

Modern Slavery within Maritime Shipping Supply Chains

Guidance for Australian
Businesses in Identifying,
Managing and Mitigating
Modern Slavery Risks within
Maritime Shipping

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Global Compact
Network Australia



Acknowledgement of Country

The UN Global Compact Network Australia and the Maritime Union of Australia acknowledge the Aboriginal and Torres Strait Islander peoples as the First Peoples of Australia. We pay our respects to Elders past, present and emerging and recognise the valuable contributions Aboriginal and Torres Strait Islander peoples make towards all aspects of Australian life. Our vision for reconciliation is a future where all Australians are united by our shared past, present, future and humanity.

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About the Organisations

UN Global Compact Network Australia

As a special initiative of the United Nations (UN) Secretary General, the UN Global Compact is a call to companies everywhere to align their operations and strategies with Ten Principles in the areas of human rights, labour, environment and anti-corruption. Our ambition is to accelerate and scale the global collective impact of business by upholding the Ten Principles and delivering the Sustainable Development Goals (SDGs) through accountable companies and ecosystems that enable change. With more than 17,800 companies and 3,800 non-business signatories based in over 179 countries and 64 local networks, the UN Global Compact is the world's largest corporate sustainability initiative – one Global Compact uniting business for a better world.

Locally, the UN Global Compact Network Australia (UNGCNA) brings together Australian signatories to the UN Global Compact, including over 50 listed companies, other businesses, non-profits and universities, to advance the private sector’s contribution to sustainable development. We connect, enable and lead businesses and stakeholders to create a sustainable future by supporting businesses to act responsibly and helping them find opportunities to drive positive business outcomes.

www.unglobalcompact.org.au

Maritime Union of Australia

The Maritime Union of Australia (MUA) is a Division of the 120,000-member Construction, Forestry, Maritime, Mining and Energy Union and an affiliate of the two million-member Australian Council of Trade Unions (ACTU) and 20 million-member International Transport Workers’ Federation (ITF).

The MUA represents approximately 14,000 workers in domestic and international shipping, offshore oil and gas, stevedoring, port services and commercial diving sectors of the Australian maritime industry.

The MUA represents workers across various areas of maritime operations that contribute to Australia's export industries and in supply chains supporting both exports and imports as well as in domestic supply chains.

www.mua.org.au

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Acronyms and Abbreviations

ACTU	Australian Council of Trade Unions
AMSA	Australian Maritime Safety Authority
COP	Conference of the Parties
ESG	Environmental, social and governance
FOC	Flag of convenience
ICS	International Chamber of Shipping
IHRB	Institute for Human Rights and Business
ILO	International Labour Organization
IMO	International Maritime Organization
IOM	International Organisation for Migration
ISPS Code	International Ship and Port Facility Security Code
ITF	International Transport Workers’ Federation
MLC	Maritime Labour Convention, 2006
MUA	Maritime Union of Australia
OHCHR	Office of the United Nations High Commissioner for Human Rights
PSC	Port State control
SEAs	Seafarer Employment Agreements
UN	United Nations
UNCLOS	United Nations Convention on the Law of the Sea
UNCTAD	United Nations Conference on Trade and Development
UNFCCC	United Nations Framework Convention on Climate Change
UNGA	United Nations General Assembly
UNGCNA	UN Global Compact Network Australia
UNGPs	United Nations Guiding Principles on Business and Human Rights

Foreword



Kylie Porter

Executive Director,
UN Global Compact Network Australia

According to the International Labour Organization (ILO), in 2021 there were an estimated 49.6 million people globally living in modern slavery, including 27.6 million in forced labour;¹ an increase on pre-pandemic years. In addition, according to the ILO, Walk Free and the International Organization for Migration (IOM), in 2021 there were approximately 400,000 seafarers ‘unable to leave their ships for shore leave’ when they arrived at ports, compounding forced labour risks.²

With over 80 per cent of global trade occurring through the shipping industry, it is the backbone of trade and one of the keys to the success of the global economy.³ However, it has also been identified as being susceptible to the risks of modern slavery; risks that can often be compounded by seafarers originating from regions with human rights and corruption challenges, the fragmented nature of global regulation for the sector and the limitations and reduced visibility of conditions on board, complex supplier arrangements, and a lack of awareness from shipowners about their responsibilities on board.

Recently, the UN Global Compact has led initiatives to raise awareness of the risks associated with the shipping industry, and to highlight the opportunities for businesses associated with the industry to be more responsible. This includes the 2022 publication on *Maritime Human Rights Risks and the COVID-19 Crew Change Crisis*⁴ and the launch of the Maritime Just Transition Taskforce at the United Nations Framework Convention on Climate Change (UNFCCC) Conference of the Parties (COP) in Glasgow in 2021, which aims to ensure that seafarers are a key stakeholder in the shipping industry’s move to net zero.⁵

Within Australia, the maritime shipping industry holds a crucial role in connecting Australian business with the world. Australia is part of the International Maritime Organization (IMO) and a signatory to the Maritime Labour Convention (MLC) which provides standards around working and living

conditions for seafarers.⁶ This is further strengthened by the application of the Australian *Modern Slavery Act 2018*.

Beyond legal compliance, businesses also have a role to play to identify, manage, and mitigate modern slavery risks within maritime shipping used in their supply chains. To enable this, businesses are encouraged to demonstrate their responsibility to respect the human rights of seafarers within Australian waters and abroad in line with the *United Nations Guiding Principles on Business and Human Rights* (UNGPs).⁷

We recognise that human rights, including the human right to freedom from modern slavery, can be complex topics that are exacerbated by the complexity of supply chains. This publication was developed in partnership with the Maritime Union of Australia (MUA) and the International Transport Workers’ Federation (ITF) Australian Inspectorate to assist businesses from all sectors with understanding the risks in the shipping industry, and to provide practical recommendations to minimise the risk of businesses being involved in modern slavery, in line with the UNGPs.

Through our partnership with the MUA and ITF, we interviewed seafarers to ensure we gained a first-hand perspective on the daily challenges they face working on ships. The support from the MUA and ITF was invaluable due to their crucial roles in advocating for respect for human rights within Australian waters, and their insights into this sector. We thank both organisations for their continued support.

Through this publication we aim to elevate the experience of seafarers, increase awareness with Australian business and empower key actors, such as the ITF, in their crucial port-side engagement with seafarers.

Kylie Porter



Paddy Crumlin

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

The Maritime Union of Australia (MUA) and the International Transport Workers’ Federation (ITF) have been willing partners with the UN Global Compact Network Australia (UNGCA) in production of this guidance for companies and investors.

Seafarers and related maritime workers, associated with both domestic and international shipping represented by our industrial organisations, play a central and strategic role in the transport supply chains that facilitate trade and generate the wealth of the nation.

Virtually every sector of the economy is in some way connected to shipping and seaports. Yet this vital national infrastructure, dominated by massive capital investment and operated by a highly skilled workforce working around the clock, is due to the location of its operations (predominantly on the high seas or tucked away on city fringes and remote regional areas), largely invisible to the Australian community.

These workforces, especially those operating the 6,000 plus individual ships visiting Australian ports each year and making over 26,000 port calls, are often out of sight, and do not receive the attention they deserve in terms of their ability to access and enjoy the rights they are accorded by international norms, conventions and human rights due diligence legislation.

Australian companies relying on their products and services through international and domestic supply chains, investors in entities across all asset classes with an exposure to shipping, regulators and governments need to be paying far closer attention to sea transportation, this vital facilitator of national economic activity.

This guidance is an important contribution to ensuring that greater attention is focussed on seafarers and shipping, aimed at helping eliminate violations of labour rights and labour standards, as well as modern slavery risk in the shipping elements of supply chains.

I congratulate the great work of the UN Global Compact Network Australia and acknowledge the work of the many people who have contributed to and participated in this project.

I hope the guidance will be judiciously applied by both companies and investors, to help deliver better material outcomes for seafarers, better environmental, social and governance (ESG) performance of companies and mitigate risk for investors.

Paddy Crumlin

Using this Publication

Purpose

Despite being identified as a key area of modern slavery and broader human rights risk, many Australian businesses are still in the early stages of identifying, managing, and mitigating human rights impacts associated with the shipping industry. The purpose of this publication is to increase awareness of relevant modern slavery risk factors present on board ships carrying Australian-owned cargo, and to provide businesses with an overview of the standards in place to support them to respect seafarers' rights. This publication also outlines practical steps for cargo owners to integrate respect for seafarers' rights into risk management and procurement processes. This publication does not consider other workers or rightsholders that may be impacted by shipping.

Approach

This publication has been informed by desktop research, a literature review, engagement and interviews with UNGCNA participants, as well as engagement with actors within the maritime shipping industry, including representatives from regulatory bodies, unions and seafarers.

Desktop research included exploring the legal, regulatory and industry standards in the shipping industry. UNGCNA participants were surveyed and interviewed about their experiences in undertaking modern slavery due diligence with their shipping suppliers. These interviews provided important context in the design of our recommendations. Two of these businesses have their stories illustrated in the Case Studies section in Part Five.

This research is also supported by interviews conducted with over 20 seafarers on board vessels docked at Australian ports. These interviews were facilitated by the ITF at Port Botany (NSW), Port Kembla (NSW) and Port Melbourne (Victoria). All data was anonymised, and the names of the seafarers spoken to were not recorded. We remain deeply grateful to the seafarers who shared their perspectives, challenges and optimism for improvement with us.

How to use this publication

This publication has been designed to assist Australian businesses with the management of modern slavery risks associated with maritime shipping. It has been drafted primarily for cargo owners, however it is relevant to all stakeholders within the shipping supply chain. It has not been drafted for shipowners or ship managers, but may be of use to them and is intended as a tool for engagement with them.

The publication is structured into the following five sections:

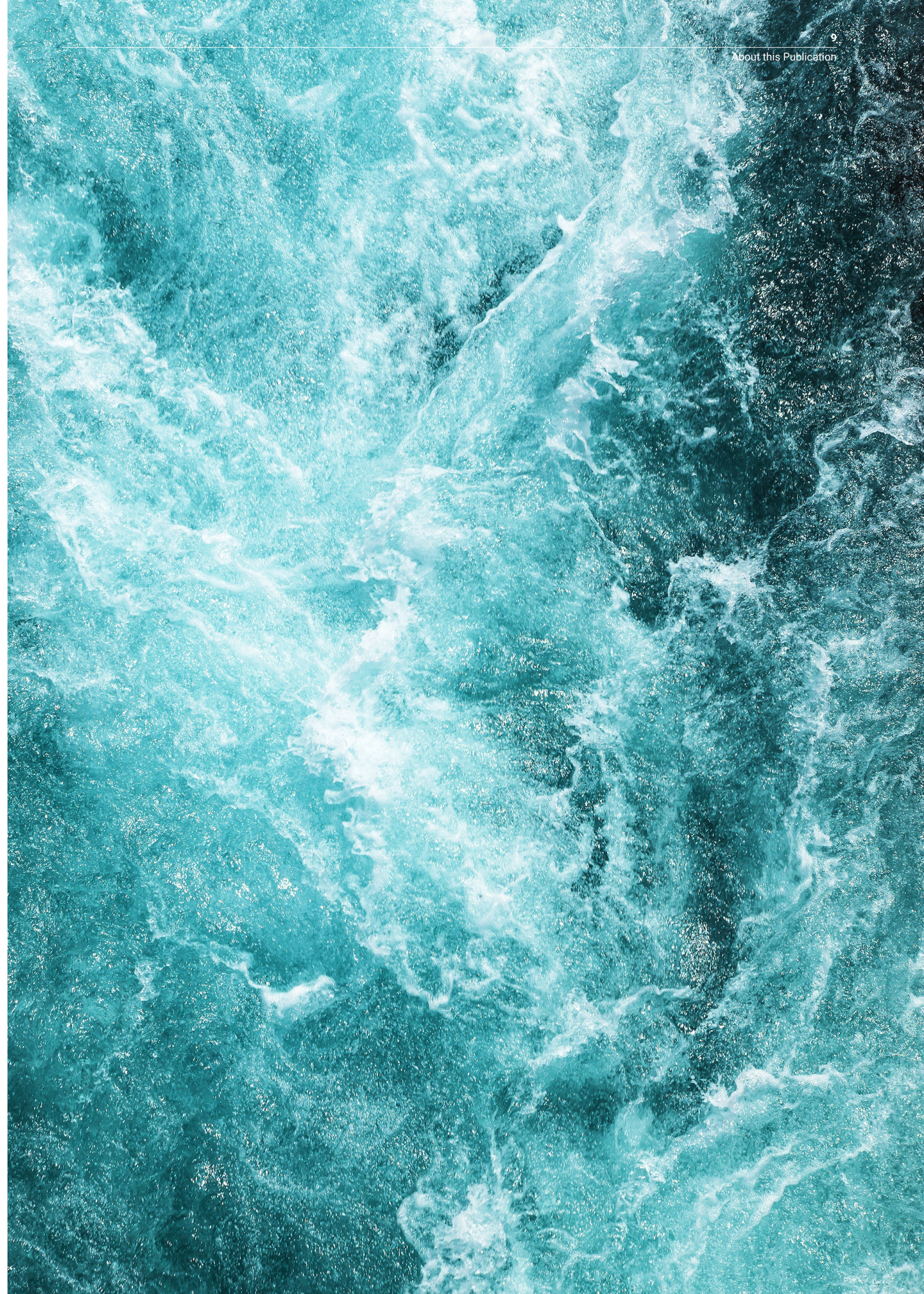
Part One provides an overview of the maritime shipping industry's supply chain, including examples of typical arrangements with cargo owners, charterers and carriers. This section also outlines regulatory and industry frameworks applicable to seafarer welfare and relevant actors within the Australian context.

