Dear City of Melbourne Meeting Group Team

This is a written submission in regards to the 29th September 2020 City of Melbourne Council Meeting and in particular Agenda Item 6.1 Records of Assemblies of Councillors.

Attached to this submission is the Report of the Special Commission of Inquiry into the Ruby Princess. Although this report emanates from NSW, and is over 300 pages in length, it does concern COVID-19 and an incident regarding a cruise ship on Sydney Harbour that had people on board who had the virus. This should be of interest to Councillors and perhaps the Risk and Audit Committee as the virus has impacted in a massive manner the City of Melbourne, and it may be of interest to regard and note how NSW responded to this issue.

Thanks to the Councillors, Management team ,Officers and in particular the administrative team for the detailed work involved in these important meetings.

For effective, transparent and good governance, the Records of Assemblies of Councillors is vital. Detailing who was participating in these meetings is important. Detailing the minutes of the meetings of the Risk and Audit Committee is vital for effective, transparent, good governance as well.

It's important for the Lord Mayor, Deputy Lord Mayor to show leadership and attend, and where necessary chair meetings. Especially meetings of significance to the City of Melbourne. That is good governance.

Priority in attending crucial meetings over preparing and having a press conference should be a must.

For example, at the State Government level, at the critical meeting where the policy direction of the Quarantine Hotel program was to be discussed and decided, one of the most important meetings in the last generation or more that concerned the health and wellbeing of the citizens of Victoria, it is astounding that the Premier of Victoria did not insist on chairing the meeting, being an active participant, listening to and reading submissions and being involved in the decision making process. Astounding.

For example, when the message - "My advice is that we go with private security companies", was delivered at the meeting, what a different world it would be if the Premier was the Chair. And in his concluding, summarising remarks he noted, the advice that we go with private security companies is one of the most ordinary pieces of advice that I have ever heard. The better option in my opinion is to have the ADF, with their skills knowledge and expertise in biosecurity involved. Regarding their chain of command ,their discipline ,their experience in securing perimeters under the most extreme pressure they have to be involved.

That would have been effective leadership.

The Separation of Powers under the Westminster System of Government should be considered.

There seems to be a manufacturing of consent in Victoria in regards to who decided on the policy direction of the Quarantine Hotel program. The notion being manufactured is that no one knows who gave the advice to not go with the ADF. It was some kind of vague trend towards a general consensus.The riff is, nobody knows.

A pertinent question is - Was a text message from Chief Commissioner of Police, Graeme Ashton that communicated -"My advice is that we have private security guards" tabled at the Coate Inquiry?

Was this reported in the Herald Sun?

If the Premier was chairing the meeting, a very important and critical State Government of Victoria meeting, there would be significant clarity regarding this matter.

Returning to the Records of Assemblies of Councillors, this is an example of transparent, good governance.

Councillors should also keep in mind that an understanding of the Separation of Powers under the Westminster System of Government is essential.

For a Premier to state that he has no idea who made the decision to not go with the ADF option is incredible. Staggering. He is acknowledging that he was not involved in the decision. This is a very serious matter. He is acknowledging that someone else was running the show there. At such a critical juncture. Incroyable verité.
Thanks again to the Lord Mayor, Deputy Lord Mayor, Councillors, management team and officers for all the work they do at these meetings.

Best regards
Chris Thrum

REPORT

New South Wales
Australia

Special Commission of Inquiry into the Ruby Princess

Report of the Special Commission of Inquiry into the Ruby Princess

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Australia

Special Commission of Inquiry into the Ruby Princess

14 August 2020

Her Excellency the Honourable Margaret Beazley AC QC
Governor of New South Wales
Office of the Governor
Macquarie Street
SYDNEY NSW 2000

Your Excellency

I was appointed by Letters Patent dated 15 April 2020, issued pursuant to the *Special Commissions of Inquiry Act 1983* (NSW), to conduct a Special Commission of Inquiry into the voyage of the Ruby Princess from 8 to 19 March 2020 and subsequent efforts to diagnose and treat, and to contain the community transmission of COVID-19 by, Ruby Princess passengers.

I now present to you the Report of the Special Commission, comprising one volume.

Pursuant to s 10(3) of the Act, I respectfully recommend that the whole of the Report be made public promptly as it deals with important matters of public concern.

Yours faithfully

Bret Walker SC

Commissioner

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Introduction and Overview

1.1 This Special Commission of Inquiry responds to the mishap that was the disembarkation of passengers from the cruise ship Ruby Princess on the morning of 19 March 2020. The setting, of course, was the COVID-19 pandemic then, as now, dominating the public health concerns of Australian governments, and people, like no single threat has in living memory.

1.2 The detailed account of the events immediately around the disembarkation is found in Chapter 7. The context provided by recent experience for the Ruby Princess is set out in Chapter 6. Critically, the development of public health procedures to meet this emergency is captured, in detail, in Chapter 5 – and its particular application during the crucial days of 18 and 19 March 2020 is tracked step by step in Chapter 8.

1.3 The considered assessment by this Commission of the quality of the public health actions that resulted in the disembarkation of so many passengers infected with SARS-CoV-2 (responsible for the possible disease outcome called COVID-19) is expressed in Chapter 9. More general assessment is found in Chapter 13.

1.4 The public health procedures and decisions were grounded in, and an attempt to carry out, requirements (including the exercise of legal powers) laid down by an interlocking system of Commonwealth and New South Wales (**State**) statutes and administrative rules and practices. They are described in Chapter 4, and to a degree critiqued in Chapter 11.

1.5 The Commission's evaluation of how an obviously unacceptable outcome could – and should – have been avoided or at least much alleviated is spelled out in Chapter 10, specifically with respect to how matters unfolded on the morning of 19 March.

1.6 Princess Cruises or Carnival, as the cruise ship business responsible for the passengers and crew is variously named in the Report, was notoriously the object of considerable blame and criticism in public discussion leading up to, and indeed during, this Commission. For the reasons that are explained in the body of this Report, such issues are not central to the course of conduct that brought about so many infected people departing relatively unrestrained that unfortunate morning from the ship, into the community – in New South Wales, other parts of Australia, and overseas especially in the United States of America. But it is not sensibly possible to pass over Carnival's part in this episode: Chapter 12 draws those threads together.

1.7 At this point, it should be noted that the Commission's Terms of Reference have not been regarded as encompassing all the matters concerning the welfare of the crew of the Ruby Princess that were pressed in that regard by the trade unions that represented those interests. Reasonable minds can no doubt differ on the merits of that decision by the Commissioner. The substantial claims by the unions for that expanded inquiry must be acknowledged. In the upshot, detailed consideration of the way the members of the crew were treated after the ship left Circular Quay following the disembarkation on 19 March was considered not to be unlike the way in which passengers, especially those who were infected and those who became sick, or died, were treated in the aftermath of the public health conduct that produced the disembarkation. Neither could be the subject of thoroughgoing inquiry by this Commission.

1.8 None of the comments in [1.7] above should be read as downplaying the gravity of the issues concerning the welfare of the crew. It was, and remains, very great. So was, and is, the position and fate of the passengers after 19 March 2020. The consequences of the dispersal, or scattering, of affected travellers (ie both passengers and crew) are self-evidently the most concrete of the public health and governmental reasons for this Commission's work.

1.9 The Commission commends the force with which those representing the unions and thus the interests of the crew reminded everyone of the basic human right to health and safety that is meant to protect individuals and communities, everywhere. That reminder was salutary. It was, overall, never contested.

1.10 The human consequences of the scattering upon disembarkation have not yet played out. That is the salient feature of an uneliminated infectious pandemic. An attempt to convey the current state of affairs is made in Chapter 14. Its facts and figures simply cannot convey the burden of pain, suffering and grief that COVID-19 has wrought on the Ruby Princess travellers. Those paramount matters were touched on in the evidence given by a selected sample of passengers. The Commission is indebted to these witnesses, whose affecting and dignified words are most eloquent. Inadequately, the staff of the Commission and I here record our deepest sympathies to the bereaved and the sick, and the disabled, who have suffered as a result of the Ruby Princess outbreak of COVID-19.

1.11 Here, it must be understood that the shortcomings in the public health response that are found in detail in the body of the Report are by no means to be regarded straightforwardly as causes of the suffering that has followed. There are several aspects to this cautionary note. First, as will be clear from the body of the Report, the Commission's inquiry is not at all the same as a common law adjudication, say, of actionable negligence. The Commission is fulfilling an executive, not judicial, function. Second, hindsight is used throughout the Report in order best to inform as to what went wrong and how it might be avoided in future. That exercise has only limited resemblance, nowhere near complete, to a court's investigation of *sine qua non* causation, and to a court's prospective judgement of alleged failures to achieve a reasonable standard of care.

1.12 Third, in particular, the implications of transmitted infection that are characteristic of this virus render near imponderable the reconstruction of what might have been, let alone on the balance of probabilities. As noted below, the tactic of home self-isolation, as was required of the Ruby Princess passengers, is in any event a really useful way to contribute to suppression of transmission. To what extent stricter transport and quarantine measures would have actually reduced the community burden compared to that which did follow from the scattering upon disembarkment is not reasonably possible to say with any confidence. The role of chance, or happenstance, in such networks of transmission is not so easily eliminated. Uncertainty is a constant. The speed with which people become infected at several removes is remarkable, probably partly because of the currently understood fact about the virus that it can be transmitted by persons who are, in the jargon, asymptomatic or pre-symptomatic – people who don't have, or yet have, reason to believe they are themselves already infected. (An instructive and readable illustration of this cardinal feature of SARS-CoV-2 is an article by Christian Tym, "How One Person Spread Coronavirus to at least 71 People".[1])

1.13 A general narrative of contextual events is found in Chapter 3. The key findings of the Commission in direct response to its Terms of Reference, including recommendations for future action, are found in Chapter 2.

1.14 What follows are the Commissioner's final reflections on this sorry episode. (It need hardly be stressed that they do not detract from the detail and specific content of findings recorded in the body of the Report.)

1.15 At the outset, the abiding impression is of seriousness: of the threat, and of the spirit in which officers of the State sought to meet it. We were not prey to the cavalier falsehoods spread by some, including the leaders of other nations affected by this pandemic. The medical science, provisional and early as it must be for this novel coronavirus, was at all material times well appreciated in important respects. First, the virus is lethal, as daily reports of deaths attest. Second, the virus can leave survivors of COVID-19 with grave disabilities and diminution in quality of life. That is, both mortality and morbidity were understood to justify prompt and vigorous precautions against community transmission.

1 See *A Rich Life*, Issue 32, 14 July 2020, https://arichlife.com.au/4-real-life-examples-of-how-covid-19-clusters-happen/ (By way of disclosure, this periodical is owned by the Commissioner's son.)

1.16 Third, on the other hand, touch wood, it seems that a sizable proportion of those infected have not (or have not discernibly, yet) experienced disease let alone serious disease. Long may that continue to be observed. However, as a phenomenon widely believed, this aspect of the virus clearly poses a community risk of complacency – along the lines of "It very likely will not harm me or mine". It does seem that the initial perception, perhaps still true by and large, that younger people are less susceptible to the virus exacerbates this state of affairs, given the common larger risk-taking by this part of the community. In the absence of ideal altruism, this attitude scarcely encourages the punctilious observance of distancing, hygiene and masking now universally thought to be indispensable for a strategy of suppression, let alone elimination. Thus, public health measures are compelled by biological and social circumstances to have to the forefront restraints on personal liberty that would not otherwise or normally be tolerable in a free and confident society.

1.17 Fourth, and for this Commission of central importance, is the evolving realisation as the medical world urgently studied the natural histories of SARS-CoV-2 and COVID-19 that the virus could be transmitted by those who had felt no symptoms (mainly, of a general respiratory kind, although not wholly so). Whether such infected carriers never developed disease (leaving the notion of occult pathology aside at present) ie the so-called asymptomatic, or did not do so until after they had transmitted the virus to another or others, ie the so-called pre-symptomatic, the implications are, and were by 18 March 2020, clear. Uncertainties, and approximations from early data, as to the incubation period, and related questions as to the potential for transmission onwards very soon after infection, should have led to one plain conclusion in public health thinking – namely, that preventing the promiscuous mingling of contacts of cases in the community was vital. It was simple to choose as a response. As should have been, and probably mostly was, appreciated by public health officials, a knowing failure to restrict the mingling of contacts (including asymptomatic and pre-symptomatic carriers) would amount to the knowing failure to take an elementary precaution.

1.18 The challenge of asymptomatic transmission (as the feature noted in [1.17] above will be called for convenience) includes the large doubts and unknowns as to its significance and extent. But, well before 18 March 2020, its likely reality was well accepted in the public health field. As the evidence before this Commission showed, it followed quite simply that the design of safeguards against community spread could not reasonably regard possible cases (ie sources of possible spread of infection) as confined only to those persons currently suffering relevant symptoms. That simple approach comes from the basic precautionary mission of public health, acutely to the fore in the case of an infectious pandemic. Applied to COVID-19 facts (or working hypotheses) accepted well before 18 March, the approach should have led to reasoning along these lines:

- There is a real possibility that merely checking for symptoms will miss the presence of infected persons.
- There is a real possibility that those (then) asymptomatic carriers may transmit the virus to others in the community.
- Infection presents a real possibility of death, suffering and disability.
- The risk of transmission is substantially reduced and contained by isolation or quarantine, if it is properly policed and maintained (including as to its permitted cessation).
- Unless there are countervailing factors against isolation or quarantine, that precaution should therefore be taken in relation to everyone who should be regarded as a contact, or close contact, of a case.
- The effectiveness of isolation or quarantine in restricting community spread of infection is reduced the longer its commencement is delayed from the time of possible transmission.

1.19 This simple reasoning long predates COVID-19. It predates, in its essentials, modern germ theory of infectious disease. It constitutes a very old form of empiricism in public health, familiar from tales of the plague. In short, the fact that SARS-CoV-2 is a novel coronavirus certainly did not, according to the evidence and common sense, detract from the validity of this simple approach. If anything, the shortage of reliable data and rigorous analysis rendered inevitable by the novelty of the virus, or at least its disease, amounted to a very powerful reason to proceed along the lines sketched in [1.18] above. As was said of the supposed Chinese approach observed by a World Health Organisation mission in February 2020, this simple approach is "very standard and what some people think of as old-fashioned public health tools", involving "case finding, contact tracing, social distancing, movement restriction… to try and stop a new emergent respiratory-borne pathogen".[2]

1.20 Of course, central to the simple approach sketched in [1.18] above is the vital step, and resource, of testing. It was not technically possible to prepare the necessary polymerase chain reaction laboratory procedure on board cruise ships. So swabs of so-called suspect cases had to be taken and properly stored for delivery to testing facilities on shore, a logistical exercise discussed in the body of the Report in several contexts. Obviously, the results of such delayed testing would be critical to the decision whether to regard a cruise ship as having on board one or more cases – so-called confirmed cases upon a positive result. Logically, before these results were known, the suspect cases could all have been assumed to be infected (and thus, they at least, assumed to be carriers – and to have been for some time during the voyage). Because by 18 March 2020 all travellers on a cruise ship were considered to be close contacts of even one case on board, that logical and precautionary assumption should at least have justified the public health authorities taking steps to prevent passengers (and, if their disembarkation were proposed, members of the crew as well) from scattering into the community after disembarkation.

2 Bruce Aylward, quoted in James Meek, "The Health Transformation Army", *London Review of Books* 2 July 2020, 15.

1.21 The logic in [1.20] would proceed on an assumed basis only until the results were known from the swabs taken from suspect cases on board. If all were negative, whatever arrangements were preventing disembarkation could be stopped, and travellers left to scatter or isolate according to a further public health assessment. By 18 March, that assessment required home isolation, but was unclear as to onward travel and transportation home, as described in detail in the body of the Report. One way to explain the mishap of the Ruby Princess on 19 March is that it came about because of a failure to follow this logically compelling pathway. And, it should be clear, the reasoning is not arcane, esoteric, scientifically challenging or socially extreme.

1.22 The alternative is false logic – ie to treat the ship as having no cases (ie carriers of the virus) on board because the results from testing were not yet known. A positive result would not convert the position from "no cases" to "one or more cases" – it would not alter the biological facts that the tests are designed to detect. Put another way, every suspect case had to be regarded as a real possibility that it was a case, a status which would be "confirmed" if a test result proved positive for the virus. Again, this does not now, in hindsight, appear abstruse or obscure. Neither was it so beforehand, well prior to public health decision-making on 18 March.

1.23 A third course should also be examined. Any logic to it, given the precautionary stance mandated by the threat of COVID-19, is completely lacking. That course would be, not to treat suspect cases before learning test results as not-cases, but to regard them as some intermediate or hybrid category, perhaps maybe-cases – but without proceeding therefore to make public health decisions in light of the possibility that they or some of them were in fact cases. There are no empirical data, then or now, to suppose any biological reduction in the threat of the disease or transmission from such suspect-cases-before-test-results, compared with confirmed cases. Common sense militates against the logistical factor of delayed test results producing any such difference. This third course probably did not directly inform what happened on 18-19 March, but serves to illustrate the muddled notion of not awaiting test results.

1.24 Once at least one positive result is known, it follows from the approach in [1.18], public health decisions can proceed to consider more fine-grained tracing, further testing of really close contacts, or of everyone. Testing may also permit genetic investigation, which has the potential to permit even better informed protection of the community. "Clusters," so-called, can be more accurately mapped. Compulsory restraints on liberty could thereby be focussed on informed rather than assumed caution.

1.25 And it should go without saying, but cannot in light of President Trump's unprincipled intransigence, that it is wrong, and immoral, to assert that "If we tested less, there would be less cases" [sic].[3] Less testing does not mean fewer cases, but, rather, less intelligence.

3 Presidential tweet quoted in *The Guardian*, Edward Helmore "Donald Trump claims Anthony Fauci 'wrong' about cause of COVID-19 surge", 2 August 2020.

1.26 As explained in the body of the Report, the proper approach to the COVID-19 threat posed by the Ruby Princess's nearing the Heads on 18 March 2020 called for the travellers on board to be regarded, in the absence of test results being known, as presenting a real possibility – not remote, not fanciful – that they included one or more infected people who could transmit the virus and perhaps spark an outbreak of infection, if no steps were taken to prevent or limit that outcome. And, wisely, the public health authorities had already decided that everyone on board a cruise ship should be regarded as a "close contact" of any COVID-19 cases on board. That is, the precautionary approach to the potential for contagion saw all cruise ship travellers as people whose health and movements (in the community) needed to be monitored and controlled if there had been even just one confirmed case on board with them. It followed that discovering whether the critical link existed had to precede any scattering upon disembarkation. It thus followed that awaiting test results was rudimentary and very important.

1.27 A great deal of the Commission's work addressed the evolving public health methods to meet the risk of COVID-19 on cruise ships arriving in Sydney. Much of that is common to the general efforts to meet that risk as it presented in the full range of circumstances, especially social mingling and travel. This Inquiry is emphatically not a comprehensive review of those overall, comprehensive and continuously adapting public health efforts. The focus rather was on the procedures devised specifically for cruise ships, and on their application on 18-19 March 2020 for the return of the Ruby Princess.

1.28 At bottom, the weakness in the procedures iteratively revised in February and March 2020 for cruise ships was the lack of robust redundancy in the screening of possible SARS-CoV-2 infections on board arriving cruise ships. As it turned out, the chances of human error leading to very undesirable social outcomes were not sufficiently reduced. It is part and parcel of all systems of human conduct that occasionally someone will make a mistake, or fail to achieve a reasonably required standard. There is no doubt that the public health officials involved in the Ruby Princess disembarkation well realised this perennial aspect of human (including bureaucratic) behaviour. A question for this Inquiry is whether it was appropriately accounted for in the design and execution of the relevant procedures.

1.29 On the whole, the State public health officials did adequately attempt to protect the public health against COVID-19 on cruise ships, by reference in particular to the need to check for human error. However, and it is a big however, their attempts sadly miscarried in this event. Had Ms Ressler not failed to update the epidemiological criterion (ie overseas connexions of travellers on board), it might be thought, at first sight, that a different assessment must have been made by the Expert Panel which actually assessed the Ruby Princess as "low risk". As the detail in the body of the Report tries to explain, however, this would not be a fair or complete view. The fact is that the Expert Panel knew, as well as Ms Ressler as a senior epidemiologist knew, that during the voyage the class of possibly suspect cases of COVID-19 had substantially expanded by inclusion of the criterion of any recent presence overseas (such as arrival from the USA for the cruise). Members of the Expert Panel, not only Ms Ressler, failed to realise and act on this information. Combined, it was a serious mistake that contributed to the relatively unrestrained scattering of passengers on 19 March 2020.

1.30 As the discussion above shows, the failure to await test results on 19 March is a large factor in this Commission's findings as to the mistakes and misjudgements that caused the scattering of infected passengers. As it happened, two other factors in relation to testing were also significant, if not so causally important. First, the avoidable delay in testing and notifying its results could have had real public health consequences – although the hypotheticals are quite beyond confident reconstruction. The sooner test results were appreciated, the sooner the scattering could be pursued and contact tracing (and associated further testing) carried out. Contacts multiply over time, if people are not completely isolated or quarantined (and then, sadly, subject to imperfect observance producing spread of infection, as in Melbourne recently).

1.31 Second, the small number of swabs taken on board the Ruby Princess and available for testing early on 19 March represented a woeful shortcoming in the stipulated number. As the number of swabs reduces, so does the possibility increase that as a sample it will miss any COVID-19 cases: that is not difficult reasoning, and presumably informed the prior explicit requirement that a COVID-19 swab be taken from every respiratory-symptomatic traveller using the ship's medical facilities during the cruise. In a sense, it was lucky that the too small sample available on 19 March did produce positive results that could produce a belated public health response.

1.32 The reasons for the shortage of swabs are examined in the body of the Report. No doubt supply chains were stretched as the pandemic flourished. But it cannot constitute prudent public health administration to have tolerated a profitable leisure business like Carnival knowingly taking the risk of insufficient swabs to comply with pre-existing requirements.

1.33 Furthermore, given the expectation that there should have been as many swabs as there had been medical attendances for respiratory symptoms, and the huge deficiency notified to NSW Health as the Ruby Princess approached Sydney, the obvious response was to arrange for dockside swabbing of all such travellers, with swabs made available from the shore. The Commission obtained no satisfactory justification for omitting that fallback precaution.

1.34 One way of asking how things may have turned out better than they did is to remove, hypothetically, the basic mistakes committed by failing to observe pre-ordained public health procedures. The main ones are the out-of-date epidemiological criterion relating to travel from overseas, and the shortfall in swabs. If the serious mistake concerning the former had not been made, the Expert Panel would have been alerted of more than one hundred rather than zero travellers meeting that criterion for suspect cases. If the latter had been rectified dockside (if not by more efficient supplies earlier), then more disease intelligence would have been available – assuming results were not delayed – for more rapid response. And overall, it seems clear the dangerous scattering of passengers either would not have occurred, or else it would have been safeguarded with better social distancing, masking and supervised isolation or quarantine. But it is impossible to estimate how much better the outcome would have been with any really solid numbers: too many variables and sensitivities render modelling of alternatives an exercise with diminishing returns. What can confidently be concluded is that we – New South Wales and the broader community – would have been very likely considerably better off with respect to COVID-19 had those mistakes not been made.

1.35 The grading of assessed risk and response is a prominent feature of the procedures devised for COVID-19 on cruise ships. As a general method or mode of public health thinking, it is unexceptionable (and unexceptional). However, if only in hindsight, one wonders whether 3 stages from "low risk" meaning no precautions to "medium risk" meaning some precaution but not awaiting test results to "high risk" meaning awaiting test results before passengers scattered, was much of an aid to the public health decision-making called for by the COVID-19 threat. As explained in the body of the Report, the infectiousness of SARS-CoV-2 was understood to be such as to mandate taking all reasonable steps to prevent its spread from a cruise ship. Even a so-called "low risk" was never worth running. And it was a dichotomy, surely – either hold everyone until test results were received, so as then to make appropriate decisions to prevent spread, or not. Given the nature of the virus and the pandemic, that latter choice surely could be made only if there were effectively no risk – and the Ruby Princess on 18 March 2020 was emphatically not in that category.

1.36 This Commission's evaluation of the public health conduct on 18-19 March 2020 in relation to the Ruby Princess takes into account some candidates as countervailing factors against the approach described in [1.18] above. Was expense, public or private, a reason not to await results in order to consider eg quarantine arrangements rather than scattering? No – and the massive knock to public and private wealth as a result of every outbreak of COVID-19, including from the Ruby Princess, explains why concern about expense would never have justified a passive response. The public health officials did not act on the basis of false economy.

1.37 Was a disinclination to inconvenience returning passengers, especially our overseas guests, an explanation for the Expert Panel's assessment of low risk and not awaiting test results? No, again. Although personal liberty was properly considered, the evidence does not suggest that some misplaced preference for an individual's freedom from restraint over the community freedom from further infection motivated the course taken. Indeed, Carnival employees, as noted in the body of the Report, were actually surprised by the decision to allow disembarkation without further ado. Notwithstanding the probable absence of this factor from the Expert Panel's assessment and decision, nonetheless it is clear that far too much is made in public discourse about such liberty interests as coming anywhere near to outweighing the imperative to safeguard community health (here, and elsewhere). There was no inkling of any such sentiment in the evidence and other material about the feeling and opinions of the Ruby Princess passengers themselves. Rather, many of them voiced the decent regret that they may have unwittingly contributed to the spread of infection.

1.38 What about the risk of infection posed to passengers kept on board? Was the then recent experience of a rapidly and widely spread outbreak on the Diamond Princess in Japan a reason that drove a decision to get passengers off the Ruby Princess as soon as possible? It has to be said immediately that members of the Expert Panel did not say so, and the finding is that this fear did not motivate their decision. If it had, so much the worse, given the scarcity of swabs, the lack of health assessment on board, the omission of further swabbing of suspect cases, the lack of social distancing or masking upon disembarkation and onwards travel, and the merely standard home self-isolation requirement. That would have been on any view a sub-standard response if the Ruby Princess were in fact considered already to be so dangerous as a seat of infection that passengers should not be kept on board even for a few more hours in their own cabins.

1.39 Unfortunately, some retrospective defences of the State public health response included mention of the risk of infection for all passengers remaining on board to await test results from suspect cases. That consideration did not cause the decision that was actually made, and neither should it have, in light of the matters noted in [1.38] above. It might have justified urgent and secure removal into strict quarantine, but alas did not do so.

1.40 The experience of conducting this Inquiry confronts one with the unpleasant possibility of forming and expressing adverse judgement of one's fellows. It is all the more unpleasant when they are genuine experts, truly public servants, and hard workers. The Commission's Terms of Reference do oblige me to do so, if I reach relevant conclusions. I have done so, as noted in this Chapter and throughout the body of this Report. It is accordingly right that I acknowledge as Commissioner that these imperfections in the State's public health work on 18-19 March 2020 in relation to the Ruby Princess should not be taken as damning condemnation of the individual public servants involved. The lapses identified are not in some way typical or characteristic of them or their colleagues. Some of these estimable individuals, as the evidence showed, remain in charge of weighty aspects of the State's frontline response to the pandemic. I have to say that my confidence in their good faith and skilled diligence in these continuing efforts was not dented by the criticism I have expressed about the Ruby Princess episode. Everyone makes mistakes, and when we judge one another we should bear that in mind. As Commissioner in this Inquiry, I have been made sharply aware that, while we all make professional mistakes, the burden and stress created by life-and-death consequences in some but not all professions should engender sympathy and regard for those (like the Expert Panel in this case) whose duties are carried out under the weight of such consequences.

1.41 *Pace* the Prime Minister, it is not an adequate answer to scrutiny of a public health official's conduct in this Inquiry to assert that he or she was doing their best. The question this Commission's Terms of Reference presents is whether, on this occasion, that was good enough – not in order to stigmatize or denounce, but in order to explain and learn. Inherent in the comments made in [1.40] above and in this [1.41] is the considered acceptance by this Commission of the genuine engagement by all the public health officials whose conduct has been examined in this Inquiry, in the difficult and multifarious tasks and challenges posed by COVID-19, of which the cruise ship program, and the Ruby Princess on 18-19 March, was but one integer of one part.

1.42 Other systemic details of the decision-making on 18-19 March are described and assessed in the body of the Report. One theme common to some of them warrants noticing in these general reflections. When legal power is being exercised, including when a legal duty is being performed, a modicum of formality probably helps rather than hinders. This is not at all a plea from a lawyer for more red tape – perish the thought. Rather, it suggests that tasks such as considering whether to grant pratique (ie permission to disembark or unload a ship or aeroplane) lend themselves to deliberate, explicit mental consideration of all relevant matters. Understood as a servant and not as a master, it is a suggestion for an ordered approach akin to a checklist. If more than one officer participates, the redundancy enhances the prospect of avoiding critical errors. Part of such an ordered approach will usually be a near contemporaneous written (or digital) record, including of informative communications. All the crucial steps on 18-19 March 2020 in relation to the Ruby Princess would have been improved, most likely, and for the public benefit, had this traditional formality been more thoroughly observed. No decrement in speed of process, or appreciable increment in administrative burdens on busy officials, would have resulted. And, most likely, a slip like the out-of-date epidemiological criterion would not have gone undetected had members of the Health staff and of the Expert Panel expressly checked off an item eg of consistency with current CDNA requirements.

