

# **International Transport Workers Federation – Australia**



Submission to the Inquiry into Australia's Maritime Logistics System

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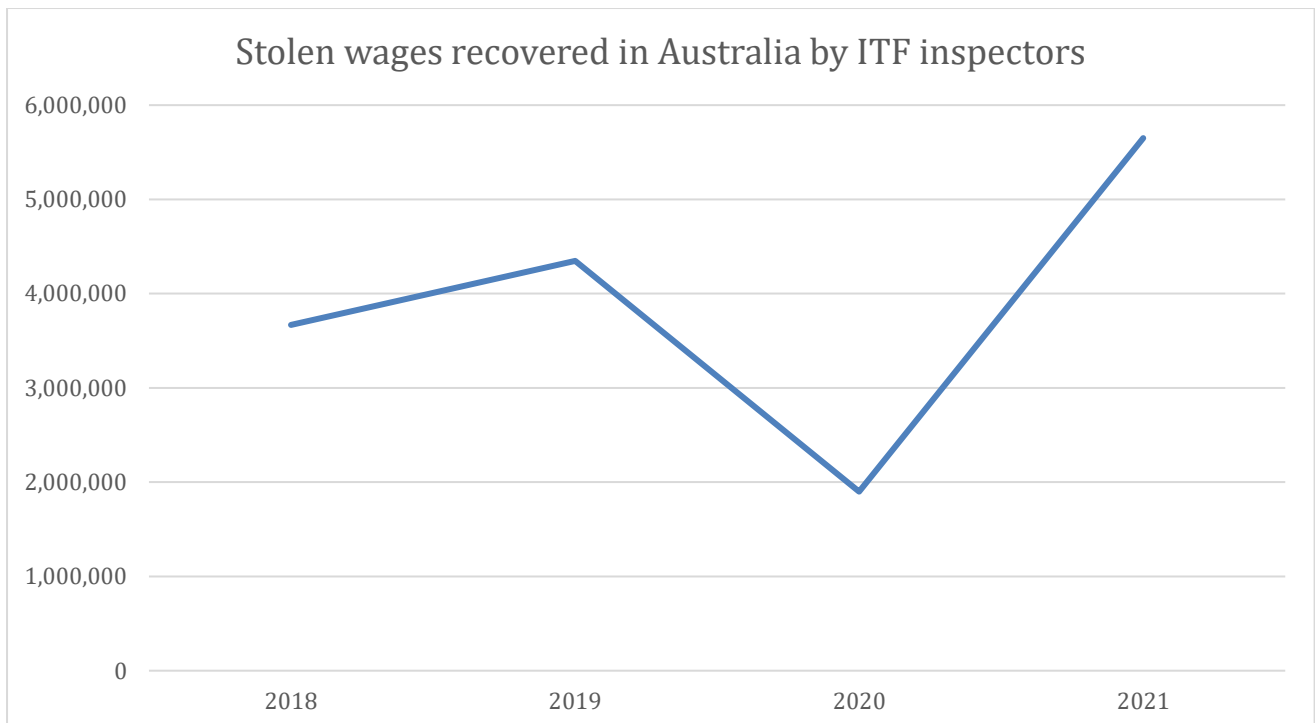
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## 1. Introduction

This submission is made on behalf of the International Transport Workers' Federation (ITF) - Australia. The ITF is an international federation of transport workers' trade unions. Around 700 unions representing over 4.5 million transport workers from some 150 countries are members of the ITF. It is one of several Global Union Federations allied with the International Trade Union Confederation (ITUC).

In Australia, the ITF has a team of 5 people that are employed full-time to inspect international ships and assist international seafarers in Australian ports. These inspectors board approximately 500 ships per year, in addition to assisting multiple seafarers that contact them by text, email, social media, seafarers centre or waterfront workers. The Australian ITF Inspectorate has been active since the 1980s.

The below graph shows the money recovered from stolen wages by the Australian inspectorate in the last few years.



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## 1. Executive Summary and Recommendations

Australia is the 5<sup>th</sup> largest user of shipping services in the world with more than 95% of its imports and exports dependent on shipping.