Part Two provides an overview of the International Labour Organization's (ILO) indicators of forced labour that can frequently occur within the maritime shipping context.

Part Three outlines a summary of the perspectives of seafarers working on board vessels at Australian ports.

Part Four outlines practical guidance for Australian businesses seeking to mitigate the risk of causing, contributing, or being directly linked to modern slavery within their own maritime shipping supply chain.

Part Five contains two case studies of due diligence undertaken by Australian businesses with their maritime shipping value chain.



Introduction

Introduction

The risks for seafarers within our modern economy

Seafaring is one of the world's most dangerous jobs.

At any one time, there are around 1.9 million seafarers working in an environment with a high-risk of labour exploitation, including the risk of forced labour and other types of modern slavery.^{8 9 10 11 12}

The inherent physical and geographical remoteness of shipping decreases visibility of working conditions, while the power dynamic associated with residing at the workplace and hierarchical structures on board have been said to increase vulnerability to exploitation.¹³ The International Labour Organization (ILO) has highlighted that working conditions often associated with seafaring, such as isolation, restriction of movement, excessive overtime and abusive working and living conditions are also key indicators of forced labour.¹⁴ At the same time, complex supplier arrangements associated with sea freight transportation and the need for expeditious shipping mean the relationship between cargo owners and seafarers may be both distant and under constant pressure. The result is that seafarers are among the most essential yet vulnerable working populations in our global economy.¹⁵

The ILO and Walk Free estimated that in 2021 there were 49.6 million people living in situations of modern slavery on any given day, including 27.6 million people in forced labour.¹⁶ In its global estimates, the ILO reported that the modern slavery risks facing seafarers were exacerbated throughout the COVID-19 pandemic, and the addition of restrictions adopted by a number of territories had turned vessels into 'floating prisons', in situations where seafarers were forced to work under threat of penalties.¹⁷

The International Transport Workers' Federation (ITF), International Chamber of Shipping (ICS) and the International Maritime Organization (IMO) estimated that during the pandemic, close to 800,000 seafarers were either unable to board ships or were forced to remain working on ships beyond the limits stipulated in their contracts.¹⁸ In response, the United Nations (UN) General Assembly unanimously adopted a resolution in December 2020 encouraging international cooperation to address challenges faced by seafarers during the pandemic, including urging Member States to designate seafarers and other marine personnel as key workers within their COVID-19 response framework.¹⁹

The responsibilities of cargo owners were also in the spotlight. At the time, leading human rights bodies including the UN Office of the High Commissioner for Human Rights (OHCHR), the UN Global Compact and the UN Working Group on Business and Human Rights issued a statement calling on cargo owners and charterers to act in alignment with their responsibility to respect human rights, and to utilise their collective leverage to improve outcomes for seafarers.²⁰

The vulnerability of those at sea to labour exploitation is clear. However, many Australian businesses are still in the early stages of identifying and assessing the modern slavery risks posed by their use of maritime shipping.

Challenges within the maritime shipping supply chain

The COVID-19 pandemic introduced significant logistical challenges and disruptions in international shipping.²¹ The UN Conference on Trade and Development (UNCTAD) reported that in May 2020, global schedule reliability for port arrivals was at 75 per cent, however this had dropped to 39 per cent by May 2021.²²

This disruption was also felt by UNGCNA participants.¹ During consultations held with local participants in the preparation of this publication, many indicated that while they had initiated engagement with shipping suppliers, complexity within the supply chain (e.g. complex contractual arrangements and multiple tiers of suppliers) was a key barrier to enforcing their supplier expectation frameworks. Other participants highlighted that increasing competition for vessel space reduced perceived leverage with shipping suppliers.

There are, however, indicators of progress. Research undertaken in the preparation of this publication indicates that although COVID-19 disruptions reduced available space on board vessels, ship owners and carriers are requesting greater certainty in planned charterer demand as the industry recovers. This presents an opportunity for cargo owners to engage in targeted outreach and use a variety of tools such as introducing stronger seafarer protections in longer-term contracts. Some participants interviewed have also had success in introducing a human rights due diligence process for their maritime shipping suppliers.

This publication seeks to highlight the factors that may make engagement with shipping suppliers more successful based on past experiences and learnings.

¹ The UN Global Compact Network Australia is a business-led, multi-stakeholder initiative. Our participants include some of Australia's largest and most well-known companies, as well as a number of small and medium-sized businesses, business and professional associations, non-profits and universities. View our participant list at: <https://unglobalcompact.org.au/our-participants/>

Part One: The Maritime Supply Chain and Regulatory Framework

Part One: The Maritime Supply Chain and Regulatory Framework

Over 80 per cent of global trade is conducted through maritime shipping.²³ Australia relies on shipping for 99 per cent of all exports and is responsible for exporting a significant proportion of some commodities – for example, Australia generated 58 per cent of the world's iron ore exports in 2020.^{24 25 26} This section provides an overview of the maritime shipping supply chain and relevant regulatory and industry standards applicable to seafarer welfare within Australia.

Overview of the maritime supply chain

The maritime shipping supply chain is comprised of several actors, including cargo owners (businesses), freight forwarders, brokers, ports, ship owners and carriers, crewing agencies and seafarers.

Actors within the shipping supply chain can be broadly categorised into four groups. Identifying each group separately is important in the context of applying the *United Nations Guiding Principles on Business and Human Rights* (UNGPs), as each may have a different level of connection with potential human rights impacts, and by consequence, different expected actions to prevent and address any harm. However, all businesses still have the same responsibility to respect human rights.

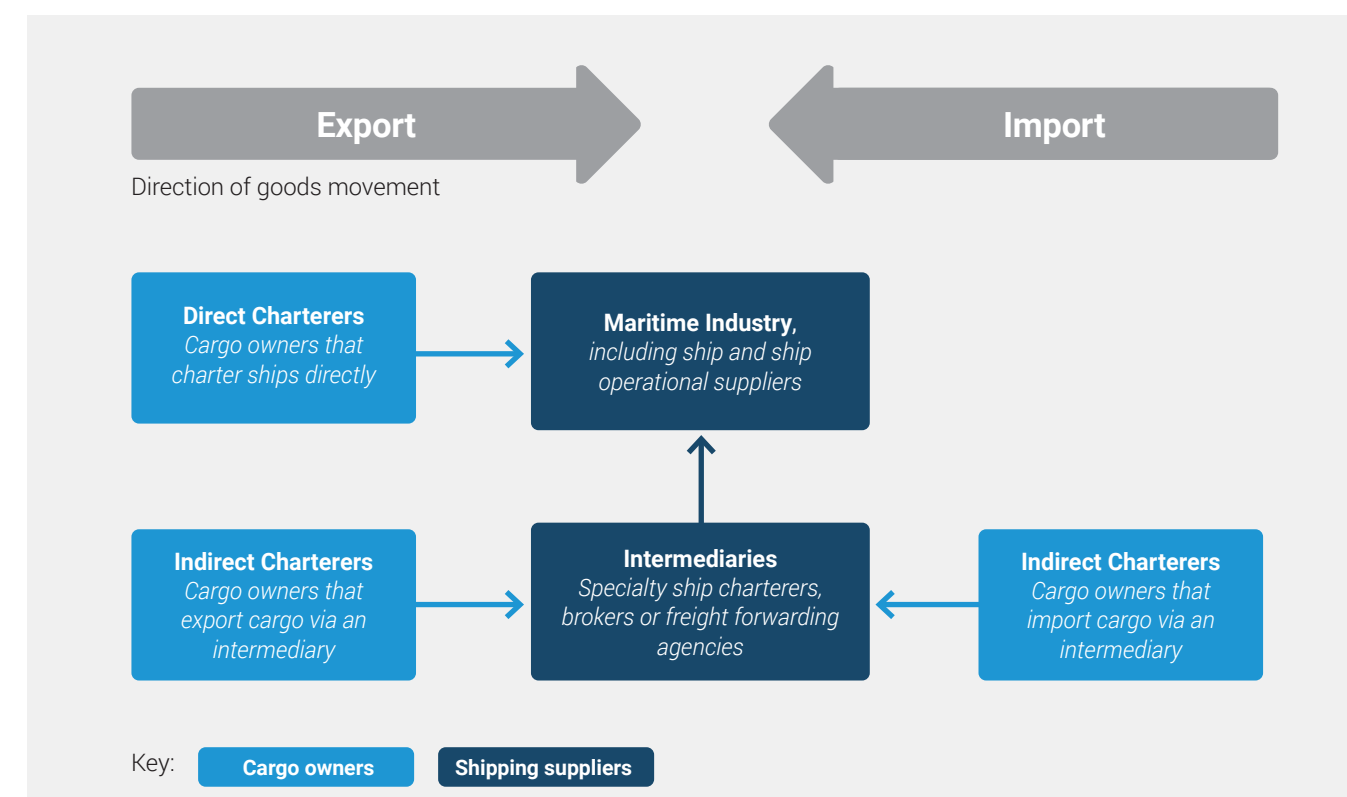
In this publication, all businesses that use maritime transport providers to import or export their cargo are referred to as

cargo owners. This includes any beneficial owner of goods, such as those that charter a small amount of space on a container ship, to businesses that own and/or charter their own vessels.

- **Group 1: Direct charterers:** Cargo owners that charter ships directly, rather than using a third party to arrange the chartering of ships.
- **Group 2: Indirect charterers:** Cargo owners that charter ships through a third-party intermediary.
- **Group 3: Intermediaries:** This includes specialty ship charterers or brokers that connect shipowners with ship charters and freight forwarding service providers who connect cargo owners with ships or space on ships.
- **Group 4: Ship and ship operational suppliers:** These include shipowners, ship operators, ship managers and crewing agencies. In some cases, cargo owners may also be ship owners – i.e. mining or oil and gas companies may own their own ships that are then managed by others.

Relationship between actors in the maritime shipping supply chain

The below graphic briefly contextualises the relationship between cargo owners, suppliers, charterers, and actors within the maritime industry.



This publication is primarily written for cargo owners to help mitigate the risk that seafarers in their supply chain are subject to conditions of modern slavery. However, given the complexity of responsibilities within shipping arrangements there can often be overlaps between actors. For the purposes of applying the UNGPs, in this publication we distinguish between cargo owners that charter ships themselves (direct charterers) and those that source ships (or space on ships) through a third party (indirect charterers). These are highlighted below.

