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Sophie Gillespie
Acting Manager Infrastructure Proposals
Freight, Ports, Aviation and Reform
WA Department of Transport

By email: Sophie.Gillespie@transport.wa.gov.au

Dear Ms Gillespie

RE: COVID-19 Risk Management Statement for International Vessels Arriving at WA Ports – draft for industry feedback

With reference to your email to industry of Tuesday, 15 June 2020 at 6:23pm and the associated draft letter on the above topic, Shipping Australia provides a variety of comments as follow below.

General comments: attitudes of public health, and other public officials, to vitally important non-health factors that are relevant during the COVID pandemic; relevance to this document

1. We live in a world of risk that cannot be eradicated, only managed. Hopefully, risk can be reduced to acceptable levels in a way that does not entail excessive expenditures of time, effort and money. Nor should risk management measures result in undue frustration, administrative burden, curtailment of individual liberties, or adverse effect on human wellbeing (mental, emotional, physical). We will collectively label all these various adverse factors with the words "cost" or "costs" as appropriate.
2. SARS-CoV-2, the pathogen which causes the COVID-19 respiratory disease (hereafter 'COVID'), is pandemic. The word "pandemic" literally means "a disease that is everywhere". We should therefore expect that there will inevitably be instances of exposure of the Australian population to COVID from time-to-time. There will inevitably be cases of COVID on ships from time to time.
3. Experience shows that is not possible to completely isolate the Australian population, or any substantial part of the Australian population, from COVID risk. Experience has also shown that it is impossible to eradicate COVID risk. Experience also shows that the only reasonable way in which COVID risk can be managed is via quarantine, contact tracking, medical care and vaccination so as to reduce COVID risk to acceptable levels. In short, COVID risk cannot be excluded or eradicated, only managed.
4. It is sensible and reasonable to consider the advantages and disadvantages of each proposed course of action (or inaction), taking into account such factors as the likelihood of harm, the magnitude of harm in the event of its realisation, and the potential mitigation of and recovery from harm after it has occurred.

5. The risk and magnitude of harm posed by COVID to society is by now well-known and understood.
6. Over the course of the pandemic, Shipping Australia has had many interactions with public health officials (and other public officials) all over the country who have input into rules that affect ocean shipping as they seek to control the pandemic. However, they only focus on health and health-risk issues.
7. We have been repeatedly told by health officials that there is no appetite for COVID risk given how COVID risk is being managed in Australia. Shipping Australia has repeatedly observed that officials then do not give any adequate – or, indeed, any – weight to the importance of ocean shipping to Australia.
8. *International trade accounts for about 46% of Australia's gross domestic product. About 99.92% of all goods and commodities that are moved to or from Australia do so by ocean-going ships.*
9. Australia's international trade is underpinned by the vast amounts of cargo that is carried by ships to Australia. Modern-day car carriers can carry 7,000 to 8,500 cars at a time. That is a huge volume of cars. Similarly, modern-day container ships are also leviathans. Container ships calling at Australia could be carrying 8,500 ocean shipping containers, each loaded with 24,000 kilograms of cargo. That's 204 million kilograms of cargo. It could be food, medical equipment, machinery and goods for sale of every kind.
10. The importance of all this cargo is not the fact that it is cargo but in the fact that is essential inventory for sale by Australian businesses and, ultimately, for consumption by Australian families.
11. *Australia's logistics sector accounts for about 9% of the total Australian workforce – that's about 1.2 million employed Australians*
12. If businesses don't get their stock in time they could fail as businesses. That would lead to job losses. Failure to have a job leads to extensive adverse health effects including anxiety, depression, various other psychological stress, increased risk of suicide, increased uptake of unhealthy behaviours (smoking, gambling, drug-taking, drinking alcohol etc) along with increased consumption of health resources (trips to the doctor, medical care, hospitalisation etc). Unemployment leads to adverse effects on the family including worsened relationships and homelessness, among other things. Meanwhile, employment leads to funding schools, police, fire services, roads, rail, and protection of the environment among many other things.
13. It should now be obvious that a functioning and cost-effective seaborne supply chain is utterly vital to the continued everyday functioning of every aspect of society. As you may recall, last year *perceived* failures in the supply chain last year *led to country-wide panic buying and public order offences* as members of the general public literally began fighting in supermarket aisles to acquire everyday goods. And this happened in relation to perceived failures i.e. the goods weren't actually in short supply. A widespread actual failure of the supply chain would lead to widespread shortages of goods, food, fuel and many other everyday matters. Institutions of society, such as hospitals, would simply be unable to function.