1.43 As the body of the Report exhaustively sets out, the governmental powers and responsibilities brought to bear on the matter of responding to the threat of COVID-19 on board the Ruby Princess on 18-19 March 2020 are by no means straightforward to describe. The legislative drafting is, unfortunately, touched with the puzzle-making flair that is a part of our national legal genius. And, above all, the scheme (if it deserves that label) is explicitly an essay in co-operative federalism – Commonwealth and State officials all playing a part in an overall combined endeavour. At the outset, it is worth remembering that procedures for protecting us from health risks when passengers disembark from cruise ships are a very good example of useful and sensible co-operative federalism: because quarantine, overseas trade and immigration are Commonwealth powers and intrinsically national (quarantine, not only national), and because health regulation in the territory of a State is, naturally, among the most pressing of the so-called police powers (constitutional, not constabulary) of the State. In any event, this Commission sees no reason to deprecate the concurrent operation, in particular, of the Commonwealth's *Biosecurity Act 2015* and the State's *Public Health Act 2010*.

1.44 The carpentry of delegated legislation and statutory instruments involved in the steps leading up to and comprising the grant of pratique is described and somewhat criticised in the body of the Report: the criticisms are not major. The administrative arrangements by which the Commonwealth's Department of Agriculture, Water and Environment (**DAWE**) interacts with the State's Department of Health are also described and evaluated, not entirely favourably: but again without major flaws. Overall, the system on 18-19 March was workable. Unfortunately, it did not work completely as intended, for the Ruby Princess, in the various respects identified in the body of the Report.

1.45 The relevant legislative provisions make it crystal clear that the Australian Border Force (**ABF**), despite its portentous title, has no relevant responsibility for the processes by which, by reference to health risks to the Australian community, passengers were permitted to disembark from the Ruby Princess, as they did, on 19 March 2020. The absence of any such duty no doubt explains why the ABF is not granted specific powers in relation to pratique, and why there are no appropriate postings of medical practitioners or epidemiologists in the ABF ranks.

1.46 The position is not so plain with respect to DAWE, to whose officers the final decision on pratique is committed by the *Biosecurity Act*. What is clear, albeit after careful perusal of dense statutory language, is that a so-called Biosecurity Officer, a member of DAWE staff, will grant pratique for a cruise ship like the Ruby Princess on 18-19 March only on the favourable word of a so-called Human Biosecurity Officer – here an officer of the State's Department of Health. This sharing (or division) of functions to achieve one administrative outcome (ie pratique) so as to advance the shared social goal of protecting the Australian community from the pandemic is, by and large, not too bad – intended as faint praise. Ways in which, mostly administratively and co-operatively, it could be improved are suggested in the body of the Report. The Government should try to persuade the Commonwealth authorities to participate in that project of very feasible improvement.

1.47 Given its lack of medical or epidemiological expertise, it is well for the public good that the ABF (and, for that matter, the Department of Home Affairs) do not bear any responsibility for the Ruby Princess mishap. As this Report was being finished, some interesting journalism was published that advanced the notion that a basic misreading by an ABF officer of negative influenza results as meaning negative COVID-19 results, had somehow contributed to the decision to let the passengers go as they did on 19 March. As the body of the Report spells out, that is not correct. It was the State's Expert Panel that made the operative decision, relayed accurately (if by a clumsy means) to the DAWE Biosecurity Officer who granted pratique. That seems by far to be the most likely understanding of what happened, by dint of administrative conduct that undoubtedly could have been more crisp and formal. To repeat, neither the ABF nor any ABF officers played any part in the mishap.

1.48 Part of the purpose of the Commission publishing as much of the evidence, other material and submissions in as close to real time as possible was to inform the public and, therefore in particular, journalists. It is a pity that serious journalism, as both the broadcast and press stories were, seems to have proceeded on this erroneous basis of a part played by the ABF. No doubt the procedures and the narrative are not easy to analyse, and no doubt the ABF officer's error was a striking one to have made (if anything, vindication of a system keeping the ABF well clear of the public health assessment).

1.49 Occasionally during this Inquiry, there has been political and public comment to the effect that this Commission should question the State Minister for Health about the grant of pratique and associated public health administration. This Commission would certainly have done so, concerning public health administration, if questions of substance had arisen about the law, the organisation of the Department, its resourcing (including recruitment of appropriately expert officers), or the like. Nothing of those kinds did arise. Perhaps those making calls for the Minister to appear at a Commission hearing during the Inquiry had in mind some version of the rather nebulous so-called Westminster theory of ministerial responsibility. This report is not the place to expatiate on the unsatisfactory nature of this idea, that does not really warrant being called a doctrine. Of course a Minister should resign in some circumstances, but as this Commission sees it, without wading into the partisan politics, this case would not appear to fit that outcome. The failures were professional – failures in decision-making by experts. They are not, as to their expert judgements, subject to Ministerial direction. Nor should they be, unless our system of government were to become farcical. Respectful as this Commissioner is of political accountability, especially in the parliamentary chambers, this Commission saw no aspect of Ministerial conduct that amounted to any action or inaction of any relevance to be investigated in this Inquiry – let alone by calling the Minister as a witness.

1.50 The running of this Inquiry could not have proceeded without the assistance of the represented parties and the witnesses. Without exception, their industry and frankness, respectively, were of the highest order. I am most appreciative of these efforts, professional and personal.

1.51 The Commissioner of Police, and his staff, were of great assistance, not only in providing the product of much prior investigation, but also in facilitating the unexpected early hearing of the Commission when the Ruby Princess's departure from Australian waters was delayed.

1.52 There were concerns raised during the Commission's hearings directed to grievances raised by published statements by the Commissioner of Police that could be understood as critical of other parties, such as Carnival employees. Those statements have not influenced any of the findings in this Report. Addressing them is not, on balance, necessary within the Terms of Reference.

1.53 The one fly in the ointment so far as assistance to this Commission goes, is the stance of the Commonwealth. I hasten to exclude the lawyers for the Commonwealth, whose written assistance and production of materials are very much appreciated, in the circumstances. Those circumstances are dominated by the assertion on the Commonwealth's part of an immunity from any compulsory process of a State's Special Commission of Inquiry. A Summons to a Commonwealth officer to attend and give evidence about the grant of pratique for the Ruby Princess was met with steps towards proceedings in the High Court of Australia. Quite how this met the Prime Minister's early assurance of full co-operation with the Commission escapes me.

1.54 This waste of time and resources, when time, in particular, was always pressing, was most regrettable. As the quality and helpfulness of the voluntary submissions by the Commonwealth demonstrated, there was no problem of resources or governmental embarrassment conducing against the Commonwealth fully co-operating with this Commission, by providing one of its officers to give evidence. It may even be that, had this happened, the confusion about the ABF noted in [1.47] above could have been avoided. It seems that this practical approach was swamped by a determination never to concede, apparently on Constitutional grounds, the power of a State Parliament to compel evidence to be provided to a State executive inquiry (such as a Royal Commission or a Special Commission of Inquiry) by the Commonwealth or any of its officers, agencies or authorities.

1.55 This is also not the place to set out arguments for and against this Commonwealth position. As a South Australian Royal Commissioner, I have previously expressed views contrary to the Commonwealth's stated position. I maintain those views. Further, I continue to believe that this difference about something as fundamental as a State's legislative power to bind the Commonwealth to assist in a State inquiry just as every other legal person in Australia would be obliged to do, disfigures the area of co-operative federalism. For example, in this case, it is of great governmental significance to New South Wales to study and inform the public health arrangements by which the risk of COVID-19 on the Ruby Princess was addressed. One hopes the Commonwealth also perceives that significance. But until this constitutional impasse is cleared, the State should re-consider its arrangements such as under the *Biosecurity Act*, so as to procure advance approval for mutual access to information by the co-operating polities. Meanwhile, perhaps the *Special Commission of Inquiry Act 1983* should itself be reviewed and modernised (along Victorian lines, perhaps) so as to clear the decks for argument only about the alleged Commonwealth immunity.

1.56 It remains to recognise as prominently as possible the merits and efforts of the small and splendid team who assisted me in this Inquiry. Valentina Markovina and Susan Kent provided indispensable and high-quality support. James Loosley and Luke Teo have shown excellent legal acumen and very impressive research, investigation and reporting skills: they imbue real confidence in their new generation of lawyers. And in Jennifer Hoy, the Commission has had unfailing insight, industry and constant support: her writing is at the heart of this Report. Nicolas Kirby has done all, and more, that could be asked of counsel assisting, with an energy and application of great benefit to the public. Finally, and again, my thanks to and admiration for the central part taken by Richard Beasley SC are difficult to convey without gushing. I thank all the Commission's staff, and commend each of them for the public service they have done.

2

Key Findings and Recommendations

Key Findings

Chapter 9

2.1 On 10 March 2020, the CDNA amended its Guidelines, such that all persons on board the Ruby Princess with an ARI or ILI became suspect cases for COVID-19: meaning they should all have been tested for the disease. The Expert Panel did not have this suspect case definition in mind when they conducted their risk assessment on 18 March. This was a serious and material error.[1]

2.2 The Expert Panel was not helped by the drafting of the risk assessment form, which was not updated with the new "suspect case" definition. This too was a serious error.[2]

2.3 The risk assessment form should have been drafted so as to clarify for the Expert Panel whether persons on this ship who had symptoms of respiratory illness were told in advance of assessment at the onboard medical centre that the consultation would be free of charge.[3]

2.4 The ARD Log should have been read by all members of the Expert Panel. They should have noticed the "significant spike" in ARI/ILI rates on the ship, particularly on 17 March. They should have requested an updated log either late on 18 March, or early on 19 March. These are all serious errors.[4]

1 [9.7](h), [9.9]-[9.15], [9.23]-[9.24], [9.112].

2 [9.16]-[9.22], [9.113].

3 [9.32]-[9.41], [9.114].

4 [9.42]-[9.57], [9.115].

2.5 A graded risk assessment approach may at times provide a useful framework for public health risk assessments. It did not here, either before 10 March, or after. It was a distraction from the real questions: what are the consequences of the risk eventuating, and what are the appropriate precautions to take in light of such consequences?[5]

2.6 An ILI rate of 1% or more had some utility for the assessment of whether COVID-19 was circulating on the Ruby Princess during the 8 March voyage. That utility was limited. The more important question was: are there suspect cases of COVID-19 on board the ship?[6]

2.7 NSW Health should have ensured that cruise ships were aware of the change to the definition of a "suspect case" for COVID-19 made on 10 March. This would have resulted in the identification of such cases on the Ruby Princess. 101 persons fell within the suspect case definition by 18 March, and 120 by the time the ship docked. NSW Health should also have ensured that such persons were isolated in cabins. These were serious mistakes by NSW Health.[7]

2.8 The failure to ensure that swabs were collected by an onboard health assessment team in accordance with the requirements of the 9 March Enhanced Procedure was a serious failure by NSW Health.[8]

2.9 The delay in obtaining test results for the swabs taken from the Ruby Princess on the morning of 19 March is inexcusable. Those swabs should have been tested immediately.[9]

2.10 In light of all the information the Expert Panel had, the decision to assess the risk as "low risk" – meaning, in effect, "do nothing" – is as inexplicable as it is unjustifiable. It was a serious mistake.[10]

Chapter 12

2.11 In relation to the insufficient supply of swabs available to the medical staff on the 8 March voyage of the Ruby Princess, no criticism is made of Dr von Waztdorf.[11]

2.12 Dr von Watzdorf gave a truthful answer to the question on the pre-arrival risk assessment form as to whether health assessments in relation to respiratory illness were provided free of charge.[12]

5 [9.58]-[9.79], [9.116].

6 [9.80]-[9.87], [9.117].

7 [9.88]-[9.93], [9.118].

8 [9.94]-[9.107], [9.119].

9 [9.105]-[9.106], [9.110], [9.120].

10 [9.108]-[9.111], [9.121].

11 [12.16]-[12.17], [12.19], [12.43]-[12.50] and [12.71].

12 [12.51]-[12.53], [12.72].

2.13 No criticism is made of Mr Little for not informing NSW Health of the "significant spike" in ARI/ILI numbers that he perceived on the Ruby Princess as at 17 March because that information was provided to NSW Health in the ARD Log on 18 March.[13]

2.14 Dr von Watzdorf ought to have notified NSW Health of the additional passengers and crew diagnosed with an ARI or an ILI on 18 and 19 March 2020. However, this was an oversight by her, which did not amount to a failure to comply with policies and procedures in place at the time.[14]

2.15 Carnival should have ensured that Dr von Watzdorf was made aware of the change to the CDNA "suspect case" definition on 10 March 2020. They should also have ensured that passengers and crew aboard the Ruby Princess were informed that there were suspect cases of COVID-19 on board. Those persons meeting the definition of a suspect case should have been required to isolate in their cabins.[15]

Chapter 13

2.16 Passengers were incorrectly advised by the ABF during the cruise that their 14-day period of self-isolation would commence from the date of departure from the last overseas port visited by the Ruby Princess, being Napier on 15 March. This inaccuracy was later clarified during disembarkation at the OPT on 19 March, when passengers were provided with a fact sheet published by the Commonwealth Department of Health which relevantly instructed them to self-isolate for 14 days from their arrival in Sydney.[16]

2.17 The directive to allow passengers to onward travel interstate and internationally after disembarkation on 19 March did not appropriately contemplate or comply with the terms of the Public Health Order that came into effect on 17 March, which required all cruise ship passengers entering the State from any other country to isolate themselves in suitable accommodation for 14 days. Under the terms of the Public Health Order, the State Government should have arranged suitable accommodation for all passengers who were not residents of the State.[17]

2.18 The fact sheet linked to an email sent to passengers at 10:46am on 20 March incorrectly advised that they were permitted to continue with onward travel, despite being identified as "close contacts" of a confirmed COVID-19 case. Although this advice was corrected by NSW Health by the evening of 21 March, it was at that stage too late to prevent a considerable number of interstate and international passengers from onward travelling, including some passengers who were symptomatic during transit.[18]

13 [12.41]-[12.42], [12.54]-[12.57] and [12.73].

14 [12.66]-[12.70], [12.75].

15 [12.60]-[12.64], [12.74].

16 [13.2]-[13.7], [13.63].

17 [13.8]-[13.14], [13.64].

18 [13.29], [13.49]-[13.54], [13.65].

Recommendations

Chapter 11

2.19 That the NSW HBO Guideline should be reconsidered in light of the criticism made at [11.13], namely that it regards a grant of pratique as the default position, and indicates that pratique should only ever be withheld where there is a compelling reason to deny it, for example, where a HBO has a "genuine belief" that other passengers "were exposed" to a LHD. The current HBO Guideline does not appear to satisfactorily reflect an appropriately precautionary public health approach.

2.20 That Human Biosecurity Officers, DAWE, the Commonwealth Department of Health and NSW Health develop:

a) better awareness of their own and each other's roles and responsibilities for human biosecurity; and

b) more formal protocols for their interaction and communication. This includes, but is not limited to, the grant of pratique.

2.21 That human health reporting within MARS be reviewed with a view to:

a) improving its ability to be readily adapted to novel circumstances and suggested improvements (see, eg, [11.52]);

b) improving its clarity of expression and the coherence and intelligence of the format of its design and presentation (see, eg, [11.54] to [11.60]); and

c) improving access to other agencies (such as the Port Authority) with a legitimate interest in receiving the data for their own operations.

2.22 That any future review of the *Biosecurity Act* consider the utility and possible expansion of human biosecurity control orders so as to be applicable to persons or groups.[19]

2.23 That the *Biosecurity Act* make explicit a requirement to update superseded human health information.[20]

19 [11.76]-[11.77].

20 [11.78].

3

Chronology of the COVID-19 pandemic

Detection of a new coronavirus in China

3.1 On 31 December 2019, the World Health Organisation's (**WHO**) Country Office in the People's Republic of China became aware of a series of cases of "pneumonia of unknown etiology" [1] detected within the population of Wuhan, the capacity city of Hubei Province.[2]

3.2 On 3 January 2020, researchers at the Chinese Centre for Disease Control and Prevention (**CCDC**) identified a novel coronavirus within bronchoalveolar samples taken from a pneumonia patient receiving treatment at Wuhan Jinyintan Hospital.[3] The coronavirus was provisionally designated as 2019-nCoV. It would later be renamed by the International Committee on Taxonomy of Viruses as "severe acute respiratory syndrome coronavirus 2" (**SARS-CoV-2**).[4] The disease caused by SARS-CoV-2 would become known around the world as COVID-19.[5]

1 "Pneumonia of unknown etiology" is a surveillance definition established following the outbreak of Severe Acute Respiratory Syndrome (SARS) in China in 2003. It is defined as an illness without a causative pathogen identified which fulfils the following clinical criteria: fever (≥38˚C), radiographic evidence of pneumonia, low or normal white-cell count or low lymphocyte count and no symptomatic improvement after antimicrobial treatment for three to five days following standard clinical guidelines. See further: Qun Li et al, 'Early Transmission Dynamics in Wuhan, China, of Novel Coronavirus-Infected Pneumonia' (2020) 382(13) *The New England Journal of Medicine* 1199, 1200.

2 World Health Organisation, *Timeline of WHO's response to COVID-19* (29 June 2020) World Health Organisation <https://www.who.int/news-room/detail/29-06-2020-covidtimeline>.

3 Wenjie Tan et al, 'A Novel Coronavirus Genome Identified in a Cluster of Pneumonia Cases – Wuhan, China 2019-2020' (2020) 2(4) *CCDC Weekly 61*.

4 Alexander Gorbalenya et al, 'The species *Severe acute respiratory syndrome-related coronavirus:* classifying 2019-nCoV and naming it SARS-CoV-2' (2020) 5 *Nature Microbiology* 536.

5 Dr Tedros Adhanom Ghebreyesus, 'WHO Director-General's remarks at the media briefing on 2019-nCoV on 11 February 2020' (Speech delivered at the World Health Organisation, Geneva, 11 February 2020) <https://www.who.int/dg/speeches/detail/who-director-general-s-remarks-at-the-media-briefing-on-2019-ncov-on-11-february-2020>.

3.3 Of 59 suspected pneumonia cases transferred to Wuhan Jinyintan Hospital on 31 December 2019, 41 were subsequently confirmed to be infected with SARS-CoV-2. The symptom onset of the first patient identified was 1 December 2019.[6] Epidemiological investigations conducted by the National Health Commission and CDCC determined that a majority[7] of these cases in Wuhan had direct exposure to the Huanan Seafood Wholesale Market.[8]

3.4 On 9 January 2020, the WHO announced that Chinese authorities had determined that the pneumonia outbreak in Wuhan had been caused by SARS-CoV-2.[9]

3.5 On 10 January 2020, Chinese state media reported the first known fatality of a patient suffering from COVID-19.[10] The 61-year-old man had continuous exposure to the Huanan Seafood Wholesale Market and was admitted to hospital following a week-long history of fever, coughing and difficulty breathing. Five days after the onset of his illness, the man's wife, a 53-year-old woman with no known exposure to the Huanan Seafood Wholesale Market, was also admitted to hospital suffering from pneumonia.[11]

3.6 On 13 January 2020, the Ministry of Public Health in Thailand confirmed the first case of COVID-19 detected outside of China, following the hospitalisation of a traveller from Wuhan on 8 January 2020.[12] Three days later, the Japanese Ministry of Health, Labour and Welfare informed the WHO of a detected case of COVID-19 in a person who had travelled to Wuhan. The WHO noted that "considering global travel patterns, additional cases in other countries are likely".[13]

6 Chaolin Huang et al, 'Clinical features of patients infected with 2019 novel coronavirus in Wuhan, China' (2020) 395 *Lancet* 497, 500.

7 Of 41 admitted hospital patients identified as having contracted 2019-nCoV on 2 January 2020, 27 (66%) had been exposed to the Huanan Seafood Wholesale Market. See ibid 498.

8 Li et al, above n 1, 1202.

9 World Health Organisation, 'WHO Statement regarding cluster of pneumonia cases in Wuhan, China' (Media Statement, 9 January 2020) <https://www.who.int/china/news/detail/09-01-2020-who-statement-regarding-cluster-of-pneumonia-cases-in-wuhan-china>.

10 Amy Qin and Javier Hernandez, 'China Reports First Death From New Virus', *The New York Times* (online), 10 January 2020 <https://www.nytimes.com/2020/01/10/world/asia/china-virus-wuhan-death.html>.

11 Huang et al, above n 6.

12 World Health Organisation, 'WHO statement on novel coronavirus in Thailand' (Media Statement, 13 January 2020) <https://www.who.int/news-room/detail/13-01-2020-who-statement-on-novel-coronavirus-in-thailand>.

13 World Health Organisation, 'Novel Coronavirus – Japan (ex-China)' (Media Statement, 16 January 2020) <https://www.who.int/csr/don/16-january-2020-novel-coronavirus-japan-ex-china/en/>.

3.7 By 20 January 2020, 282 confirmed cases of COVID-19 had been reported to the WHO across four countries including: China (278 cases), Thailand (2 cases), Japan (1 case) and the Republic of Korea (1 case).[14] On the same date, Chinese authorities determined that COVID-19 would be included in the notifiable report of Class B infectious diseases and border health quarantine infectious diseases, resulting in the enforcement of temperature checks, health care declaration and quarantine at transportation depots.[15]

3.8 On 21 January 2020, the Commonwealth Chief Medical Officer (**CMO**), in his capacity as Director of Human Biosecurity, made a written determination, pursuant to s 42 of the *Biosecurity Act 2015* (Cth) (***Biosecurity Act***),[16] that COVID-19 (designated "human coronavirus with pandemic potential") should be included as a "listed human disease". The effect of this determination was, *inter alia*, to authorise the Commonwealth Health Minister to impose enhanced border screening measures for all travellers entering and departing Australia.

3.9 Soon after that determination, on 25 January 2020, Australia confirmed its first imported case of COVID-19, identified as a man from Wuhan, who had flown from Guandong to Melbourne on 19 January 2020.[17] In response, the Australian Government raised the level of travel advice for Wuhan and Hubei Province to "Level 4 – Do Not Travel" and introduced precautionary measures to ensure all passengers arriving in Australia from China were met and provided with information about COVID-19 and instructions on what to do if they developed any symptoms.

3.10 On 30 January 2020, the WHO Director-General, Dr Tedros Adhanom Ghebreyesus, convened a meeting of the Emergency Committee pursuant to the International Health Regulations (2005). The Emergency Committee was informed that there were at that time 7,711 confirmed COVID-19 cases in China and 83 cases reported in 18 other countries. Confirmed cases of human-to-human transmission were reported in 3 countries outside China.[18] Following the meeting of the Emergency Committee, the Director-General declared that the global outbreak of COVID-19 constituted a Public Health Emergency of International Concern (**PHEIC**).[19]

14 World Health Organisation, *Novel Coronavirus (2019-nCoV) Situation Report 1* (21 January 2020) 1 <https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200121-sitrep-1-2019-ncov.pdf?sfvrsn=20a99c10_4>.

15 World Health Organisation, *Report of the WHO-China Joint Mission on Coronavirus Disease 2019 (COVID-19*) (16-24 February 2020) World Health Organisation 14 <https://www.who.int/docs/default-source/coronaviruse/who-china-joint-mission-on-covid-19-final-report.pdf>.

16 *Biosecurity (Listed Human Disease) Amendment Determination 2020* (Cth). The Director of Human Biosecurity may determine that a human disease is a "listed human disease" if he or she considers the disease may be communicable; and cause significant harm to human health.

17 The Hon Greg Hunt MP, 'First confirmed case of novel coronavirus in Australia' (Media Release, 21 January 2020) 1 <https://www.health.gov.au/ministers/the-hon-greg-hunt-mp/media/first-confirmed-case-of-novel-coronavirus-in-australia>.

18 World Health Organisation, 'Statement on the second meeting of the International Health Regulations (2005) Emergency Committee regarding the outbreak of novel coronavirus (2019-nCoV)' (Statement, 30 January 2020) <https://www.who.int/news-room/detail/30-01-2020-statement-on-the-second-meeting-of-the-international-health-regulations-(2005)-emergency-committee-regarding-the-outbreak-of-novel-coronavirus-(2019-ncov)>.

19 Dr Tedros Adhanom Ghebreyesus, 'WHO Director-General's statement on IHR Emergency Committee on Novel Coronavirus (2019-nCoV)' (Speech delivered online from the World Health Organisation, Geneva, 30 January 2020) <https://www.who.int/dg/speeches/detail/who-director-general-s-statement-on-ihr-emergency-committee-on-novel-coronavirus-(2019-ncov)>.

3.11 On 1 February 2020, the Australian Government extended its "Level 4 – Do Not Travel" advisory to cover all of mainland China. On the same date, the Prime Minister of Australia, in response to updated advice from the CMO and the Australian Health Protection Principal Committee (**AHPPC**), announced additional travel restrictions to prevent the spread of COVID-19. Principally, this included a temporary prohibition on all foreign nationals (excluding permanent residents) departing mainland China from entering Australia for 14 days from the time they departed, or transited through, mainland China.[20]

Virology and clinical characteristics of SARS-CoV-2

3.12 Coronaviruses are associated with a number of infectious disease outbreaks in humans, including two large scale pandemics in the past two decades: severe acute respiratory syndrome (**SARS**) in 2002-03, and Middle East Respiratory Syndrome (**MERS**) in 2012.

3.13 SARS-CoV-2 is the seventh coronavirus known to infect humans.[21] Although SARS-CoV-2 has been confirmed as a zoonotic virus, the origin of its outbreak has yet to be precisely identified.[22] Estimates of the timing of the most recent common ancestor of SARS-CoV-2 suggest the emergence of the virus in humans in late November to early December 2019.[23]

3.14 Virological research has also suggested that, due to the similarities between SARS-CoV-2 and coronaviruses detected in mammals since 2005, bats may have served as the host for the progenitor of SARS-CoV-2.[24] The nature of the intermediate host (or hosts) for the virus, however, remains unclear.[25]

20 The Hon Scott Morrison MP, 'Updated Travel Advice to Protect Australians from the Novel Coronavirus' (Media Release, 1 February 2020) <https://www.pm.gov.au/media/updated-travel-advice-protect-australians-novel-coronavirus>.

21 Kristian Andersen et al, 'The proximal origin of SARS-CoV-2' (2020) 26 *Nature Medicine* 450, 450.

22 World Health Organisation, above n 15, 8.

23 Andersen et al, above n 21, 451.

24 Andersen et al, above n 21.

25 World Health Organisation, above n 15, 8.

3.15 Evidence of human-to-human transmission of SARS-CoV-2 emerged almost immediately following the discovery of the virus in Wuhan in early January 2020.[26] The WHO discovered that the virus is transmitted via droplets and fomites during close unprotected contact between infected and non-infected persons.[27] For that reason, the primary route of human-to-human transmission, particularly during the early stages of the pandemic, was through family or household contacts.[28] Recently, aerosol transmission, implicating the importance of enclosed spaces and ventilation, has become seriously suspected.[29]

3.16 Generally, people infected with SARS-CoV-2 develop signs and symptoms, including mild respiratory symptoms and fever, around five to six days following infection.[30] There have also been reported cases of asymptomatic[31] infection of SARS-CoV-2 across a number of countries,[32] although information on the history and progression of asymptomatic infection remains scarce.[33] The WHO also noted during a relatively early period of the pandemic that asymptomatic cases did not appear prevalent, nor did they appear to contribute significantly to secondary transmission of SARS-CoV-2.[34] The science has since moved on and nothing like confident categorical statements can be made about this topic, let alone by a Special Commission of Inquiry constituted by a lawyer. As to asymptomatic (or pre-symptomatic) transmission, it can confidently be regarded as a real possibility, at all times material to this Commission.

3.17 When a person is infected with SARS-CoV-2, the virus finds an optimal binding with a human receptor known as angiotensin-converting enzyme 2 (**ACE2**).[35] The binding with ACE2 allows SARS-CoV-2 to enter other cells, initially in the pharyngeal passageway. Once inside, the "virus hijacks the cells' machinery, making myriad copies of itself and invading new cells".[36]

26 Li et al, above n 1, 1203.

27 World Health Organisation, above n 15, 8.

28 Jasper Fuk-Woo Chan, 'A familial cluster of pneumonia associated with the 2019 novel coronavirus indicating person-to-person transmission: a study of a family cluster' (2020) 395 *Lancet* 514-523.