Direct charterers

- (i) **Cargo owners** (e.g. large mining, oil and gas companies) arrange for the chartering of ships through either a subsidiary company or a business unit within their company governance structure. These ships transport products (e.g. bauxite, iron ore, coal, or crude oil). Some of these companies may also be shipowners.

Indirect charterers

- (ii) **Cargo producers:** These are typically smaller cargo owners that produce products or buy direct from producers and aggregate products for shipping (e.g. grain products). As cargo owners, they typically engage a third party (e.g. a specialist ship charterer) to arrange the charter of ships for transportation, rather than use an in-house entity (e.g. mid-tier mining, horticulture and agriculture businesses, grain traders).
- (iii) **Cargo importers:** Typically, businesses such as large retailers that charter ships (or space on ships) through third parties for the purposes of importing goods (e.g. groceries, whitegoods, electronics, clothing, furniture, construction materials and fertilizer). Cargo importers typically arrange space on existing chartered ships, either on a spot cargo basis or under contract.

Typical maritime supply chain scenarios

Below are various scenarios which help to explain the relationship between actors in the shipping supply chain.

Scenario 1: Hire from a shipowner

This refers to cargo owners hiring directly from a shipowner. For example, an Australian-based subsidiary of an oil company that wants to export crude oil to Singapore for refining. It can search for a vessel on an online vessel matching service, known as a ship chartering marketplace, or contact a carrier directly. In this case the oil company is a *cargo owner* and a *charterer*, while the carrier is a *shipowner* and a *ship operator*.

Scenario 2: Use a broker as an intermediary to secure a ship to charter

Another typical scenario is dealing with a broker. For example, a smaller mining company utilising a broker to procure space to export minerals on board a ship headed to China. In this case the miner is a cargo owner and a charterer, the broker is an intermediary and the carrier is a *shipowner* and a *ship operator*.

Note: A *ship broker* is the intermediary between shipowners and ship charterers who brings them together. A broker differs from a *freight forwarder* in that brokers never take possession of cargo and do not carry any responsibility for its transport. By contrast, freight forwarders physically and legally take possession of cargo and arrange for storage, consolidation, and transportation.

Scenario 3: Hire a ship from another charterer

Hiring a ship from another charterer is typically a more complicated process as it can involve multiple charterers and/or brokers. For example, a *non-vessel operating common carrier* (NVOCC – a transportation company that does not own its fleet but leases cargo space from shipowners), may charter a ship from a bank for 10 years. During this time, this NVOCC company can lease this ship to a cargo owner (*shipper*) for separate voyages or short/long term charter. In this case, the cargo owner (*shipper*) will be a *sub-charterer*, and the NVOCC company will be the *disponent owner* (one taking the place of the legal owner), with corresponding rights and liabilities.

Regulatory framework applicable to maritime shipping in Australia

Flag States

Under the UN Convention on the Law of the Sea (UNCLOS), every ship must be registered under a flag State.²⁷ While shipowners are responsible for the safety and welfare of the crew, responsibility for compliance with relevant international instruments such as the ILO, MLC, and Conventions of the IMO rest with the flag State.²⁸

Consequently, ships derive their rights and obligations from the States whose flag they fly. The right for States to confer their national flag to a vessel is unconditional, and the only restriction that UNCLOS makes is that ‘[t]here must exist a genuine link between the State and the ship’.²⁹ However, there is no conclusive, globally accepted definition of the ‘genuine link’ and it is ultimately the flag State and its domestic compliance framework that determines the quality of life at sea.

Challenges with ‘flags of convenience’

Due to the challenges in establishing a genuine link between State and ship, the ITF has identified that if a ship flies the flag of a country other than the country of beneficial ownership, it is referred to as a ‘flag of convenience’ (FOC) ship.³⁰ This process is known as ‘flagging out’ and may provide shipowners with the ability to take advantage of:

- minimal regulation
- cheap registration fees
- low or no corporate taxes
- freedom to employ cheap labour from the global seafarer labour market.

For workers on board, this can mean a significantly increased risk of:

- low wages and instances of wage theft
- poor on-board working conditions
- inadequate food and clean drinking water
- long periods of work without proper rest, leading to stress and fatigue
- lack of an ability to take shore leave or be repatriated at the end of a seafarers’ employment contract term, which could constitute forced labour.

The ITF publicly advocates for a ‘genuine link’ between the real owner of a vessel and the flag the vessel flies. Ship registration in FOC registries makes it more difficult for unions, industry stakeholders and the public to hold shipowners to account.³¹

The Maritime Labour Convention – ‘the seafarers’ bill of rights’

As a result, numerous international agreements and standards have been introduced to provide protections for seafarers across the world. In 2006, the ILO condensed several existing maritime standards into the *Maritime Labour Convention 2006* (MLC), which established the first comprehensive set of global standards for living and working conditions on board ships.³² The MLC ensures the same standards apply to all ships which dock in ratifying countries.³³ It is important to note that the MLC does not incorporate all manner of universally recognised human rights.³⁴

The Maritime Labour Convention in Australia

Australia is a signatory to the MLC.³⁵ During the ratification process, the Minister with the Australian Permanent Mission in Geneva and recent President of the Governing Body of the ILO, Greg Vines, noted:³⁶

‘As the largest island continent, Australia’s economic future is inextricably linked to safe and productive shipping. It is in our environmental and economic interest to ensure that ships that travel through the Asia-Pacific region are safe, secure and crewed by seafarers that are decently treated, fairly paid and well trained.’

The MLC has been implemented into domestic legislation through the *Navigation Act 2012*, the *Fair Work Act 2009*, and associated regulation.³⁷ The MLC also requires

signatory countries to establish welfare boards to support seafarers.³⁸ The Australian Seafarers’ Welfare Council has been established and works to provide leadership in the implementation of Australia’s obligations under the MLC, assist in the creation of national seafarer support measures, and promote the delivery of welfare services across ports in Australia.³⁹

The role of the Australian Maritime Safety Authority

In Australia, the Australian Maritime Safety Authority (AMSA) is the primary body responsible for enforcing the requirements in the MLC. It fulfills two compliance and enforcement functions relevant to modern slavery risk, which are given effect in Australia by the Navigation Act 2012 and specifically Marine Order 11 (Living and working conditions on vessels) 2015, made under that Act.⁴⁰

1. The port State control (PSC) function, relevant to foreign registered ships visiting Australian ports.
2. The Flag State Control (FSC) function relevant to Australian registered (flagged) ships.

The MLC requires that all vessels must have an onboard complaints procedure, which allows seafarers to make complaints without fear of any repercussions.⁴¹ AMSA investigates every MLC complaint it receives, unless the vessel is out of the area.⁴² In these situations, it uses an international database to place alerts on the vessel, and ensure the complaint is investigated when the vessel next arrives in Australia.⁴³ AMSA reports that it conducts over 3,000 vessel inspections across 70 ports in Australia each year.⁴⁴ Between 2016-2020, it noted there had been an increase in complaints received, with complaints doubling in 2020 as a result of COVID-19 restrictions.⁴⁵ AMSA also chairs the Australian Seafarers’ Welfare Council.⁴⁶

The role of the International Transport Workers’ Federation

The International Transport Workers’ Federation (ITF) is an affiliate-led organisation that maintains an infrastructure of labour advocates and inspectors in major ports around the world. These advocates generally rely on the provisions of ITF-approved collective bargaining agreements, the provisions of the *International Ship and Port Facility Security Code (ISPS Code)* and the MLC to gain access to ships and conduct inspections of seafarer conditions and wage records on foreign-registered ships in ports.

In Australia, the ITF maintains a small team of four officials who conduct inspections of foreign-registered vessels in Australian ports. Some of those inspections are undertaken in response to specific complaints or concerns raised by seafarers and some are part of the ITF’s routine monitoring activities.

If ITF inspectors find that wage payments or conditions on board are in violation of the MLC, domestic standards, or relevant collective bargaining agreements referenced in Seafarer Employment Agreements (SEAs), then the ITF will engage with the shipowner (or its agent), ship operator or manager, in obtaining an effective remedy for the seafarer(s).

³¹ For more information, the International Chamber of Shipping (‘ICS’) publishes an annual Flag State Performance Table which outlines performance against safety, environment and working condition metrics.

If and when shipowners, ship operators or their agents comply with those requests and recovery amounts are paid, the funds are then distributed to the affected seafarers.

The ITF inspectorate seeks to establish strong working relationships with AMSA port State control officers, particularly when acting on complaints relating to issues such as employment contracts, collective agreements or MLC provisions. While there is currently no formal alignment between the two processes, each could be strengthened by collaboration on a collective grievance mechanism (as outlined in Part Four).

Business and human rights frameworks

The UN Guiding Principles on Business and Human Rights in the maritime context

The UNGPs are the recognised global standard for preventing, addressing and remedying business-related human rights harms.⁴⁷ The UNGPs provide that States should protect human rights and businesses should respect human rights.⁴⁸ This means businesses should essentially try to do no harm and if they do, they should address this harm in line with the UNGPs.

In this context, human rights refers to all internationally recognised human rights, including those expressed in the *International Bill of Human Rights* and the principles concerning fundamental rights in the ILO's *Declaration on Fundamental Principles and Rights at Work*.^{49 50 51 52} Primary responsibility for the protection of human rights (such as through enforcement of the MLC) rests with flag States and governments where vessels are subject to port State control (for example, through port enforced inspections and certifications as required in Australia). However, under the UNGPs, businesses still have a responsibility to respect seafarers' rights even where States fail to uphold their

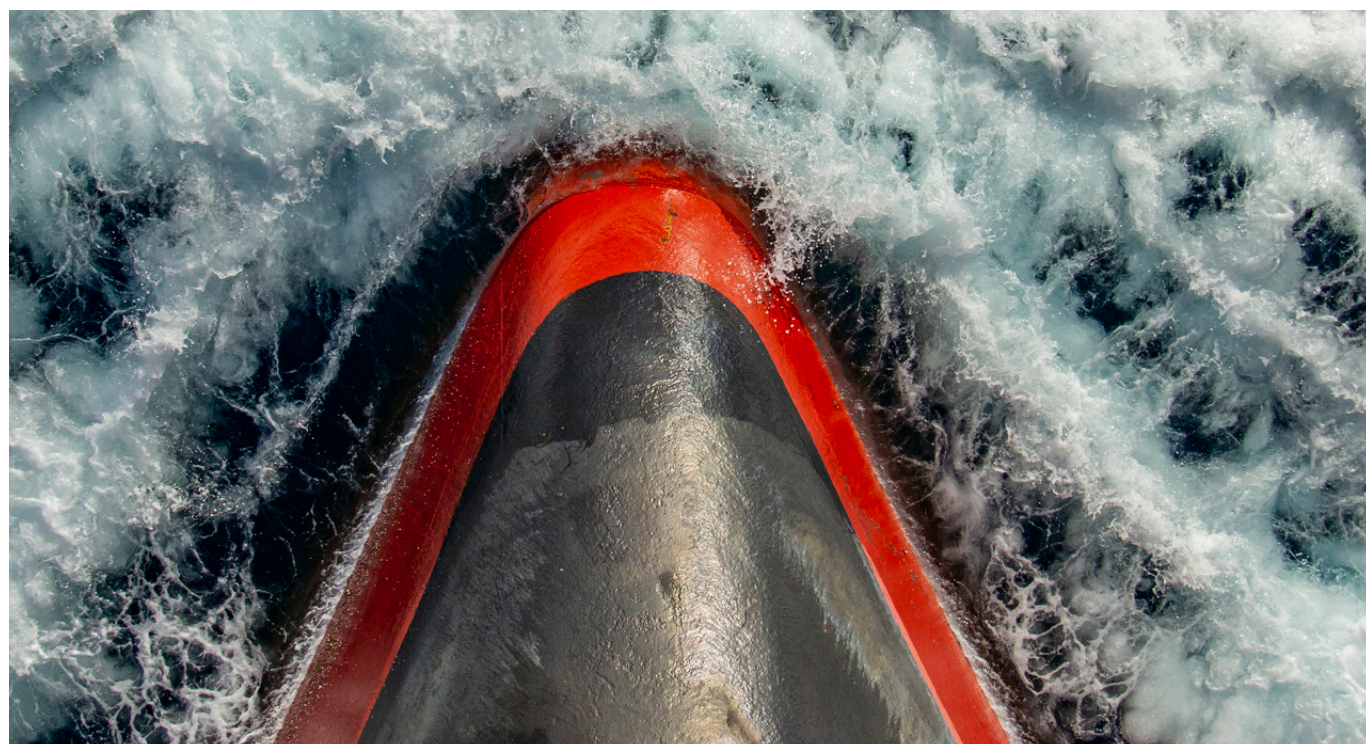
obligations.⁵³ In the modern slavery context, the Australian Government has clarified that the responsibility of business extends to taking action to prevent, mitigate and, where appropriate, remedy modern slavery within an entity's supply chain, including their shipping supply chains.⁵⁴ As noted above, the MLC does not cover all of seafarers' internationally recognised human rights, and integrating the UNGPs may also require businesses to assess risks to broader human rights.⁵⁵

