



International Transport Workers' Federation

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Director
Beneficial Ownership and Transparency Unit
Market Conduct Division
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Director

Re: Submission in response to Treasury's Consultation paper on Multinational tax integrity: Public Beneficial Ownership Register of November 2022

The Maritime Union of Australia (MUA) and International Transport Workers Federation (ITF) welcomes the Government's intentions to introduce a public register of beneficial ownership information to record who ultimately owns, controls, and receives benefits from a company or legal vehicle operating in Australia.

The MUA and ITF interest in a public beneficial ownership register derives from two important perspectives.

Firstly, the MUA and ITF represent workers in the shipping and ports sectors (maritime supply chain sector) which globally and domestically are dominated by multinational corporations with a global footprint, with beneficial ownership in nations including countries such as the UAE, China, Hong Kong and Philippines which require different standards of corporate governance than expected in Australia. Further, there is often considerable institutional investor stakeholdings in those companies, whether listed or unlisted, often by pensions funds where trade unions nominate directors to the governance boards of those pension funds.

The lack of transparency on who are the real owners of these maritime supply chain sector companies makes it difficult for organisations seeking to apply human rights, labour rights and labour standards in those companies to hold them to account on their obligations under international norms and conventions such as those of the ILO, IMO and OECD, and to the standards in collective bargaining agreements settled between those companies and trade unions.

This is particularly the case in shipping, where most of the globe's trading ships are registered in nations which are different from the nation of beneficial ownership, giving rise to the term 'flags of convenience' (FOC). This of course is a deliberate strategy of shipowners/ship operators and the FOC ship registries to enable tax avoidance/evasion, avoidance of acceptable ship and crew standards (including working conditions as for example established by the ILO Maritime Labour Convention (MLC)) and work health and safety laws. The FOC registries do not establish internationally recognised wage rates for seafarers and in any case their labour relations compliance and enforcement regimes are virtually non-existent. Neither the ILO itself, nor the MLC it administers, establish minimum enforceable wage rates for international seafarers. The ILO establishes a minimum wage scale, but it is guidance only, while the MLC only establishes methods for payment of wages.

The gaps in regulation of international shipping labour standards is particularly pertinent in Australia given it is the globe's fifth largest user of ships and which has perhaps the weakest cabotage law of any of the 90 plus nations in the world that provide some protection for their domestic shipping industry. The result is that hundreds of foreign registered ships are participating in the domestic freight transport sector under temporary licenses (TLs) approved by the Minister's delegate in the Department of Infrastructure,

Transport, Regional Development, Communications, and the Arts under the *Coastal Trading (Revitalising Australian Shipping) Act 2012* (CT Act). The ships and the labour standards on those ships are not adequately regulated by any international compliance and enforcement regime nor domestic regime, notwithstanding the existence of some effective Port State Control regulators.

Not only do the owners/operators of those ships pay no corporate tax in Australia for profits arising from their commercial activities in Australia, but they are among a significant number of foreign registered ships visiting Australian ports that a recent report has shown engage in unacceptable labour exploitation practices, wage theft in particular.

A report of November 2022 commissioned by the ITF and undertaken by the Australia Institute/Centre for Future Work, entitled *Robbed at Sea*¹ found that