29 Elizabeth Anderson et al, 'Consideration of the Aerosol Transmission for COVID-19 and Public Health' (2020) 40(5) *Risk Analysis* 902-907.

30 Li et al, above n 1, 1203.

31 Asymptomatic transmission may also be understood in this context as including pre-symptomatic transmission.

32 See Camilla Rothe et al, 'Transmission of 2019-nCoV Infection from an Asymptomatic Contact in Germany' (2020) 382(10) *The New England Journal of Medicine* 970-971; Anne Kimball et al, 'Asymptomatic and Presymptomatic SARS-CoV-2 Infections in Residents of a Long-Term Care Skilled Nursing Facility' 69(13) *Morbidity and Mortality Weekly Report* 377-381.

33 Aki Sakurai et al, 'Natural History of Asymptomatic SARS-CoV-2 Infection' (2020) *New England Journal of Medicine* 1 <https://www.nejm.org/doi/pdf/10.1056/NEJMc2013020>.

34 The WHO asserts that the majority of people who test positive to COVID-19 while asymptomatic will subsequently go on to develop a mild form of the disease.

35 Andersen et al, above n 21.

36 Meredith Wadman et al, *How does coronavirus kill? Clinicians trace a ferocious rampage through the body, from brain to toes (*17 April 2020) Science <https://www.sciencemag.org/news/2020/04/how-does-coronavirus-kill-clinicians-trace-ferocious-rampage-through-body-brain-toes>.

3.18 This phenomenon has distinguished SARS-CoV-2 from other human coronaviruses such as SARS. Typically, peak viral load concentrations for SARS have been detected around seven to ten days following the onset of symptoms and did not occur until the virus had entered the lower respiratory tract. Conversely, peak concentrations in SARS-CoV-2 have been detected before day five of the onset of an infected person's symptoms and calculated at more than 1,000 times higher than SARS. These findings indicate a much more efficient transmission pathway of SARS-CoV-2, at a time when symptoms are either absent or still mild and typical of conventional upper respiratory tract infections.[37]

3.19 According to findings made by the WHO following its Joint Mission to China in February 2020, approximately 80% of patients with COVID-19 have mild to moderate disease, around 14% develop severe disease, and 6% become critical.[38] Patients who become critically ill with COVID-19 can suffer a devastating range of conditions. Although COVID-19 is mostly commonly seen to attack a person's lungs, the virus' reach can also extend to many other organs including the heart and blood vessels, kidneys, stomach and brain.[39] As with all attempts to describe COVID-19, even this understanding is provisional.

3.20 Due to the rapidly evolving understanding of SARS-CoV-2, calculation of the mortality rate for COVID-19 has been a particularly challenging exercise for epidemiologists worldwide. The latest studies estimate that between five and ten people will die for every 1,000 confirmed COVID-19 diagnoses; an Infection Fatality Rate of 0.5-1%.[40] A significant difference between COVID-19 and other pandemic diseases, however, is the age distribution of patients who are severely ill. It is now widely accepted that the mortality rate in people infected with COVID-19 increases steeply with age and deaths are predominantly seen in patients older than 50 years.[41]

37 Roman Wölfel et al, 'Virological assessment of hospitalized patients with COVID-19' (2020) 581 *Nature* 465, 467-468.

38 World Health Organisation, above n 15, 12.

39 Wadman et al, above n 36.

40 Smriti Mallapaty, 'How deadly is the coronavirus? Scientists are close to an answer' (2020) 582 *Nature* 467.

41 Analysis of the COVID-19 outbreak in Italy shows that the fatality rate was 0% for age group 0-39 years, 0.1% for 40-49 years, 0.6% for 50-59 years, 2.7% for 60-69 years, 9.6% for 70-79 years and 16.6 for ≥80 years. See Eskild Petersen et al, 'Comparing SARS-CoV-2 with SARS-CoV and influenza pandemics' (2020) *Lancet Infectious Diseases* <https://www.thelancet.com/action/showPdf?pii=S1473-3099%2820%2930484-9>.

CDNA National Guidelines

3.21 The Communicable Diseases Network of Australia (**CDNA**), a subcommittee of the AHPPC, provides national public health coordination and leadership and supports best-practice for the prevention and control of communicable diseases. The body comprises all State and Territory Directors of Communicable Diseases, representatives of the Commonwealth and other health experts.[42]

3.22 The CDNA has developed a Series of National Guidelines (**SoNGs**) for the surveillance and response to a number of nationally notifiable diseases. The SoNGs are generally endorsed by the AHPPC and published by the Commonwealth Department of Health. The objective of each guideline is to define a minimum public health standard that should be adopted in the management of and response to notifiable diseases.[43]

3.23 Since 23 January 2020, the CDNA has published SoNGs specifically in relation to the management and response to COVID-19 for Public Health Units in Australia (the **CDNA Guidelines**).[44] These guidelines provide contemporary information about infection, definitions for "confirmed" and "suspected" COVID-19 cases, testing procedures, public health management of confirmed COVID-19 cases (including self-isolation and quarantine measures), the management of close contacts and responses to outbreak situations.[45]

3.24 During the early stages of the outbreak of COVID-19 in Australia, multiple versions of the CDNA Guidelines were published, as the international community's understanding of the novel coronavirus continued to rapidly evolve. In February to March 2020, 21 iterations of the CDNA Guidelines were publicly released, including 3 versions that were in place between the departure of the Ruby Princess from Sydney on 8 March 2020, and its return on the morning of 19 March 2020.[46]

42 Exhibit 57, Statement of Dr Jeremy McAnulty (15 June 2020) [13].

43 Exhibit 57, Statement of Dr Jeremy McAnulty (15 June 2020) [13].

44 A consolidated bundle of the various iterations of the CDNA National Guidelines in force from February-March 2020 is contained at Exhibit 32.

45 Exhibit 57, Statement of Dr Jeremy McAnulty (15 June 2020) [15].

46 Version 1.17 (published on 5 March 2020), Version 1.18 (published on 10 March 2020) and Version 2.0 (published on 13 March 2020).

Suspect case definition

3.25 As at February and March 2020, the CDNA Guidelines broadly defined a "suspect case" as a patient satisfying identified epidemiological and clinical criteria. As was the case with other parts of the guidelines, the applicable criteria was continually evolving during this period as further information became available to public health authorities in Australia.

3.26 On 8 March 2020, a "suspect case" of COVID-19 was defined as follows:

Epidemiological criteria:

- Travel to (including transit through) a country considered to pose a risk of transmission in the 14 days before the onset of illness

OR

- Close or casual contact in the 14 days before illness onset with a confirmed case of COVID-19

Clinical criteria:

- Fever

OR

- Acute respiratory infection (e.g. shortness of breath or cough) with or without fever

3.27 Countries considered to pose a risk of transmission included mainland China, Iran, Italy and South Korea (higher risk) and Cambodia, Hong Kong and Indonesia (moderate risk).

3.28 By 10 March 2020, the epidemiological criteria for a "suspect case" of COVID-19 had been updated and significantly broadened to include all international travel in the 14 days before the onset of illness. Accordingly, this updated "suspect case" definition had been in place for in excess of one week prior to the risk assessment of the Ruby Princess by an expert panel formed by NSW Health.[47]

47 Discussion of the notion of a "suspect case" and its significance to the assessment of passengers on the Ruby Princess is discussed in further detail at Chapters 8, 9 and 12 of this Report.

Infectious period

3.29 From 21 February 2020, the CDNA Guidelines provided the following advice regarding the understanding of the infectious period of COVID-19:

> "**5. Infectious period**
>
> Infectious period of COVID-19 remains unknown, however there is some evidence to support the occurrence of pre-symptomatic or asymptomatic transmission. As a pre-cautionary approach, cases are considered to be infectious 24-hours prior to onset of symptoms. Cases are considered to pose a risk of onward transmission and require isolation until criteria listed in the release from isolation section have been met."

3.30 The relevant criteria for a confirmed COVID-19 case to be released from isolation included:

- The person has been afebrile for the previous 48 hours;
- Resolution of the acute illness for the previous 24 hours;
- At least seven days after the onset of the acute illness; and
- Polymerase chain reaction (PCR) negative on at least two consecutive specimens collected 24 hours apart after the acute illness has resolved.

Advice for cruise ships

3.31 The CDNA Guidelines also provide specific advice for "Special Situations". On 21 February 2020, the CDNDA Guidelines extended its advice for "Special Situations" to managing the risk of COVID-19 outbreaks on cruise ships.[48] Specifically, the CDNA Guidelines recommended the following precautions for embarkation and disembarkation procedures:

> "After all suspect and confirmed cases have been managed appropriately and the Human Biosecurity Officer has determined that no other passengers or crew have symptoms consistent with COVID-19, remaining passengers and crew will be allowed to disembark. The vessel may be permitted to commence embarking once it is certain there is no risk of ongoing transmission."[49]

48 Exhibit 32, CDNA National Guidelines for Public Health Units re 2019-nCoV, Version 1.9 (21 February 2020).

49 Exhibit 32, CDNA National Guidelines for Public Health Units re 2019-nCoV, Version 1.9 (21 February 2020) at p 12.

Communicable Diseases Intelligence Reports

3.32 *Communicable Diseases Intelligence* (**CDI**) is a peer-reviewed scientific journal published by the Office of Health Protection in the Commonwealth Department of Health. The journal is an authoritative source of information on the epidemiology, surveillance, prevention and control of communicable diseases of relevance to the Australian community.

3.33 Following confirmation of the first case of COVID-19 in Australia on 25 January 2020, the CDI commenced the release of a weekly epidemiological report addressing COVID-19 (**CDI Report**).[50] Each report included data on confirmed COVID-19 cases in Australia reported in the week prior, as well as an overview of the international situation and any updated information on the severity, transmission and spread of SARS-CoV-2.

3.34 The CDI Report for the week ending 14 March 2020 provided the following updates:[51]

- Internationally, there were 142,539 reported cases of COVID-19, with 5,393 deaths
- In Australia, there were 295 confirmed cases (including three deaths) of COVID-19, 152 (51%) of which had been reported in NSW;
- The median age of all 295 reported Australian COVID-19 cases was 47 years, with the highest proportion of cases aged 50-59 and 60-69 years; and
- Of the 166 confirmed overseas-acquired COVID-19 infections in Australia; 36 (22%) had a directed link to the United States, 18 (11%) had a direct link to Italy and 13 (8%) had a direct link to the United Kingdom.

3.35 The subsequent CDI Report for the week ending 22 March 2020 indicated the following developments in Australia and internationally for COVID-19:

- Internationally, there were 292,142 reported cases of COVID-19, with 12,784 deaths;
- In Australia, there were 1,765 confirmed cases (including seven deaths) of COVID-19, 766 (43%) of which had been reported in NSW;[52]
- The median age of all reported Australian COVID-19 cases was 48 years, with the highest proportion of cases aged 20-29 and 60-69 years; and
- Virus genome sequences analysed from Australian cases indicated introduction of SARS-CoV-2 from China, Iran, Europe and the United States.

50 A consolidated bundle of the CDI Weekly Epidemiology Reports from January to March 2020 is contained at Exhibit 33.

51 Exhibit 33, Epidemiology Reports re COVID-19 of Communicable Diseases Intelligence, Department of Health - Numbers 1 to 9, CDI Report week ending 14 March 2020.

52 This reporting period accounted for 65% of reported cases in Australia.

The Diamond Princess

3.36 Emerging evidence of the rapid transmissibility of COVID-19 within close contact environments gave rise to significant public concerns regarding the potential for the spread of the novel coronavirus on cruise ships. By mid-February 2020, this concern was brought sharply into focus by the case of the Diamond Princess, a stricken cruise ship that was quarantined at Yokohama Port in Japan.

3.37 On 20 January 2020, the Diamond Princess, a cruise ship owned and operated by Princess Cruise Lines, departed Yokohama Port on a 16-day round trip itinerary, travelling to: Hong Kong on 25 January 2020; Chan May Port, Vietnam on 27 February 2020; Cai Lan, Vietnam on 31 January 2020; and Naha, Japan on 1 February 2020. The cruise had 3,711 passengers (2,666 guests and 1,045 crew) on board.[53]

3.38 On 1 February 2020, the first case of COVID-19 connected with the Diamond Princess was confirmed by health authorities in Hong Kong. The ill passenger, an 80-year-old male, had earlier disembarked in Hong Kong on 25 January 2020. At disembarkment, the ill passenger had only developed minor respiratory symptoms, but on 1 February 2020, he was hospitalised with fever and soon tested positive to COVID-19.[54]

3.39 At the time of the announcement from Hong Kong, the Diamond Princess was docked at Okinawa, Japan and had been issued a provisional quarantine certificate. The ship was immediately directed to return to Yokohama Port, where it arrived on 3 February 2020 and re-commenced its quarantine.[55] Two days later, on 5 February 2020, ten passengers tested positive to COVID-19, with the result that all passengers were isolated in their cabins, although crew continued to work.[56] Japanese health authorities consequently announced that the ship's quarantine period would be extended by at least 14 days.[57]

3.40 In the early stages of the COVID-19 outbreak onboard, testing was limited to passengers presenting with fever or respiratory symptoms and their close contacts. All passengers who tested positive to COVID-19 were disembarked and hospitalised. This testing procedure was soon after expanded to any high-risk passengers; prioritising elderly passengers, those with pre-existing medical conditions and those in internal cabins with no access to outdoor areas on the ship.[58]

53 Eisuke Nakazawa et al, 'Chronology of COVID-19 Cases on the Diamond Princess Cruise Ship and Ethical Considerations: A Report From Japan' (2020) *Disaster Medicine and Public Health Preparedness* 1.

54 Ivan Fan-Ngai Hung et al, 'SARS-CoV-2 shedding and seroconversion among passengers quarantined after disembarking a cruise ship: a case series' (2020) *Lancet Infectious Diseases* 1, 2 <https://www.thelancet.com/action/showPdf?pii=S1473-3099%2820%2930364-9>.

55 Nakazawa et al, above n 53.

56 Leah Moriarty et al, 'Public Health Responses to COVID-19 Outbreaks on Cruise Ships - Worldwide, February-March 2020' 69(12) *Morbidity and Mortality Weekly Report* 347.

57 Shuichi Doi, Daisuke Yajima and Shingo Tsuru, 'Cruise ship put under 2-week quarantine as 10 cases confirmed', *The Asahi Shimbun* (online), 5 February 2020 <http://www.asahi.com/ajw/articles/13102622>.

58 Moriarty et al, above n 56.

3.41 On 15 February 2020, the Japanese Ministry of Health, Labour and Welfare determined to expand its testing policy to ensure that every passenger onboard was tested for COVID-19. On that date, the number of passengers who had tested positive had grown to 285. By 20 February 2020, confirmed COVID-19 cases onboard the ship had surged to 634, representing more than half of the confirmed cases outside of China at the time.[59]

3.42 Over the next few days, governments from a number of countries around the world announced their intentions to repatriate their citizens who were passengers on the ship.[60] On 17 February 2020, the Prime Minister of Australia announced that all Australian passengers onboard the Diamond Princess would be repatriated to Australia, where they would compulsorily be required to observe a further 14-day quarantine period at the Howard Springs Facility in Darwin.[61]

3.43 On 20 February 2020, 164 passengers arrived at the Howard Springs Quarantine Facility to begin their 14-day quarantine period. All passengers had been health screened before being permitted to disembark the Diamond Princess. None had tested positive for COVID-19 or had any symptoms associated with the disease. Following their arrival, six people identified as having minor respiratory symptoms or fever. Those passengers were immediately separated from others at the airport and put directly into isolation. The following day, the CMO confirmed that two of the isolated passengers had tested positive for COVID-19. Dr Murphy further stated: "[g]iven there was continued evidence of spread of infection on board the Diamond Princess in recent days, the development of some positive cases after return to Australia is not unexpected, despite all of the health screening before departure".[62]

3.44 Ultimately, of 3,711 passengers onboard the Diamond Princess, 712 (19.2%) tested positive for COVID-19. Of those positive cases, 331 (46.5%) were asymptomatic at the time of testing. Of the 381 symptomatic patients, 37 (9.7%) required treatment in an intensive care unit and nine (1.3%) tragically died.[63] There were also three reported instances of secondary transmission among Japanese public responders, including one nurse, one quarantine officer and one administrative officer.[64]

59 Kenji Mizumoto et al, 'Estimating the asymptomatic proportion of coronavirus disease 2019 (COVID-19) cases on board the Diamond Princess cruise ship, Yokohama, Japan, 2020' (2020) 25(10) *Euro Surveillance* 1.

60 Nakazawa et al, above n 53, 3.

61 The Hon Scott Morrison MP, 'Press Conference – Melbourne, VIC' (17 February 2020) <https://www.pm.gov.au/media/press-conference-melbourne-vic-0>.

62 Dr Brendan Murphy, 'Two Diamond Princess passengers positive for COVID-19' (Media Release, 21 February 2020) <https://www.health.gov.au/news/four-more-diamond-princess-passengers-test-positive-for-covid-19>.

63 This included 78-year-old James Kwan, who on 1 March 2020 became the first Australian to die due to COVID-19.

64 Moriarty et al, above n 56, 348.

The Grand Princess

3.45 In the wake of the Diamond Princess, public concerns surrounding the evident transmissibility of COVID-19 on cruise ships were further compounded by the journey of the Grand Princess off the Californian coast.

3.46 From 11 to 21 February 2020, the Grand Princess, another cruise ship owned by Princess Cruise Lines, sailed on a roundtrip itinerary from San Francisco, California. A second voyage, carrying 3,751 passengers (2,460 guests and 1,111 crew), departed San Francisco on 21 February 2020, with a planned return on 7 March 2020. A majority of the 1,111 crew and 68 passengers from the first voyage remained onboard for the second voyage.[65]

3.47 On 4 March 2020, the Centers for Disease Control and Prevention (**CDC**) in the United States was informed of a passenger from the first cruise who had tested positive for COVID-19 in California. The CDC notified Princess Cruise Lines, which commenced cancelling all social activities planned for the remainder of the second voyage. Since that notification, more than 20 additional confirmed cases of COVID-19 have been identified from the first voyage of the Grand Princess, including one death.[66]

3.48 On 5 March 2020, specimens taken from 45 passengers were collected from the ship by a response team.[67] The following day, United States Vice President Mike Pence confirmed during a briefing with members of the White House Coronavirus Task Force that 21 passengers (2 guests and 19 crew) had tested positive for COVID-19. All guests and symptomatic crew members were requested to isolate in their cabins.[68]

3.49 Following discussions between the White House Coronavirus Task Force, the CDC and authorities in the State of California, the Grand Princess was directed to port at a non-commercial dock in Oakland, California, where it arrived on the afternoon of 8 March 2020.[69] On 9 March 2020, all passengers from California were transferred to Travis Air Force Base in Miramar for a 14-day quarantine period. The remaining passengers[70] from the United States were transported to military bases in Georgia and Texas for their respective 14-day quarantine periods.[71]

3.50 By 21 March 2020, of 469 passengers with available results, 78 had tested positive for COVID-19.[72]

65 Moriarty et al, above n 56, 348-349.

66 Moriarty et al, above n 56, 348-349.

67 Moriarty et al, above n 56, 348-349.

68 Mike Pence, Vice President of the United States, 'Press Briefing by Vice President Pence and Members of the White House Coronavirus Task Force' (Transcript issued on 6 March 2020) <https://www.whitehouse.gov/briefings-statements/press-briefing-vice-president-pence-members-white-house-coronavirus-task-force-3/>.

69 Mike Pence, Vice President of the United States, 'Remarks by President Trump, Vice President Pence, and Members of the White House Coronavirus Task Force in Press Briefing' (Transcript issued on 9 March 2020) <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-vice-president-pence-members-white-house-coronavirus-task-force-press-briefing/>.

70 All passengers from Canada (242) and the United Kingdom (113) were repatriated by direct charter flights following their disembarkment in Oakland.

71 Pence, above n 69.

72 Moriarty et al, above n 56, 348-349.

Pandemic declaration and escalating public health responses

3.51 On 11 March 2020, the WHO Director-General reported a 13-fold increase in the number of COVID-19 cases detected outside of China in the previous fortnight. By that stage, there were in excess of 118,000 reported infections spanning 114 countries, with 4,291 deaths recorded. Dr Tedros acknowledged that "in the days and weeks ahead, we expect to see the number of cases, the number of deaths, and the number of affected countries climb even higher." [73] In recognition of what Dr Tedros described as "the alarming levels of spread and severity", as well as the "alarming levels of inaction", the WHO made the assessment that COVID-19 could be described as a pandemic.[74]

3.52 The WHO's pandemic declaration would ultimately herald an unprecedented shift in the Australian public health response to COVID-19. From 13 to 19 March 2020, the newly formed National Cabinet, consisting of the heads of the Commonwealth and State and Territory Governments, endorsed a series of increasingly restrictive public health measures geared towards reducing transmission of COVID-19 within the Australian community. These measures included as follows:

- On 13 March 2020, a restriction on non-essential, organised public gatherings of more than 500 people;[75]
- On 15 March 2020, a 14-day self-isolation requirement on all international arrivals and a ban on international cruise ship arrivals;
- On 18 March 2020, an immediate ban on all non-essential indoor gatherings of greater than 100 people;[76] and
- On 19 March 2020, the closure of Australian borders to non-citizens and non-residents, effective as at 9:00pm.

73 Dr Tedros Adhanom Ghebreyesus, 'WHO Director-General's opening remarks at the media briefing on COVID-19' (Speech delivered at the World Health Organisation, Geneva, 11 March) <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>.

74 Ibid.

75 This restriction was subsequently legally enforced by the NSW Minister for Health following the *Public Health (COVID-19 Public Events) Order 202*0.

76 This restriction was legally enforced by the NSW Minister for Health following the *Public Health (COVID-19 Mass Gatherings) Order 2020*.

4

Legal Framework for Cruise Ship Arrivals

Introduction and key legislation

4.1 As a cruise ship approaches an Australian port, it is subject to an array of statutory regimes and a number of administrative processes which purport to fulfil those statutes' requirements.

4.2 There are, of course, immigration considerations in relation to the people – both passengers and crew – who are entering or re-entering Australia. Additionally, there are customs considerations relating to the importation of goods into Australia, and there are biosecurity considerations in relation to both goods and people.

4.3 This chapter focusses particularly on the human biosecurity arrangements relevant to international cruise ship arrivals.

The Constitution

4.4 The *Constitution* provides the Commonwealth Parliament with the power to make law with respect to quarantine (s 51(ix)) and immigration and emigration (s 51(xxvii)).

The Commonwealth Statutes

4.5 Without attempting to be exhaustive, the following Commonwealth statutes are relevant to an incoming cruise ship:

- *Biosecurity Act 2015*
- *Migration Act 1958*
- *Customs Act 1901*
- *Australian Border Force Act 2015*

4.6 Of these statutes, the *Biosecurity Act 2015* (Cth) (***Biosecurity Act***) is central to this Commission.

Biosecurity Act

Relevant objects and definitions

4.7 The objects of the *Biosecurity Act* relevantly provide for the management of the risk of Listed Human Diseases (**LHD**) or any other infectious human diseases entering Australia, or emerging, establishing themselves or spreading in Australia.

4.8 The Director of Human Biosecurity (**DHB**) may determine that a human disease is a LHD if he or she considers the disease may be communicable; and cause significant harm to human health: s 42. A determination under s 42 is a legislative instrument. The *Biosecurity (Listed Human Diseases) Determination 2016* was amended on 21 January 2020 to include human coronavirus with pandemic potential at s 4(h).

4.9 A "biosecurity risk" is defined as the *likelihood* of a disease or pest entering or establishing itself in Australian territory, and the potential of the disease or pest to:

a) cause harm to human, animal or plant health, or the environment; or

b) have economic consequences associated with the entry, establishment or spread of the disease or pest.

Responsibilities for administration and enforcement

4.10 The responsibility for administering the *Biosecurity Act* is divided between the Department of Agriculture, Water and the Environment (**DAWE**) and the Commonwealth Department of Health. This results in a bifurcation of administrative and enforcement powers and responsibilities. DAWE has primary responsibility for most provisions of the *Biosecurity Act*. DAWE's responsibilities are referred to, simply, as "biosecurity". The Commonwealth Department of Health's responsibilities are referred to as "human biosecurity". At the apex of each of these administrations, under each of the Ministers, is the Director of Biosecurity and the DHB. They are responsible for, respectively, "Biosecurity Officers" and "Human Biosecurity Officers" (**HBO**) (including, in relation to the latter category, a Chief Human Biosecurity Officer (**CHBO**) appointed for each State and Territory).

4.11 This Commission is concerned with a cruise ship which entered Australia carrying SARS-CoV-2, a LHD which was, by that time, sufficiently serious and widespread to carry the designation of a pandemic. This Commission is, thus, focussed on questions which are referred to in the *Biosecurity Act* as relating to 'human biosecurity'.

4.12 Chapter 4 of the *Biosecurity Act* provides that DAWE has the responsibility for vessels, including cruise ships, entering Australia. That responsibility is reflected in the power to grant pratique.

Pratique

4.13 The *Biosecurity Act* provides for the grant of "pratique". Pratique is relevantly defined by the World Health Organisation's International Health Regulations 2005 (**IHR**) as "permission for a ship to enter a port, embark or disembark…". Giving effect to the IHR is one of the objects of the *Biosecurity Act*.

4.14 The provisions concerning pratique are located in Part 2 of Chapter 2 of the *Biosecurity Act*. Chapter 2 deals with managing human biosecurity. Part 2 of Chapter 2 is entitled "Preventing risks to human health". Part 2 seeks to achieve its object by providing the Commonwealth Health Minister with the power to require individuals to provide information about his or her health or undergo screening (s 44).

Positive and negative pratique

4.15 The *Biosecurity Act* provides for pratique in one of two ways. Automatic pratique is given by force of s 48(2). This is known as "positive pratique". Section 49 provides for "negative pratique". Negative pratique is, essentially, pratique in relation to certain classes of vessels which is granted on a case-by-case basis. It is negative in the sense that the vessel will not have permission to dock, disembark or unload until a Biosecurity Officer affirmatively grants pratique.

4.16 The default position is automatic (positive) pratique. Section 49(1) enables the DHB to make a legislative instrument which specifies classes of aircraft and vessel to be excepted from the positive pratique arrangements and stipulates the requirements those excepted conveyances must satisfy for pratique to be granted. Cruise ships fell into such a class, depending on factors explained below.

DAWE controls the grant of pratique

4.17 The *Biosecurity Act* provides that once the conditions prescribed in the DHB's legislative instrument are satisfied, a Biosecurity Officer may grant pratique (s 49(4)).

4.18 Notwithstanding that pratique concerns the management of human biosecurity, the grant of pratique is vested in a Biosecurity Officer (a DAWE officer) rather than a HBO. This may be because DAWE has general control of biosecurity in relation to vessels (Chapter 4) including their pre-arrival reporting obligations (s 193). DAWE manages vessels' pre-arrival reporting through a system called the Maritime Arrivals Reporting System (**MARS**).

Biosecurity (Negative Pratique) Instrument 2016

4.19 The relevant legislative instrument promulgated by the DHB is the *Biosecurity (Negative Pratique) Instrument 2016* (Cth) (***Biosecurity Instrument***). Pursuant to s 49 of the *Biosecurity Act*, that instrument excludes certain classes of conveyance from the default arrangements of positive pratique. Relevantly, cl. 5, item 2 of the *Biosecurity Instrument* excludes vessels that have provided a pre-arrival report that disclosed that an individual has or had, during the voyage, signs or symptoms of a LHD.

4.20 Therefore, once a ship has declared even just one individual (passenger or crew) who has (or who has had during the voyage) signs or symptoms consistent with a LHD, that ship does not have automatic (positive) pratique and requires consideration of the grant of pratique by a biosecurity officer.

4.21 By virtue of cl. 5, item 2 of the *Biosecurity Instrument*, the Biosecurity Officer is not to grant pratique unless permission has been granted by a CHBO, HBO or Biosecurity Officer.

4.22 Submissions on behalf of Carnival that, in the context of the *Biosecurity Instrumen*t, any of the persons listed in cl. 5, item 2 should be construed to be a Biosecurity Officer for the purposes of s 49 of the *Biosecurity Act* should be rejected. The *Biosecurity Act* defines "biosecurity officer" to mean a person appointed pursuant to s 545. That section relates only to the appointment of DAWE Biosecurity Officers. It does not relate to the appointment of HBOs or CHBOs.

4.23 Accordingly, the *Biosecurity Instrument* permits a Biosecurity Officer to grant pratique without recourse to advice from a CHBO or HBO.

Chapter 10 of the Biosecurity Act – governance and officials

4.24 The Director of Biosecurity is the person who is (or acting as) the Secretary of the Department administered by the Agriculture Minister, in this case, DAWE: s 540.[1]

4.25 The DHB is the Commonwealth Chief Medical Officer: s 544(1).

4.26 The Commonwealth Health Minister may enter into an arrangement with a State or Territory body for an officer or employee of the body to be authorised as a CHBO or a HBO for that State or Territory: s 564.