The Neptune Declaration

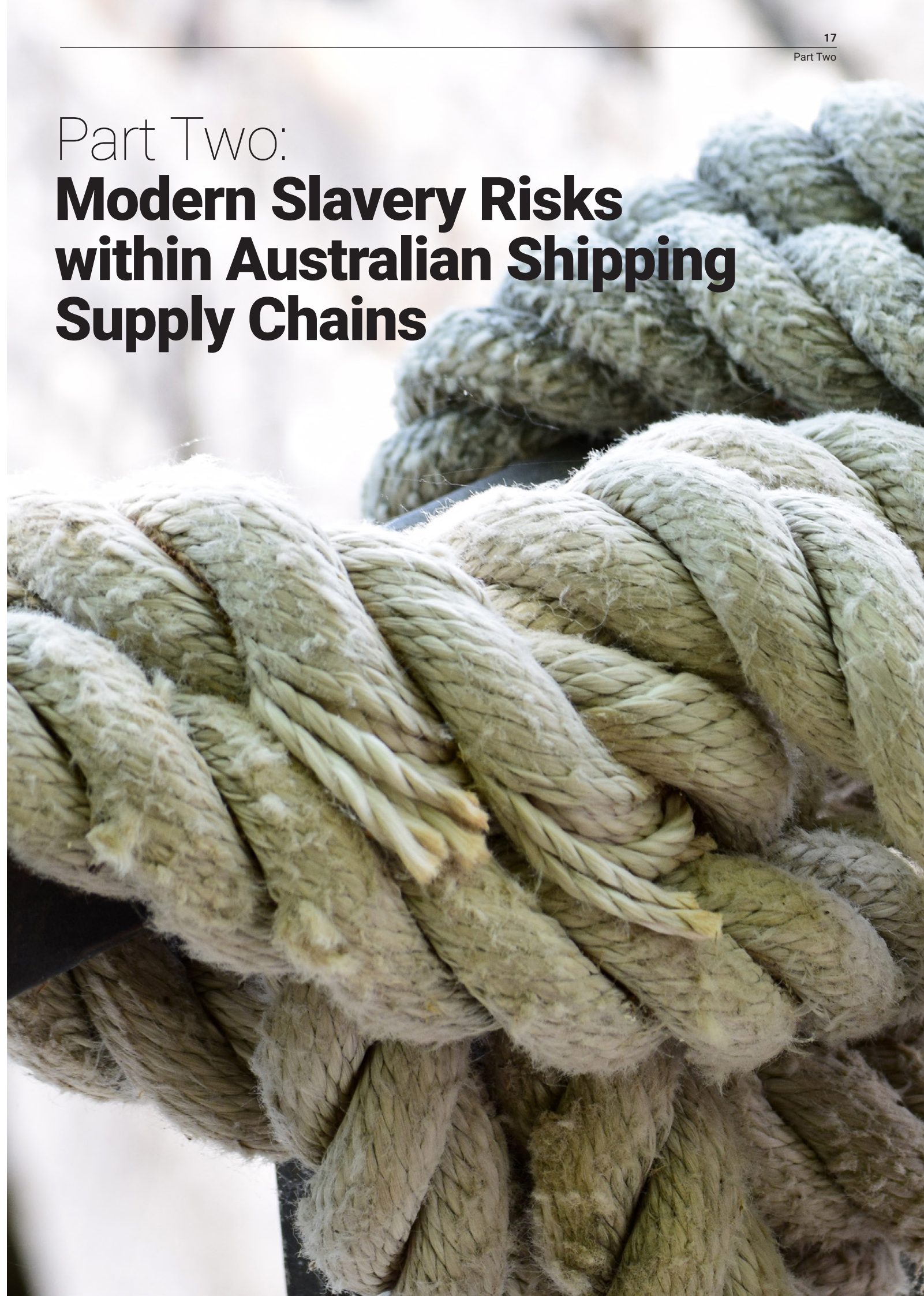
In response to the COVID-19 crew change crisis, the *Neptune Declaration* was introduced as a signatory-based call to action to encourage crew wellbeing required to keep the maritime shipping supply chain functioning.^{56 57} It was developed by the Maritime Industry Crew Change Taskforce, which was formed during the Global Maritime Forum's 2020 Virtual High-Level Meeting, and urged action by charterers and shipowners across four key areas:

1. recognise essential worker status
2. implement gold standard health protections
3. increase collaboration between ship operators and charterers to facilitate crew changes
4. ensure air connectivity between key maritime hubs.

In 2021, recognising the key role of charterers, a number of signatories to the *Neptune Declaration* also developed a best practices guidance document for charterers in operationalising the principles in the Declaration.⁵⁸



Part Two: Modern Slavery Risks within Australian Shipping Supply Chains



Part Two: Modern Slavery Risks within Australian Shipping Supply Chains

The ILO has highlighted that poor working conditions often associated with seafaring, such as isolation, restriction of movement, excessive overtime and abusive working and living conditions are key indicators of forced labour.⁵⁹ These can be compounded by seafarers working in an environment that is not always subject to national laws and standards, and at times on board vessels flying the flag of a State with limited labour protections (such as FOC States).⁶⁰

This section summarises how key risk factors can manifest in the context of seafaring and provides a summary of concerns raised by seafarers on board ships docked at Australian ports. It is important to note these risk factors do not exist in isolation and often reinforce each other, creating increased vulnerability to exploitation.

Modern slavery risk factor one – An uncertain regulatory framework

International shipping occurs in an environment of legal and jurisdictional uncertainty because international waters are generally not governed by national labour laws. In international waters, shipping companies are not typically subject to national labour standards and protections that apply to other industries operating in domestic contexts, such as modern slavery disclosure regimes. Where shipping companies are covered by the laws of the nation of ship registration, compliance and enforcement of those domestic laws remains unclear while such ships are navigating in international waters.

Consequently, the capacity of national labour regulators to perform an effective compliance and enforcement role is weakened. Regulating this global industry is made more challenging because certain shipping companies may engage in management and outsourcing practices that distance themselves from national legal frameworks.

Modern slavery risk factor two – Isolation

Seafarers spend extended time at sea and are likely to experience feelings of loneliness and isolation.⁶¹ These experiences are exacerbated by residing at the workplace and relying on colleagues for social company during both working and non-working hours, reducing the ability of staff to establish social support relationships.⁶² In a survey commissioned by AMSA, around 40 per cent of seafarers reported experiencing negative mental health symptoms.⁶³ Isolation at sea also means that seafarers are reliant on their employer for outside communication with family, authorities and actors such as the ITF, which can increase vulnerability to exploitation.

In November 2020, AMSA inspected a Panama-flagged cargo ship where they found nine Chinese and Filipino seafarers had been on board for up to 20 months with no shore leave.⁶⁴ For context, the MLC requires that the normal maximum period that a seafarer can serve aboard a vessel without leave is 11 months. AMSA described the situation as ‘completely unacceptable’ and issued a direction prohibiting the ship from departing until the affected crew had been repatriated. Following this intervention, all nine crew were reunited with their families.

Modern slavery risk factor three – Restriction of movement

Working and residing at sea restricts seafarers’ movement however in some cases may also violate their right to freedom of movement. In 2020, the Australian Broadcasting Corporation (ABC) reported that in addition to the port-side restrictions that were in place due to COVID-19, seafarers at Australian ports were refused shore leave because it was considered that if they fell ill with COVID-19 this would present a risk for the entire ship.⁶⁵ Limitations placed on movement, such as restricting access to shore leave, remove vital opportunities to relieve stress, socialise and meaningfully connect, and significantly raise the risk that seafarers are forced to work longer than permitted under the MLC.⁶⁶ In September 2022, the Australia Institute also reported that seafarers within Australian waters often endure restrictions on access to shore leave, as well as access to medical and mental health services.⁶⁷

In October 2021, AMSA banned a Singapore-flagged bulk carrier from Australian ports for six months for ‘serious and shameful breaches of the [MLC]’ including failing to repatriate seafarers after their original nine-month contracts. AMSA found evidence that seafarers had been on board for over 12 months and had been unable to return home.⁶⁸

In 2021, AMSA issued a 36-month ban to a ship for ‘serious deficiencies’ relating to the working and living conditions for seafarers on board.⁷⁷ The regulator banned the Liberian-flagged oil tanker from Australian ports after it deemed conditions on board to be in breach of the MLC, including lack of electricity, running water, no sanitary facilities and no ventilation.⁷⁸

Modern slavery risk factor four – Excessive overtime

Requiring workers to consistently perform excessive overtime is a significant indicator of forced labour. In a collation of studies looking at seafarer experiences, the Department of Psychological Medicine at Kings College, London, reported that many seafarers commonly experienced long, monotonous hours of work (often more than 10 hours), as well as inadequate rest periods.⁶⁹ Seafarers also indicated that this significantly increased emotional exhaustion and mental fatigue.^{iii 70} In a survey commissioned by AMSA into the determinants of safety culture within the Australian maritime industry, more than 20 per cent of respondents reported working more than 69 hours per week, and that those shifts were unpredictable.⁷¹

In May 2017, AMSA found that a Papua New Guinean-flagged ship in Brisbane had 79 serious deficiencies, which included evidence of crew exceeding 72 hours of work in seven days. The vessel was banned from Australian ports for three months.⁷²

Modern slavery risk factor five – Abuse and poor working conditions

Seafarers frequently report poor working conditions on board ships, such as:⁷³

- **Intimidation, psychological and physical abuse:** Research indicates that bullying and intimidation remain serious problems within shipping. As a hierarchy-focussed and masculine-coded occupation, researchers have highlighted that bullying between onboard ranks and between different ethnicities remains frequent.⁷⁴ Examples include harassing, offending or socially excluding team members.⁷⁵
- **Fatigue, lack of ability to rest and sleep:** Researchers have also highlighted that onboard processes such as watch-keeping take place around the clock and therefore require irregular sleep hours, resulting in reportedly poor sleep quality and fatigue.⁷⁶

Modern slavery risk factor six – Wage exploitation

In September 2022, the Australia Institute reported that systematic and widespread wage exploitation could be occurring on international ships visiting Australian ports.⁷⁹ The report estimated the total extent of wage theft on vessels visiting Australian ports could equate to A\$65 million per year. This finding potentially highlights the weak international regulatory system for international ships, and deficiencies in the regulation of international shipping registries that provide cover for seafarer exploitation. The report argues that the regulation of seafarers’ wages and conditions, which should arise from the ‘genuine link’ between flag State and ship as required under UNCLOS, appears to be missing in most cases due, largely, to a lack of definition of the term in international treaties and a lack of consequences where no such genuine link exists.⁸⁰

In 2022, AMSA responded to complaints by seafarers of wage exploitation on board a Liberian-flagged oil tanker in the Port of Gladstone. Upon inspection, AMSA found the employment conditions for 21 seafarers had not been met and the crew were owed approximately A\$123,000. AMSA also found evidence that the food and drinking water were not of appropriate quality, quantity and nutritional value. The ship was banned from Australian ports for six months.⁸¹

Modern slavery risk factor seven – Migrant worker status

Seafarers are typically migrant workers either on board vessels or at ports that they visit. This serves to increase the risk of exploitation, due to lack of access to social protection, as well as language and cultural barriers.⁸² In 2021 most seafarers were nationals of the Philippines (13.3 per cent of the global total), followed by the Russian Federation (10.5 per cent), Indonesia (7.6 per cent), China (7.1 per cent) and India (6.0 per cent).⁸³

ⁱⁱⁱ Note, the most recent Seafarers Happiness Index report commissioned by Mission to Seafarers also highlighted that many seafarers feel pressure to work excessive hours.