- International seafarers engaged on foreign-registered ships commonly experience widespread exploitation at the hands of their employers;
- One dimension of this problem is extensive underpayment of wages;
- There are large gaps between international and Australian domestic labour standards governing international shipping, where domestic standards apply to international ships when they become licenced under the CT Act to operate in Australian coastal trading;
- There is a loophole in the Australian intention to close that gap between labour standards applying to foreign-registered international ships, and wages and conditions considered socially acceptable in Australia because the Fair Work Regulations 2009 do not require application of Seagoing Industry Award provisions applying to TL ships during the first two voyages in any twelve month period;
- The total extent of wage theft on vessels visiting Australian ports equal to some A\$65 million per year in the report's 'central' case, and ranging between A\$46 and A\$84 million per year in the 'low' and 'high' cases, respectively:
 - Given the methodological approach used in the *Robbed at Sea* report, these figures could significantly under-estimate the extent of wage theft. First, the report discounted the propensity of exposure by ITF inspectors from 70% to 35% - that is, it discounted by 50% the discovery of wage theft by ITF inspectors. Second, given that each ITF wage exposure only examines wage data 3 months in arrears, the full dollar value could potentially be higher by a factor of four. Third, the data does not include wage theft recovery by both the Fair Work Ombudsman (FWO) and the Australian Maritime Safety Authority (AMSA). For example in 2021 those two regulators recovered collectively approximately A\$800,000 in unpaid seafarer wages:
 - ❖ That is, the actual extent of wage theft could be as high as A\$260 million annually in the central case and A\$184 million and A\$336 annually in the low and high cases, respectively.

One of the issues that arises in cases of under or non-payment of wages and entitlements as required under Awards made by the Fair Work Commission that applies to ships operating under a TL is that the beneficial owner can be exceedingly difficult to trace to exert compliance pressure or prosecution action by the ITF, the Port State Control regulator (in Australia, the Australian Maritime Safety Authority) and or the Fair Work Ombudsman (FWO).

This situation reinforces the importance of establishing a public register of beneficial ownership, provided that companies whose ships are authorised to participate in coastal trading under a TL fall within the definition of 'operating in Australia'. If that is not to be the case, we would propose that the Treasurer recommend to the Hon Catherine King, Minister for Infrastructure, Transport, Regional Development and Local Government that she amend the CT Act to require applicants for a TL to:

- Identify the beneficial owner/s and provide contact details including a contact person for addressing labour grievances, in accordance with the expectations of the UN Guiding Principles on Business and Human Rights; and

¹ Australia Institute/Centre for Future Work, [Robbed At Sea](#), October 2022

- Lodge a bond that would cover the wage entitlements of the seafarers to facilitate wage recovery in the case of proven under or non-payment of wages in accordance with applicable Awards or collective bargaining agreements approved by the Fair Work Commission (FWC).

The second perspective that underpins our support for establishing a public register of beneficial ownership information derives from our commitment to ensure that the pool of workers' deferred wages held and being invested by the profit-to-member superannuation funds on which trade unions nominate members of the governance boards, is being invested in both the best financial interest of fund members and is concurrently being invested responsibly.

We define responsible investment as investment in companies (either directly or through asset managers) and in entities that are committed to high environmental, social and governance (ESG) performance standards.

In that regard it is important that fund members and their governance boards (including the trustee directors on those governance boards and on fund investment committees) have access to transparent and reliable company disclosures that includes beneficial ownership information for assessing risks in areas such as:

- Compliance with taxation law;
- Corporate structures that are transparent and accessible;
- Charges or convictions relating to corrupt or other criminal conduct;
- Climate adaptation and mitigation, including just transitions;
- Adoption and application of new technology, including workforce impacts; and
- Human rights – including labour rights/labour standards, workforce diversity, workforce safety, respect for First Nations peoples etc.

We would urge the Government to reject the Singapore model (the Register of Registrable Controllers (RORC) information lodged with the Accounting and Corporate Regulatory Authority (ACRA)), which I am advised is only available to law enforcement agencies for the purpose of administering or enforcing the laws under their purview (e.g. investigation of money laundering offences) and that members of the public do not have access to the RORC information.

I trust you find this submission a helpful contribution in designing and establishing an effective, functional and searchable register of beneficial ownership information.

The MUA also endorses the joint submission of the Tax Justice Network, Centre for International Corporate Tax Accountability & Research, the Tax Justice Network Australia, Transparency International Australia, Publish What You Pay Australia, the Australian Council of Trade Unions, U Ethical, United Workers Union, and the Synod of Victoria and Tasmania and the Uniting Church in Australia.

Yours sincerely



Paddy Crumlin
National Secretary, Maritime Union of Australia
President, International Transport Workers Federation