1.1. 6,463 foreign-flagged ships made 30,616 calls to Australian ports in 2020/21.

Port State Control responsibilities in Australia fall to the Australian Maritime Safety Authority (AMSA) and part of this remit is to conduct PSC inspections.

Inspections that are conducted by AMSA are various however usually focus on classification and operational or Maritime Labour Convention (MLC) issues. MLC inspections can be conducted by AMSA as part of their routine inspections or acting on complaints from seafarers, welfare groups, ITF or community.

4.5% of international ships subject to PSC inspections were detained however this statistic does not reveal the true picture of substandard ships, Maritime Labour Convention breaches or Human Rights abuse because not all of the 6463 ships were subject to inspection.

The ITF has been successful in having more than 15,000 ships regulated by international collective agreements but still need an ongoing active network of dedicated inspectors to police the agreements. One indication of the extent of violations is that the Inspectorate in Australia conducted 500 inspections in 2021 and recovered almost \$5 million USD of wage theft from shipping companies owed to seafarers. Apart from wage theft, compensation, and repatriation the worldwide inspectorate regime deals with an increasing list of breaches of human and workers' rights. Quite often breaches incurred are reported to Port State Control (PSC) and often leads to ships being detained.

In this Submission we draw on our constant practical experience of dealing with international seafarers and the seagoing industry to provide insight into the functioning of the industry.

1.2. The Coastal Trading Act permits the use of foreign flagged ships to carry Australian Coastal cargo providing the application is made to the Shipping Business Unit of the The Department of Infrastructure, Transport, Regional Development and Communications.

1.3. International seafarers that crew ships engaged in transporting coastal cargo are entitled to Award payments upon the third and subsequent voyages that are completed. The payments are to comply with the Seagoing Industry Award - Part B amounts.

Whilst many shipping companies, charterers and clients do the right thing and pay the award entitlements to the crews, many do not.

Part of the problem is the ambiguity regarding qualification to award payments for seafarers. When the Coastal Trading Act was passed into law, the intent of Temporary licences was to support companies operating General Licenced ships on the coast and to support industries transporting cargo when no General Licenced ships were available to perform the task. The

Award payments were created to support the intent and recognise that on occasions, foreign crewed ships would be required to supplement General Licenced shipping. Whilst the Department of Infrastructure, Transport, Regional Development and Communications, has the responsibility of governance over the licencing system, it does not have the responsibility for compliance matters pertaining to payment of award wages. That responsibility sits with the office of the Fair Work Ombudsman.

Complaints brought before the FWO Office are seldom prosecuted or settled, partly because the amounts are less than the cost of preparing for and prosecuting companies for non-compliance and partly because the ship and its crew are trading in other parts of the world by the time the FWO decides to investigate, making communications and evidence gathering problematic.

Wage theft that occurs outside of the FWO remit to enforce compliance to award entitlements are not open to prosecution by the FWO because the breaches to agreements that are not registered in Fair Work Australia are not the responsibility of the FWO. Non-payment or underpayment of wages that sit outside of award entitlements are often left for the ITF to resolve with the shipping companies or manning agents themselves, or by making complaint to AMSA under MLC.

Part of the solution is to amend the qualification period to access award payments for seafarers from the third and subsequent voyages to the first and subsequent voyage. The intent in which Temporary Licences were to be used to support General Licenced shipping is zero, so the wavering of award payments is not supporting the Australian Shipping companies to build viable shipping operations. The discounting of the cost of shipping should not be borne by the international seafarers.

Other solutions that could be considered is to empower the government agencies to enforce compliance on the spot. Infringement notices could be issued and on the spot fines issued to shipping companies for non-payment of entitlements. The recording of data could be used for future reference in determining whether a shipping company is suitable to be engaged on the Australian Coast and companies with the worst cases of wage theft or human rights abuse disqualified from obtaining Temporary Licences. This will send a clear message to the industry that Australia is serious about wage theft and Human Rights.