Part Three: Seafarer Perspectives in Australian Waters



Part Three: Seafarer Perspectives in Australian Waters

Meaningful consultation with potentially affected groups is a crucial element of human rights due diligence, including when it is applied to modern slavery risk management.⁸⁴ As part of the research for this publication, the UNGCNA undertook in-person interviews with a cross-section of randomly selected seafarers on board vessels docked at Australian ports. These interviews were facilitated by the ITF at Port Botany (NSW), Port Kembla (NSW) and Port Melbourne (VIC). All data was anonymised, and the names of the seafarers spoken to were not recorded.

Our consultation process is not a substitute for business requirements to consult stakeholders as outlined in the UNGPs, however it does provide some framing for the seafarer perspectives on board ships at local ports. It is important to note that key themes arising from the conversations do not alone suggest these seafarers are in situations of modern slavery.

Themes arising during the interviews were similar to those previously highlighted by other seafarer organisations.^{85 86} These included an inherent power imbalance onboard, fatigue and lack of appropriate staffing, a lack of access to telecommunications, and issues associated with the way remuneration is paid. Seafarers frequently highlighted the marked improvement in conditions on board Australian flagged ships compared to those flying 'flags of convenience'.

Power imbalance

When prompted with an open question about their working experience, many seafarers identified power imbalances onboard as a significant cause of distress. As seafarers are reliant on their employer for their quality of life, many noted the power held by officers over the crew was problematic, and that crew would not be able to raise workplace issues with officers without repercussions such as bullying or exclusion. Several seafarers also expressed concern about issues that occur 'behind closed doors' such as preferential treatment and harassment, and noted that cargo owners, charterers and crew supply agencies would not be aware of these issues.

One seafarer noted, 'What the company sees is only what the [direct manager] or the Captain says to them. The subordinates' voice is never heard, they are invisible [...]. Companies need to be aware of how this is happening on ships.'

Staffing and fatigue

Several seafarers were also quick to point out concerns over fatigue associated with their role and a lack of ability to negotiate their responsibilities. Some noted that while the MLC and AMSA enforced minimum crewing numbers, these were often a bare minimum to keep the vessel afloat

and placed strain on the available workers. Seafarers also highlighted that in their experience, Australian flagged ships were more likely to be understaffed as the labour is typically more expensive.

One seafarer expressed concerns about the accumulation of fatigue associated with a newly implemented shift schedule onboard, which requires them to be awake for approximately an extra three hours per day. They noted, 'After about 20 days of this, the fatigue hits and productivity drops and you start making errors – it becomes dangerous.'

Mental health, isolation and lack of access to communications

When asked about the worst part of their role, many seafarers noted mental health, feelings of isolation and a lack of connection with family. Several indicated they felt the 'company' (by way of reference to the shipowner, carrier and officers) did not care about the mental health of their staff and that a 'man up' culture was in place on board. Many also noted that while Wi-Fi is provided onboard and at some ports, data is often expensive or inaccessible, and data caps provided are insufficient to connect meaningfully with family and friends at home.

One seafarer noted, 'If we could change one thing, it would be more Wi-Fi – currently we get 200mb per month, and after that you're done.'

Another noted, 'There is a myth that seafarers are 'hardened people' – they're not – things like suicide, divorce and mental health are common with those in shipping.'

Remuneration

Nearly all seafarers indicated that remuneration played a large part in their overall job satisfaction, with many sending money to their families back home. However, some workers raised issues with the way that pay was distributed, with 80 per cent of their salary typically being sent to a bank account which they are unable to access while at sea. This was especially of concern on board vessels where seafarers indicated they had to pay for certain items, such as extra bottles of fresh water. One seafarer also noted that Ship Masters often have two sets of books for remuneration and staff management – one which they use with the crew, and another which they show the shipowner and any inspectors.⁸⁷ 'Most people don't understand how important shipping is. If we were to all strike, the world would stop.'

Part Four: Practical Guidance for Cargo Owners



Part Four: Practical Guidance for Cargo Owners

Australian businesses that own cargo have a key role to play in addressing modern slavery at sea. This section contextualises the relationship between the cargo owners and seafarers under the UNGPs and outlines practical steps for Australian businesses to undertake when engaging with their shipping partners.

Taking an integrated approach to mitigating modern slavery risk requires engagement throughout the business. Human rights or modern slavery practitioners should begin their engagement internally, such as with senior management, procurement, and logistics team members, and strategically plan outreach with maritime shipping partners. Once an approach is established, practitioners should engage with the actor closest to seafarers in the supply chain (typically the shipowner or ship carrier), advocate for seafarer welfare considerations in the supplier expectations, mandate the presence of an effective grievance mechanism and engage with seafarer organisations and advocacy groups.

The UNGCNA recommends that businesses take a holistic approach to integrating due diligence across all internationally recognised human rights impacted by their organisation. The steps outlined below are designed to assist businesses in engaging with shipping suppliers, however, they are not a substitute for implementing a comprehensive human rights due diligence process.

Step One – Understand your relationship to modern slavery risk

1.1 Understanding the appropriate action required under the UNGPs

The UNGPs contain a ‘continuum of involvement’ which outlines the relationship between a business and a potential adverse human rights impact, and the level of action expected in response.⁸⁸ This is based on three levels of potential involvement:^{89 90}

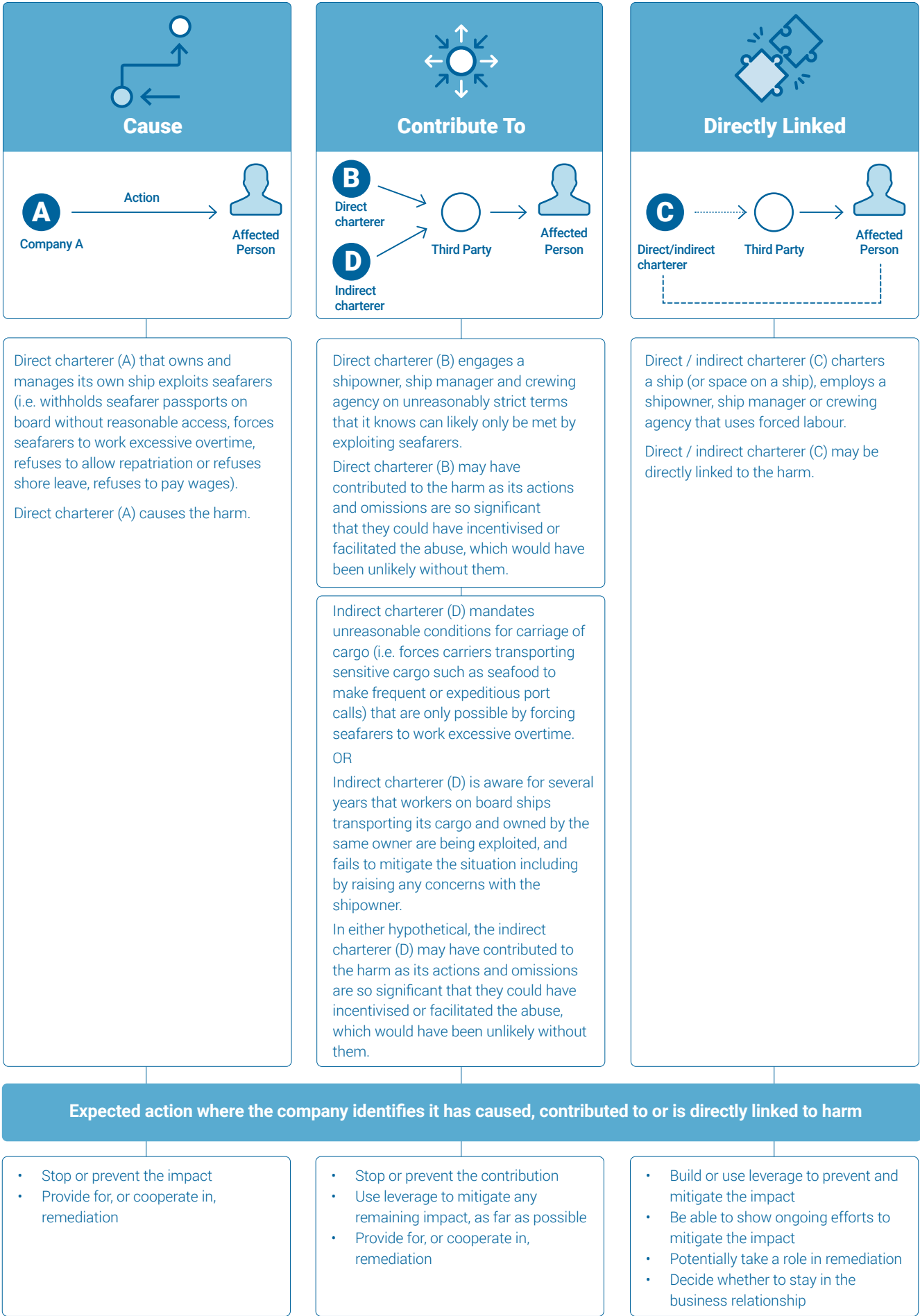
- **Cause:** The business’ operations directly result in modern slavery practices.
- **Contribute to:** The business’ operations or actions in its supply chain may contribute to modern slavery, including through acts or omissions that facilitate or incentivise slavery.
- **Directly linked:** The business’ operations, products or services may be connected to modern slavery through the activities of another entity it has a business relationship with.

In examining their potential relationship with modern slavery risks associated with shipping, direct and indirect charterers may have different considerations:

- Cargo owners that are direct charterers (i.e. that own vessels or charter entire ships as part of their own operations) have the potential to cause (where they own and manage their own ships), contribute to, or be directly linked to modern slavery of seafarers within their own seafaring operations.
- Cargo owners that are indirect charterers (i.e. that transport cargo through maritime shipping) are less likely to cause or contribute to seafarers experiencing modern slavery, although a contribution does remain possible. Indirect charterers are more likely to have the potential to be directly linked to modern slavery of seafarers through their shipping partners.

The Australian Government encourages businesses to utilise the UNGPs’ continuum of involvement in identifying their modern slavery risks.⁹¹ Various benchmarks of modern slavery statements are also starting to consider whether companies are reporting using this continuum.⁹² The following table outlines hypothetical scenarios that illustrate the potential application of the continuum of involvement in the maritime context for direct and indirect charterers.

UNGPs Cause, Contribute and Directly Linked Continuum of Involvement in the Maritime Context



Step Two – Engaging internal stakeholders in preparation for supplier engagement

2.1 Integrate seafarer welfare considerations into organisational policy structure

The UNGPs expect businesses to demonstrate their commitment to respecting human rights through the introduction and integration of policies and processes that are appropriate to their size and circumstances.⁹⁵ Cargo owners should ensure that any policy relating to human rights includes expectations of personnel and business partners. While it may not be feasible to specifically reference seafaring partners (i.e. where the cargo owner does not want to specifically reference every type of business partner it has), engagement with those parties including any supporting guidance material should make it clear what the cargo owner’s expectations are in relation to its human rights policy. It is highly recommended that the policy expressly refers to the rights of transport workers (such as seafarers), however this unfortunately remains uncommon.