4.27 Additionally, the DHB may authorise a person to be a CHBO or a HBO for a State or Territory: s 562. The DHB must be satisfied that the person to be appointed as CHBO or HBO has appropriate clinical experience before appointing them to the role. The Commonwealth Department of Health has Standard Operating Procedures for the appointment of CHBOs and HBOs. Such authorisation must not be made unless an arrangement under s 564 is in place.

1 Previously known as the Department of Agriculture and Water Resources (from 2015 to 2019).

The arrangement between the Department of Health and the State of NSW

4.28 There was, at all relevant times, an arrangement in place pursuant to s 564, between the Commonwealth and NSW Health in relation to provision, by the latter, of a CHBO, HBOs and biosecurity services.

4.29 The Schedule to a Standing Funding Agreement (**Agreement**) with the Commonwealth Department of Health names the relevant "programme" as "*Agreement with the States and Territories for the provision of Human Quarantine Services*." The "activity" is described as "Human Biosecurity Services". The Agreement is expressly made pursuant to s 564 of the *Biosecurity Act*.[2] The Agreement provides that the State will ensure that a CHBO and HBOs are appointed. The CHBO's activities will be subject to the direction of the DHB and a HBO's activities will be subject to direction of the State's CHBO.

4.30 The services that are to be provided by the Agreement are as follows:

- Routine, day-to-day human biosecurity services at the Australian border, including by:
  - screening travellers at Australia's international border for LHDs; and
  - managing the treatment of travellers at Australia's international border for LHDs; and
- Resourcing for human biosecurity emergencies (if required, based on an assessment according to the individual circumstances of each incident).

4.31 The Agreement also provides that the CHBO and HBOs will perform certain other activities including:

1) the provision of medical advice to Biosecurity Officers assessing ill travellers at Australia's international points of entry;
2) integration into State public health systems of particular travellers;
3) imposing Human Biosecurity Control Orders (**Control Orders**) on individuals who may have a LHD;
4) providing advice to DAWE Biosecurity Officers concerning measures to be taken to treat a vessel or other biosecurity measures to be performed if a vessel is suspected to have a communicable disease onboard;
5) to act as a conduit between Commonwealth and State on human biosecurity matters;
6) to support the assessment of travellers who are at higher risk of developing a listed human disease; and
7) maintaining regular contact with First Points of Entry in the State to ensure that response procedures to health emergencies are documented in the [seaport] emergency planning as required under the IHR.

2 Exhibit 114, Voluntary Statement of the Commonwealth of Australia (12 June 2020), Document 8.

4.32 The Agreement recites that the Commonwealth has constitutional responsibility for quarantine including biosecurity. It further recites that the Commonwealth's objective in relation to human biosecurity matters "is to protect the Australian public from serious communicable diseases, particularly new, exotic and re-emerging infectious diseases through human biosecurity activities."

4.33 The Agreement notes that the Commonwealth Department of Health is responsible for administering the human health aspects of the *Biosecurity Act* which is a key element of the Commonwealth's biosecurity programme. The Agreement also notes that the Commonwealth Department of Health does not have officials at Australia's First Points of Entry to perform human biosecurity services, and that "These activities are performed by [DAWE Biosecurity Officers] supported by State and Territory health departments and the Department of Health."

4.34 NSW Health had developed a policy to assist the CHBO and HBOs with how to assess and manage a suspected case of a LHD.[3]

Chapter 2 of the Biosecurity Act – managing biosecurity risks in relation to human health

Human Biosecurity Control Orders

4.35 One way which the *Biosecurity Act* seeks to actively manage human biosecurity risks, once such risks are identified, is through Control Orders. Control Orders may be made by CHBOs, HBOs and Biosecurity Officers: s 60.

4.36 A Control Order may be made where someone has signs or symptoms of a LHD or if they have been "exposed" to someone who has such signs or symptoms. "Exposed" is defined as including physical contact or close proximity: s 17. It may be assumed that everyone on a cruise ship is likely to have been "exposed" to one another.

4.37 The administrative processes relating to Control Orders are fairly demanding. Consequently, it is impractical to issue Control Orders to large numbers of individuals. The contents of the Control Order are prescribed by s 61. Those contents are comprehensive in their requirements to notify persons subject to Control Orders about the nature and justification of the Control Order. The Control Order must be given to the individual within 24 hours of it having been made or it is of no effect: s 63.

3 Exhibit 93, Second statement of Dr Sean Tobin (19 June 2020), Annexure SNT-5.

4.38 The biosecurity measures which may be included in a Control Order include: home self-isolation (s 87); undergoing an examination (s 90); requiring body samples (s 91); and isolation measures. An isolation measure is a requirement that an individual remain isolated at a specified medical facility. "Medical facilities" are defined to be places where medical assessments are conducted. Those facilities may be either permanent or temporary. Accordingly, a designated hotel would meet the definition of "medical facility" as long as medical assessments were conducted there. These powers were not invoked in relation to the passengers who disembarked the Ruby Princess on 19 March 2020.

4.39 On 16 March 2020, the NSW Health Minister gave a ministerial direction (commencing 17 March 2020) that a person arriving in NSW who had been in a country other than Australia within 14 days before that arrival must isolate themselves for a period of 14 days: *Public Health (COVID-19 Quarantine) Order 2020*. On 28 March 2020, Minister Hazzard made a further direction requiring all international maritime arrivals to attend a "quarantine facility" for 14 days: *Public Health (COVID-19 Maritime Quarantine) Order 2020* (amended 3 April 2020). The latter direction effected the "mandatory hotel quarantine" regime for international arrivals which has applied since that time.

Chapter 4 of the Biosecurity Act – conveyances

4.40 Chapter 4 deals with "conveyances", including cruise ships. Section 191(2) provides that a vessel becomes subject to "biosecurity control" when it enters Australian territory.

Pre-arrival reporting

4.41 Section 193 requires the operator of an aircraft or vessel entering Australia to furnish a pre-arrival report (**PAR**). The form and content of the PAR are prescribed by s 48(2) of the *Biosecurity Regulation 2016* (***Biosecurity Regulation***), most relevantly at cl 48(2)(l) which requires the vessel to provide:

> "details of any person on board who has, or had, during the voyage signs or symptoms of a listed human disease, or signs or symptoms of any other disease that are, or were, not due to: (i) a pre-existing physical condition; or (ii) an injury; or (iii) inebriation; or (iv) the effects of a drug other than alcohol; or (v) motion sickness".

4.42 The report must be submitted to MARS 12-96 hours before the estimated time of arrival at an Australian port: cl. 48(6)(a) of the *Biosecurity Regulation*. Section 194 of the *Biosecurity Act* requires vessel operators to update the report if they become aware that the information in the report is incomplete or incorrect. Section 194 is expressed in a way which creates an obligation to correct a report which is found to be incomplete or incorrect. The section does not convey a clear obligation to update case numbers if and when those case numbers increase: ie the number of cases reported at a specified time does not make that report "incomplete or incorrect" when the number of cases later increases. Consequently, it is doubtful whether updating is required by s 194.

Commonwealth Policies

4.43 There are four Commonwealth biosecurity-related policies which apply to an incoming passenger ship:

1) DAWE Work Instruction – *Undertake a Routine Vessel Inspection*;[4]
2) DAWE Work Instruction – *Undertake a Human Health Inspection on board international vessels*;[5]
3) DAWE Guideline – *Death or illness of a traveller on board an international vessel*;[6] and
4) Commonwealth Health – *Assessing Ill Travellers at Australia's International Border*.[7]

DAWE Work Instruction: Undertake a Routine Vessel Inspection

4.44 The Maritime National Coordination Centre (**MNCC**) is described as the "central contact point for Agencies, Masters and the inspectorate for advice on vessel clearance activities." One of its responsibilities is the provision of documentary risk-assessments of all pre-arrival information.

4.45 Biosecurity Officers are, pursuant to this Work Instruction, responsible for physical vessel inspections, assessing documentation, assessing crew and taking appropriate action when a biosecurity risk is identified.

4.46 MARS will queue a Routine Vessel Inspection (**RVI**) when, relevantly, a biosecurity risk has been reported by a vessel in a PAR, or MARS has assessed the risk on a vessel and determined that a RVI is required.

4.47 A RVI is divided into various components including: an interview with the Master of the vessel; a Human Health Assessment and various other assessments including in relation to ballast water and ship sanitation. Where a Human Health Assessment is required, Biosecurity Officers must follow the procedures set out in the *Death or illness of a traveller on board an international vessel* Work Instruction (dealt with from [4.56] below). The *Undertake a Routine Vessel Inspection* Work Instruction notes "Important: it is the Department of Health Policy that the TIC [Traveller Illness Checklist] be administered face to face."

4.48 The Work Instruction provides that a Biosecurity Officer must board a vessel with various documents including a Traveller with Illness Checklist (**TIC**); the *Death or illness of a traveller on board an international vessel* Work Instruction; and a HBO contact list. They must also ensure that the ship's medical log is available for review by the Biosecurity Officer in order to compare it to the disclosure provided in the ship's PAR.[8]

4 Exhibit 114, Voluntary Statement of the Commonwealth of Australia (12 June 2020) [78], Document 23.
5 Ibid [78], Document 24.
6 Ibid [78], Document 25.
7 Ibid [78], Document 26.
8 Ibid Document 23, p 17.

4.49 The RVI requires a TIC to be administered for any traveller who had a fever in the past 24 hours and, where there are any such travellers, requires the *Death or illness of a traveller on board an international vessel* Work Instruction to be applied.[9]

DAWE Work Instruction: Undertake a Human Health Inspection

4.50 The Work Instruction entitled *Undertake a Human Health Inspection on board international vessels* outlines the procedures for Biosecurity Officers to attend to ill travellers onboard international vessels and complete the Human Health Inspection eForm.

4.51 The Policy statement states that "Every vessel entering Australia from international ports and waters poses a potential biosecurity risk and must be managed appropriately." The Work Instruction also provides that where a human health biosecurity risk is identified, Biosecurity Officers must follow the procedures set out in the *Death or illness of a traveller on board an international vessel* Work Instruction.[10]

4.52 In relation to this Work Instruction, a Biosecurity Officer is responsible for the physical inspection of vessels, assessing documentation, assessing crew and taking appropriate action where a biosecurity risk is identified. A HBO is responsible for the provision of advice and direction on human biosecurity matters.[11]

4.53 The Human Health Inspection relevantly includes an interview with the Master of the vessel and the execution of an inspection which, the Work Instruction notes, may require the Biosecurity Officer to follow the procedures in the *Death or illness of a traveller on board an international vessel* Work Instruction.[12]

4.54 Under the heading "Human Health", the Work Instruction notes that a Human Health Inspection is undertaken to verify whether a potential LHD is present onboard the vessel and, where it is, requires a Biosecurity Officer to follow the procedures set out in the *Death or illness of a traveller on board an international vessel* Work Instruction.[13]

4.55 Similarly to the *Undertake a Routine Vessel Inspection* Work Instruction, a Biosecurity Officer is required to complete a TIC for each traveller who has had a fever in the previous 24 hours and to record any action taken in relation to the biosecurity risk, for example, the details of the conversation with a HBO.[14]

9 Ibid Document 23, p 20.
10 Ibid Document 24, p 7.
11 Ibid Document 24 p 4.
12 Ibid Document 24 p 8.
13 Ibid Document 24 p 11.
14 Ibid Document 24 p 14.

DAWE Guideline: Death or illness of a traveller on board an international vessel

4.56 The *Death or illness of a traveller on board an international vessel* is named as a "Guideline" as opposed to a "Work Instruction" but nothing turns on this. It is in a similar form to the Work Instructions described above, and is referred to in the other Work Instructions as a 'Work Instruction'.[15]

4.57 The Guideline outlines the process to manage human biosecurity risks when a traveller onboard an international vessel has died, is ill, or has been ill.

4.58 The Guideline notes that the operator of an international vessel must submit a PAR. That report must note any person onboard the vessel who has, or had during the voyage, signs or symptoms of any illness. There is a notation that in exceptional circumstances (for example when the presence of a LHD has been confirmed) the MNCC may be required to contact the HBO directly, or the HBO may request the MNCC attach further conditions to the approval to berth.

4.59 Where the PAR for a vessel discloses that a traveller has (or had, during the voyage) signs or symptoms of a LHD, negative pratique applies.[16]

4.60 Where a Biosecurity Officer attends for a Human Health Inspection and there has been an illness onboard the international vessel, the Biosecurity Officer is required to complete a TIC for each ill traveller. There is a process of interview which is stipulated for the application of the TIC. Where the Biosecurity Officer identifies that the signs or symptoms of a LHD are present, the Biosecurity Officer must contact a HBO. The HBO then provides advice to the Biosecurity Officer. If the HBO suspects that a LHD is present, the Biosecurity Officer is required to follow the advice provided by the HBO.

Commonwealth Health policy

4.61 The Commonwealth Department of Health has written a policy document entitled *Assessing Ill Travellers at Australia's International Border*. The Commonwealth's Voluntary Statement[17] does not indicate whether this policy was intended to bind DAWE's Biosecurity Officers and it is not apparent from the evidence available to the Commission whether HBOs were provided with a copy of the policy, or whether anyone (either Biosecurity Officers or HBOs) received instruction in relation to it.

4.62 This policy does largely coincide with the framework set out in DAWE's internal Work Instructions and guidelines. It provides for the administration of TICs by Biosecurity Officers and the notification of a CHBO or HBO for a "case management decision" based on the traveller's medical requirements and the protection of public health.

15 Ibid Document 25.

16 Ibid Document 25, p 11.

17 Ibid Document 26.

4.63 The TIC is "a longstanding border screening tool, created by Commonwealth Health prior to the introduction of the *Biosecurity Act*".[18] It was updated in January, February and March 2020. The TIC in evidence before the Commission refers to "higher and moderate risk countries" in the Series of National Guidelines (**SoNGs**) published by the Communicable Diseases Network of Australia (**CDNA**).[19] It appears that the form was not updated to acknowledge COVID-19's pandemic designation and the concomitant conclusion that, from that time, all international travel was considered to pose a risk in relation to COVID-19. However, reference to the then-current CDNA SoNGs would have likely had the effect of prompting a Biosecurity Officer to become aware, on 19 March 2020, that all travel would engage the requirement to contact a CHBO or HBO.

4.64 The TIC provides for the collection of detailed information from a traveller who has been febrile in the past 24 hours. It provides certain "trigger points" where, if questions are answered in particular ways, the Biosecurity Officer must contact a CHBO or HBO.

Chapter 8 of the Biosecurity Act – biosecurity & human biosecurity emergencies

4.65 Chapter 8 of the *Biosecurity Act* deals with biosecurity emergencies and provides that the Governor General may declare a human biosecurity emergency of no longer than three months, which allows the Commonwealth Health Minister to exercise broad powers to give directions and set requirements: s 475. Section 476 allows for one further three-month extension.

4.66 In relation to COVID-19, that declaration was made on 18 March 2020 (the *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) Declaration 2020*).

4.67 On 15 March 2020, the Australian Government announced a 30-day ban on arrivals of cruise ships that applied to any international ships departing from a foreign port as of 12:01am AEDST on 16 March 2020 and destined for an Australian port. Ad hoc exemptions to this ban were considered by the Maritime Traveller Processing Committee (**MTPC**), under the auspices of the Australian Border Force (**ABF**). There were, however, certain exemptions that were written into the legislative instrument.

4.68 The formal determination giving effect to this arrangement was made by the Commonwealth Health Minister on 18 March 2020, pursuant to the *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements) Determination 2020* (**Determination**): s 477(1) of the *Biosecurity Act*. The Determination was in the following terms:

18 Ibid fn 50.

19 Exhibit 32, CDNA National Guidelines for Public Health Units re 2019-nCoV – Versions 1.2 to Versions 2.4.

> "International cruise ships not to enter Australian ports before 15 April 2020
>
> The operator of an international cruise ship must cause the ship not to enter a port in Australian territory before 15 April 2020, unless:
>
> a) there is in force permission for the ship to enter the port given by the Comptroller-General of Customs (within the meaning of the *Customs Act 1901*) on the basis that:
>
> (i) the ship is in distress; or
>
> (ii) other extraordinary circumstances exist; or
>
> b) the ship departed a port outside Australian territory before the end of 15 March 2020 (by legal time in the Australian Capital Territory) and, when it departed that port, was bound directly for a port in Australian territory."

4.69 The Ruby Princess had departed Napier before the end of 15 March 2020 and, accordingly, was within the exemption provided in paragraph (b) of the Determination. The Ruby Princess was, therefore, not subject to the Determination and was allowed to enter the Port of Sydney.

4.70 On 27 March 2020, the ban was extended until 15 June 2020.

4.71 The ABF Commissioner is the Comptroller-General of Customs and, so, maintains oversight of the cruise ship ban.

Other relevant Commonwealth legislation

Australian Border Force Act 2015 (Cth)

4.72 The *Australian Border Force Act 2015* (Cth) authorises the exercise of powers under the *Customs Act 1901* (Cth), the *Migration Act 1958* (Cth) (***Migration Act***), the *Maritime Powers Act 2013* and other Commonwealth laws.

Maritime Traveller Processing Committee

4.73 The MTPC co-ordinates the exercise of various statutory controls and responsibilities carried out at seaports. One of the MTPC's routine functions is to review approval requests from the cruise ship industry to arrive or depart from minor or non-designated seaports where there is no permanent ABF or DAWE presence.

4.74 Following the cruise ship ban on 15 March 2020, the MTPC assumed temporary oversight for the approval of all cruise ships arriving in Australian waters, and consideration of any exemptions to the 30-day restriction.

Customs Act 1901 (Cth)

4.75 The *Customs Act 1901* (Cth) (***Customs Act***) is concerned with the importation of goods. The ABF are responsible for enforcing the *Customs Act*.

4.76 Section 64 of the *Customs Act* requires a commercial vessel due to arrive at an Australian port to provide an "impending arrival report" to the ABF.

4.77 The ABF's responsibility for granting exemptions to the Determination is given by reference to the ABF's status as a "Collector" under the *Customs Act*.

4.78 Section 15 of the *Customs Act* provides for the gazettal of ports and the affixing of "limits of those ports". Ordinarily, nine large Australian ports are gazetted under the *Customs Act* so that international cruise ships (as defined by s 169 of the *Migration Act*) can arrive at those ports automatically. As stated above, the MTPC controls arrivals at other ports where HBO and Biosecurity Officers are not ordinarily available.

4.79 On 15 March 2020, the gazettal of the Port of Sydney was altered so that in every case, an international cruise ship was required to give the MTPC 30 days' notice of their intention to arrive at a port. The MTPC then directed that ship to a particular port. This change was described by the Prime Minister as being part of the "bespoke arrangements" put in place alongside the cruise ship ban.

Migration Act 1958 (Cth)

4.80 Any person who enters Australia must present a passport or other prescribed identification and, if a non-citizen, a visa: s 166. However, an exception to this provision exists for passengers and crew on specified "round-trip cruises" (**RTC**), as follows.

4.81 Persons are taken to have left Australia when they leave the migration zone (as defined by s 5(1) of the *Migration Act*). However, s 80 provides that in particular circumstances, persons may go outside the migration zone, yet be taken not to leave Australia.

4.82 Section 80 generally applies to passengers and crew on approved RTC voyages that have been granted an exemption under s 169(3) of the *Migration Act*. If the exemption is in place, travellers on exempted RTC are not required to meet the usual immigration requirements under s 166 unless directed to do so.

4.83 Cruise ship operators can request approval of exempted RTC status for particular voyages by the Department of Home Affairs, specifically the Traveller Policy Section. The material received by the Commission to date suggests that the Ruby Princess was exempt from s 166 pursuant to s 80. This explains why many passengers have reported that upon disembarkation on 19 March 2020 they were not required to undergo the clearances and passport inspection one might otherwise expect upon returning from an international destination.

Relevant New South Wales legislation

Public Health Act 2010 (NSW)

4.84 The *Public Health Act 2010* (***Public Health Act***) concerns the promotion of public health in New South Wales (**State**).

4.85 Part 2 of the *Public Health Act* confers broad powers on the NSW Health Minister to make directions dealing with public health risks generally and during states of emergency.

4.86 The *Public Health Act* also allows for the appointment of an individual as the public health officer for a part of the State.[20] The functions of the public health officer, which may be delegated, include reporting on matters affecting public health in the relevant part of the State, coordinating activities and local government authorities in relation to public health risks and coordinating enforcement of the *Public Health Act*.[21]

4.87 COVID-19 was included as a "scheduled medical condition" and a "notifiable disease" for the purposes of the *Public Health Act* on 21 January 2020.[22] This attracts a number of reporting requirements for medical practitioners, health practitioners and the chief executive officers of hospitals.

4.88 COVID-19 was also included as a "contact order condition" for the purposes of the *Public Health Act* on 21 January 2020.[23] This enables an authorised medical practitioner (principally the Chief Health Officer) to make a public health order in relation to a person who, due to their risk of developing COVID-19 and their behaviour, may pose a risk to public health.

4.89 Section 7 of the *Public Health Act* provides the NSW Health Minister with the power to take such action and give such directions as the Minister considers necessary to deal with a situation that is, or is likely to be, a risk to public health. It is an offence under s 10 of the *Public Health Act* not to comply with a direction under s 7 if a person has notice of the direction and does not have a reasonable excuse for failing to comply with it.

4.90 On 16 March 2020, the NSW Health Minister gave a Ministerial direction (commencing 17 March 2020) pursuant to s 7 of the *Public Health Act* that a person who arrives in the State and who has been in a country other than Australia within 14 days before that arrival must after that arrival isolate themselves for a quarantine period of 14 days: *Public Health (COVID-19 Quarantine) Order 2020* (**the Quarantine Order**).[24]

20 Section 121.

21 Sections 122, 125.

22 *Public Health Amendment (Scheduled Medical Conditions and Notifiable Diseases) Order 2020.*

23 Ibid.

24 Government Gazette of the State of NSW, Number 49 dated 16 March 2020, (n2020-750).

4.91 Section 5 of the Order states:

> "5 Direction of the Minister
>
> 1) The Minister directs that a person who arrives in New South Wales and who has, within 14 days immediately before that arrival, been in a country other than Australia must do the following—
>
> a) travel from the point of arrival in New South Wales to premises suitable for the person to reside in during the quarantine period,
>
> b) except in exceptional circumstances, reside in the premises during the quarantine period,
>
> c) not leave the premises during the quarantine period except—
>
> (i) for the purposes of obtaining medical care or medical supplies, or
>
> (ii) because of an emergency, or
>
> (iii) in circumstances where the person is able to avoid close contact with other persons,
>
> d) not permit any other person to enter the premises during the quarantine period unless the other person—
>
> (i) usually resides at the premises, or
>
> (ii) is also complying with this direction for the same quarantine period, or
>
> (iii) enters the premises for medical purposes or because of an emergency,
>
> e) otherwise comply with the NSW Health Self Isolation Guidelines during the quarantine period.
>
> 2) The direction under subclause (1) does not apply to the following persons—
>
> a) a person who arrives in New South Wales in the person's capacity as a member of the flight crew of an aircraft,
>
> b) a person who arrives in New South Wales at an airport and does not leave the airport before taking a flight out of New South Wales."

4.92 The Quarantine Order does not specifically address onward travel by any person intending to enter Australia for less than 14 days. But the Quarantine Order does not provide any exception in relation to such further travel. To interpret s 5(1)(a) to allow for someone to arrive in Australia, quarantine for several days and then complete onward travel to another destination would conflict with the apparent underlying purpose of the order. Relevantly, the Explanatory Note states:

> "The object of this Order is to deal with the public health risk of COVID-19 and its possible consequences by giving a Ministerial direction that a person who arrives in New South Wales and who has been in a country other than Australia within 14 days before that arrival must after that arrival isolate themselves for a quarantine period of 14 days. The direction does not apply to the flight crew of aircraft or person transiting through an airport in New South Wales on their way to another State or Territory or another country."

4.93 On 28 March 2020, the NSW Health Minister made the *Public Health (COVID-19) Maritime Quarantine Order 2020*, regarding all persons arriving in the State on a vessel coming from a port outside the State. This order directed that such persons were to quarantine in a facility specified by the Commissioner of Police, NSW Police Force for a period of 14 days, commencing from when they disembarked from the vessel. A similar order was made in relation to persons arriving by aircraft. Accordingly, from that time, all persons arriving in the State from overseas were required to be quarantined, principally in hotels, for 14 days.

Legislation relevant to the Port Authority of NSW

4.94 The Port Authority of NSW (**Port Authority**) is a State-owned statutory corporation by virtue of the *Ports and Maritime Administration Act 1995*. The Port Authority retains responsibility for the role of Harbour Master, management of dangerous goods and emergency responses, as well as the navigation, security and safety of commercial shipping operating in Sydney Harbour, Port Botany, Newcastle, Port Kembla, Yamba and Eden.

4.95 The Port Authority is responsible for the operation of the Overseas Passenger Terminal at Circular Quay and the White Bay Cruise Terminal and Balmain. The Port Authority does not have any statutory role or powers in relation to biosecurity or immigration matters.

Marine Safety Act 1988 (NSW)

4.96 The Port Authority employs harbour masters in respect of the ports under its authority. Each harbour master is appointed by the NSW Ports Minister under the *Marine Safety Act 1988* (NSW) (***Marine Safety Act***) and has statutory functions and powers in relation to marine safety, including the power to control the time and manner in which any vessel may enter or leave a port under their authority.

4.97 One of the key services provided by the Port Authority is "pilotage", which is compulsory under the *Marine Safety Act* for large vessels such as cruise ships seeking to enter a commercial port in the State. Where this service is required, a marine pilot from the Port Authority meets an incoming vessel at the "pilot boarding ground", goes aboard and assists the Master to safely navigate the vessel into the harbour and to its allocated berth. The pilot boarding ground for Sydney Harbour is 4 nautical miles east of Hornby Light at South Head.

4.98 The Port Authority's Vessel Traffic Services team (**VTS**) manages the logistics of coordinating vessel traffic in the busy waters of Sydney Harbour and Botany Bay. The position of VTS is accredited under *Marine Order 64 (Vessel Traffic Services) 2013*, which is made pursuant to the *Navigation Act 2012* (Cth).

5

Enhanced Cruise Ship Procedures

5.1 This chapter provides background to the various enhanced procedures that were in place in NSW by the time of the Ruby Princess's arrival at Sydney on 19 March 2020.

The Port Authority's coronavirus guidelines

5.2 In late January and early February 2020, the senior executives of the Port Authority of NSW began preparing "Coronavirus working guidelines" to manage the risk of exposure of its staff to passengers or crew on board cruise ships who might be infected with COVID-19 (**PANSW Guidelines**).[1]

5.3 The first version of the guidelines was distributed to employees on 2 February 2020.[2] At this time, the guidelines indicated that the Port Authority would not require its employees to board a vessel if COVID-19 was evident on board. The guidelines further indicated that the Port Authority would delay the provision of pilotage to any vessels which had departed from mainland China in the last 14 days. To these ends, the Port Authority's Vessel Traffic Services team was to ask each incoming vessel for: (1) a declaration from the Master of the vessel that there were no sick people on board; (2) a declaration of the previous 5 ports of call for the vessel; and (3) the date the vessel had departed mainland China, if relevant.

5.4 Revised versions of the guidelines were issued on 18 February 2020, and 4, 6 and 13 March 2020, in light of updated advice from Commonwealth and State authorities regarding COVID-19 and the spread of the virus to countries other than China.[3] By 13 March 2020, the guidelines included a "Response Scenario Matrix", which relevantly set out the different responses to be taken by the Port Authority based on a ship's answers to the pre-arrival questions. Those questions had been updated as follows:

1 Exhibit 23, Statement of Sarah Marshall (22 April 2020) [4].

2 Exhibit 22, Statement of Emma Fensom (5 May 2020), Annexure 1.

3 Exhibit 22 Statement of Emma Fensom (5 May 2020) [7] and Annexure 2.

- "What were the last 5 ports of call?
- Are there any ill passengers or crew on board?
- Are any crew members showing symptoms of the novel coronavirus on board?
- Has the vessel been in mainland China, Iran, Republic of Korea or Italy in the last 14 days? What date did the vessel depart those countries.
- Has any person on the vessel been in contact with a proven case of novel coronavirus infection in the last 14 days.
- Are there any crew or passengers who have left, or transited through, mainland China or Iran, Republic of Korea or Italy less than 14 days ago?"[4]

5.5 An "adverse answer" to any one of the six questions would result in the ship being denied a booking until something could be put in place to minimise the risk to the boarding pilot.[5]

5.6 Emma Fensom (the Acting Chief Operating Officer of the Port Authority) told the Commission that the pre-arrival questions were developed because the Port Authority did not have standing access to the human health reports and other information submitted by vessels through the Department of Agriculture, Water and the Environment's Maritime Arrivals Reporting System (**MARS**).[6]

The division of public health responsibilities in NSW

5.7 NSW Health has 12 Public Health Units which service and report to the 15 Local Health Districts (**LHDs**) and three specialist networks (children's and paediatric services, justice health and forensic health) in NSW.[7] The Public Health Units' primary responsibilities are underpinned by the *Public Health Act*, which provides for the appointment of a "public health officer" for a part of the State.[8]

5.8 A key function of the Public Health Units is the control of infectious diseases. To this end, the *Public Health Act* requires doctors, laboratories and hospitals to notify NSW Health regarding any patient with a "notifiable disease".[9] Each Public Health Unit is responsible for monitoring notifications in the area covered by the LHD and coordinating the local response to any public health risks which arise.[10] COVID-19 was included as a "notifiable disease" on 21 January 2020.[11] During the current pandemic, the Public Health Units have undertaken much of the work of contact tracing of suspected and confirmed cases of COVID-19 in NSW.