AMSA could be given increased powers to enforce compliance of FWO determinations over wage entitlements and payments and should be resourced adequately to raise its presence within the industry by increasing its inspection rates.

## **RECOMMENDATIONS:**

**Recommendation:** The Productivity Commission should not undermine, efforts to increase the security of employment and access to sick leave in the maritime industry for all maritime workers.

**Recommendation:** Domestic and international seafarers must be given the status as key workers. They should also be given priority access to COVID- 19 vaccines and the ability to fly interstate and cross international borders so that they can safely go back home. Australian must participate in international efforts to address this ongoing issue.

**Recommendation:** That maritime workplaces and international seafarers have access to free rapid antigen testing for Covid and that broader covid safety measures protect not only the workforce but the supply chain covering all those international seafarers while in Australian waters.

**Recommendation:** The Productivity Commission reviews the National Freight and Supply Chain Strategy and the National Ports Strategy to ensure that they properly incorporate and plan not only for Australia’s domestic shipping needs but also for international.

**Recommendation:** The Productivity Commission seeks an independent analysis of international shipping lines and services that come to Australia over the past 10 years including:

- Vessel cargo capacity
- Port calls
- TEU handled
- Reliability of service

**Recommendation:** Investigate the need to provide a coastal container shipping service, particularly to connect Fremantle and Adelaide and potentially other ports in Victoria, South Australia and West Australia to larger international container hub ports in other states.

**Recommendation:** To reform the Coastal Trading Act to ensure there is a better balance of domestically and internationally controlled shipping across all shipping trades.

**Recommendation:** To reform the Coastal Trading Act to ensure the qualification for Australian Award part B applies from the first voyage instead of the third.

**Recommendation:** The Australian government establish a Regulator of International Shipping, an independent body with strong functions and powers aimed to ensure that international shipping operating to Australia is compliant with all human rights, MLC and legal obligations. AMSA should have also broader responsibilities within the Coastal Act.

Some of their responsibilities would include:

- Registering, monitoring, and publishing details on all shipping services to Australia, and ensuring they meet tests and obligations for reliability, notification of schedule and fees changes, and ship size.

- Receiving and mediating complaints about international shipping services to Australia.
- Planning future shipping needs to Australia, and ensuring services and infrastructure are available to meet those needs.
- Mechanisms to address non-compliance with international human rights, MLC, labour standards, WHS standards and corporate governance norms and conventions in international shipping.

## 2. The Regulation of FOCs and International Shipping

Global deregulation of shipping has been the largest contributing factor associated with human rights violations, breaches to Maritime Labour Convention (MLC), International Labour Organisation (ILO) and other conventions which Australia is a signatory to as owners increasingly shifted national flag registered fleets to low cost, low compliance flag states commonly known as Flags of Convenience. Most of the world's estimated 1.6 million seafarers are from Philippines, China, India, Turkey, the Ukraine and Indonesia.<sup>1</sup> 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.<sup>2</sup> In between seafarers and ship owners are frequently layers of international sub-contracting that obscure the fundamental employment relationship between them.

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.<sup>3</sup>

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.

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.

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.

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<sup>1</sup> David Walters and Nick Bailey, 2013, *Lives in Peril: Profit or Safety in the Global Maritime Industry?* New York: Palgrave MacMillan, p.86-87.

<sup>2</sup> UNCTAD, Review of Maritime Transport 2014, p.39.

<sup>3</sup> UNCTAD, Review of Maritime Transport 2014, p.44.



Some of these registers have poor safety and training standards and place no restriction on the nationality of the crew. Sometimes, because of language differences, seafarers are not able to communicate effectively with each other, putting safety and the efficient operation of the ship at risk.

Once a ship is registered under an FOC shipowners then recruit the cheapest labour they can find, pay minimal wages and cut costs by lowering standards of living and working conditions for the crew.

Globalisation has helped to fuel this race to the bottom. In an increasingly fierce competitive shipping market, each new FOC is forced to promote itself by offering the lowest possible fees and the minimum of regulation. In the same way, ship owners are forced to look for the cheapest and least regulated ways of running their vessels in order to compete, and FOCs provide the solution.