- 2.2 Preparing for engagement with maritime shipping supply partners
- Before engaging with maritime shipping partners, human rights practitioners should engage internal stakeholders associated with shipping to establish an organisational approach. These include:
- **Senior leadership:** Engage senior leaders on the modern slavery risks associated with maritime shipping (highlighted in Part Two), including specifically building their awareness of how the organisation could be involved in modern slavery of seafarers in line with the UNGPs’ continuum of involvement and what this might mean in terms of appropriate action.
 - **Procurement and logistics:** Identify the internal processes for procuring logistics and shipping services, and engage the owner(s) of the process on relevant modern slavery risks (highlighted in Part Two). Identify any relevant supplier expectations frameworks and test the possibility of incorporating seafarer welfare considerations if this is not already in place.
 - **Contractual arrangements:** Engage the business unit responsible for contractual arrangements with logistics, freight forwarding and shipping services on the modern slavery risks associated (highlighted in Part Two). Understand whether any modern slavery related clauses exist and test the potential for introducing a clause relating to modern slavery in the maritime shipping context. This may include engaging with both a commercially focussed unit and the legal team.

2.3 Map the shipping supply chain

Mapping the shipping supply chain is the first step in understanding where modern slavery lies. Practitioners can do this by mapping the relevant shipowners, carriers, and freight forwarding or logistics companies within their own shipping supply chain. There may be technological solutions to support this exercise as well as the option of engaging various other external stakeholders to help

build an understanding of which shipping suppliers need to be included. Guidance on the actors included within the Australian context is highlighted in Part One. There may be particular challenges in relation to one-off suppliers (i.e. spot charters) but this should be considered as part of the mapping to at least ensure those relationships have been considered in a meaningful way.

2.4 Plan the engagement

Practitioners should attempt to engage all relevant actors in the shipping supply chain, including the actor closest to seafarers. In most instances, this will be the shipowner, ship manager, or carrier, however this may be complicated by complex carrier arrangements and whether the organisation is a direct or indirect charterer. Practitioners should also investigate whether their shipowner, ship manager or carrier is party to any seafarer welfare forums (such as the Australian Seafarers’ Welfare Council) as an additional point to open the dialogue with the supplier.

Step Three – Integrating seafarer welfare into the supplier engagement process

- 3.1 Target self-assessment questionnaires
- Many organisations are beginning to request that suppliers complete self-assessment questionnaires designed to assess the potential for modern slavery or broader human rights risks associated with the supplier. While self-assessment questionnaires are a useful tool and important for opening a dialogue with suppliers, they should form part of a broader supplier engagement and due diligence process.
- Any self-assessment questionnaire forwarded to shipowners, ship managers or carriers should be highly targeted towards the intended end user, and ideally limited to less than 10 questions. Cargo owners should target questionnaires based on:
- the intended supplier
 - the likely supplier representative completing the questionnaire
 - context and language used within the maritime shipping context.
- At a minimum, questionnaires should request shipowners, ship managers or carriers to confirm that operations on board comply with:
- the MLC
 - the *Neptune Declaration*
 - all labour protections available in the domestic context on board
 - all labour protections enforced through port State control.

Practitioners should also consider the extent to which the shipowner, ship manager or carrier has integrated broader expectations in the UNGPs into their policies and processes. This can be reflected in a plain English way such as asking if the supplier has a trusted and accessible grievance mechanism in place or what processes they have in place to identify any ongoing risks of modern slavery to seafarers. Depending on the degree of leverage a cargo owner has over their supply chain (i.e. via purchase power) and the level

of visibility through to maritime partners (i.e. if it charters whole vessels), cargo owners may elect to mandate more comprehensive self-assessment questionnaires, vessel visits to verify the information, or contract with a specialist ship vetting company, as part of the procurement process. In making this determination, cargo owners may consider co-ordination with peers and industry groups which may serve to increase leverage over maritime suppliers and support streamlining of assessment (i.e. avoiding suppliers having to respond to multiple different assessment processes).⁹⁶

3.2 Additional certification standards and frameworks

Some cargo owners have begun to request that vessels follow additional certification standards and frameworks. Some examples include:

- **Sustainable Shipping Initiative (SSI) and Institute for Human Rights and Business (IHRB) – Seafarers’ rights and welfare Code of Conduct for shipowners, operators, charters and cargo owners:** In 2021, the SSI and the IHRB launched a seafarers’ rights and welfare Code of Conduct, which seeks to reinforce compliance with the MLC, other maritime conventions and the UNGPs. The purpose of the Code of Conduct is to provide ship owners and operators with a common standard to align to in their respect for human rights, and by consequence, for charterers and cargo owners to strengthen their supplier outreach and expectation setting.
- **RightShip:** RightShip is a third party maritime due diligence organisation which collects data on vessels and provides reporting back to cargo owners on safety, sustainability, and social responsibility practices.

3.3 Risk assessment and supplier selection

The cargo owner should review responses provided by potential shipping suppliers and consider the modern slavery risks posed to seafarers engaged through those arrangements. Based on this information, the cargo owner should assess whether or not to proceed with a particular ship supplier. Cargo owners may also wish to integrate this assessment into their ongoing due diligence process and refresh the assessment at regular intervals.

3.4 Setting supplier expectations

Once a shipowner, ship manager or carrier is selected, the cargo owner should work to set expectations that include a minimum standard of compliance with regulatory requirements and international standards. The primary method for communicating these expectations should be included in supplier expectation frameworks, such as a Supplier Code of Conduct. As noted above, within the maritime context, expectations should include the MLC, the Neptune Declaration and the UNGPs, as well as the maintenance of an ongoing dialogue to manage modern slavery risk.⁹⁷

3.5 Incorporating welfare considerations into contracts with suppliers

Incorporating seafarer welfare concerns into contractual arrangements is another way to formalise leverage. Cargo owners should seek to incorporate clauses that enforce expectations for seafarers’ rights as far as possible throughout the shipping supply chain. These clauses could include:

- **Connectivity:** Seafarers should be provided with adequate telecommunication facilities which allow them to maintain meaningful connection with family, friends, and with relevant protection and inspection agencies, such as the ITF or industry assistance provider organisations.
- **Maximum period of service:** Seafarers should not be on board for a continuous period of more than the maximum period of service as outlined in the MLC (currently 11 months) or as otherwise specified in their Seafarer Employment Agreement (SEA). Seafarers are not to work beyond the expiration of their contracts without their consent. It is important that cargo owners do not permit the use of ‘no crew change’ clauses in charter parties’ agreements with shipping suppliers.⁹⁸
- **Repatriation:** Shipowners must uphold the right of seafarers to fair and free repatriation (as required by the MLC).
- **Shore leave:** Seafarers must be granted time to take shore leave if requested while the ship is in port, subject to the operational requirements of a seafarer’s work on board a vessel (as required by the MLC).
- **Medical care (including mental health support):** Seafarers must be permitted appropriate access to medical care on board and ashore (as required by the MLC), including mental health support. Vessel owners, operators, or crew supply agencies should make relevant vaccinations available to crew as a matter of priority.
- **Staffing:** Vessel operators must comply with safe and adequate crewing requirements in accordance with IMO requirements.⁹⁹

As part of the contract negotiation process, cargo owners should seek to ensure that shipping suppliers have a meaningful understanding of the reason for including seafarer welfare related clauses and how they can set themselves up to comply. Cargo owners should keep a record of any request to vary such clauses.

Step Four – Ensuring seafarer access to an effective grievance mechanism

4.1 Ensuring access to an effective grievance process

Cargo owners should exercise influence to ensure that all transport workers (including seafarers) have access to an effective grievance mechanism.¹⁰⁰ In the maritime context, any complaints handling process on board a vessel must provide timely, effective, and rights-based outcomes. As a minimum, this is done by enabling the complaints identification and settling process outlined in the collective bargaining agreement in SEAs, and/or the MLC, as appropriate.¹⁰¹ The process should also meet the effectiveness criteria outlined in the UNGPs.¹⁰²

4.2 Encouraging participation in multi-stakeholder grievance processes





Due to the increased vulnerability to retaliation faced by seafarers, cargo owners may also wish to advocate for grievances to be settled through a multi-stakeholder grievance process.¹⁰³ The UNGPs provide that multi-stakeholder and other collaborative initiatives can assist grievance processes in meeting the required effectiveness criteria.¹⁰⁴





In the maritime context, an effective multi-stakeholder grievance process should include the seafarer, the local ITF body and affiliates, the shipowner or representative, and regulatory body where appropriate. It should be always accessible to the seafarer, allow them to be accompanied or represented during the procedure, and provide safeguards against victimisation for raising complaints that are not manifestly vexatious or malicious. Including the local ITF

body and affiliates may also serve to increase the legitimacy, predictability, transparency, and rights-compatibility of the mechanism for seafarers. As a protective body, seafarers have also indicated that the presence of the ITF decreases the risk of retaliation. A collective multi-stakeholder grievance mechanism should be supported (through advocacy or negotiation with shipowners and carriers) by all cargo holders as a non-competitive issue.

Cargo owners that charter ships as part of their operations may wish to establish their own dedicated grievance mechanism process, or work to ensure that seafarers have access to their existing processes such as whistleblowing mechanisms. Any such integration should complement the complaints handling procedure included under the MLC and meet the effectiveness criteria outlined in the UNGPs.¹⁰⁵ The effectiveness criteria include the criteria in the table below.

Application of the UNGP’s effectiveness criteria in the seafaring context

Criteria	Explanation	Application in seafaring context
 Legitimate	Enabling trust from the stakeholder groups for whose use the grievance mechanism is intended and being accountable for the fair conduct of grievance processes.	<ul style="list-style-type: none">• Involve other actors (such as the ITF and local trade union groups) to increase trust, and to ensure that seafarers have confidence in the legitimacy of the grievance mechanism.
 Accessible	Being known to all stakeholder groups for whose use the grievance mechanism is intended and providing adequate assistance for those who may face barriers to access.	<ul style="list-style-type: none">• Ensure processes are publicised on board in a manner that is visible and transparent.• Ensure seafarers understand the grievance process, including how to file a complaint.• Ensure that seafarers have access to adequate communications technology to allow them to raise concerns including in their own language and where people have literacy or other accessibility challenges.
 Predictable	Providing a clear and known procedure with an indicative time-frame for each stage of the grievance process, and clarity on the types of process and outcomes available and means of monitoring implementation.	<ul style="list-style-type: none">• Ensuring seafarers understand what to expect when filing a complaint, how it will be dealt with and what remedy will be provided.
 Equitable	Seeking to ensure that aggrieved parties have reasonable access to sources of information, advice, and expertise necessary to engage in a grievance process on fair, informed and respectful terms.	<ul style="list-style-type: none">• Ensure that seafarers understand their rights and entitlements under the MLC, their Seafarer Employment Agreement (SEA) or any relevant Seafarer Collective Agreement Framework, internationally recognised human rights and the application of the UNGPs.• This includes making resources available to support seafarers in understanding their rights and entitlements, and remunerating seafarers for time spent on rights-related training.

Criteria	Explanation	Application in seafaring context
 Transparent	Keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake.	<ul style="list-style-type: none">Communicating effectively and often about the availability of the grievance process.Keeping any parties to a relevant grievance updated on its progress.Engaging with seafarers, trade union groups and industry bodies on the performance of grievance processes and committing to improvements where appropriate.Disclosing outcomes from grievance processes in modern slavery related disclosure.
 Rights-compatible	Ensuring that outcomes and remedies accord with internationally recognised human rights.	<ul style="list-style-type: none">Ensuring that outcomes comply with all internationally recognised human rights such as avoiding discriminatory outcomes, in addition to all rights and entitlements afforded to seafarers under the MLC.
 A source of continuous learning	Drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms.	<ul style="list-style-type: none">Measuring engagement with seafarers and outcomes obtained through the grievance process, to understand any potential blind spots to effective remedy in the process as well as any systemic issues leading to complaints.
 Based on engagement and dialogue	Consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances.	<ul style="list-style-type: none">Understanding the key concerns of seafarers and designing the process around their participation, needs and expectations for remedy.Ensuring any decisions about remediation for specific complaints are made in consultation with the relevant seafarer(s).