4 Exhibit 22, Statement of Emma Fensom (5 May 2020) [31] and Annexure 17.

5 Exhibit 25, Statement of Stephen Howieson (30 April 2020) [40].

6 Transcript of the Commission, 8 May 2020 T713.39-714.24.

7 Exhibit 57, Statement of Dr Jeremy McAnulty (15 June 2020) [3].

8 *Public Health Act 2010* s 121. For example, Professor Mark Ferson is the public health officer for the South Eastern Sydney Local Health District: Exhibit 38, Statement of Professor Mark Ferson (29 May 2020) [5].

9 *Public Health Act 2010* pt 4; Exhibit 57, Statement of Dr Jeremy McAnulty (15 June 2020) [9].

10 Exhibit 57, Statement of Dr Jeremy McAnulty (15 June 2020) [9].

11 *Public Health Amendment (Scheduled Medical Conditions and Notifiable Diseases) Order 2020.*

5.9 The Public Health Units' powers are not limited to investigation and surveillance. Relevantly, the *Public Health Act* provides for the making of public health orders in relation to persons who have or may have certain diseases or conditions which pose a risk to public health.[12] Among other things, a public health order may authorise the detention of a person or require them to undergo treatment. To make such an order, an authorised medical practitioner appointed by the Secretary of NSW Health must be satisfied, *inter alia*, that the person may be a risk to public health because of the way that he or she behaves.[13]

5.10 The Public Health Units work in conjunction with the Communicable Diseases Branch of Health Protection NSW, which provides coordination and support in relation to the State-wide delivery of health services.[14] Health Protection NSW operates within a separate hierarchy to the LHDs, reporting directly to the Chief Health Officer, and does not have any direct authority or control over the Public Health Units.[15]

NSW Health's cruise ship surveillance program

5.11 Some of the Public Health Units in NSW have seaports in their LHDs. Relevantly, the Public Health Unit in the South Eastern Sydney Local Health District (**SES PHU**) covers the Overseas Passenger Terminal in Circular Quay, and the Public Health Unit in the Sydney Local Health District (**SLHD**) covers the White Bay Cruise Terminal in Balmain.

5.12 While historically there has been no State-wide approach to surveillance of illness on cruise ships in NSW, the SES PHU has a longstanding "cruise ship surveillance program", which has been monitoring cruise ships entering the Port of Sydney since the late 1990s.[16]

5.13 Prior to the emergence of the COVID-19 pandemic, the SES PHU's surveillance program involved the "cruise ship team" using the MARS to review the pre-arrival reports for cruise ships due to enter the Port of Sydney. This information was used to respond to outbreaks of illness and to prepare monthly reports on rates of illness on board cruise ships. The cruise ship surveillance team also maintained contact with ships' doctors to provide them with advice and support in relation to public health questions.[17]

12 *Public Health Act 2010* pt 4 div 4.

13 *Public Health Act 2010* s 62.

14 Exhibit 57, Statement of Dr Jeremy McAnulty (15 June 2020) [7].

15 Transcript of the Commission, 29 June 2020 T2058.5-42.

16 Exhibit 38, Statement of Professor Ferson (29 May 2020) [9].

17 Exhibit 38, Statement of Professor Ferson (29 May 2020) [10]-[11].

5.14 In 2020, the cruise ship team comprised a non-medical epidemiologist (Kelly-Anne Ressler) and an administrative officer, both of whom had other responsibilities in the SES PHU. Ms Ressler acted as the point of contact for cruise ship doctors and would escalate any clinical questions arising to the Director of the SES PHU, Professor Mark Ferson.[18] It was understood that the team's work was based on cooperation with the cruise line industry and did not involve the exercise of any compulsory powers.[19]

The decision to develop an enhanced screening procedure for cruise ship arrivals in NSW

5.15 On 21 January 2020, NSW Health commenced setting up the Public Health Emergency Operations Centre (**PHEOC**) to manage its response to the inevitable spread of COVID-19 in NSW.[20] Dr Jeremy McAnulty, the Executive Director of Health Protection NSW, was deployed to oversee the work of the PHEOC.[21]

5.16 The PHEOC initially comprised teams of staff working in planning, operations, communications, media and logistics. As the threat of COVID-19 grew, additional staff were redeployed to the PHEOC, including staff from Health Protection NSW, NSW Health, and other government agencies.[22]

5.17 In early February 2020, Dr McAnulty set in motion the development of an enhanced screening procedure to deal with the public health risk posed by cruise ship arrivals in NSW in the context of the emerging pandemic.[23] To this end, the PHEOC began arranging regular teleconferences with the Public Health Units with seaports in their LHDs to coordinate a State-wide response.[24] The teleconferences commenced on 13 February 2020 and continued throughout February and March. The members of the working group included:[25]

- From the PHEOC: Dr Jeremy McAnulty and Dr Sean Tobin (a senior medical officer in the Communicable Diseases Branch and the Chief Human Biosecurity Officer for NSW).
- From the SES PHU: Professor Mark Ferson, Dr Vicky Sheppeard (the Deputy Director of the Public Health Unit) and Kelly-Anne Ressler.
- From the SLHD Public Health Unit: Dr Leena Gupta (the Clinical Director of the Public Health Unit) and Dr Isabel Hess (a Public Health Staff Specialist).
- From the Hunter New England LHD: Dr Craig Dalton and Dr David Durrheim.

18 Transcript of the Commission, 10 June 2020 T1186.

19 Transcript of the Commission, 10 June 2020 T1188.5-21; Transcript of the Commission, 5 May 2020 T308.21-28.

20 Exhibit 100, Statement of Dr Christine Selvey (22 June 2020) [6].

21 Exhibit 57, Statement of Jeremy McAnulty (15 June 2020) [16].

22 Exhibit 57, Statement of Jeremy McAnulty (15 June 2020) [22].

23 Exhibit 57, Statement of Dr Jeremy McAnulty (15 June 2020) [51].

24 Exhibit 28, Statement of Dr Sean Tobin (29 May 2020) [15].

25 Exhibit 38, Statement of Professor Mark Ferson (29 May 2020) [19].

5.18 A detailed timeline of the drafting of the enhanced procedure is set out below. As may be seen, early versions of the procedure were prepared on the basis that there would be a uniform approach in relation to all cruise ship arrivals. By 15 February 2020, however, the working group had begun refining a pre-arrival risk assessment procedure, whereby an expert panel would decide on the appropriate public health response for each ship.[26] The risk to be assessed by the panel was the risk of there being even just one case of COVID-19 on board the ship.

5.19 The preparation of the enhanced procedure was intended to be informed by the CDNA Guidelines and, in particular, the evolving "suspect case" definition for COVID-19. The working group was conscious of the need to ascertain information from incoming ships regarding the passengers and crew who had been in a country with local transmission of COVID-19 in the 14 days prior to embarkation (a key epidemiological criterion for a suspect case) and the presentation of passengers and crew with symptoms consistent with COVID-19 (the clinical criteria for a suspect case).

5.20 It was generally understood at all relevant times that the clinical criteria for a suspect case of COVID-19 were "fever" or "acute respiratory infection (eg shortness of breath or cough) *with or without fever*" (emphasis added). However, for the purposes of considering the health situation on board a cruise ship, the working group found it useful to draw a distinction between "acute respiratory illness" (**ARI**) and "influenza-like illness" (**ILI**). ARI was understood to encompass a broad range of non-specific respiratory symptoms, with or without fever. ILI was understood to represent a subset of ARI, involving both respiratory symptoms and fever.

5.21 The distinction between ARI and ILI was particularly relevant to the identification of a "respiratory outbreak" on board a cruise ship. Although not clear to an ordinary reader of the procedures, the term "respiratory outbreak" was frequently used by the working group to mean an outbreak of ILI only (thus excluding ARI without fever). In his evidence, Professor Ferson explained that the decision to define a respiratory outbreak by reference to ILI only reflected the fact that the cruise ship team had historical information regarding the background rates of ILI on cruise ships, but not ARI.[27]

26 See eg Exhibit 57, Statement of Dr Jeremy McAnulty (15 June 2020) [78] and [80].

27 Exhibit 38, Statement of Professor Ferson (29 May 2020) [17].

The early draft procedures

5.22 On 12 February 2020, Dr McAnulty sent a rough draft of the enhanced cruise ship procedure to Professor Ferson and two colleagues based in the PHEOC: Dr Christine Selvey (the Acting Director of the Communicable Diseases Branch of Health Protection NSW) and Dr Tobin.[28] The draft proposed that a small health assessment team would board all cruise ships that had travelled outside Australia and screen any passengers who had been in a country with local transmission. The draft further proposed that where there was an outbreak of respiratory disease on board a ship and passengers who had been in a country with local transmission, samples from suspect cases would need to be tested for COVID-19 prior to passengers and crew disembarking the ship.

5.23 Professor Ferson replied by email to Dr McAnulty and the others later that day, expressing concern that boarding all incoming ships would be a disproportionate response to the risk posed.[29]

5.24 Consequently, on 13 February 2020, Dr McAnulty sent a revised draft of the procedure by email to Professor Ferson and the others.[30] Amongst other things, this version of the draft widened the proposed scope of the onboard health screening to include any passengers with fever or respiratory illness.

5.25 Professor Ferson replied by email to Dr McAnulty and the others later that day, expressing the view that the draft procedure had become "worse not better". [31] Professor Ferson opined that it was unnecessary for the onboard health assessment team to assess persons with respiratory symptoms if they did not have "travel history", ie the important epidemiological criterion.

5.26 Dr McAnulty replied by email to Professor Ferson and the others later that day, stating, "[i]t is a lot of work, but its trying to balance the very low risk with the very big problem if we have a case on a ship. Local Transmission is currently mainland China, but it may change in the future".[32]

5.27 On 13 February 2020, Dr Sheppeard circulated a more detailed draft of the enhanced procedure to Dr McAnulty, Professor Ferson, Dr Gupta, Dr Durrheim and the other members of the working group.[33] This draft, which proceeded on the basis that a health assessment team would board all cruise ships upon arrival, was divided into three sections:

28 Exhibit 29, Annexures to the NSW Health Witness Statements, Tab 4.

29 Exhibit 29, Annexures to the NSW Health Witness Statements, Tab 6.

30 Exhibit 29, Annexures to the NSW Health Witness Statements, Tab 6.

31 Exhibit 29, Annexures to the NSW Health Witness Statements, Tab 6.

32 Exhibit 29, Annexures to the NSW Health Witness Statements, Tab 6.

33 Exhibit 53, Statement of Dr Vicky Sheppeard (9 June 2020), Annexure VS-1.

a) The first section set out proposed new requirements to be communicated to the cruise line industry, including the requirement to answer a set of pre-arrival questions, the requirement for ships to isolate any persons with respiratory symptoms and fever, and the requirement for ships' doctors to take and store viral swabs for COVID-19 testing from anyone presenting to the ship's medical centre with ILI.

b) The second section set out a pre-arrival procedure in which the cruise ship team in the SES PHU would be responsible for reviewing pre-arrival reports submitted through the MARS and following up with any ships with a rate of ILI meeting a threshold of concern. The procedure suggested that if there were any suspect cases of COVID-19, the PHEOC would facilitate helicopter retrieval of swabs from those persons prior to arrival.

c) The third section set out a procedure for onboard screening of passengers and crew by the health team.

5.28 On the same date, Dr Sheppeard circulated a further updated draft of the procedure, which incorporated advice she had received from Ms Ressler of the cruise ship surveillance team.[34] The two key changes to the procedure were: first, in lieu of reviewing pre-arrival reports in the MARS, the cruise ship surveillance team would ask each incoming cruise ship for a copy of its Acute Respiratory Diseases Log (**ARD Log**); and second, the threshold for concern, by reference to the rate of ILI on board a ship, would be fixed at ">1%".

5.29 On the same date, Dr Sheppeard circulated an "algorithm" which summarised diagrammatically the process of responding to a cruise ship in accordance with the draft procedure.[35] The algorithm indicated that, where there were passengers or crew with fever or respiratory symptoms on board a ship, consideration would need to be given to their "exposure history" (specifically, any recent travel in a country with local transmission or contact with a confirmed case of COVID-19). A "positive exposure history" would trigger the need for helicopter collection of swabs for COVID-19 prior to arrival, with pratique withheld until test results were confirmed. If there was no "exposure history", the ship would then need to be categorised as either "low" or "high risk" based on a review of its ARD Log, with consideration given to any features of concern such as ">1% ILI rate, high acuity, flu negative". In a low-risk scenario, "well" passengers would be allowed to disembark while symptomatic passengers were reviewed by the onboard health assessment team. In a high-risk scenario, passengers would be required to stay on board pending testing of swabs for COVID-19.

34 Exhibit 53, Statement of Dr Vicky Sheppeard (9 June 2020) [13] and Annexure VS-2.

35 Exhibit 53, Statement of Dr Vicky Sheppeard (9 June 2020) [14] and Annexure VS-3.

5.30 On the same date, Dr Sheppeard's draft procedure was discussed at the first joint teleconference between the PHEOC and the Public Health Units.[36] Following that teleconference, Dr Gupta sent an email to the working group providing her preliminary views on behalf of the SLHD.[37] She relevantly stated:

> "…Strongly recommend on public health grounds that all results available for cruise ships where this is the final port for disembarkation for the cruise ships before disembarkation commences. Our experience from the follow up of a much lesser number of negative results daily from the coronavirus clinic has identified: people don't have an Aussie sim so no contact number, numbers can be wrong or ring through, hotels can get very concerned if people are discharged pending test results. There will also be community expectation in light of the Japan incident. Noted that this may delay disembarkation by a few hours thus delaying the cruise ship timetable, but I know that these delays can be managed by the Ports Authority – especially if they are planned delays. Where it is not the final port this could be relaxed as the passengers will be returning to the ships…"[38]

5.31 A short time later that day, Dr Durrheim of the Hunter New England LHD sent an email to the working group echoing Dr Gupta's concerns:

> "This is a very high risk transmission opportunity. People may fly in from Asia to board in Sydney/Newcastle and travel home on the ship.
>
> The burden that cruise ships have placed on Public Health surveillance in the previous pandemic ("Pandemic Dawn") was enormous. We will need some real clarity around casual and close contacts in this context. Given the Japanese experience it appears that this virus spreads efficiently in this petri-dish environment. Once the horse (should that be the pangolin) has bolted off the vessel, we have lost control (for many of the reasons Leena has given – international mobile phones/vs local SIMS etc).
>
> Thus I strongly suggest, that specimens are choppered in to a lab. 8 hours before arrival for "flu cases" that are negative on rapid flu testing… I would prefer that people did not disembark if there were any people on board from any country/area with person-to-person transmission and flu-like illness on board until the results are available." [39]

5.32 As will be seen, these were prescient observations of risks that eventually materialised. Doctors Gupta and Durrheim were, unfortunately, thoroughly vindicated by events. However, their reasoning was not a stab in the dark: they were applying well established precautionary approaches.

36 Exhibit 53, Statement of Dr Vicky Sheppeard (9 June 2020) [11].

37 Exhibit 29, Annexures to the NSW Health Witness Statements, Tab 5.

38 Exhibit 29, Annexures to the NSW Health Witness Statements, Tab 5.

39 Exhibit 30, Email from Dr David Durrheim on 13 February 2020 at 3:34pm.

The request for assistance from the Port Authority

5.33 As adverted to in Dr Selvey's draft procedure of 13 February 2020, one of the issues considered by the NSW Health working group in early February 2020 was the possibility of retrieving swabs from a cruise ship for urgent COVID-19 testing prior to the ship coming into dock. The working group initially explored retrieval of swabs by helicopter, an expedient that was never implemented.[40]

5.34 On 14 February 2020, Dr McAnulty arranged for logistics staff in the PHEOC to contact the Port Authority regarding an alternative arrangement involving its marine pilots. Dr McAnulty recalled that the marine pilots had assisted with the collection of swabs during the swine flu epidemic in 2009.[41]

5.35 On 15 February 2020, Dr Selvey sent a formal proposal on behalf of NSW Health to Emma Fensom.[42] The proposal suggested that, where swabs were required to be collected from an incoming ship, this would be facilitated by the cutter boat crew responsible for transporting a marine pilot to the ship. The cutter boat crew would collect the swabs at the time of placing the pilot on board the ship and then deliver the swabs to a public health officer at a convenient location, such as Rose Bay.

5.36 On 17 February 2020, Ms Fensom advised Dr Selvey by phone that it would not be possible for the Port Authority to assist with the collection of swabs.[43] Ms Fensom explained that, following the transfer of a marine pilot to an incoming ship, the relevant cutter boat was required to escort the ship into the harbour. Accordingly, delivery of any swabs to Rose Bay prior to the ship docking would require an additional boat and crew, which would not be feasible for the Port Authority from an operational perspective. Ms Fensom further explained that there would be potential work health and safety risks to any Port Authority employees required to handle packages of swabs.

5.37 As NSW Health did not have any alternative means of retrieving swabs from ships before docking, the possibility of this being implemented was put to one side in the preparation of the enhanced cruise ship procedure.[44]

40 Exhibit 57, Statement of Jeremy McAnulty (15 June 2020) [62]-[63].

41 Exhibit 57, Statement of Jeremy McAnulty (15 June 2020) [63]-[64].

42 Exhibit 100, Statement of Christine Selvey (22 June 2002) [15] and pp 13-14.

43 Exhibit 22, Statement of Emma Fensom (5 May 2020) [9]; Exhibit 100, Statement of Dr Christine Selvey (22 June 2020) [17].

44 Exhibit 57, Statement of Dr Jeremy McAnulty (15 June 2020) [67].

The refinement of a risk assessment procedure

5.38 By 15 February 2020, the working group had begun to refine a pre-arrival risk assessment procedure, whereby an expert panel would decide on the appropriate public health response for each ship. This panel would comprise Professor Ferson and Dr Gupta in their capacities as the Directors of the SESLHD and SLHD Public Health Units respectively, and Dr McAnulty and Dr Tobin on behalf of the PHEOC. Where Professor Ferson or Dr Gupta could not attend, a physician from the relevant Public Health Unit would attend in their place.[45] In practice, this meant that Dr Sheppeard would stand in for Professor Ferson, and Dr Isabel Hess would stand in for Dr Gupta. It may be noted that, from 23 February 2020, Associate Professor Bradley Forssman (the Director of the Nepean Blue Mountains LHD Public Health Unit) frequently served as one of the members of the expert panel.[46]

5.39 Dr McAnulty circulated a new draft of the screening procedure on 15 February 2020.[47] This version delineated two different risk categories which appear to have been based on the low and high-risk scenarios suggested by Dr Sheppeard in her draft cruise ship "algorithm". The procedure proposed that the risk assessment would be principally based on a review of the ship's ARD Log. The key trigger for concern in this assessment would be the presence of a "respiratory outbreak" on board the ship, considered together with any "features of concern", such as the travel history of the affected persons or any contact by those persons with a confirmed case of COVID-19. As noted above, the reference to a "respiratory outbreak" was understood to be a reference to an outbreak of ILI.

5.40 Over the course of the day, other members of the working group suggested changes to the draft procedure in mark up.[48] For her part, Dr Gupta sent comments on behalf of the SLHD in an email to Dr McAnulty and Professor Ferson only. She relevantly stated:

> "Main point of difference is that in my view, in current situation is that we should wait for test results irrespective of risk category before announcing pratique.
>
> The reason is that operationally, people will still present to EDs GPs etc and that poses a different set of challenges. Better to be clear that no one has coronavirus before leaving." [49]

45 Exhibit 28, Statement of Dr Sean Tobin (29 May 2020) [16].

46 Exhibit 56, Statement of Associate Professor Bradley Forssman (29 May 2020) [16].

47 Exhibit 53, Statement of Dr Vicky Sheppeard (9 June 2020) [16] and Annexure VS-5.

48 See eg Exhibit 53, Statement of Dr Vicky Sheppeard (9 June 2020) [17] and Annexure VS-7.

49 Exhibit 29, Annexures to the NSW Health Witness Statements, Tab 8.

5.41 On 16 February 2020, Dr McAnulty sent an email to Professor Ferson and Dr Tobin attaching an updated draft of the procedure incorporating the feedback provided by the various members of the working group.[50] This version of the draft included the requirement for cruise ships to actively ask passengers or crew with respiratory symptoms or fever to present to the ship's doctor for assessment free of charge. It also included a new annexure titled "pre-arrival risk assessment form", which had been prepared by the PHEOC. It was intended that this form would be populated with information obtained from the relevant cruise ship and used to record the expert panel's decision. Whereas previous versions of the procedure had two risk categories, the updated form identified three: low, medium and high.

5.42 Dr McAnulty's covering email asked Professor Ferson to address a question in the draft procedure as to what rate of illness would be indicative of a "respiratory outbreak" on board a ship.[51] In a reply sent by email later that day, Professor Ferson indicated that, while there was no international standard, the Centers for Disease Control defined an outbreak of influenza or ILI as involving in excess of "1.380 cases per 1,000 traveller days", which equated to illness affecting roughly 1.38% of travellers on a 10-day cruise. On that basis, he suggested that "1%" was a "good rule of thumb". Professor Ferson added that he was content with the pre-arrival risk assessment form.[52]

5.43 On 17 February 2020, an updated draft of the procedure, marked "5 pm 16 February 2020", was circulated to the working group.[53] Based on Professor Ferson's advice, the draft specified ">1%" as the rate of ILI indicative of a "respiratory outbreak".

50 Exhibit 29, Annexures to the NSW Health Witness Statements, Tab 10.

51 Exhibit 29, Annexures to the NSW Health Witness Statements, Tab 10.

52 Exhibit 29, Annexures to the NSW Health Witness Statements, Tab 11.

53 Exhibit 29, Annexures to the NSW Health Witness Statements, Tab 12.

The 19 February draft procedure

5.44 The working group's efforts to prepare a procedure for screening of cruise ships culminated in a version marked "11.00 am 19 February 2020" (the **19 February Assessment Procedure**),[54] which (notwithstanding its label of "draft") was applied up until the time of the Ruby Princess's arrival on 19 March 2020. This version was circulated amongst Dr McAnulty, Professor Ferson and Dr Gupta, who understood that it governed their work on the expert panel.[55] However, it was never sent to Dr Hess, Associate Professor Forssman or Dr Sheppeard, who had regard to the previous, but largely similar version, marked "5 pm 16 February 2020".[56]

5.45 The 19 February Assessment Procedure detailed a procedure for pre-arrival risk assessments of cruise ships, whereby all cruise ships arriving in NSW from international waters would be assessed by the Chief Human Biosecurity Officer and categorised as either "low risk", "medium risk" or "high risk". As noted at [5.18], the risk to be assessed was the risk of there being a case of COVID-19 on board the ship.

5.46 The draft procedure provided for a different public health response in relation to each risk category. If a ship was assessed as "low risk", no further assessment was required. If a ship was assessed as "medium risk", an assessment team would meet the ship and conduct an onboard health screening before determining whether passengers and crew were allowed to disembark. If a ship was assessed as "high risk", clearance to disembark was not to be granted by the Chief Human Biosecurity Officer until swabs were taken from suspect cases and tested for COVID-19.

5.47 The draft procedure specified two key matters to be considered in the risk assessment: first, whether any passengers or crew had been in high risk areas or had contact with a confirmed case of COVID-19 in the 14 days prior; and second, whether there was a respiratory outbreak on board that was not "explained" by positive influenza tests. As noted at [5.39], the reference to a "respiratory outbreak" was understood to be a reference to an outbreak of ILI. As had been discussed by Professor Ferson and Dr McAnulty, the procedure specified that a "respiratory outbreak" was indicated by illness affecting ">1%" of the ship's passengers and crew.

54 Exhibit 29, Annexures to the NSW Health Witness Statements, Tab 18.

55 Exhibit 28, Statement of Dr Sean Tobin (29 May 2020) [20]; Exhibit 38, Statement of Professor Ferson (29 May 2020) [31]; Exhibit 101, Statement of Dr Leena Gupta (12 June 2020) [26].

56 Exhibit 56, Statement of Associate Professor Forssman (29 May 2020) [10]; Exhibit 52, Statement of Dr Isabel Hess (29 May 2020) [15] and [28]; Exhibit 53, Statement of Dr Vicky Sheppeard (9 June 2020) [20].

5.48 The criteria for the three risk categories were as follows:

- A low risk was indicated if there was no respiratory outbreak on board the ship or, if there was a respiratory outbreak, it was "explained" by positive influenza tests.
- A medium risk was indicated if: (a) there was a respiratory outbreak on board; and (b) passengers or crew had visited a country included in Australian COVID-19 testing criteria in the 14 days before embarkation or there were other features of concern (such as a respiratory outbreak that was not "explained" by positive influenza tests).
- A high risk was indicated if: (a) there was a respiratory outbreak on board that was not "explained" by positive influenza tests; and (b) affected passengers had visited mainland China in the 14 days before embarkation.

5.49 The draft procedure detailed a number of pre-arrival requirements for cruise ships. This included the requirement for passengers and crew to be isolated if they had "respiratory symptoms or fever" and the requirement for the ship's doctor to collect 2 swabs from any passengers or crew member presenting with respiratory illness: one for rapid influenza testing (on board) and the other for COVID-19 testing (on shore).

5.50 The draft procedure indicated that, where there was a respiratory outbreak on board a ship, the ship was to report this to NSW Health, provide a copy of its ARD Log, and advise of the "total number of swab samples available for COVID-19 testing".

5.51 Annexed to the draft procedure was the "pre-arrival risk assessment form". The information to be recorded in this form included: the number of passengers and crew on board; the percentage of crew and passengers with ILI; the number of passengers and crew who had been in contact with a confirmed case of COVID-19; the number of ill passengers and crew who had been in a country included in the Australian COVID-19 testing criteria in the 14 days prior to embarkation; and the number of swabs available for COVID-19 testing.

Letter to the Cruise Line Industry dated 22 February 2020

5.52 On 22 February 2020, Dr Kerry Chant, the Chief Health Officer for NSW, sent a letter to cruise line industry representatives enclosing a document titled "Enhanced COVID-19 Procedures for the Cruise Line Industry" (**22 February Enhanced Procedure**). Dr Chant's letter advised that she was seeking urgent confirmation that each cruise ship docking in NSW was able to meet the "guidance" set out in the document.[57] As considered further elsewhere, this entailed a prudent approach to assessing the adequacy of the numbers of swabs required.

5.53 The procedure explained briefly that NSW Health would conduct a risk assessment in relation to each ship to determine whether an "enhanced screening" by a health assessment team would be required upon arrival. To this end, it requested that each ship provide certain information to NSW Health at least 24 hours before arrival at port, including a copy of the ship's full ARD Log, information regarding the travel history of any passengers or crew with symptoms or a history of travel in certain countries with local transmission, details of any respiratory outbreak identified onboard, the number of swabs collected for COVID-19 testing, and a list of any planned medical disembarkations. Regarding the term "respiratory outbreak", the procedure indicated that:

> "A respiratory outbreak is defined as >1% of people on board affected. Smaller numbers of cases with mild respiratory illness are expected and do not necessarily represent an outbreak."

5.54 The procedure also set out a number of requirements for cruise ships in relation to the onboard management of illness, including ensuring that sufficient supplies were available to manage a respiratory outbreak, asking passengers and crew with respiratory symptoms to attend the medical clinic for free assessment, and appropriately isolating passengers who may be infectious.

5.55 The final section of the procedure was titled "Pre-arrival preparations for Health Screening". It indicated that, if an onboard screening was required, the cruise ship would need to make a series of announcements the day before arrival notifying passengers and crew that the following persons would be required to present for assessment by the health assessment team prior to disembarking:

- Anyone with respiratory symptoms or fever;
- Any close or casual contact of a confirmed case;
- Anyone who had travelled or transited through mainland China; and
- Anyone who had travelled in Hong Kong, Thailand, Singapore, Japan or Indonesia in the 14 days prior to embarkation.

