a piece of critical infrastructure? I've got some real concerns.

Mr Wilden: We have a part of Home Affairs called Aviation and Maritime Security, which obviously has some roles across the management of ports. Much of it is at the state and territory level, but I'm happy to come back with an explanation of where the different accountabilities lie in managing the ports in terms of the Commonwealth and who owns what in the Commonwealth and what is owned by the states.

Ms SWANSON: I just feel that, given this explosion—and I know we may have very different regulatory frameworks—it would be foolhardy of us to think that we'll be okay. We probably need to take it as a warning and make sure that we're doing all the right things. We certainly don't want systemic failings in relation to that as well. If we could have that, that would be great.

Mr Wilden: Certainly.

Answer:

Ammonium nitrate is stored at Orica Australia Pty Ltd's (Orica's) Kooragang Island site in the Port of Newcastle. The Port of Newcastle and Orica are a security regulated port and port facility operator under the *Maritime Transport and Offshore Facilities Security Act 2003*, and operate in accordance with maritime security plans approved by the Department of Home Affairs. Due to privacy and security reasons, the contents of the security plans may not be publicly disclosed.

The Kooragang Island site is a licensed Major Hazard Facility that manufactures and stores materials in accordance with the New South Wales Work Health and Safety Regulation 2017.