Since it was established, the FOC system has become pervasive in the international shipping industry and its institutions. In many ways, it foreshadowed the globalisation of other industries.

The ITF defines flags of convenience as:

2.1.1. Where the beneficial ownership of a vessel is found to be elsewhere than in the country of the flag the vessel is flying, the vessel is considered as sailing under a Flag of Convenience. In cases where the identification of the beneficial owner is not clear, effective control will be considered and any vessel where there is no genuine link between the flag state and the person(s), or corporate entity with effective control over the operation of the vessel shall be considered as sailing under an FOC.<sup>4</sup>

2.1.2. FOCs enable shipowners to minimise their operational costs by, inter alia, tax avoidance, transfer pricing, trade union avoidance, recruitment of non-domiciled seafarers and/or passport holders on very low wage rates, non-payment of welfare and social security contributions for their crews, using seafarers to handle cargo, and avoidance of strictly applied safety and environmental standards. As a result, FOC registers enjoy a competitive advantage over those national registers which operate with high running costs and are subject to the laws and regulations of properly established maritime administrations in the flag state. FOCs also allow shipping companies to establish complex ownership structures that are characterised by a lack of administrative and managerial accountability and transparency.<sup>5</sup>

3. 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

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<sup>4</sup> ITF, 2010, *Mexico City Policy: ITF policy on minimum conditions on merchant ships*, Definition of a flag of convenience, p.12.

<sup>5</sup> ITF, 2010, *Mexico City Policy: ITF policy on minimum conditions on merchant ships*, Statement of principles, p.12.

trade union rights, freedom of association and the right to collective bargaining with bona fide trade unions.

There are primarily four kinds of interests or faces to a state's interest under the international law of the sea: flag state, port state, coastal state, and labour supply state. Regulatory difficulties with FOCs emanate from this reality as a State could have none, some, or all four interests to varying degrees. This creates a potential internal difficulty for governments seeking to reconcile differing, and sometimes conflicting interests.

In our efforts to protect the interest of seafarers the ITF has developed the Flag of Convenience Campaign (FOC campaign) prosecuted by a network of over 130 ITF Inspectors in ports throughout the world, including a team of dedicated Inspectors and a network of supporters in Australia.

### **3. PRODUCTIVITY ISSUES DUE TO MLC BREACHES AND COVID 19**

Human Rights and Maritime Labour Convention (MLC) breaches, as well as the Coronavirus disease (COVID-19) have triggered a global health and economic crisis with implications for maritime transport and trade. Restrictions introduced in response to the pandemic have caused disruptions affecting ports, shipping, and supply chains.

Various industries faced challenges along their supply chain such as lead time issues, port closures, reduced working hours at ports, equipment, and labour shortages. These obstacles undermine the smooth movement and supply chain operations. While the longer-term impact of the COVID-19 outbreak is yet to be fully understood, all indicators are pointing to significant immediate challenges for the sector. These differ depending on the maritime transport segment (e.g., container, bulk, tanker), the port functionality and whether the transport operation is domestic or international.

ITF inspections often reveal a number of deficiencies relating to the working conditions of the crew under the Maritime Labour Convention (MLC), 2006.

Most common deficiencies found in these inspections what will most likely lead to a detention of the vessel are:

- Vessel not crewed in accordance with the minimum safe manning document
- Seafarer Employment Agreements no valid or expired.
- No access to shore leave granted
- Rescue boat davit not fully operational or safety equipment
- Insufficient food provisions on board for length of journey

In these cases, vessels will be detained until the remaining deficiencies are rectified by the operator in consultation with their Flag state administration.

The Maritime Labour Convention (MLC), 2006 is an international convention developed under the International Labour Organization. It sets out modern standards relating to the working and living conditions of seafarers at sea.

All Australian registered and foreign flagged vessels within Australian waters must comply with the standards set out in the MLC.

Proper treatment of seafarers is just as important as the proper maintenance of ships' equipment - a failure in either system can lead to serious accidents and therefore a potential detention by the maritime authorities.