57 Exhibit 29, Annexures to the NSW Health Witness Statements, Tab 23.

5.56 In the same section, the procedure indicated that ships' doctors would be requested by NSW Health to assist with the collection of swabs for COVID-19 testing. Importantly, the procedure stipulated that two viral swabs would need to be collected from any person requiring testing: one for rapid influenza testing on board and one to be stored for later COVID-19 testing.

The procedure for confirmed cases of COVID-19

5.57 In late February 2020, NSW Health developed an additional procedure for responding to confirmed cases of COVID-19 linked to a cruise ship, producing a draft document titled "NSW Health COVID-19 cruise ship response procedure for confirmed cases in passenger or crew" (the **Confirmed Case Procedure**).[58]

5.58 The Confirmed Case Procedure identified three main scenarios in which a case of COVID-19 might be identified in connection with a cruise ship: first, where NSW Health had received notification of a cruise ship traveller who had recently disembarked in another port and had subsequently been confirmed as a COVID-19 case; second, where NSW Health had identified a case during an onboard health assessment; and third, where local testing had identified a case in the community with links to a previous voyage.

5.59 The procedure indicated that, if a case was confirmed, NSW Health would establish an "Incident Management Team" to coordinate the assessment and management of other travellers on the same cruise ship. The procedure further indicated that any confirmed cases would need to be transported safely by ambulance to a tertiary hospital with appropriate isolation facilities. The procedure noted the possibility that non-compliant travellers would need to be served with a public health order by way of enforcement of isolation requirements.

5.60 The procedure noted, by reference to the CDNA Guidelines, that there could be some difficulty in classifying the close contacts of a confirmed case on board a cruise ship. In this regard, the procedure said this:

> "If there have been extensive and prolonged potential exposures by the case while infectious, or if there are multiple confirmed cases identified on the ship, the number of likely close contacts will likely increase markedly such that it may be concluded that the all travellers should be considered as close contacts."[59]

58 Exhibit 57, Statement of Dr Jeremy McAnulty (15 June 2020), Annexure 45.

59 It may be noted that ultimately, and for good reason, the approach taken by NSW Health in relation to cruise ships was that all passengers and crew on board the ship would be treated as "close contacts" if a case was confirmed: see Exhibit 58, Second statement of Dr Jeremy McAnulty (15 June 2020) [20]; Transcript of the Commission, 5 May 2020, T125.44-47.

The draft "Standard Operating Procedure"

5.61 On 28 February 2020, Dr Sheppeard sent an email to the working group attaching a draft "Standard Operating Procedure" (**SOP**) for comment.[60] The stated purpose of this document was to provide guidance and a delineation of responsibilities for the relevant Public Health Units and the PHEOC with respect to the risk assessment and screening process.

5.62 The first section of the SOP, under the heading "Preparedness & Prevention", indicated that NSW Health was to email all relevant cruise ship companies regarding new public health requirements. Comments left in the document noted that some of these requirements had not been explicitly addressed in the letter to the cruise industry of 22 February 2020, including the requirement for ships to ensure that they had "stocks of sterile transport medium (viral or universal) and swabs (dacron, rayon or flocked)".

5.63 The second section of the SOP set out three key responsibilities for the cruise ship surveillance team in the SES PHU: first, maintaining a log of all ships due to enter Sydney; second, sending emails to ships 48 hours before arrival requesting ARD Logs and other information; and third, preparing a pre-arrival risk assessment form to be sent to the expert panel.

5.64 The third section of the SOP clarified that the PHEOC would be responsible for arranging the joint teleconferences with the Public Health Units. The fourth section of the SOP detailed procedures for the onboard assessment by a health assessment team.

5.65 The attachments to the SOP included a draft email to be sent to ships 48 hours prior to arrival, an updated version of the pre-arrival risk assessment form, and other draft emails to be sent to ships in different scenarios.

5.66 While comments were provided by Dr Gupta on behalf of the SLHD on 4 March 2020, the draft SOP was never amended nor finalised.[61]

60 Exhibit 29, Annexures to the NSW Health Witness Statements, Tab 28; Exhibit 53, Statement of Dr Vicky Sheppeard (9 June 2020) [30].

61 Exhibit 53, Statement of Dr Vicky Sheppeard (9 June 2020) [32]; Exhibit 29, Annexures to the NSW Health Witness Statements, Tab 33.

The National Protocol

5.67 On 6 March 2020, the Commonwealth Department of Health disseminated a document titled "National protocol for managing novel coronavirus disease (COVID-19) risk from cruise ships" (**National Protocol**).[62] This document had been prepared in consultation with various government agencies, the Cruise Lines International Association and the Chief Human Biosecurity Officers for the States and territories. Dr Tobin had provided comments on behalf of NSW Health on 21 and 24 February 2020.[63]

5.68 The National Protocol's stated purpose was to clarify the intent, responsibility and required action in responding to COVID-19 risk from cruise ships. The protocol described itself as "primarily a border operations protocol".[64] The protocol noted that "[t]he decision to escalate border measures [was] an Australian Government decision informed by whole of Government advice with expert input from state and territories…"[65]

Border Screening

5.69 The National Protocol confirmed that, with some modifications, the standard border screening process for cruise ships would apply in relation to pre-arrival reporting and the grant of pratique.

5.70 In relation to pre-arrival reporting, the National Protocol noted that, in accordance with s 193 of the *Biosecurity Act 2015* (Cth), vessels were required to lodge a "pre-arrival report" and a "human health report" via the MARS between 96 and 12 hours prior to arrival at an Australian port. The National Protocol further noted that, that in light of the public health emergency arising as a result of COVID-19, the form of pre-arrival report had been updated to include the following questions:

- Has the vessel been in mainland China, Republic of Korea, Italy or Iran in the last 14 days?
- Has any person on the vessel been in mainland China, Republic of Korea, Italy or Iran in the last 14 days?
- Has any person on the vessel been in contact with a confirmed case of novel coronavirus infection in the last 14 days?[66]

62 Exhibit 9, Australian Government, Department of Health, document titled "National protocol for managing novel coronavirus diseases (COVID-19) risk from cruise ships, endorsed 3 March 2020.

63 Exhibit 28, Statement of Dr Sean Tobin (29 May 2020) [33]; Exhibit 29, Annexures to the NSW Health Witness Statements, Tabs 21 and 25.

64 Exhibit 9, Australian Government, Department of Health, document titled "National protocol for managing novel coronavirus diseases (COVID-19) risk from cruise ships, endorsed 3 March, p 1.

65 Exhibit 9, Australian Government, Department of Health, document titled "National protocol for managing novel coronavirus diseases (COVID-19) risk from cruise ships, endorsed 3 March, p 12.

66 Exhibit 9, Australian Government, Department of Health, document titled "National protocol for managing novel coronavirus diseases (COVID-19) risk from cruise ships, endorsed 3 March, p 5.

5.71 In relation to "pratique", the National Protocol noted that a cruise vessel was assumed to have pratique from the vessel's first port of arrival in Australia unless: (a) there was illness or death on board; or (b) the vessel had not provided a pre-arrival report. The protocol reiterated that, where there was illness or death on board or a pre-arrival report had not been provided, the vessel was taken to have "negative pratique" until a Biosecurity Officer had assessed that there was no human health risk associated with the vessel and granted pratique.[67]

5.72 In relation to the administration of the "Traveller with Illness Checklist" (**TIC**), discussed in Chapter 4 of this Report, the National Protocol indicated that, where a cruise ship had reported unwell travellers, the vessel would be met by a Biosecurity Officer and unwell travellers would be screened using existing screening procedures for listed human diseases. The National Protocol noted in this regard that the "TIC screens for COVID-19" were based on the case definition provided by the CDNA Guidelines.[68]

5.73 The National Protocol advised that three additional border measures would be applied in light of the public health emergency arising as a result of COVID-19. The first was that all cruise ships would be required to provide any stored swabs urgently to State and Territory health officers for rapid transport to laboratory testing facilities. The second was that all cruise ships would be required to deliver onboard announcements encouraging self-reporting of ill health by travellers and informing travellers of their obligation to declare whether they are experiencing specific symptoms. The third was that all ports would be required to deliver verbal announcements at the Australian seaport to encourage self-reporting by passengers and to inform them of their disclosure obligations.[69]

Risk assessments

5.74 The National Protocol indicated that, given the prevailing circumstances, it was important that there also be an assessment of the public health risk of each vessel arriving in Australia from international ports before control and other public health measures were implemented.[70]

67 Exhibit 9, Australian Government, Department of Health, document titled "National protocol for managing novel coronavirus diseases (COVID-19) risk from cruise ships, endorsed 3 March, p 6.

68 Exhibit 9, Australian Government, Department of Health, document titled "National protocol for managing novel coronavirus diseases (COVID-19) risk from cruise ships, endorsed 3 March, p 6.

69 Exhibit 9, Australian Government, Department of Health, document titled "National protocol for managing novel coronavirus diseases (COVID-19) risk from cruise ships, endorsed 3 March, pp 6-7.

70 Exhibit 9, Australian Government, Department of Health, document titled "National protocol for managing novel coronavirus diseases (COVID-19) risk from cruise ships, endorsed 3 March, p 3.

5.75 The National Protocol suggested that the following criteria could be used to inform the risk management strategy pursued by a public health unit:

- the itinerary of the vessel;
- the travel history of any person on board the vessel;
- the contact history of any person on board;
- the healthcare capabilities of the vessel; specifically, its ability to assess presenting travellers, including point of care testing for influenza, and the facilities available for isolation;
- whether healthcare consultations were being offered at no cost or a subsidised rate, and the rate of access by passengers;
- whether the number of persons presenting with influenza-like illness exceeded that expected for the specific itinerary and season;
- whether point of care testing for influenza was available, and the number of cases presenting with ILI but testing negative for influenza; and
- any indication or information that the ship had not implemented appropriate measures (surveillance, isolation, communication, treatment etc.).[71]

Procedures for dealing with suspected cases of COVID-19 and outbreaks of influenza-like illness

5.76 The National Protocol provided specific advice for when a ship's medical officer had determined that there was:

a) a suspected case of COVID-19 on board (defined in accordance with the CDNA Guidelines); or

b) an outbreak of influenza-like illness on board "with larger than expected numbers of tests negative for influenza". In this regard, the protocol noted that an "outbreak" would be indicated by illness affecting "≥ 1%" of passengers or crew members.

5.77 The protocol again advised that two "samples" should be collected from any suspect case or passenger with ILI: one for rapid influenza testing and the other for later COVID-19 testing.

5.78 The protocol reiterated that travellers would not be allowed to disembark the vessel until a Biosecurity Officer, in consultation with a Human Biosecurity Officer, had made the appropriate assessments and pratique had been granted.

71 Exhibit 9, Australian Government, Department of Health, document titled "National protocol for managing novel coronavirus diseases (COVID-19) risk from cruise ships, endorsed 3 March, pp 3-4.

Further letter to the Cruise Line Industry of 9 March 2020

5.79 On 9 March 2020, NSW Health disseminated an updated version of the "Enhanced COVID-19 Procedures for the Cruise Line Industry" (**9 March Enhanced Procedure**).[72] Dr McAnulty gave evidence that the purpose of this document was to recommend "additional precautions" and to "strengthen [ships'] specimen collection capacity in case COVID-19 testing was required following the pre-arrival risk assessment".[73] Key representatives from the cruise line industry, including Carnival Australia, had been consulted regarding the industry's capacity to comply with the procedure.

5.80 In contrast to the 22 February Enhanced Procedure, this version of the procedure did not expressly require cruise ships to refer to the waiver of fees in making announcements asking passengers with respiratory illness to present to the ship's medical centre. That change was apparently based on a submission made by Carnival Australia during the consultation process that it "did not consider the offer of a free assessment for all guests to be necessary or manageable onboard" and that it had "no evidence to suggest that guests did not present when ill or suffering symptoms".[74]

5.81 This version of the procedure also contained two key changes concerning "swabs". First, the procedure made explicit that the requirement for cruise ships to ensure that they had sufficient supplies to manage a respiratory outbreak included "sterile transport swabs". Second, the procedure indicated that swabs should be taken by ships' doctors from "all people with influenza-like illness (ILI) AND those with acute respiratory illness (ARI) with a history of travel to countries on the Australian list of countries at risk of COVID-19". In this regard, the procedure indicated that three swabs were required for each person: two swabs for COVID-19 testing (a nasopharyngeal and an oropharyngeal swab) and a further swab for rapid influenza testing.

72 Exhibit 29, Annexures to the NSW Health Witness Statements, Tab 44.

73 Exhibit 57, Statement of Jeremy McAnulty (15 June 2020) [92].

74 Exhibit 104, Email from Carnival Australia to Ministry of Health annexing Enhanced COVID-19 Procedures of 26 February 2020.

5.82 The procedure reiterated that each ship would need to provide the following information to NSW Health at least 24 hours before arrival at port:

- "A copy of the full ARD log (including details of patients presenting with fever OR ARI OR both, a list of countries they have visited in the 14 days prior to illness onset, and results of rapid influenza testing).
- A list of any passengers and crew who have been in contact with a confirmed case of COVID-14 within 14 days before embarking (if known).
- A list of passengers and crew who have been in countries on the Australian list of countries at risk of COVID-19 transmission in the 14 days prior to embarkation.
- Number of swabs collected for possible SARS-COV-2 testing.
- A list of the on-board medical staff and their contact details.
- A list of any planned medical disembarkations.
- A list of any deaths during the cruise, including cause of death."

5.83 The procedure noted that a ship would not be granted pratique until given clearance by "the Human Biosecurity Officer".

The risk assessment procedure in practice

5.84 From mid-February until the cessation of cruise travel around late March 2020, NSW Health expert panels conducted risk assessments in respect of 63 cruise ship arrivals. As noted at [5.38], Associate Professor Bradley Forssman served as a member of the panel from 23 February 2020.[75]

5.85 In accordance with the SOP, the cruise ship surveillance team in the SES PHU was responsible for liaising with each incoming ship, obtaining a copy of its ARD Log and preparing the pre-arrival risk assessment form. These tasks were usually completed by Ms Ressler, although she was sometimes assisted by Laura-Jayne Quinn, an Environmental Health Officer in the SES PHU. Professor Ferson or Dr Sheppeard would then consider both the ARD log and the completed risk assessment form, before sending the form on to the other members of the expert panel.[76] From time to time, Professor Ferson or Dr Sheppeard would also send the ARD Log to the other members of the expert panel. However, at no stage did this become a consistent practice.[77]

75 Exhibit 56, Statement of Associate Professor Bradley Forssman (29 May 2020) [16].

76 Exhibit 16, Statement of Kelly-Anne Ressler (1 May 2020) [13]-[14].

77 Exhibit 16, Statement of Kelly-Anne Ressler (1 May 2020) [19]-[20].

5.86 The majority of the risk assessments were carried out during the regular joint teleconferences between the PHEOC and the Public Health Units. Around 9 March 2020, however, it was agreed that an initial risk assessment would be performed via email and, if all experts agreed that the cruise ship posed a "low risk", no teleconference would be held. This change in procedure was adopted because it had become increasingly difficult to schedule the teleconference in light of the expert panel members' other demanding COVID-19-related duties.[78]

Modification of the risk assessment form and pre-arrival questions

5.87 The pre-arrival risk assessment form and the pre-arrival questions were modified on multiple occasions in February and March 2020 "depending on the information [NSW Health] needed to collect".[79] These changes were often made by Ms Ressler, subject to approval from Dr Sheppeard or Professor Ferson.[80] A common reason to modify the form was to capture the expanding list of countries of concern identified in the epidemiological criteria for a suspect case of COVID-19.

5.88 By 10 March 2020, however, the focus on specific "countries of concern" had been rendered largely redundant by the inclusion of all "international travel" in the epidemiological criteria for a suspect case of COVID-19 in the CDNA Guidelines. At this time, the pre-arrival risk assessment form included fields containing the following questions regarding travel history:

> "Number of passengers and crew who have been in Mainland China, Iran, South Korea or Italy
>
> Number of passengers and crew who have been in another country of concern* within 14 days of embarking (*currently Hong Kong, Japan, Indonesia, Singapore, South Korea, Cambodia, Italy, Iran and Thailand)
>
> Number of ill passengers and crew who have been in countries included in the Australian COVID-19 testing criteria in the 14 days before embarkation"[81]

5.89 The change to the suspect case definition on 10 March 2020 was not missed by Ms Ressler, who sought to update the pre-arrival risk assessment form by deleting the field for recording the "Number of passengers and crew who have been in another country of concern". Ms Ressler considered that the field was no longer relevant or correct, as by 10 March 2020, all countries were countries of concern according to the CDNA Guidelines.[82] For whatever reason, however, Ms Ressler did not delete or modify the two other fields concerning the travel history of passengers and crew.

78 Exhibit 28, Statement of Dr Sean Tobin (29 May 2020) [72]-[73].

79 Transcript of the Commission, 5 May 2020 T341.5

80 Transcript of the Commission, 5 May 2020 T346.29-44.

81 Exhibit 16, Statement of Kelly-Anne Ressler (1 May 2020) [60]-[61] and Annexure KAR-6.

82 Exhibit 16, Statement of Kelly-Anne Ressler (1 May 2020) [60]-[61].

5.90 Around the same time, Ms Ressler prepared an updated template of pre-arrival questions for cruise ships. The old template had included a request for a list of passengers who had been in various countries (Mainland China, Thailand, Indonesia, Hong Kong, Singapore, South Korea, Iran, Japan, Italy and Cambodia) in the last 14 days.[83] Ms Ressler replaced this with a request for a list of passengers who "have left or transited through China or Iran in the last 14 days" and "have left or transited through the Republic of Korea on or after 5 March 2020". Ms Ressler noted in her evidence that she did not include Italy in these questions, which she believes was simply a mistake.[84]

5.91 It may be noted that there was at all times a discrepancy between the pre-arrival risk assessment form and the pre-arrival questions in terms of the date range for capturing relevant travel history: whereas the form referred to travel "within 14 days of embarking", the pre-arrival questions referred to travel "in the last 14 days".

83 See eg Exhibit 16, Statement of Kelly-Anne Ressler (1 May 2020), Annexure KAR-7.

84 Exhibit 16, Statement of Kelly-Anne Ressler (1 May 2020) [62].

6

Prior Voyages of the Ruby Princess in 2020

6.1 In the month prior to the voyage with which this Commission is concerned, the Ruby Princess had completed two voyages to New Zealand: a round-trip departing Sydney on 11 February 2020 and returning on 24 February 2020; and a round-trip departing Sydney on 24 February 2020 and returning on 8 March 2020. Both voyages were subject to NSW Health's new screening procedures for cruise ships, which had only recently been implemented around 15 February 2020.

The voyage between 11 and 24 February 2020

6.2 The first of the two prior voyages was completed without incident. In accordance with NSW Health's enhanced procedures, additional information was sought from the ship and a pre-arrival risk assessment was carried out by a NSW Health expert panel on 23 February 2020 by way of teleconference. On this occasion, the expert panel comprised Dr Jeremy McAnulty, Dr Vicky Sheppeard, Dr Zeina Najjar (a public health staff specialist in the Sydney Local Health District) and Associate Professor Bradley Forssman.[1]

6.3 On the basis of the information provided by the Ruby Princess, which suggested that only 22 people had presented to the ship's medical centre with acute respiratory illness, the expert panel concluded that the ship would be assessed as "low risk". This meant that the ship would not be required to undergo further health screening upon arrival at Sydney. The expert panel noted, however, that a further teleconference would be convened if NSW Health received any further information suggesting an outbreak on board the ship.[2]

6.4 On 24 February 2020, the Ruby Princess docked at the Overseas Passenger Terminal (**OPT**) in Circular Quay and passengers were allowed to disembark without further screening. After this had been completed, new passengers were taken on board and the ship set sail again for New Zealand.

1 Exhibit 118, Risk Assessment Form prepared by NSW Health for the arrival of Ruby Princess on 24 February 2020.

2 Exhibit 118, Risk Assessment Form prepared by NSW Health for the arrival of Ruby Princess on 24 February 2020.

The voyage between 24 February 2020 and 8 March 2020

6.5 Between 24 February 2020 and 5 March 2020, the Ruby Princess completed a tour of New Zealand, docking in the Bay of Islands, Auckland, Napier, Wellington, Akaroa, Dunedin and Fiordland. On 5 March 2020, the ship set sail again for Sydney.

6.6 On 5 March 2020, Dr Ilse von Watzdorf (the Ruby Princess's Senior Doctor) sent an email to a Sydney port agent for Carnival Australia (**Carnival**) advising that the ship had taken on a crew member in Dunedin on 4 March 2020 who had recently spent two weeks on holiday in Genoa, Italy.[3] Dr von Watzdorf noted that the crew member had been placed in isolation at the request of public health officials in Dunedin and asked if there was anything further required by NSW Health. The email was forwarded to the cruise ship surveillance team in the South Eastern Sydney Public Health Unit (**SES PHU**) a short time later that day.[4]

6.7 Kelly-Anne Ressler replied on behalf of NSW Health on the same date.[5] She advised that the crew member should be monitored regularly and remain isolated in her cabin. She noted that Carnival might also consider arranging for the crew member to be quarantined in a hotel in Sydney following the ship's arrival on 8 March 2020. Dr von Watzdorf replied directly to Ms Ressler on the same date, confirming that the crew member would remain isolated on board and that consideration would be given to the possibility of her disembarking in Sydney on 8 March 2020.[6]

6.8 On 6 March 2020, in advance of the Ruby Princess' scheduled return to Sydney, Ms Ressler sent the standard pre-arrival request for information to Dr von Watzdorf pursuant to NSW Health's enhanced procedures.[7] Ms Ressler's email included a request that the ship make an announcement asking anyone with respiratory symptoms or fever to present to its medical centre for assessment.

6.9 Around 7:00am on 7 March 2020, Dr von Watzdorf replied by email to Ms Ressler, providing the ship's acute respiratory diseases log (**ARD Log**) and other responses to NSW Health's requests for information.[8] The ARD Log indicated that of the ship's 2,995 passengers and 1,163 crew, 170 (4.08%) had presented to the ship's medical centre with acute respiratory illness and 18 (0.43%) had presented with influenza-like illness.[9] In her email, Dr von Watzdorf explained that a significant number of people had presented to the medical centre with acute respiratory illness after the ship had made the announcement requested by NSW Health. Dr von Watzdorf observed that this had resulted in a sharp increase, from 30 to 170, in the number of persons recorded in the ARD Log.

3 Exhibit 16, Statement of Kelly-Anne Ressler (1 May 2020), Annexure KAR-5.

4 Exhibit 16, Statement of Kelly-Anne Ressler (1 May 2020), Annexure KAR-5.

5 Exhibit 16, Statement of Kelly-Anne Ressler (1 May 2020), Annexure KAR-5.

6 Exhibit 16, Statement of Kelly-Anne Ressler (1 May 2020), Annexure KAR-5.

7 Exhibit 16, Statement of Kelly-Anne Ressler (1 May 2020) [35] and Annexure KAR-3.

8 Exhibit 16, Statement of Kelly-Anne Ressler (1 May 2020) [36] and Annexure KAR-3.

9 Exhibit 16, Statement of Kelly-Anne Ressler (1 May 2020), Annexure KAR-6.

6.10 At 10:58am on the same date, Dr von Watzdorf confirmed that the crew member who had been in Italy remained asymptomatic and afebrile and would be disembarking on 8 March 2020 to complete a period of hotel quarantine.[10]

6.11 On the same date, a pre-arrival risk assessment form was prepared by Ms Laura-Jayne Quinn (an Environmental Health Officer in the SES PHU) based on the information provided by the ship. The form was sent to and considered in the first instance by Dr Sheppeard, who made minor amendments before sending it on the other members of the expert panel at 12:53pm. In her covering email, Dr Sheppeard recommended that further information be sought from the ship's doctor in relation to two passengers from the United Kingdom who had spent several days in Singapore and had developed a cough and a runny nose and had tested negative for influenza. The other members of the expert panel – Dr Sean Tobin, Dr Leena Gupta and Associate Professor Forssman – agreed with Dr Sheppeard's recommendation.[11]

6.12 A short time later, Dr Sheppeard sent an email to Dr von Watzdorf advising of the expert panel's preliminary concerns and seeking an update regarding the clinical status of the two passengers who had spent time in Singapore. [12] Dr Sheppeard requested that Dr von Watzdorf take swabs from those passengers and any other persons who might present to the medical centre with acute respiratory illness or influenza-like illness prior to the ship's arrival at Sydney.

6.13 At 2:30pm, Dr von Watzdorf replied by email to provide an update regarding the health of the two passengers of concern and to confirm that swabs could be taken from them if required by NSW Health. [13] She noted, however, that the ship had only six viral swabs available onboard and enquired if there was anywhere she could obtain additional swabs.

6.14 At about 4:30pm, the expert panel held a teleconference to discuss the risk assessment for the Ruby Princess.[14] The expert panellists were primarily concerned about the two passengers who had spent a number of days in Singapore.[15] However, they also took into account that a relatively large number of passengers and crew had presented with acute respiratory illness and that the pre-arrival risk assessment form indicated that no swabs would be available for COVID-19 testing.[16] The expert panel concluded that the ship posed a "medium risk", such that an onboard health assessment would be required pursuant to NSW Health's enhanced screening procedures.

10 Exhibit 16, Statement of Kelly-Anne Ressler (1 May 2020), Annexures KAR-4 and KAR-5.

11 Exhibit 16, Statement of Kelly-Anne Ressler (1 May 2020) [40]; Exhibit 56, Statement of Associate Professor Bradley Forssman (29 May 2020) [26]; Exhibit 29, Annexures to the NSW Health Witness Statements, Tab 40.

12 Exhibit 16, Statement of Kelly Anne-Ressler (1 May 2020) [41] and Annexure KAR-7.

13 Exhibit 16, Statement of Kelly-Anne Ressler (1 May 2020) [41] and Annexure KAR-7.

14 Exhibit 16, Statement of Kelly-Anne Ressler (1 May 2020) [42]-[43].

15 Exhibit 28, Statement of Dr Sean Tobin (29 May 2020) [63]-[67]; Exhibit 53, Statement of Dr Vicky Sheppeard (9 June 2020) [43]; Exhibit 56, Statement of Associate Professor Bradley Forssman (29 May 2020) [28]-[30]; Exhibit 101, Statement of Dr Leena Gupta (12 June 2020) [46]-[50].

16 Exhibit 28, Statement of Dr Sean Tobin (29 May 2020) [67]; Exhibit 53, Statement of Dr Vicky Sheppeard (9 June 2020) [46]-[47].

6.15 At 5:42pm, Ms Ressler sent a further email on behalf of NSW Health to Dr von Watzdorf, Commodore Pomata and other Carnival employees, advising that the ship would be subject to an onboard health assessment upon arrival.[17] Ms Ressler requested that the ship set aside a large, open space onboard for this purpose and advised that all persons with current respiratory symptoms or a travel history of concern would be required to attend for screening. Ms Ressler indicated that persons requiring screening should complete the traveller record form attached to her email.

6.16 At 12:18am on 8 March 2020, the Ruby Princess' captain, Commodore Giorgio Pomata, sent an email providing his answers to the pre-arrival questions required by the Port Authority of New South Wales (**Port Authority**) coronavirus guidelines. In response to the question "Are there any crew members showing symptoms of the novel coronavirus on-board or are there any ill passengers or crew on board", the Commodore answered, "No". At 12:25am, the Port Authority's Vessel Traffic Services Team (**VTS**) confirmed that it would put a pilot on board to facilitate the ship's arrival at the OPT.[18]

6.17 At about 4:30am, a marine pilot from the Port Authority boarded the ship and brought it into the harbour.[19] As a general precaution, the pilot was wearing personal protective equipment supplied by the Port Authority.[20] However, he was not aware that the ship had been assessed by NSW Health as "medium risk" and would be subject to an onboard health screening.[21]

6.18 At 5:45am, the ship docked at the OPT, where it was met by the NSW Health Assessment Team (**Health Team**). The team comprised Ms Ressler (the team lead), Dr Sheppeard, three nurses and three logistics staff. They had brought with them two screening "kits" containing swabs, gloves, masks, aprons, alcohol gel and other equipment.[22]

6.19 The marine pilot disembarked the Ruby Princess shortly after it had been moored. The pilot noticed the members of the Health Team gathered in the gun port of the ship but did not know at that stage who they were or what they were doing on board the ship.[23]

17 Exhibit 16, Statement of Kelly-Anne Ressler (1 May 2020) [45] and Annexure KAR-9.

18 Exhibit 23, Statement of Sarah Marshall (5 May 2020), Annexure M.

19 Exhibit 95, Statement of James Dargaville (16 April 2020) [9].

20 Exhibit 95, Statement of James Dargaville (16 April 2020) [9].

21 Exhibit 95, Statement of James Dargaville (16 April 2020) [15].

22 Exhibit 16, Statement of Kelly-Anne Ressler (1 May 2020) [47]-[48]; Exhibit 53, Statement of Dr Vicky Sheppeard (9 June 2020) [49]-[50].