14. It follows from the above, therefore, that unduly adverse restrictions on the international supply chain ought to be avoided.
15. Shipping Australia therefore urges all public officials that an objectively reasonable risk management approach should be adopted for the control of COVID. This includes assigning an adequate weight to the economic importance of ocean-going shipping and to the whole logistics chain, to ensure that Australian's vital interests are met.
16. The draft "*COVID-19 Risk Management Statement for International Vessels*" does not appear to take into account the vital importance of ocean shipping to Australian society.

"All vessels arriving in WA ports that have visited a port outside Australia (other than a port in New Zealand) or a restricted location in the last 60 days will be treated as potentially having COVID-19 on board."

17. We will refer to this "last 60 days" as being the "suspicion period". A key problem with this requirement is that it will reduce productivity for seafarers and waterside workers.
18. As maritime crew sail on commercial ocean-going ships, ship-targeted control measures will usually be appropriate and effective for crew-control. However, crew and ship movements are not always synonymous, and it is sometimes sensible to distinguish between them. This is one such situation.
19. For instance, the crew of a ship may not have done so much as set foot in an overseas port in many months even though the ship may well have been physically berthed at multiple overseas ports during the suspicion period. In such cases there is no reason to apply a suspicion period at all to a crew that has not left a ship.
20. Even where crew do leave ships during the pandemic, this is normally limited to a few metres around the vessel to carry out safety checks. The crew are in the open air during this time. Medical studies show that the risk of infection is 18.7 times less in the open air compared with indoors <https://www.medrxiv.org/content/10.1101/2020.02.28.20029272v2>. In any event, crew will wear appropriate protective equipment and will maintain social distancing, which has been shown to be effective against COVID (see: <https://www.sciencedirect.com/science/article/abs/pii/S0025556420300560?via%3Dihub>).
21. It is therefore neither logical nor reasonable to target COVID-control measures at ships *per se* but, rather, COVID-control measures should focus on crew movements.
22. If, within the suspicion period, there have been no new joiners to the crew, and if the crew did not leave the ship in any overseas port, and if they did not have any near-contact with any other people while carrying out essential in-port duties, then the 60-day suspicion period is unwarranted and unreasonable.
23. Secondly, a 60-day suspicion period is excessive in duration. A meta-analysis by Daley et al was carried out on 21 high quality medical studies with a combined sample of over 6,000 patients. The studies were done throughout the course of the pandemic.
24. Daley et al's meta-analysis demonstrates that the overall mean and median incubation period for COVID is 5.894 days and 5.598 days, respectively. About 99% of people incubate COVID within 14-days. The longest maximum incubation period ever recorded in the pandemic was 32 days.

Daley et al's results are similar to other meta-analyses. For further details see <https://www.medrxiv.org/content/10.1101/2020.12.23.20248790v1.full.pdf>.

25. Given the above data, a 60-day suspicion period for ships is utterly unsupported by evidence and is unreasonable. This conclusion is reinforced by the fact that, by and large, the vast majority of commercial maritime crew likely won't even set foot in Western Australia and will not come into contact with any Australian.
26. A reasonable suspicion period would be far shorter. Given that 99% of all COVID incubation periods take place within 14 days, having a suspicion period of only a few days greater than 14 days is reasonable for COVID risk management purposes.

"Quarantine will also apply to any non-crew members boarding a vessel for more than 12 hours"

27. Does this 12-hour requirement apply to continuous periods of 12 hours? Or is it cumulative to include all periods of time aboard, no matter how short?
28. What is the scientific evidentiary basis for 12 hours? Why not 13 hours? Why not 11 hours?