For more information on establishing an effective grievance mechanism, see our earlier publication *Implementing Effective Modern Slavery Grievance Mechanisms: A Guidance Note for Business*.¹⁰⁶

Step Five – Deploy strategies to increase leverage

5.1 Advocate for stronger seafarer protections in longer-term contracts

Due to recent disruptions to international shipping, many cargo owners are seeking longer-term, multi-year, end-to-end contracts with carriers.¹⁰⁷ Concurrently, carriers are seeking to convert single voyage or single route customers to long term, end-to-end logistics customers.¹⁰⁸ These conditions create the ideal opportunity for businesses to advocate for the inclusion of stronger seafarer welfare conditions into longer-term contracts with carriers, and to introduce a multi-stakeholder grievance mechanism process into the contractual clauses.

5.2 Align with peers

To increase leverage over shipping suppliers, cargo owners should also explore engaging with peers and industry groups and align their approach to supplier expectations.¹⁰⁹ Cargo owners may also wish to engage with peers and industry groups in formalising a multi-stakeholder grievance mechanism process.

Step Six – Engagement with other key actors

6.1 Agencies, civil society and non-governmental organisations

To further mitigate modern slavery risks, cargo owners should seek to identify, engage with and support key advocates for seafarer welfare. Engagement with seafarer groups also assists companies in meeting expectations to draw on both internal and external human rights expertise, and to conduct meaningful engagement with potentially affected groups, under the UNGPs.¹¹⁰ In the shipping context, this should include seafarers themselves, relevant agencies and seafarer organisations such as trade unions and NGOs.

Agencies, civil society groups and industry bodies include:

- International Maritime Organization (IMO):** The IMO is the UN agency responsible for the regulation of the shipping industry. Its primary role is to act as a forum for establishing a regulatory framework for international shipping that is fair and effective, universally adopted and implemented. This covers all aspects of international shipping – including manning and safety.¹¹¹
- International Labour Organization (ILO):** The ILO is the primary UN agency responsible for convening governments, employers and workers to set labour standards and develop policies to promote decent work for all. The ILO has adopted many international labour standards for seafarers.¹¹² In 2006, nearly all standards were consolidated into the *Maritime Labour Convention*, which entered into force in August 2013. The core focus of the ILO's maritime programme is the promotion of these standards through codes of practice, guidelines, and reports addressing seafarers' welfare issues.¹¹³

- United Nations Global Compact (UN Global Compact):** The UN Global Compact is the world's largest corporate sustainability initiative and works to advance the integration of the UN Global Compact's Ten Principles and the Sustainable Development Goals (SDGs) within the private sector. In 2021, the UN Global Compact co-founded the Maritime Just Transition Task Force, which seeks to enable the shipping industry to take a people-centred approach to transitioning to a zero-carbon industry.¹¹⁴ The UN Global Compact also incorporates 64 local networks, including the UNGCNA within Australia.
- International Transport Workers' Federation (ITF):** The ITF is an affiliate-led organisation that maintains an infrastructure of labour advocates and inspectors in major ports around the world. In Australia, the ITF maintains a small team of four officials who conduct inspections of foreign-registered vessels in Australian ports.
- Institute for Human Rights and Business (IHRB):** The IHRB is an international think tank focussed on business and human rights. It facilitates an Ocean and Human Rights Platform that works to raise awareness of adverse human rights impacts across ocean industries, including the shipping industry. Within this work and as noted above, the IHRB has jointly developed a Code of Conduct for charterers and template self-assessment questionnaires which gauge the performance of shipowners and ship managers.¹¹⁵ IHRB also jointly published the *Maritime Transport and the COVID-19 Crew Change Crisis: A Tool to Support Human Rights Due Diligence guidance* document with the UN Global Compact, the ILO, and the Office of the United Nations High Commissioner for Human Rights (OHCHR).
- Human Rights at Sea:** Human Rights at Sea is an international NGO that advocates for all human rights in the maritime context. It works to prevent, detect, and remedy human rights abuses at sea through public awareness campaigns, business engagement and the production of resources.
- Sustainable Shipping Initiative:** The Sustainable Shipping Initiative is a multi-stakeholder collective of businesses, carriers and seafarer welfare organisations committed to cross-sectoral collaboration on building a more sustainable maritime industry.

Step Seven – Reporting on due diligence steps undertaken

7.1 Reporting under the Modern Slavery Act

In Australia, the *Modern Slavery Act 2018* requires businesses with over \$100 million consolidated annual revenue to publish an annual statement outlining the business’ response to seven mandatory criteria. The criteria include describing the modern slavery risks within the business’ operations and supply chain, and the actions the business has taken to assess and address these risks.¹¹⁶ The UNGPs also require that businesses communicate externally on how they address their human rights impacts, taking care to not pose risks to affected stakeholders or personnel as part of any communications.¹¹⁷

The below table outlines certain criteria within the Australian *Modern Slavery Act* which may be relevant to identifying and reporting on modern slavery risks within the maritime shipping supply chain.

Mandatory criteria	Suggested items to include
Describe the structure, operations and supply chains of the reporting entity.	<ul style="list-style-type: none">• Outline the use of maritime shipping within the reporting entity's operations and supply chain, including reliance on shipping for business continuity, and shipping lanes through which goods are transported.
Describe the risks of modern slavery practices in the operations and supply chains of the reporting entity [...].	<ul style="list-style-type: none">• Outline the results of assessing the reporting entity's potential involvement in modern slavery risks associated with maritime shipping, including any country specific risks that may be relevant.
Describe the actions taken by the reporting entity [...] to assess and address those risks, including due diligence and remediation processes.	<ul style="list-style-type: none">• Outline any steps undertaken by the reporting entity to assess the modern slavery risks posed by the use of maritime shipping, including any engagement with suppliers to better understand the modern slavery risk management controls they may have in place such as through the use of questionnaires or other vetting processes.• Outline any action undertaken to utilise leverage with the reporting entity's suppliers, including integrating seafarer welfare considerations into its procurement process or setting supplier expectations in contracts and through codes of conduct and other key documents.• Outline any engagement undertaken with maritime focussed agencies, civil society groups and industry bodies.
Describe how the reporting entity assesses the effectiveness of such actions.	<ul style="list-style-type: none">• Outline any successful integration of seafarer welfare considerations into contracts with suppliers (where available), including how the cargo owner thinks this may have supported the prevention or mitigation of modern slavery risks.• Outline the outcomes from due diligence or remediation activities undertaken and how this informed the business’ ongoing modern slavery risk management. These could include:<ul style="list-style-type: none">◦ investigations undertaken◦ repatriations◦ provision of wages.• Outline the organisational approach towards measuring compliance of its supplier expectations, including the setting of a benchmark and monitoring improvement over time.• Outline feedback from engagement with seafarers and other external stakeholders, including via civil society groups and trade unions (where available).• Outline any targets relating to training of internal staff on shipping related risks.• Outline any available data on complaints submitted through the grievance mechanism process, including trends in grievances raised and outcomes achieved.

Part Five: Case Studies



Part Five:
Case Studies

Overview of Part Five

The following case studies highlight good practice examples of engaging with maritime shipping partners, setting expectations at the contractual level, and conducting ongoing monitoring of conditions for seafarers.

These case studies are based on interviews with business representatives and research from publicly available information on each business’s approach. They are presented as a learning resource and their inclusion does not represent the endorsement of the UNGCNA, or the MUA, for the business or its actions. While aspects of the case studies suggest good practice, this view is based solely on the information provided and UNGCNA and MUA cannot attest to the implementation of these processes in practice.

Case Study One:
Coles Group

Coles is a leading Australian retailer providing customers with everyday products including fresh food, groceries, household goods, liquor, and financial services through both its store network as well as online platforms. Coles’ reporting entities and brands include Coles Supermarkets Australia Pty Ltd, Liquorland (Australia) Pty Ltd and Eureka Operations Pty Ltd (trading as Coles Express), which are supported by a central operations (including functions such as buying, warehousing, delivery, meat processing and marketing).

Identifying and acting on risks

As a large business with diverse operations and supply chain, Coles’ modern slavery risk profile is not static and will continue to evolve over time. Coles reports that it assesses the modern slavery risks in its operations and supply chain using a variety of tools and resources. These include considerations related to the nature of business activities, geographic, existing or emerging operational contexts, sector, product, and supplier-specific regulatory frameworks and risk factors. The monitoring of risks is embedded in Coles’ product development and supplier onboarding processes, including for procurement from non-trade suppliers. Ethical sourcing check points are included in the non-trade supplier tender, selection and onboarding process. Ongoing risk management and monitoring are incorporated as part of contractual requirements.

Following COVID-19, Coles acknowledged that the immediate and long-term challenges of the pandemic drove changes in its suppliers’ modern slavery risk profiles and human rights due diligence processes, due to emerging adverse impacts on workers across global supply chains. These might include increased worker vulnerability to risks of modern slavery and the need for steps to be taken to proactively address this, including within the shipping industry.



Managing emerging modern slavery risks linked to COVID-19 in the international shipping sector

Operational challenges and consequent human rights impacts driven by COVID-19 restrictions affected the work of nearly two million seafarers across the shipping sector worldwide.¹¹⁸ Since the beginning of the pandemic, a number of statements and calls of action were released by the broader international community, recognising seafarers as essential workers for their contribution to continuity in global supply chains. Promoting respect for seafarers’ human rights and wellbeing has become even more critical for a successful and sustainable shipping industry.

In 2021, Coles was alerted to concerns from trade unions that strict border controls implemented by countries during COVID-19 had the potential to result in seafarers being confined to vessels beyond the timeframe in their original agreements. This was because they were unable to be relieved by incoming crew and/or be flown home. As part of the Coles tender process for international shipping partners, the organisation requested detailed information from prospective maritime suppliers, including the measures taken to increase health and hygiene measures during COVID-19 and ensuring crew can disembark ships and return home safely. All suppliers were able to demonstrate that sufficient steps had been taken to support seafarers and facilitate appropriate crew changes, in line with IMO guidance and related protocols. In some instances, additional efforts beyond compliance were reported, such as cooperation with relevant authorities to address challenging crew change cases and collaboration with international multi-stakeholder groups.

Coles reported that its largest international shipping provider, Mediterranean Shipping Company SA (MSC), has been actively advocating for the need to integrate human rights standards for seafarers into existing human rights due diligence processes undertaken by sectors using maritime freight transport. Coles also noted that MSC has introduced contractual requirements with a focus on emerging risks related to human rights of seafarers, and promoting their inclusion into commercial service agreements with customers and business partners.¹¹⁹

Recognising the impact of COVID-19 restrictions on their respective modern slavery risk profiles, Coles and MSC agreed in the 2022 financial year to incorporate dedicated modern slavery clauses into their commercial arrangements addressing the wellbeing of seafarers and other related human rights risks.¹²⁰ This was the result of extensive discussion and learning between human rights teams at both organisations, enabled by positive technical support from procurement, legal and commercial teams. Coles reports that it has since incorporated the modern slavery clauses as leading practice in its other international shipping commercial contracts.