23 Exhibit 95, Statement of James Dargaville (16 April 2020) [13].

6.20 Upon boarding the ship, the Health Team learnt that arrangements had been made for the screening to be carried out in the ship's dining room. Ms Ressler gave evidence that the Health Team were "quite shocked" by the large number of people seated in the dining room, waiting to be screened. Over 360 persons were present, far exceeding the 170 listed in the ship's ARD Log. It was understood that these people had gathered in the dining room on the basis of an announcement made by the ship calling for anyone with a travel history of concern or respiratory symptoms to present themselves for screening.[24] Ms Ressler said that the people waiting were not practising physical distancing and were not wearing face masks.[25] However, everyone had completed the traveller record form sent to the ship the evening prior.[26]

6.21 Dr Sheppeard asked everyone to stay seated where they were while the Health Team set up screening stations in the dining room. Masks were then handed out for everyone to put on before the health screening began. The purpose of this screening was to determine who would be swabbed for COVID-19, which was ultimately a matter for Dr Sheppeard.[27]

6.22 In the first stage of the screening, the Health Team's three nurses went around the room and checked everyone's temperature. Anyone with a temperature was moved to a separate location to have their temperature taken again. Ms Ressler and the other members of the Health Team then went around the room to speak to each person and review their completed traveller record form. A total of 366 persons were screened in this manner. The Health Team identified that 240 people were symptomatic and about 120 were not. Ms Ressler observed that some people had presented for health screening despite having no symptoms and no relevant travel history.[28]

24 Exhibit 16, Statement of Kelly-Anne Ressler (1 May 2020) [49].

25 Transcript of the Commission, 1 May 2020 T259.

26 Exhibit 16, Statement of Kelly-Anne Ressler (1 May 2020) [51].

27 Transcript of the Commission, 1 May 2020 T260.1-6.

28 Exhibit 16, Statement of Kelly-Anne Ressler (1 May 2020) [51]-[53].

6.23 Having spoken to nearly all of the 366 persons presenting for screening, Dr Sheppeard's overall assessment was that COVID-19 was unlikely to be on board the ship. In her evidence, Dr Sheppeard said that she took into account that there was no evidence of severe disease or high rates of respiratory infection amongst travellers who had come from high risk countries. Further, she observed that most of the travellers who had a respiratory infection were improving.[29]

6.24 Dr Sheppeard also reviewed the two passengers who had been in Singapore. She observed that both had recovered, which suggested to her that they were unlikely to have been infected with COVID-19.[30]

6.25 Dr Sheppeard was, however, concerned about six passengers who had presented with unexplained fever, severe coughs and systemic illness. Those passengers were tested for influenza using rapid point-of-care tests, and two were confirmed to be positive for influenza. Consequently, Dr Sheppeard decided that swabs for COVID-19 testing would be taken from the four passengers who had tested negative, as well as an additional three crew with fever. Dr Sheppeard described this approach as "precautionary", as not all of these persons fit the epidemiological criteria for a "suspect case" of COVID-19 applicable at the time.[31]

6.26 The swabbed passengers and crew were placed into isolation, while all other passengers were allowed to disembark. Dr Sheppeard recommended to the ship's staff that they not allow new passengers and crew to board until the test results had been received.

6.27 The test results were not received until sometime between 5:00 and 5:30pm, at which point it was confirmed that all of the relevant persons had tested negative for COVID-19. Accordingly, the passengers from whom swabs had been taken were allowed to disembark, and new passengers and crew were permitted to come onboard.[32]

6.28 Before the Health Team disembarked the ship, Ms Ressler gave Dr von Watzdorf a full box of 25 swabs and asked her to collect specimens for COVID-19 testing during the course of the next voyage.[33]

29 Exhibit 53, Statement of Dr Vicky Sheppeard (9 June 2020) [52].

30 Exhibit 53, Statement of Dr Vicky Sheppeard (9 June 2020) [53].

31 Exhibit 53, Statement of Dr Vicky Sheppeard (9 June 2020) [52].

32 Exhibit 16, Statement of Kelly-Anne Ressler (1 May 2020) [56].

33 Exhibit 16, Statement of Kelly-Anne Ressler (1 May 2020) [57].

Communication issues surrounding the Ruby Princess's arrival on 8 March 2020

6.29 It was not until sometime after the Ruby Princess had been piloted into Sydney Harbour on the morning of 8 March 2020 that the Port Authority became aware that NSW Health was conducting a health screening of passengers and crew onboard the ship. The Port Authority had not been privy to any earlier information regarding the "medium risk" assessment and the ship's Human Health Report lodged via the Department of Agriculture, Water and the Environment's Maritime Arrivals Reporting System (**MARS**). [34]

6.30 The situation was raised with the Port Authority's Acting Chief Operating Officer, Emma Fensom, who was advised that the ship's onward journey would be delayed until 5:00pm pending COVID-19 testing of onboard samples.[35] Ms Fensom indicated that, if the test results taken were to come back positive for COVID-19, the Port Authority would require advice from NSW Health before placing a pilot onboard. Ultimately, however, the Port Authority received confirmation that the swabs taken from the Ruby Princess had tested negative for COVID-19 and pilotage was provided to the ship accordingly.

6.31 In the following days, Port Authority staff were understandably concerned that they had not been alerted to the potential health risks posed by the ship. This included a concern, discussed in further detail at [6.42]-[6.46], that the Commodore of the ship may have provided a "false declaration" in response to the Port Authority's pre-arrival questionnaire.

6.32 On 9 March 2020, the Port Authority's Crisis Management Team held its first official meeting, in which it was agreed that the Port Authority would need to seek advice from NSW Health, the Australian Border Force (**ABF**) and Carnival in relation to cruise ship arrivals.[36]

6.33 On the same date, Sarah Marshall (General Manager Operations at the Port Authority), had a telephone discussion with Ms Ressler, whom she had learnt was involved in the routine health screening of cruise ships. Ms Marshall raised what had happened on 8 March 2020 and explained that it was important that the Port Authority receive notification of any health screening of cruise ships in advance, given the exposure of marine pilots to health risks on board the ship. Ms Ressler explained the NSW Health assessment process for cruise ships, including the steps that NSW Health would take if there was a confirmed COVID-19 case on board the ship. Ms Ressler emphasised, however, that NSW Health would not know if there was COVID-19 onboard a ship until it had come into port. She said that NSW Health would be getting passengers off the ship and not isolating them on board, as they had been in the case of the Diamond Princess.[37]

34 Exhibit 95, Statement of James Dargaville (16 April 2020) [15].

35 Exhibit 22, Statement of Emma Fensom (5 May 2020) [21]; Statement of Sarah Marshall (5 May 2020) [12].

36 Exhibit 23, Statement of Sarah Marshall (22 April 2020) [20].

37 Exhibit 23, Statement of Sarah Marshall (22 April 2020) [22].

6.34 Ms Marshall sent an email to Ms Ressler later that day requesting that the Port Authority be notified, by email to VTS, when NSW Health had deemed there to be a risk onboard a ship and would be conducting a health screening.[38] Ms Ressler replied a short time later, confirming that NSW Health would advise when a "medium or high risk ship" is "on the radar" and attaching a copy of the NSW Health document titled "Enhanced COVID-19 measures for cruise line industry" dated 9 March 2020.[39]

6.35 On 10 March 2020, Ms Marshall sent an email to the Port Authority's marine pilots to provide an update on the Ruby Princess incident. Ms Marshall indicated that what had happened on 8 March 2020 would not happen again, as NSW Health would be informing VTS of any ships assessed as "medium" or "high risk".[40]

6.36 On the same date, Ms Marshall lodged a request for access to the MARS and sent an email to a contact person at the ABF seeking to set up a telephone call to discuss cruise ship matters.[41] The ABF officer replied by email, indicating that she would call the following day. That telephone call did not eventuate, and Ms Marshall did not receive any further response from the ABF officer, despite sending two further emails on 12 March 2020.[42]

6.37 On 12 March 2020, Ms Marshall received an email from Craig Yorston of the MARS Administration team in response to a query she had submitted regarding her pending access request. Mr Yorston stated, "[d]espite it being a registration option I don't believe the access type for Port Authorities was fully implemented – I'd need to confirm this with the development team. I can see that this access level has never been granted". Mr Yorston queried what it was that the Port Authority was hoping to use the MARS for. In a reply by email, Ms Marshall indicated that the Port Authority would like to have the "visibility of the MARS forms" to assist with its ability to safely bring vessels into port where they may have people onboard with known COVID-19 symptoms.[43]

38 Exhibit 23, Statement of Sarah Marshall (22 April 2020) [23] and Annexure G.

39 Exhibit 23, Statement of Sarah Marshall (22 April 2020) [23] and Annexure G.

40 Exhibit 23, Statement of Sarah Marshall (22 April 2020) [24] and Annexure H.

41 Exhibit 23, Statement of Sarah Marshall (22 April 2020) [25].

42 Exhibit 23, Statement of Sarah Marshall (22 April 2020) [21].

43 Exhibit 23, Statement of Sarah Marshall (22 April 2020), Annexure I.

6.38 On 13 March 2020, Ms Marshall made a number of telephone enquiries of the Department of Agriculture, Water and the Environment seeking an update on her request for access to the MARS. Ultimately, Ms Marshall spoke to Guy Bursle (Director, Conveyances and Ports Compliance Controls). Mr Bursle indicated that giving her access to MARS would be a "tricky IT issue", but he had an idea for a way in which a notification to the Port Authority could be triggered if a human health inspection was required. Mr Bursle said that he would get back to her.[44]

6.39 On 16 March 2020, it came to Ms Marshall's attention that NSW Health was involved in "a matter" on board the Pacific Explorer. Ms Marshall sent an email to Ms Ressler raising this and noting that the Port Authority had not received any formal notification from NSW Health.[45] In a reply by email, Ms Ressler apologised and indicated that the ship had submitted swabs taken from four people for COVID-19 testing. Ms Ressler further indicated that the NSW Health expert panel had requested that those people stay on board until the test results were received, while all others had been allowed to disembark.[46]

6.40 In a subsequent email, Ms Marshall asked for an explanation as to why the Port Authority had not been alerted to these matters. She said that she needed this information as her staff were going to be "up in arms about this", having been told that they would be getting alerts from NSW Health after the "Ruby Princess incident" on 8 March 2020. In a reply by email, Ms Ressler apologised again, indicating that the ship had been assessed as low risk and not requiring an onboard health team response. She said that she would have let Ms Marshall know if it had been assessed as medium or high risk.[47]

6.41 On 17 March 2020, Ms Marshall received an email from Mr Yorston in relation to her MARS access request. Mr Yorston indicated that there had been "a fair bit of discussion about this and the directive is that you should be sourcing this information from the Department of Health (federal and/or state)."[48]

44 Exhibit 23, Statement of Sarah Marshall (22 April 2020) [28].

45 Exhibit 23, Statement of Sarah Marshall (22 April 2020), Annexure K.

46 Exhibit 23, Statement of Sarah Marshall (22 April 2020), Annexure K.

47 Exhibit 23, Statement of Sarah Marshall (22 April 2020), Annexure K.

48 Exhibit 23. Statement of Sarah Marshall (22 April 2020), Annexure I.

The "false declaration" made by the Commodore on 8 March 2020

6.42 It is understandably of concern to Carnival that there are multiple assertions in the evidence before the Commission that the Commodore knowingly gave a false answer to the Port Authority's biosecurity questionnaire of 8 March 2020. The relevant question read: "Are there any crew members showing symptoms of the novel coronavirus on-board or are there any ill passengers or crew on board?" The Commodore answered "No".[49]

6.43 The explanation given by the Commodore, whose first language is Italian, was that he misunderstood the question. This was communicated to the Port Authority together with an apology on 13 March 2020.[50]

6.44 The Commission accepts that there are two important matters of context for the Commodore's answer. First, at the time of the Commodore's email, the Ruby Princess had reported to both NSW Health and the Commonwealth that there were people with respiratory symptoms on board. It was reasonable for the Commodore to assume that this information was being shared with the Port Authority.

6.45 Second, the relevant question was not without ambiguity. An arguably reasonable interpretation of the question was that "ill passengers or crew" was, in context, referring to people who were positively known to be ill with COVID-19. So understood, an answer in the negative would not entail dishonesty.

6.46 In these circumstances, the Commissioner does not consider that the evidence indicates dishonesty by the Commodore and makes no adverse findings in this regard. Of course, it is a striking example, in hindsight, of the need for improved clarity of communication about such urgent information.

49 Exhibit 22, Statement of Emma Fensom (5 May 2020), Annexure 10.

50 Exhibit 23, Statement of Sarah Marshall (22 April 2020), Annexure M.

7

The Voyage of the Ruby Princess from 8-19 March

The departure of the Ruby Princess on 8 March

7.1 As described in Chapter 6 of this Report, the Ruby Princess arrived at the Overseas Passenger Terminal (**OPT**) at Circular Quay on 8 March 2020 following a two-week round-trip cruise to New Zealand. The vessel was scheduled to undertake a similar voyage departing the same day at approximately 6:45pm, with the following planned itinerary (**the 8 March voyage**):

- 9 and 10 March 2020 — At sea
- 11 March 2020 — Fiordland National Park
- 12 March 2020 — Dunedin (Port Chalmers)
- 13 March 2020 — Akaroa
- 14 March 2020 — Wellington
- 15 March 2020 — Napier
- 16 March 2020 — Tauranga
- 17 March 2020 — Auckland
- 18 March 2020 — Bay of Islands
- 19 and 20 March 2020 — At sea
- 21 March 2020 — Arrival in Sydney

7.2 In the weeks prior to departure, passengers booked to sail on the 8 March voyage received correspondence from Princess Cruise Lines Ltd (**Princess Cruises**) stating that Princess Cruises was monitoring the situation in relation to COVID-19 and that any passenger booked on the 8 March voyage who had travelled from or through mainland China, Macau or Hong Kong (including airport transit), or had contact with a suspected or confirmed case of COVID-19 within 14 days of the commencement of the voyage would not be allowed to board the ship. Refunds were offered to affected passengers.[1] Passengers were further notified that they would be subject to pre-boarding health reporting and enhanced screening at check-in.[2]

7.3 Those booked to depart on the 8 March voyage began gathering at the OPT from 8:00am. Passengers had been notified that embarkation times would be staggered, with some passengers scheduled to board as early as 12:00 noon.[3] Upon their arrival at the OPT, some passengers observed that there were still persons on board the vessel.[4]

7.4 A number of passengers gave evidence that their boarding of the vessel was significantly delayed, and many were advised that this was due to the onboard assessment conducted by NSW Health upon the arrival of the vessel earlier that morning, which had delayed disembarkation of passengers from the prior voyage. Others recalled being told that the ship was to undergo a "deep clean" before passengers embarked.[5] Text messages sent to passengers waiting to board for the 8 March voyage from Princess Cruises advised that embarkation would be delayed and passengers ought not arrive at the OPT before 1:00pm. Subsequent messages advised of a further delay in embarkation until 5:00pm, and a "revised sail time" of 10:00pm.[6]

The pre-embarkation health screening

7.5 As foreshadowed by Princess Cruises, all passengers booked on the 8 March voyage aged 18 years and over were subject to health screening upon their arrival at the OPT.[7] This process was outlined in an "Instructional Notice" produced and updated by Carnival.[8]

1 Exhibit 96, 255 police statements of Ruby Princess passengers and families; Exhibit 79, Statement of Lynda De Lamotte (20 May 2020) [8]; Exhibit 80, Statement of Lynette Jones (21 April 2020) [7].

2 Exhibit 79, Statement of Lynda De Lamotte (20 May 2020) [8]; Exhibit 90, Statement of Kristy McMahon (7 May 2020) [5].

3 Exhibit 84, Statement of Ann Kavanagh (28 April 2020) [7]; Exhibit 79, Statement of Lynda De Lamotte (20 May 2020) [4]; Exhibit 71, Statement of Jill Whittemore (28 April 2020) [6]-[7]; Exhibit 80, Statement of Lynette Jones (21 April 2020) [9].

4 Exhibit 71, Statement of Jill Whittemore (28 April 2020) [7].

5 Exhibit 80, Statement of Lynette Jones (21 April 2020) [10]; Exhibit 83, Statement of Sharon Schofield (6 May 2020) [4]; Exhibit 91, Statement of Janette Moore (14 April 2020) [10]-[12]; Transcript of the Commission, 22 June 2020 T1693.29-34.

6 Exhibit 72, Statement of William Wright (15 April 2020) [13]-[14]; Exhibit 74, Statement of Andrew Saulys (14 May 2020) [6]; Exhibit 76, Statement of Josephine Roope (16 April 2020) [6]; Exhibit 90, Statement of Kristy McMahon (7 May 2020) [7], [9], [11].

7 Exhibit 103, Statement of Johanna Bosman (30 June 2020) p 6 of Exhibit JB-1.

8 Exhibit 106, Statement of Dr Grant Tarling (29 June 2020) [32], [40] and pp 43-47 of Exhibit GT-1.

7.6 In accordance with the Instructional Notice, passengers for the 8 March voyage were issued a Traveller's Health Declaration form (**THD**) upon check-in.[9] The THD required passengers to declare whether they, or any of their children under 18 years, had, in the past 14 days:

1) travelled from or through mainland China, Hong Kong, Macau, South Korea or Iran, including airport transit in those locations;
2) been in contact with a suspect or confirmed case of COVID-19 or a person being monitored for COVID-19;
3) travelled from, or through, Italy, Japan, Singapore, Taiwan, Thailand, Cambodia or Indonesia, including airport transit in those locations.

7.7 Passengers who answered "no" to all three questions were permitted to embark on the 8 March voyage without further screening. If a passenger answered "yes" to Questions 1 or 2 they were not permitted to board the 8 March voyage.[10] There were 34 passengers denied boarding on the basis of their answers to Questions 1 or 2.[11]

7.8 Passengers that answered "no" to Questions 1 or 2 but "yes" to Question 3, were taken to a designated area on the ground floor of the OPT and were subject to further screening by medical personnel from the Ruby Princess.[12] The further screening was conducted by Johanna Bosman, employed by Princess Cruises as a Registered Nurse (**RN**) for the 8 March voyage. The process to be followed by medical personnel was outlined in a document titled *Identification, Assessment and Management of Patients for Coronavirus Disease 2019 (COVID-19)*. Among other stipulations, it indicated that close contact was to be minimised and persons were to stay at a distance of two metres from each other, where possible. It also stated that "consultation fees for pre-boarding evaluations should be waived".[13]

7.9 Upon their attending the designated area, passengers were asked to reconfirm their answers to Question 1 of the THD. If they answered "yes" to Question 1 they were denied boarding on the 8 March voyage. RN Bosman gave evidence that, on 8 March, there were some passengers who did answer "yes" who were denied boarding, and in relation to whom no further health screening occurred.[14]

9 Exhibit 103, Statement of Johanna Bosman (30 June 2020) [14], and see eg p 9 of Exhibit JB-1; Exhibit 71, Statement of Jill Whittemore (28 April 2020) [10]; Exhibit 89, Statement of Laraine Fenton (5 May 2020) [6].

10 Exhibit 103, Statement of Johanna Bosman (30 June 2020) [21](b).

11 Exhibit 43, Statement of Julie Taylor (13 May 2020), Annexure 9.

12 Exhibit 103, Statement of Johanna Bosman (30 June 2020) [21](c), [25](a) and p 6 of Exhibit JB-1.

13 Exhibit 121, "Identification, Assessment and Management of Patients for COVID-19", issued February 2020 by Holland America Group.

14 Exhibit 103, Statement of Johanna Bosman (30 June 2020) [25](d).

7.10 For all other passengers, RN Bosman requested further information about the length of time they had spent in the countries identified in the answers to Question 3 of the THD and completed a novel coronavirus Patient Investigation Form (**the Investigation Form**). She also took their temperature and recorded the result on the THD.[15]

7.11 As required by the Investigation Form, RN Bosman ascertained if the passenger had any respiratory symptoms. Those presenting with fever or "serious respiratory symptoms" were not permitted to board the Ruby Princess.[16] Any passenger with mild respiratory symptoms was referred to a local practitioner or hospital for further examination. There was one such passenger booked to depart on the 8 March voyage who presented to a Darlinghurst general practitioner for further examination as he displayed "chronic respiratory symptoms".[17]

7.12 Passengers were then asked Questions 1-4 on the Investigation Form to determine whether they were permitted to board. RN Bosman stated that passengers were permitted to board if:

a) they had no respiratory symptoms, or had mild respiratory symptoms but had obtained a medical certificate and been cleared by medical personnel of Princess Cruises; and

b) they had answered "no" to the four questions on the Investigation Form.[18]

7.13 Of the 59 passengers who underwent additional screening on 8 March, all of them were allowed to board the Ruby Princess.[19]

7.14 Passengers gave evidence that there were no separate toilet facilities in the area designated for the further health screening, and that passengers who had already been refused boarding on the basis of the THD screening questions "came to talk to others in [their] area".[20]

Passengers embark the Ruby Princess

7.15 The Daily Report Form of the Port Authority of New South Wales (**Port Authority**) indicates that embarkation of the Ruby Princess commenced at 5:25pm and concluded at 9:07pm, with the vessel sailing at 10:59pm.[21] The vessel was carrying 2,671 passengers and 1,146 crew members.

15 Exhibit 103, Statement of Johanna Bosman (30 June 2020) [10], [23]-[25], see also pp 7-126 of Exhibit JB-1 for copies of Investigation Forms from 8 March 2020.

16 Exhibit 103, Statement of Johanna Bosman (30 June 2020) [25](k).

17 Ibid [25](l), [28] and p 127 of Exhibit JB-1.

18 Ibid [26]-[27].

19 Ibid [28].

20 Exhibit 96, 255 police statements of Ruby Princess passengers and families.

21 Exhibit 36, Port Authority of NSW Daily Report Form.

The health of travellers during the voyage

Policies and procedures of Carnival relevant to the COVID-19 pandemic

7.16 Dr Grant Tarling, the Chief Medical Officer for Carnival Cruise Line, provided a statement to the Commission detailing various policies and practices promulgated by Carnival applicable during the 8 March voyage in relation to COVID-19,[22] in particular:

a) *Instructional Notice re Prevention and Control of COVID-19 (Revision 5)* which relevantly specified that any person under investigation for COVID-19 (as per the criteria of the Centers for Disease Control and Prevention) was, if possible, to be immediately isolated in the onboard medical centre;[23]

b) *Enhanced Cleaning Protocols* which detailed changes to sanitation protocols introduced in late February, including: the use of THDs; the increased availability and use of hand sanitiser by guests and crew; and altered requirements for public venues and restrooms. An additional requirement was imposed on 8 March 2020 to the effect that staff were to serve all passengers and crew at buffet venues on board the vessel.[24]

c) *Management of Acute Respiratory Disease – PHS-1120 (2018)* which directed that all patients who met the case definition for influenza-like illness (**ILI**) set out on page 1 "should be isolated for at least 24 hours post resolution of fever, not influenced by the use of antipyretics, and major symptoms". The policy required onboard medical personnel to maintain "accurate and current clinical records" and an "ILI surveillance log". It also stipulated that close contacts of ILI cases "should be identified and interviewed to determine their symptoms and medical risk factors".[25]

Observations from passengers in relation to hygiene protocols

7.17 A number of passengers aboard the 8 March voyage gave evidence of announcements throughout the cruise advising those on board to exercise good personal hygiene protocols, in particular hand washing and the use of hand sanitiser.[26] Many passengers were experienced 'cruisers' and described these announcements and protocols as routine.[27] Some passengers had brought with them their own personal protective equipment (**PPE**) including sanitiser, rubber gloves and antibacterial spray.[28]

22 Exhibit 106, Statement and Exhibit of Dr Grant Tarling (29 June 2020).

23 Ibid [40] and pp 43-47 of Exhibit GT-1.

24 Ibid [53]-[55] and pp 51-53 of Exhibit GT-1.

25 Exhibit 122.

26 Exhibit 74, Statement of Andrew Saulys (14 May 2020) [15]; Exhibit 79, Statement of Lynda De Lamotte (20 May 2020) [19].

27 Exhibit 64, Statement of Graeme Lake (12 May 2020) [27]; Transcript of the Commission, 22 June 2020 T1707.23-30.

28 Exhibit 80, Statement of Lynette Jones (21 April 2020) [21]; Exhibit 76, Statement of Josephine Roope (16 April 2020) [35].

Respiratory illness on board the Ruby Princess

7.18 On 14 March 2020, the Senior Doctor of the Ruby Princess, Dr Ilse von Watzdorf emailed Kelly-Anne Ressler from the Public Health Unit of the South Eastern Sydney Local Health District (**SES PHU**) to enquire whether NSW Health required regular updates about respiratory illnesses onboard "every few days". Dr von Watzdorf noted that the ship had "a few cases of the sniffles and influenza A again" but nothing she was concerned about "clinically in terms of COVID-19". Ms Ressler replied that NSW Health would collect information prior to the arrival of the vessel in Sydney, but Dr von Watzdorf could stay in touch if she had concerns.[29]

7.19 On 15 March 2020, Dr von Watzdorf sent Ms Ressler a further email indicating that it appeared that the Ruby Princess was "in the early phases of an Influenza A outbreak onboard" and that a questionnaire had been completed by all passengers and crew. She advised that all of those with symptoms were Influenza A positive, apart from one febrile patient. Dr von Watzdorf further advised that the febrile patient and four other passengers had been tested for COVID-19 in Wellington on 14 March 2020 and had returned negative tests.[30] She also noted that the ship had "the usual number of afebrile acute respiratory illnesses onboard as well".[31]

Passengers who attended the medical centre

Mr Anthony Londero

7.20 From 11 March 2020, Anthony Londero developed symptoms of influenza, including, by 15 March, a high temperature. He recalled receiving a notice in his cabin during the evening on 16 March encouraging anyone with a high temperature to report to the medical centre. He did so, and was admitted that evening by Dr von Watzdorf who advised that he was showing signs of cardiac strain, aggravated by influenza. He was tested for Influenza A and B and a swab was also taken for COVID-19 testing, which he was advised could not occur on board.[32]

7.21 Mr Londero gave evidence that in relation to his influenza test, Dr von Watzdorf remarked "they aren't going to be happy because [it] came back negative". He said that he "didn't really understand what that meant", but that Dr von Watzdorf also told him "I don't believe you have the coronavirus". Mr Londero said that Dr von Watzdorf did not express why she held this belief.[33]

29 Exhibit 50, Email from Dr Ilse von Watzdorf to Kelly-Anne Ressler (15 March 2020).

30 *Cf* Exhibit 114, Voluntary Statement of the Commonwealth of Australia (12 June 2020) [142]-[143], [159]-[160].

31 Exhibit 50, Email from Dr Ilse von Watzdorf to Kelly-Anne Ressler (15 March 2020).

32 Exhibit 60, Statement of Anthony Londero (16 April 2020) [27]-[28]; Transcript of the Commission, 19 June 2020 T1605.45-1606.02, T1608.30-1609.04.

33 Transcript of the Commission, 19 June 2020 T1606.10-41.

7.22 In her oral evidence, Dr von Watzdorf was asked if, at the time, it was her understanding that a positive test for influenza excluded COVID-19. She answered, "I would think so", but conceded that it was a clinical possibility that someone could be suffering from both at the same time.[34] When asked whether a person with ILI who had tested positive for influenza was less likely to also have COVID-19 than if they had tested negative for influenza, she stated:

> "As a physician, you treat the diagnosis that you have in front of you. You treat the patient, not – you know, not the disease … If a patient has a diagnosis of influenza-like illness and they improve with treatment … and they are afebrile and they are feeling well and improved, that is how you would assess whether this patient has indeed the diagnosis that you thought they had."[35]

7.23 Mr Londero remained a patient in the medical centre for the remainder of the cruise as he continued to feel extremely unwell. He recalled being given paracetamol intravenously. As discussed in further detail below, it was ultimately decided that he would be medically disembarked upon the ship's arrival in Sydney. He was allowed to return to his cabin for a few hours on the evening of 18 March to have dinner and to pack and prepare.[36]

David and Kim Walters

7.24 David Walters gave evidence that his wife, Kim, began to experience symptoms of influenza on the evening of 17 March 2020 and they both presented to the medical centre. Mr Walters noticed that some of the other people waiting were wearing face masks, although the staff of the medical centre were not.[37] Both Mr and Mrs Walters had their temperatures taken. Mrs Walters was also tested for Influenza A and B, and returned a negative result; however Dr von Watzdorf said she "still thought Kim was suffering from the flu".[38] Mr Walters gave evidence that he and Mrs Walters were tested for COVID-19 when they attended the medical centre.[39] [40]

34 Transcript of the Commission, 22 April 2020 T39.28-40.

35 Transcript of the Commission, 22 April 2020 T40.31-37.

36 Exhibit 60, Statement of Anthony Londero (16 April 2020) [28]-[29]; Transcript of the Commission, 22 April 2020 T20.11-13; 19 June 2020 T1605.18-43, T1607.36-1608.02.