Seafarers live difficult lives often spending many months at sea away from their families and friends. Any vessel which is found to be in breach of the MLC or other Australian standards will be exposed to possible detention by AMSA and repeat offenders' risk being banned from Australian waters as the case studies addressed in this submission.

Every time a ship is detained, it has a knock-on effect in the relevant port and possibly other ports in the detained ship's schedule.

- Ship and cargo delayed from sailing to next destination
- Next ship in queue experiences unnecessary delay
- Wharf Labour shift start times impacted
- Pilot scheduling impacted
- Towage scheduling impacted
- Mooring services scheduling impacted
- Next port of call has greater pressure placed on its scheduling, etc

Some case studies regarding breaches of MLC and Human rights where vessels have been detained for weeks at ports by Maritime Authorities resulting in long bans afterwards and causing delays at those are below:

### **Case study the Maryam**

**Vessel:** Maryam

**Flag:** Panama

**IMO No:** 9272864

**Ship owner:** Movers Trading and Maritime

**Ship manager:** Aswan Shipping, a privately owned ship management company with HQ in Turkey

**Registered owner:** Maryam Trading & Maritime Transportation Co Inc, Panama

**Crew:** Turkish / Indian / Georgian (total crew of 22 seafarers)

**Date of ITF Inspection and Port:** 4 March 2021, Port Kembla

The contract duration for 13 crew was 9 months (+/-2 months) and for 9 crew was 6 months (+/-2 months) – contracts commenced on 12 September 2020 for some crew and 11 December 2020 for others.

Repatriation issues:

- 9 Crew had SEA's due to expire on 12 March 2021 (at 6 months).
- No seafarer wished to extend their contract beyond the specified date and requested ITF assistance with repatriation.

- The shipowner/operator did not arrange repatriation for crew until dates ranging from 3 April 2021 to 29 May 2021 - for some crew, that was up to 8 weeks beyond the term of their contract.
- Due to delays in arranging repatriation to dates well beyond the terms of their contracts, in contravention of the ILO MLC, and given the multitude of other breaches of the MLC identified by the Port State Control Regulator, AMSA [Australian Maritime Safety Authority], such as failing to provide safe and decent working and living conditions onboard, most of the crew resigned on 16 April 2021.
- Previously this ship was detained in Port Kembla by AMSA on 19 February 2021 for the following breaches:
  - The Safety Management System, as implemented onboard, is not effective in ensuring safe shipboard operations, maintenance of ship and equipment, and adequate resources and personnel.
  - Emergency generator operation defective. Two main generators pose fire and safety risk due to oil and water leaks.
  - Port and starboard lifeboat steering systems defective.
  - Company has failed to provide safe and decent working and living conditions onboard:
    - See details at <https://www.amsa.gov.au/vessels-operators/port-state-control/ship-detention-list-february-2021>.

In the case study, both the charterer and the shipper have an obligation under the UN Guiding Principles on Business and Human Rights to “Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.” (clause 13(b))

In the case of the Maryam in relation to a voyage in February/March 2021 carrying South 32 coking coal to Vietnam for the Hoa Phat Hai Duong Steel Joint Stock Company steel making operations, there is no evidence that either company took appropriate steps to ensure that the ship owner, registered owner, ship manager or crewing agency complied with their obligations under the ILO MLC or the IMO Crew Change Protocols.

Requiring a seafarer to remain on board, in the absence of agreement by the seafarer, beyond the duration of their contract as specified in a SEA is regarded as forced labour under the definition of forced labour in the ILO Forced Labour Convention, 1930 (No. 29).

As a results of all those breaches, Australian authorities have issued a record ban to the owners of Panama-flagged bulk carrier MV Maryam, preventing the vessel from entering any Australian port for three years in response to major safety and maintenance issues, along with crew welfare abuses.