"Ensure safe and well-documented crew change practices at the previous ports of call and during passage to WA including... enabling COVID-19 vaccination of crew"

29. Demanding that various actions are carried out in other ports of call before arrival in WA leads to a "deadlock" type problem in which every actor in a given problematic scenario waits for other actors to act. As all actors are waiting for the other actors to act then no-one ever acts. We saw this exact problem in the global crew change crisis when various authorities demanded that crews were changed over in other countries. That deadlock caused massive problems with crew changes, as has been extensively documented.
30. Ensuring safe and well-documented crew change practices at other ports might not be possible. Each sovereign nation is just that: sovereign. It has the absolute right to make its own rules. Crew change practices in overseas ports can only be carried out in accordance with overseas law. This statement above should be amended to include a "reasonably practicable" qualifier and it should also have a "subject to appropriate overseas law" statement.
31. Demanding that crew are vaccinated in previous ports of call will likely, again, lead to the deadlock problem and then no seafarer will ever be vaccinated. All governments have a moral and compassionate duty to offer vaccination to as many people as is reasonably practicable. It is also in Australia's national interests to ensure seafarers have vaccination options. This requirement should be modified to include... "where and when reasonably practicable". WA should also commit to offering a one-jab vaccine (currently provided by Johnson & Johnson) to all seafarers when this is reasonably practicable.

“Where practicable, ensure any vessel with suspected COVID-19 infection on board returns to its previous port instead of continuing to WA... Entry to WA ports for an incoming vessel with suspected COVID-19 infection may be denied.”

32. Shipping Australia objects to the term *"suspected COVID-19 infection"*. What constitutes "suspicion"? It is very ambiguous. At the very least there needs to be a reasonable and objective standard of suspicion with clear and unambiguous criteria. However, for reasons given below, Shipping Australia prefers these requirements to be excised from the document.
33. Seafarers who are exposed to COVID are exposed to the risk of pain, suffering and death. It is also possible that a seafarer could suffer a serious, sudden and unexpected medical issue at sea, or could be gravely injured while at sea, at the same time that there is a COVID case onboard. In such circumstances, the welfare of the suddenly-sick or injured seafarer, the COVID patient and all the other seafarers who are onboard (and who would be exposed to the risk of contracting COVID), would be best served by the ship being able to proceed to the next port of call. That could well be in WA.
34. The proposition that seafarers should be prevented from landing so as to access medical care, or required to return to sea (potentially for weeks) and be unreasonably and unnecessarily exposed to unnecessary pain, suffering and death months is morally bankrupt and repugnant.
35. Seafarers have a human right to access health care. Australia has the skills and ability to safely manage the process by which seafarers are taken onshore and treated in an appropriate and humane way. Australia should exercise that ability.
36. The people and companies of Western Australia rely on ships and shipping for the ability to supply goods for everyday life, to continue their business operations and to export their commodities. If a single large container ship is refused entry and is sent far away, then a great number of people and business that are depending upon the cargo in that container ship could suffer extreme financial hardship.
37. Ocean-going ships are extraordinary expensive assets to operate. The current one-day cost (*not including fuel costs*) of a larger container ship at the time of writing (17 June 2021) is about AUD\$93,650 per day. The previous port of call could be on the other side of the planet in Japan, China or Korea. Even closer to home, Singapore is 14 days away. Closer still, places such as Adelaide are still potentially a few days away. It is unreasonable to demand that shipping companies bear such enormous costs without a solid justification.
38. As explained above, COVID is everywhere. COVID-risk cannot be isolated nor eradicated. Attempting to do so is likely to impose extreme adverse consequences on individual people, on companies and, indeed, on the people of Western Australia. These 'deny entry' and 'return to previous port' statements are not practical, are unreasonable and introduce unjustifiably severe adverse consequences. They ought to be deleted.

“Managing a vessel outbreak is likely to be costly. The vessel master will be held accountable for vessel sanitation and cleaning following an outbreak. The vessel’s agent, charterer or customer will be called upon to reimburse the State for any such costs. Other costs such as transport and quarantine will also be fully recovered.”

39. It is unreasonable to hold an individual person, such as the ship master, liable for this cost. A pandemic is, by its nature, everywhere. Inevitably, a highly-infective everywhere-virus will sooner or later be present on ships. The presence of an infection onboard is not likely to have been caused by the ship master. In any event, a ship master is highly unlikely to have the funds available to meet such a liability.
40. It is unreasonable to hold an innocent third party, such as the Australian ship agent vicariously liable for the costs incurred by another party.
41. It is unreasonable to demand that various third parties pay for such liabilities when there are better alternatives.
42. For instance, WA could simply demand the deposit of a bond from the ship owner / operator prior to the ship being berthed.
43. A second option, which could be deployed in advance of (or possibly in conjunction with) a bond, is to use the arrest/insurance system. It is perfectly good, tried and tested system that ensures that liabilities are met:
 - Ocean-going ships are required by international law to have protection and indemnity (P&I) insurance.
 - In the event that WA needs reimbursement then it can simply ask the ship operating / owning company to pay – if the company pays then WA's claims are satisfied and problem is resolved.
 - If the company does not pay, then WA can have an Admiralty Marshal arrest the ship pending payment of the debt; the P&I company will pay an appropriate amount into court so that the ship can continue trading and the debt (plus legal costs) can be obtained from the monies deposited in court.
 - If the company does not pay and the ship sails before payment of claimed liabilities, then WA can arrest the ship anywhere in the world. There are many and numerous jurisdictions around the world, such as Singapore, that are ship arrest-friendly.