Recognising the need to mobilise from contractual terms to human rights due diligence in practice, Coles and MSC initiated a pilot project to track how human rights-related contractual compliance obligations are being implemented in relation to the vessels used to transport Coles’ shipments, being the first agreement of its kind between MSC and any of its customers.¹²¹ As part of this project, MSC was able to track and report on 24 vessels out of more than 200 used for Coles’ shipments in the contract period, incorporating 842 seafarers on board.¹²²

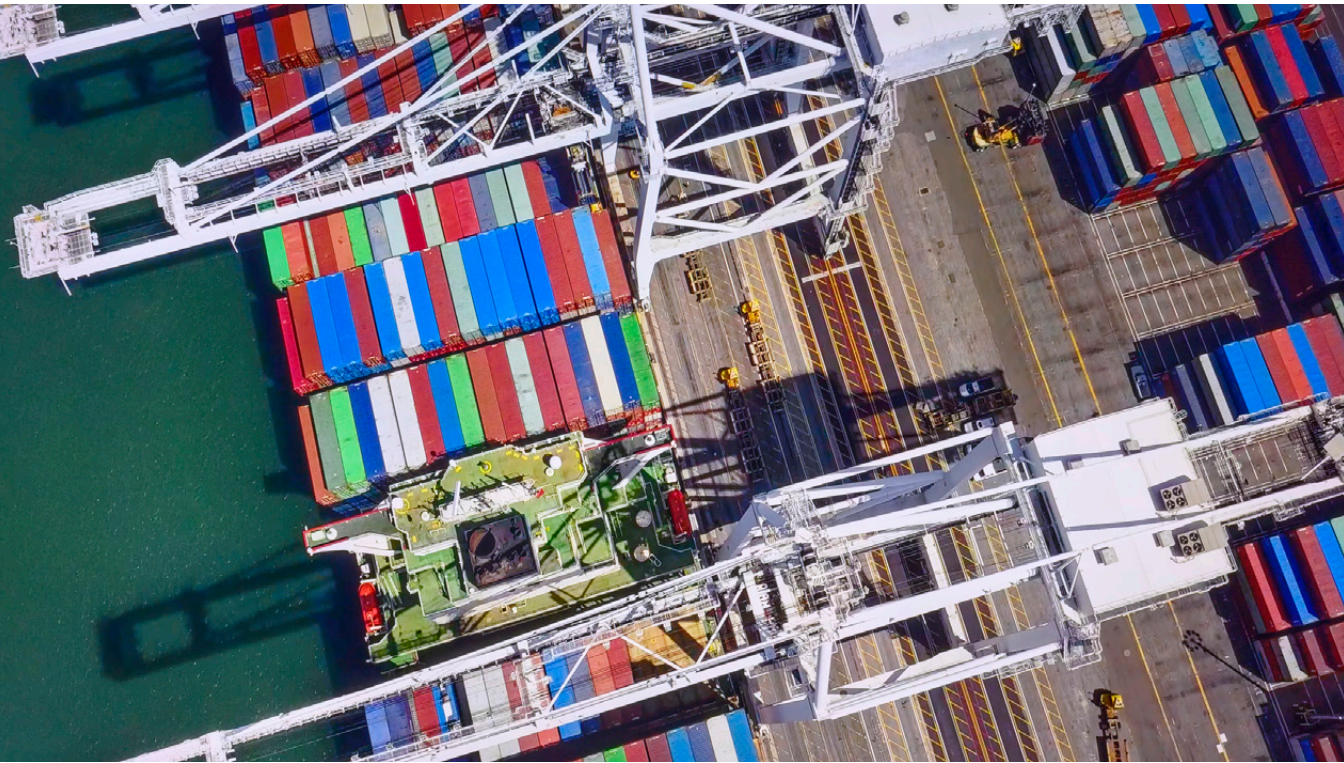
Initial results from the pilot project showed there continued to be COVID-related challenges in the shipping supply chain directly impacting on seafarers, including constant variation in COVID safety requirements at several ports. In some instances, this resulted in seafarers having to remain on board vessels longer than 11 months. These situations were directly handled by MSC through requesting ad hoc flag States’ permission to repatriate the workers. Additional measures were provided to alleviate seafarers’ distance from families and prevention of potential mental health

issues beyond compliance obligations, including provision of increased free internet access during their restricted shore leave period.

Efforts made by both Coles and MSC to scope the pilot project included reviewing trade routes for Coles’ shipments and a deep dive into seafarer numbers, shore leave, safe repatriation and crew changes, monitoring and evaluating crew wellbeing initiatives and the training of seafarers on their rights and related grievance mechanisms and reporting channels. Coles and MSC have committed to continually reviewing and learning from this pilot project and to explore pathways for scaling human rights due diligence in practice.

Collaboration and stakeholder engagement

Coles is also a member of the Responsible Shipping Dialogue, a multi-stakeholder forum convened by the IHRB.¹²³ The Dialogue acts as a forum for global brands, shipowners and operations, and seafarers’ representatives that aims to provide guidance for cargo owners on ensuring the undertaking of human rights due diligence in their shipping activities. Coles’ participation in this forum allows it to participate in discussion as well as generate a better understanding of seafarers’ welfare issues along with ocean carriers and other expert organisations. The collaboration between MSC and Coles highlights the value of building strong relationships with key suppliers, listening and learning from each other and acting upon opportunities for leadership and collaboration.



Case Study Two: Rio Tinto

Rio Tinto is a multinational mining and metals corporation operating in around 35 different countries. It operates as a combined group consisting of both Rio Tinto PLC that is registered in England and Wales, and Rio Tinto Limited that is registered in Australia. Rio Tinto mines and produces materials including iron ore, aluminium, copper, diamonds, lithium, scandium, titanium dioxide, salt and borates.

Rio Tinto owns 17 vessels whilst chartering 230 vessels at any given time, collectively with upwards of 6000 seafarers on board. This portfolio performs over 2700 voyages per annum.

Identifying and acting on risks

Rio Tinto has acknowledged that chartering vessels to transport materials creates modern slavery and broader human rights risks. Rio Tinto monitors these risks through its human rights due diligence framework and also collaborates with other stakeholders in its shipping supply chain to address these impacts, including the previous and ongoing impacts of the COVID-19 pandemic. Examples of how Rio Tinto has done this include the facilitation of crew changes for both its owned and chartered fleet, and its support for the *Neptune Declaration* to minimise the risk of COVID-19.

In 2021, Rio Tinto worked to address food shortages and supported the health of the crew on a ship chartered by a bauxite customer that had been detained by the AMSA. The company also conducted a gap analysis of its marine function's strategy on safety and welfare against key external human rights commitments and industry-leading practice.

Rio Tinto have also provided input as part of the Sustainable Shipping Initiative and Institute for Human Rights and Business' voluntary *Code of Conduct for Delivering on Seafarers Rights*. Rio Tinto is currently considering opportunities to both implement and support the Code.

Approach to marine risk assessments

Rio Tinto has reported several steps for identifying and assessing modern slavery risks relating to its shipping partners. Firstly, all vessels calling at its terminals must be RightShip vetted. This follows the strengthening of RightShip's human rights criteria to consider vessels with historical human rights abuses, poor living or working standards, gross failings of rights and employment terms and ILO abandonment cases in May 2021. In addition, a combination of both RightShip data and internal inspections conducted on vessels across Rio Tinto's fleet are used to confirm the standards on board meet Rio Tinto's expectations.

For example, Rio Tinto conducted an estimated 250 first and third-party on-board audits on vessels calling at its ports which included reviewing living and working conditions. This included increasing resourcing in Montreal to support its ports in Canada, and aligning with the resourcing model that supports its existing ports in Western Australia, Gladstone and Weipa, Australia.

Rio Tinto actively monitors the length of time crew are on

board its chartered vessels, working with the vessel owners to change crew before 11 months service in line with the MLC. This is verified through spot-chartered vessels to confirm with the vessel owner that the crew has been on board less than 11 months prior to chartering.

In 2021, Rio Tinto implemented a new process that requires its shipping agents to complete annual ethics and integrity training online, focussing on business integrity and referring to its supplier code of conduct and *The Way We Work* (its global code of corporate conduct). Rio Tinto also reported implementing enhanced due diligence checks that are conducted by a third party in line with its *Know Your Third Party* procedure.

Marine dry docking due diligence

In 2021, Rio Tinto undertook due diligence relating to modern slavery to select its dry-docking business partners for Rio Tinto-owned vessels. Dry docking of vessels refers to a mandatory maintenance schedule that happens at regular intervals (as set by international legislation) to ensure vessels remain safe to operate. During dry docking, typically a ship is brought to dry land to allow for inspection and maintenance works on any exterior parts usually below the waterline.

As part of Rio Tinto's due diligence process, a comprehensive physical audit of shipyards across multiple countries was undertaken using a range of criteria, including occupational health and safety, and human rights. The human rights aspect of the audit reviewed policies and processes concerning key human rights risk areas such as forced labour, child labour, discrimination and harassment, and access to a confidential grievance mechanism.

Audit responses were then reviewed by an internal human rights team, enabling them to set expectations of the shipyards and prospective suppliers around modern slavery risk management and the importance of discussing this at the prequalification stage.

Training and capacity building

Throughout 2021, Rio Tinto offered a range of marine training and capacity building activities for its staff. This included its human rights team conducting a human rights webinar for the marine function which included discussion of red flags for identifying modern slavery.

The company also regularly conducts human rights awareness-raising with ship management companies Anglo-Eastern and ASP Ship Management Singapore which are responsible for managing Rio Tinto-owned vessels. In 2021 sessions were held with ship managers on setting human rights expectations to provide clarity on expected standards.

Following a series of training and capacity building sessions in 2021, Rio Tinto has incorporated human rights into mandatory induction training for crew (including seafarers), supporting ship managers to assess modern slavery risks on board Rio Tinto-owned vessels, strengthen due diligence checks concerning the legal ages of crew members and evaluating survey options to measure seafarer wellbeing on board Rio Tinto-owned vessels.

RioTinto

Appendix

Appendix 1 - Definitions

Supply chain actor definitions

Carrier: A company that transports goods and/or people in its own or chartered vessels or equipment and is named as the carrier in the contract of carriage.

Charter: To hire a ship.

Charterer: A person or organisation that charters (hires) a ship.

Crewing agency: A company that fulfils the following functions: (i) Advertises a vacancy and gathers applications; (ii) Proposes seafarers/candidates to principals/clients; (iii) Arranges medical and visa requirements for outgoing seafarers; (iv) Arranges most local procedures/requirements for crew joining a ship; and (v) Is generally understood as providing 'recruitment and placement services' as referred to in the ILO MLC, 2006.

Crew manager: A company that employs seafarers on behalf of a ship manager or shipowner or on its own behalf.

A crew manager fulfils the following functions: (i) Signs crew management agreements with shipowners; (ii) Interviews seafarers, ensures all licences and certificates are authenticated and medicals and all other local requirements are satisfied; (iii) Selects appropriate and competent seafarers according to their service and experience and allocates them to relevant ships under management; (iv) May act as the maritime employer having all the judicial responsibilities for the crew; (v) Ensures that flag State laws of the ships are satisfied especially as regards to rank, qualifications and certificates of crew; (vi) Ensures that flag State laws are satisfied as regards employment regulations, crew tax and social insurance; (vii) Implements under its own name insurances for crew accident and crew protection and indemnity exposure; (viii) Administers crew and all their related issues.

Shipowner: The shipowner means the owner of the ship or another organisation or person, such as the manager, agent or bareboat charterer, who has assumed the responsibility for the operation of the ship from the owner and who, on assuming such responsibility, has agreed to take over the duties and responsibilities imposed on shipowners in accordance with the MLC, regardless of whether any other organisation or persons fulfil certain of the duties or responsibilities on behalf of the shipowner.

Shipper: The owner or suppliers of goods who entrusts them on board a vessel for delivery using a contract in the form of a charter-party or bill of lading or otherwise. These are individuals or companies that send or receive goods for transportation. They are usually the suppliers or owners of cargo to be shipped.

Ship operator: A ship operator is any company which operates the ship and is responsible for the operating costs, repairs and earnings of vessels. The operator may or may not be the owner of the vessel. Operating costs include crew wages, port charges, fuel, and hull insurance.

Ship manager: Ship managers are those who are, on behalf of shipowners or charterers or the ship operator, engaged in day-to-day management of the ship. In such a case, all commercial rights, obligations and consequences are undertaken by the shipowners or charterers or ship operators.

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