The detainment of the Maryam grossed over 100 days, at least 80 of these days, the ship was tied up alongside a berth in Port Kembla. This resulted in that berth becoming non-operational for this period. In an otherwise normal shipping cycle of loading and discharging vessels alongside, it is reasonable to suggest approximately 3 ships visits per week to the berth. So in this particular case, it is reasonable to suggest that the Maryam contributed to significant delays to other shipping, back log or queuing of ships and cargo, delays to Sth 32 cargo reaching its delivery destination, possible rescheduling of wharf, pilot and towage scheduling etc

### **Case study the Movers 3**

**Vessel:** Movers 3  
**Flag:** Panama  
**IMO No:** 9250244  
**Ship owner:** Movers Trading and Maritime  
**Ship manager:** Movers Denizcilik Ticaret AS  
**Operator:** Aswan Shipping  
**Registered owner:** M3 Trading & Maritime Transportation Co Inc  
**Crew:** Turkish / Jordanians (total crew of 21 seafarers)  
**Date of ITF Inspection and Port:** 16 March 2021, Port Kembla

This vessel had appalling working and living conditions onboard, the replacement of poorly maintained ballast tank, head vents and the updated ship surveys, along with the repatriation issues had the vessel detained by AMSA (for a period of 50 days approx.) and later banned from Australian Waters for a period of 18 months.

Aswan Shipping had shown a complete disregard for its obligations to provide decent working and living conditions for the crew and never ensured the vessel was well maintained to be safe for the crew.

According to reports confirmed by Australian authorities, the Movers 3 was detained, then released, only to be detained again.

The vessel's engine had such serious problems that authorities were blocking the ship from coming into Weipa's inner harbour. Instead, it remained anchored at Weipa's outer harbour.

The engine faults meant the vessel was unable to be propelled, which is needed to produce potable water needed onboard for showers, toilets and washing up.

The engine troubles are a sign of critically deficient maintenance and could be indicative of deeper problems. Surveyors from the classification society boarded the ship to examine its issues.

A persistent problem affecting crew welfare had been that the vessel's freezers had broken down, forcing crew to discard meat and other food. The refrigeration situation, although finally resolved, had put considerable pressure on the ship's cook, who resigned and asked to be repatriated to Turkey. He was later taken off the vessel and flown home.

The 2002-built Movers 3 came to Weipa from the Port of Liuheng, near Shanghai, China. It is unclear if Aswan's ships have been embroiled in the ongoing trade war affecting dozens of ships laden with Australian cargo which have been blocked by Chinese authorities from discharging their loads at the country's ports.

Blacklisted Aswan drove unpaid, abandoned crew to hunger strike also in Kuwait on their vessel MV Ula.

The shipping company made headlines in January 2020 when 19 seafarers working aboard its MV Ula bulk carrier vessel undertook an urgent hunger strike in the port of Shuaiba, Kuwait. The seafarers had gone 17 months abandoned by the company at the time. Aswan owes seafarers aboard the MV Ula more than US \$410,000 in unpaid wages, as well as repatriation flights home.

<https://www.itfglobal.org/en/news/itf-wins-freedom-hunger-striking-seafarers-after-two-years-trapped-ula>

A globally deregulated shipping industry has shown that despite the use of low taxed, low cost crewing models, the industry is still striving to crash through the floor and benchmark new lows. Many companies operating FOC shipping models have no regard for paying Tax, safety, the effects of their cartel behaviour on communities, no regard for human rights or in some instances, human life. Sadly, without government appetite to reign in some of the worst corporate behaviour on the planet, the shipping industry will continue with tax avoidance schemes set up in countries of convenience, continue with appalling treatment of seafarers, and striving for new lows in humanity.

The government may seek to query productivity within the Australian Maritime Industry and supply chains however in order for it to do so, it must first come clean with what benchmarks it wishes to measure Australian workers against.

The deregulated shipping industry has much to answer for in terms of human rights abuse, wage theft and modern slavery and tax avoidance. Without consideration for partial re-regulation to address issues that are occurring in our own backyard, any notion to measure Australian workers performance, using the lowest common denominator as the benchmark smacks of ideology and opportunism. The Australian Government must at least attempt to clean up the shipping industry where it has the power and influence to do so before it seeks to measure Australian Community standards against the world's most deregulated and exploitative industry.