"Vessel sanitation and cleaning following an outbreak"

44. Who will be responsible for arranging the vessel sanitation and cleaning? Who will pay for this? To what standard must the cleaning be done? These questions need to be answered.
45. In the event that a party other than the ship operator arranges for the vessel sanitation and cleaning then this requirement ought to be subject to a reasonableness requirement; sanitation and cleaning must not entail excessive costs or delay.

46. For instance, in the biosecurity area, there have been examples of ships delayed for a whole weekend because entomologists were not available. At current costs, that's an AUD\$187,000 cost simply because of a lack of availability of staff. It would be ridiculous and absurd for a ship to rack up a similar cost simply because there is / are no available cleaning staff on duty at the weekend or over a public holiday.

Other matters

47. Since the onset of the pandemic, the shipping industry has been asking for a set of State-by-State protocols for the handling of ships that have positive COVID cases onboard. Shipping Australia calls upon the WA government to develop and distribute a draft set of protocols to the shipping industry for the purposes of discussion with the ultimate aim of implementation.

Summary

48. Shipping Australia calls upon public officials to:

- accept that it is not possible to exclude and eradicate COVID risk; to accept that COVID control measures pose costs on society and that those costs can be extreme
- appreciate the vital importance of shipping and trade to Australia's national interests
- take these factors into account when drafting and implementing COVID-control rules and to specifically impose the least-possible restrictive measures commensurate with a reasonable risk management process for the objectively reasonable maintenance of public health
- base rules on evidence and science
- reduce the suspicion period to a much shorter duration and near to a 14-day timeframe
- note that ship and crew movements are non-synonymous and to draft COVID control measures focused on crew, not ships
- clarify the nature of the 12-hour aboard ship period; explain why 12 hours has been chosen
- avoid deadlock inducing rules
- enable easy crew changes in WA ports
- make all proposed rules subject to "objectively reasonably practicable" requirements and clearly spell out what the objectively reasonable criteria are
- encourage, allow and implement the vaccination of seafarers that call in Australia
- allow ships to call in WA if there are people onboard who are sick with COVID
- allow sick and injured seafarers to reasonable access to medical care in Australia
- not impose measures on shipping that unnecessarily adversely affect Australian businesses and families by turning away ships or denying them entry
- not imposing measures on shipping that would result in delay and consequent huge wasted costs
- excise any comments from its draft statements that would result in ships being turned away or denied entry
- excise any comments from its draft statements that would hold ship masters and ship agents liable for sanitation and clean-up costs
- excise any comments from its draft statements that would impose liabilities on third parties such as ship agents

- commit to pursuing reimbursement from shipping companies using any, or any combination of, asking for payment, taking deposits or bonds, and (as a last resort) arresting ships
- explain in some detail the vessel cleaning and sanitation requirements
- commit to not imposing rules resulting in unreasonably excessive costs and delay
- create draft protocols for handling ships with COVID cases aboard and then issue those protocols to industry for further discussion.

About Shipping Australia

49. Shipping Australia www.shippingaustralia.com.au is an industry association that represents the participants in Australia's international supply chain. We provide policy advice to our 29 full members, which includes ocean shipping lines and shipping agents active in Australia. We have over 40 corporate associate members, which generally provide services to the maritime industry in Australia. These services include port and terminal operations, pilotage, insurance, and legal advice among other things. Our members handle the vast majority of containerised seaborne cargo imports and exports to and from Australia. They also handle a considerable volume of our car trade and our bulk commodity trade. Our members employ more than 3,000 Australians.

Yours sincerely,



Melwyn Noronha
Chief Executive Officer