37 Transcript of the Commission, 19 June 2020 T1656.12-1657.31.

38 Transcript of the Commission, 19 June 2020 T1658.01-19.

39 Exhibit 65, Statement of David Walters (25 April 2020) [33]-[34]; Transcript of the Commission, 19 June 2020 T1659.28-45, T1663.26-42.

40 Mr Walters may be mistaken about having been tested for COVID-19 whilst on board the Ruby Princess, as a swab from him was not sent to the laboratory for testing on 19 March 2020 (see Exhibit 114, Document 77).

7.25 Mr and Mrs Walters were told to return to their cabin, self-isolate and return to the medical centre every 12 hours to have their temperatures checked, which they did.[41] Mr Walters gave evidence that although Mrs Walters took paracetamol there was "no change in her condition" and her temperature was "quite high most of the time". As detailed in Chapter 13 of this Report, at [13.24], Mrs Walters was notified that she had tested positive to COVID-19 on 20 March as she and Mr Walters were waiting at Sydney Airport to board a flight to Tasmania.[42] Mr Walters was advised on 23 March that he had also tested positive to COVID-19.[43]

Ms Josephine Roope and Mrs Lesley Bacon

7.26 Ms Roope travelled on the 8 March voyage with Brian and Lesley Bacon. She gave evidence that Mrs Bacon began experiencing leg pain on 12 March before becoming unwell during the evening of 16 March and developing a cough. Mrs Bacon attended the medical centre that evening and Ms Roope recalled that Mr Bacon told her that Mrs Bacon "had the flu and they were keeping her in overnight". Mrs Bacon ultimately remained in the medical centre for the remainder of the voyage and was medically disembarked on 19 March.[44] The Acute Respiratory Disease (**ARD**) logs provided to NSW Health by the Ruby Princess indicated Mrs Bacon had tested negative for Influenza A and B.[45]

7.27 On 18 March, Ms Roope and Mr Bacon attended the medical centre at 9:00am and enquired about Mrs Bacon's condition. They were told by medical personnel that Mrs Bacon had the flu and "she was going to be fine". During that visit Ms Roope had her temperature taken and was given Tamiflu medication. It appears that Ms Roope was medically examined on the initiative of the medical staff, due to her close contact with Mrs Bacon. The fee for that consultation was ultimately waived.[46]

7.28 Ms Roope attended the medical centre again later that afternoon and noticed that Mrs Bacon's condition appeared to have deteriorated. She again enquired about Mrs Bacon's condition because by then she "had a concern about coronavirus". She also noticed that staff were wearing masks, as were a number of the passengers attending the medical centre; however she gave evidence that she and Mr Bacon were not provided with masks at any stage.[47]

41 Transcript of the Commission, 19 June 2020 T1658.42-1659.24.

42 Exhibit 65, Statement of David Walters (25 April 2020) [48]; Transcript of the Commission, 19 June 2020 T1662.

43 Exhibit 65, Statement of David Walters (25 April 2020) [53].

44 Exhibit 76, Statement of Josephine Roope (16 April 2020) [17]-[18]; Transcript of the Commission, 22 June 2020 T1764.16-21, T1767.45-1769.34.

45 Exhibit 3.

46 Exhibit 76, Statement of Josephine Roope (16 April 2020) [18]; Transcript of the Commission, 22 June 2020 T1770-1771.42, T1782-1783, T1784.32-1785.32; Exhibit 77, Mrs J Roope case summary; Exhibit 78, Folio C518 of Mrs J Roope.

47 Exhibit 76, Statement of Josephine Roope (16 April 2020) [19]-[20], [26], [37]; Transcript of the Commission, 22 June 2020 T1771.44-1772.34, T1773, T1784.04-24.

Mr Paul Reid

7.29 After experiencing symptoms of influenza from 14 March 2020, Paul Reid visited the medical centre on board the Ruby Princess on 16 March, just before it closed for the day. He was given a "nose swab" and his throat was examined, but not swabbed. Shortly afterwards he was told by a male doctor he had influenza, that "it wasn't Corona, and more likely to be a common cold".[48] The ARD logs compiled by the medical staff of the Ruby Princess and sent to NSW Health record that Mr Reid tested negative for Influenza A and B.[49] He and his wife later tested positive for COVID-19.[50]

Mrs Wendy Williams

7.30 Wendy Williams gave evidence that she began experiencing influenza-like symptoms when the vessel left the port of Napier, and they worsened on 16 March 2020. Mrs Williams visited the medical centre on 17 March with her husband. She described her symptoms to the nurse and had her temperature taken, which was recorded as being in the normal range. Notwithstanding, Mr and Mrs Williams decided to self-isolate until the end of the voyage. [51]

7.31 On the morning of 19 March, they attended the medical centre to obtain face masks as Mrs Williams was still experiencing influenza-like symptoms and did not want to disembark without one. Mrs Williams gave evidence that by the time she disembarked the vessel she was concerned that she may have contracted COVID-19 and did not want to infect others. [52] Mrs Williams recalled that when she attended the medical centre on 19 March she again described her symptoms, including a sore throat, fever, chills and tiredness, but did not ask to see the doctor because she was concerned about the cost.[53] It appears that she was not aware of the fact that consultations in relation to respiratory disease were to be free of charge, despite the fact that Dr Tarling's evidence is that when passengers presented to the medical centre they were informed of this fact.[54]

7.32 Mrs Williams does not appear in any of the ARD logs provided to NSW Health from the Ruby Princess for the 8 March voyage. Following her return home, Mrs Williams was tested for COVID-19 on 20 March and advised of the positive result on 22 March.[55]

48 Exhibit 86, Statement of Paul Reid (15 May 2020) [6]-[12].

49 Exhibit 3.

50 Exhibit 86, Statement of Paul Reid (15 May 2020) [15]-]17].

51 Exhibit 67, Statement of Wendy Williams (11 May 2020) [11], [16]-[17]; Transcript of the Commission, 19 June 2020 T1673.13-34, T1674.24-1676.42.

52 Exhibit 67, Statement of Wendy Williams (11 May 2020) [21]; Transcript of the Commission, 19 June 2020 T1682.12-21.

53 Transcript of the Commission, 19 June 2020 T1685.

54 Exhibit 106, Statement of Dr Grant Tarling (29 June 2020) [72].

55 Exhibit 67, Statement of Wendy Williams (11 May 2020) [25].

Mrs Lynda De Lamotte

7.33 Lynda De Lamotte developed a sore throat "halfway through" the voyage, after the Ruby Princess had departed Dunedin. In line with advice in the onboard newsletter, she made enquiries of guest services as to whether she ought to attend the medical centre. Mrs De Lamotte also recalled asking guest services if she should be tested for COVID-19, at which point she was asked if she had any symptoms other than a sore throat. Mrs De Lamotte stated that she was told it was "probably not necessary" and that attendance at the medical centre was "very expensive". She asked how much it would cost but the staff member was not able to assist.[56]

7.34 Mrs De Lamotte's symptoms did not worsen and had resolved by the time the vessel arrived in Sydney, so she did not attend the medical centre at any stage. Mrs De Lamotte and her husband both tested positive for COVID-19 once they had returned home.[57]

Mrs Lynette Jones

7.35 Lynette Jones stated that on 16 March 2020, she began to feel unwell and experience symptoms including a high temperature, a cough and aches and pains. As she was still unwell on 18 March, she attended the medical centre on board the vessel during the afternoon and was subsequently diagnosed with Influenza A. Her temperature was 37.9°C.[58] She was also advised that her husband, Donald, should attend the medical centre, which he did later that day. She does not recall being told to self-isolate, although the medical records from the Ruby Princess record otherwise.[59] On 24 March, both Mr and Mrs Jones tested positive for COVID-19.[60]

56 Exhibit 79, Statement of Lynda De Lamotte (20 May 2020) [18]; Transcript of the Commission, 22 June 2020 T1792.31-1795.04.

57 Exhibit 79, Statement of Lynda De Lamotte (20 May 2020) [23]; Transcript of the Commission, 22 June 2020 T1796.41-1797.01.

58 Exhibit 80, Statement of Lynette Jones Exhibit (21 April 2020) [17]-[19]; Transcript of the Commission, 23 June 2020 T1820.30-39; Exhibit 3; Exhibit 81, Case Summaries: Lynette and Donald Jones.

59 Exhibit 80, Statement of Lynette Jones Exhibit (21 April 2020) [17]-[19]; Transcript of the Commission, 23 June 2020 T1822-1822.24; Exhibit 81, Case Summary of Lynette Jones, p 1.

60 Exhibit 80, Statement of Lynette Jones Exhibit (21 April 2020) [28].

Use of viral swabs by the medical centre

7.36 When the Ruby Princess departed Sydney on 8 March 2020, the ship's medical centre had an independent stock of 27 viral swabs, in addition to a separate supply of rapid influenza testing kits, each of which contained a viral swab.[61]

7.37 During the 8 March voyage, a total of 18 viral swabs were taken from passengers and crew for COVID-19 testing, as follows:[62]

- Five viral swabs were taken on 13 and 14 March 2020, all of which tested negative for COVID-19 while the ship was docked in Wellington;
- Three viral swabs were taken on 16 March 2020, one of which tested positive for COVID-19 in Sydney; [63]
- Six viral swabs were taken on 17 March 2020, two of which tested positive for COVID-19 in Sydney; and
- Four viral swabs were taken on 18 March 2020, one of which tested positive for COVID-19 in Sydney.

7.38 The vast majority (14/18) of viral swabs taken for COVID-19 testing were from persons who tested negative to Influenza A and B. A viral swab was also taken from an asymptomatic passenger who had transited through Singapore for four hours on 7 March 2020.

7.39 Dr von Watzdorf gave evidence that passengers such as Mrs Bacon and Mr Londero were swabbed for COVID-19 because they had presented with ILI, tested negative for influenza and under the circumstances it was "prudent to collect a swab for COVID-19".[64]

61 Written submissions on behalf of Princess Cruise Lines and Carnival (13 July 2020) [135].

62 Exhibit 3, Final Acute Respiratory Illness Spreadsheet dated 20 March 2020.

63 The Commission has confirmed that the SEALS result obtained for Anthony Londero was positive for COVID-19 on 20 March 2020. See further Chapter 13 at [13.19].

64 Transcript of the Commission, 22 April 2020 T22.40-23.01, T23.44-47.

The 8 March voyage is cut short

7.40 By 13 March 2020, Carnival and other related companies had decided to cease operations.[65] The captain of the Ruby Princess, Commodore Giorgio Pomata, made an onboard announcement to this effect on the same day, but noted that the 8 March voyage would continue as planned.[66]

7.41 On 15 March 2020, Commodore Pomata made a further announcement to the effect that, as a result of the cruise ship ban announced by the Commonwealth Government, the Ruby Princess was to make an early return to Sydney, and would not be visiting the remaining ports on the original itinerary.[67] Passengers later received written notification dated 17 March 2020 of the early return of the vessel to Sydney, outlining options for compensation in light of the cancellation of the latter stages of the voyage.[68] Those passengers who had booked airfares and related travel with Princess Cruises received additional correspondence outlining consequent changes to their onward travel arrangements.[69]

Public health measures imposed during the 8 March voyage

7.42 During the 8 March voyage, a number of measures were announced by the Commonwealth and NSW governments in response to the pandemic.

7.43 On 13 March 2020, the Prime Minister and the Commonwealth Chief Medical Officer announced a restriction on non-essential, organised public gatherings of more than 500 people. The restriction was brought into force by the NSW Minister for Health on 15 March 2020 by means of the *Public Health (COVID-19 Public Events) Order 2020*.

7.44 On 15 March, the Commonwealth Government announced a 14-day self-isolation requirement for international arrivals to Australia, effective as at 11:59pm that day. A ban on cruise ship arrivals was also imposed, effective as at the same date and the Commonwealth Department of Health released the first information sheet containing guidance about social distancing.

7.45 On 16 March, the NSW Health Minister gave a Ministerial direction (commencing 17 March) pursuant to s 7 of the *Public Health Act 2010* (NSW), which provided that a person arriving in NSW who had been in a country other than Australia within 14 days before that arrival was to isolate themselves for a period of 14 days: *Public Health (COVID-19 Quarantine) Order 2020*.

65 Transcript of the Commission, 8 May 2020 T813; Exhibit 91, Statement of Janette Moore (14 April 2020), Annexure 3.

66 Exhibit 85, Onboard announcements during Ruby Princess cruise from 8-19 March 2020.

67 Exhibit 85, Onboard announcements during Ruby Princess cruise from 8-19 March 2020; Exhibit 72, Statement of William Wright (15 April 2020) [28].

68 Exhibit 91, Statement of Janette Moore (14 April 2020), Annexure 7.

69 Exhibit 71, Statement of Jill Whittemore (28 April 2020) [23].

7.46 On 18 March 2020, the Prime Minister announced a number of new measures for the control of COVID-19, including an immediate ban on all non-essential indoor gatherings of greater than 100 people and social distancing measures promoting the maintenance of 1.5 metres distance between persons. These measures were publicly endorsed by the NSW Government.

The response on board the Ruby Princess

Public health information

7.47 On 16 March 2020, Commodore Pomata made a further announcement in relation to the 14-day self-isolation requirement announced by the Commonwealth Government the previous day. He advised passengers that the 14-day period commenced from the last overseas port visited, which, in the case of the Ruby Princess was Napier, on 15 March. He further advised that Australian citizens and residents were permitted to self-isolate at their home, that onward travel was permitted, and that anyone not transiting directly to the airport was required to self-isolate at their accommodation until travelling to the airport to undertake onward travel.[70]

7.48 On 17 March, the Cruise Director on board the Ruby Princess made an announcement requesting that all passengers experiencing "fever or respiratory symptoms" present to the medical centre, to ensure that NSW Health could be provided with "the correct information" about the health of passengers and crew in anticipation of disembarkation on 19 March.[71]

70 Exhibit 85, Onboard announcements during Ruby Princess cruise from 8-19 March 2020.

71 Exhibit 85, Onboard announcements during Ruby Princess cruise from 8-19 March 2020; Transcript of the Commission, 19 June 2020, T1673.36-1674.04; 23 June 2020 T1820.41-1821.01.

7.49 In addition to the announcements, passengers recalled receiving a number of notices during the last days of the voyage, which addressed applicable requirements in light of the measures imposed by the Commonwealth Government. Passengers gave evidence of these being placed in their cabins following room service or slipped under their cabin door. These included:

1) *Restrictions on entry to Australia relating to COVID-19 for cruise ships* produced by the Australian Border Force (**ABF**), which, *inter alia*, stated that:
   - returning travellers were to self-isolate for 14 days upon entry to Australia. The notice also stated that the 14-day period "commences from the day of departure from the last port of embarkation";
   - travellers with existing domestic transfer bookings were permitted to complete domestic travel and complete the self-isolation period at their "final destination"; and
   - "foreign nationals must complete the 14-day isolation period or they may disembark the cruise ship and return to their home country". In relation to foreign nationals, the notice further stated that while in transit they were to remain in the airport or self-isolate in their accommodation for the transit period if they had a layover.[72]
2) *Advice to cruise ship passengers* produced by the ABF, which set out the same information as the above notice in relation to self-isolation and onward domestic travel but also stipulated that:
   - International visitors with onwards connections (domestic and international) could go to the airport to make their domestic connection "and complete your period of self-isolation at this point". It then stated, "[y]ou are required to self-isolate at your hotel until 14 days have passed since your last overseas port or until you head to the airport to make your way home".[73]
3) *Isolation guidance* fact sheet produced by the Commonwealth Department of Health, which, in relation to self-isolation, stipulated that "all people who arrive in Australia from midnight 15 March 2020 … are required to self-isolate for 14 days". It stated that during the isolation period persons should not attend public places or public gatherings and "if you are in a hotel, avoid contact with other guests or staff".[74]

72 Exhibit 96, 255 police statements of Ruby Princess passengers and families, Tab 18, Annexures 1; Exhibit 96, 255 police statements of Ruby Princess passengers and families, Tab 202, Annexure 2; Exhibit 106, Statement of Dr Grant Tarling (29 June 2020) [65](q) and Exhibit GT-1, pp 130-1; Exhibit 92, Statement of Peter Little (26 June 2020) [83] and Exhibit PWL-1, pp 106-111.

73 Exhibit 92, Statement of Peter Little (26 June 2020) [83] and Exhibit PWL-1, pp 106-111; Exhibit 91, Statement of Janette Moore (14 April 2020) [22] and Annexure 2.

74 Exhibit 114, Voluntary Statement of the Commonwealth of Australia (12 June 2020) [36] and Document 13; Exhibit 91, Statement of Janette Moore (14 April 2020) [22] and Annexure 1.

4) *Information for international travellers* fact sheet produced by the Commonwealth Department of Health, which, in relation to self-isolation, also stipulated that "all travellers must isolate for a period of 14 days after they have entered Australia". It also referred travellers to the *Isolation Guidance* fact sheet for more information in relation to self-isolation.[75]

7.50 The ABF notices described at [7.49] above were emailed to representatives of Carnival by the ABF at 10:31pm on 15 March, and further circulated among senior executive officers of Carnival on 16 March.[76]

7.51 Passengers also received notices from Princess Cruises signed by Dr Tarling which detailed measures adopted by Princess Cruises in response to COVID-19 and provided guidance to reduce the "risk of illness". Passengers were advised to contact the medical centre on board the vessel if they experienced any symptoms of respiratory illness.[77]

7.52 Some passengers recalled being told that they ought to expect delays when the vessel returned to Sydney "due to NSW Health conducting health checks".[78]

Onboard activities during the return journey to Sydney

7.53 Mrs De Lamotte and Ms Roope stated that they noticed increased cleaning occurring on the vessel during the return journey to Sydney, although they did not notice unwell passengers.[79] Ann Kavanagh recalled her husband Kevin asking staff at the concierge desk if anyone on board the vessel had symptoms of COVID-19 "and they said no", despite her noticing that crew members seemed to be "keeping their distance from passengers".[80]

75 Exhibit 114, Voluntary Statement of the Commonwealth of Australia (12 June 2020) [36] and Document 14; Exhibit 91, Statement of Janette Moore (14 April 2020) [22] and Annexure 2.

76 Exhibit 92, Statement of Peter Little (26 June 2020) [83] and Exhibit PWL-1, pp 106-8.

77 Transcript of the Commission, 22 June 2020 T1789.21-35; Exhibit 75; Exhibit 91, Statement of Janette Moore (14 April 2020) [22], Annexures 5 and 6.

78 Exhibit 83, Statement of Sharon Schofield (6 May 2020) [13].

79 Exhibit 76, Statement of Josephine Roope (16 April 2020) [36]; Exhibit 79, Statement of Lynda De Lamotte (20 May 2020) [31].

80 Exhibit 84, Statement of Ann Kavanagh (28 April 2020) [21]-[22].

7.54 Some passengers noticed changes in hygiene practices in the buffet dining areas. For example, Sharon Schofield and Jill Whittemore noticed that after a few days the food service area changed "from self-serve to the crew serving",[81] which would appear to be in accordance with the enhanced protocols described by Dr Tarling.[82] However, there were other passengers who did not notice any change to the usual arrangements, such as Mrs Jones, who gave evidence that she was "reluctant" to attend the buffet venues.[83]

7.55 The combined stipulations of the ABF notices and the *Isolation Guidance* fact sheet produced by the Commonwealth Department of Health could reasonably be interpreted to have required all travellers aboard the 8 March voyage to self-isolate following departure from the port of Napier, or at least upon receipt of the ABF notices described in [7.49]. However, the receipt of the notices by Carnival executives and the staff of the Ruby Princess does not appear to have brought about a discernible change to activities on board the vessel.

7.56 Mrs De Lamotte gave evidence that she had understood that the 14-day isolation period commenced from when the Ruby Princess left the port of Napier, but the effect of the notices left in passenger cabins was not explained by staff.[84] She also gave evidence of a farewell party held on the last night of the voyage where there was no social distancing and people were dancing "shoulder to shoulder".[85]

7.57 Ms Schofield observed that "the ship operated as normal" and "all the shows and entertainment continued as normal, there was no social distancing".[86] Further, Ms Whittemore gave evidence that a St Patrick's Day celebration was held on 17 March 2020, which was several days after the ABF notices had been sent to Carnival.[87]

81 Exhibit 83, Statement of Sharon Schofield (6 May 2020) [11]; Transcript of the Commission, 22 June 2020 T1694.11-19.

82 See [7.16](b) of this Chapter.

83 Transcript of the Commission, 19 June 2020 T1671.41-1672.02; 23 June 2020 T1823.19-30.

84 Transcript of the Commission, 22 June 2020 T1799.05-1799.28.

85 Exhibit 79, Statement of Lynda De Lamotte (20 May 2020) [20]; Transcript of the Commission, 22 June 2020 T1797.04-1797.34.

86 Exhibit 83, Statement of Sharon Schofield (6 May 2020) [16].

87 Exhibit 71, Statement of Jill Whittemore (28 April 2020) [22]; Transcript of the Commission, 22 June 2020 T1696.

The Ruby Princess approaches the Port of Sydney

Biosecurity clearance processes from 16-18 March 2020

7.58 As detailed in Chapters 4, 5 and 6, the Ruby Princess was required to provide information to Australian authorities about the human health situation on board the vessel in advance of its arrival in Sydney on 19 March.

Human Health Reports

7.59 The following Human Health Reports were submitted to the Maritime Arrival Reporting System (**MARS**) by the Ruby Princess:[88]

1) Human Health Report submitted at 3:01pm on 16 March 2020 detailing:
   - 53 persons who had become ill or showing signs of illness in the past 14 days; and
   - 10 persons with temperatures (or suspected temperatures) over 38°C.
2) Human Health Report submitted at 8:54am on 18 March 2020 detailing:
   - 110 persons who had become ill or showing signs of illness in the past 14 days; and
   - 17 persons with temperatures (or suspected temperatures) over 38°C.
3) Human Health Report submitted at 7:21pm on 18 March 2020 detailing:
   - 128 persons who had become ill or showing signs of illness in the past 14 days; and
   - 24 persons with temperatures (or suspected temperatures) over 38°C.

The NSW Health risk assessment of 18 March 2020

7.60 At approximately 4:00pm on 17 March 2020, Laura-Jayne Quinn, an Environmental Health Officer from the SES PHU, sent an email to Dr von Watzdorf requesting further information about the "influenza A outbreak onboard" and answers to the standard questions in relation to COVID-19.[89]

7.61 At 9:39am on 18 March, Dr von Watzdorf sent a reply to Ms Quinn and Ms Ressler, copying in Ms Valerie Burrows, the Port Agent Manager for Carnival Australia, and attaching "the full ARD Log" which she described as containing the details of all passengers and crew with "fever OR acute respiratory symptoms OR both". She indicated that viral swabs had been collected for "a few cases of 'febrile, influenza test negative' individuals", who had been kept isolated.[90]

88 Exhibit 19, (1) Pre-arrival Report and Human Health Update dated 16 March 2020, (2) Human Health Updates dated 18 March 2020.

89 Exhibit 16, Statement of Kelly-Anne Ressler (1 May 2020) [64], Annexure KAR-11.

90 Exhibit 16, Statement of Kelly-Anne Ressler (1 May 2020) [67], Annexure KAR-11.

7.62 The ARD Log attached to Dr von Watzdorf's reply indicated that of the 3,795 persons on board, 101, or 2.66%, had presented to the medical centre with acute respiratory disease. Of those persons, 36, or 0.94%, had presented with an ILI. The ARD Log also indicated that eight viral swabs had been collected for testing for COVID-19.[91] The number of viral swabs was later amended to ten as the result of a conversation between Ms Ressler and Dr von Watzdorf on the morning of 18 March. During that conversation Ms Ressler suggested that Dr von Watzdorf consider taking swabs for COVID-19 testing from passengers from the United States on the ARD Log, in light of the limited testing that had reportedly been conducted in the USA.[92] Of the additional swabs ultimately taken from passengers for COVID-19 testing, only one was from a passenger from the USA.[93]

7.63 The completion and review of the pre-arrival risk assessment form, and the risk assessment conducted by the NSW Health Expert Panel for the arrival of the Ruby Princess in Sydney on 19 March (**Expert Panel**) are addressed in detail in Chapter 8 of this Report. At this point it suffices to say that during the afternoon of 18 March the Expert Panel agreed that, in relation to the criteria set out in the 19 February Draft Procedure[94] the Ruby Princess was "low risk".[95]

Communication of the "low risk" assessment of the Expert Panel

7.64 At 5:07pm on 18 March 2020, Ms Ressler emailed Dr von Watzdorf, Ms Burrows, the Hotel General Manager of the Ruby Princess, Charles Verwaal, Commodore Pomata and other staff on board the vessel to advise of the decision of the Expert Panel. Ms Ressler stated that notwithstanding the assessment, NSW Health requested that the Ruby Princess "send the 15 swabs to our lab for COVID-19 testing" and attached the relevant form.[96] Dr von Watzdorf later clarified with Ms Ressler that there were 13 swabs available for COVID-19 testing.[97]

Change to arrival time

7.65 The "on-call" Port Agent for Carnival for the arrival of the Ruby Princess on 19 March 2020 was Bibi Tokovic. Sometime during the morning on 18 March, Ms Tokovic received an email from the Administration Officer of the Ruby Princess, Mr Savio D'Souza, asking if ambulances could be arranged to meet the vessel. At that stage, Ms Tokovic was awaiting confirmation of the time that the vessel was to arrive. She understood from Ms Burrows that there was a desire to obtain the swabs that had been taken from those on board so they could be tested urgently for COVID-19.[98]

91 Ibid [67], Annexure KAR-11.

92 Ibid [72]-[73].

93 Exhibit 16, Statement of Kelly-Anne Ressler (1 May 2020), Annexure KAR-20; Transcript of the Commission, 22 April 2020 T39.20-21.

94 See Chapter 5 at [5.44] and onwards.

95 Exhibit 16, Statement of Kelly-Anne Ressler (1 May 2020) [81], Annexure KAR-16.

96 Ibid [87], Annexure KAR-19.

97 Ibid Annexure KAR-2, p 2.

98 Transcript of the Commission, 6 May 2020 T480-481.

7.66 During the day on 18 March, Ms Burrows and Paul Mifsud, Senior Director, Port Operations, Asia Pacific for Carnival Australia, discussed the possibility of "bringing the Ruby Princess in early" on 19 March, because they anticipated that NSW Health would conduct health screening of passengers (as had occurred on 8 March) and that this process would delay disembarkation. Ms Burrows said she had that expectation on the basis of the number of guests on board that had influenza-like symptoms. Ms Burrows gave evidence that whilst she didn't always look at the ARD Log, she was aware it would include entries for both ILI and acute respiratory illness (**ARI**).[99]

Application to arrive at the Port of Sydney

7.67 As outlined in Chapter 4 of this Report, following the 15 March 2020 ban on cruise ship arrivals, the Maritime Traveller Processing Committee (**MTPC**) assumed oversight for the arrival of all international cruise ships at the Port of Sydney.[100] Consequently, at 2:31pm on 18 March, a Port Agent for Carnival sent an email to the MTPC attaching an application form and Debarkation Report, seeking approval for the Ruby Princess to arrive at the Port of Sydney at 2:00am on 19 March 2020.[101] The application was forwarded to personnel in the ABF, the Department of Agriculture, Water and the Environment (**DAWE**) and the Commonwealth Department of Health by Dionne Keating of MTPC Coordination.

7.68 At 4:07pm on 18 March, Andrew Snook, Supervisor of Shipping Operations at the ABF sent an email to the MTPC which purported to approve the application, notwithstanding that he was not a member or officer of the MTPC.[102] ABF and DAWE personnel with the requisite authority to issue the approval replied to Ms Keating's email at 4:37pm and 4:47pm, respectively.[103] Their approval was communicated to Ms Burrows and Carnival at 4:50pm.[104]

7.69 At approximately 4:09pm on 18 March, Ms Tokovic sent an email to a number of recipients, including persons at the ABF, DAWE and the Port Authority, setting out a program for the arrival of the Ruby Princess at the OPT at 2:30am on 19 March 2020. It stated that the Port Agent and officials would board the vessel "for clearance" at 6:00am and passenger embarkation would commence at 7:00am. It also said "2 ambulance at time of email". The email further specified Ms Tokovic would be the Port Agent attending the arrival.[105]

99 Transcript of the Commission, 8 May 2020 T778-780, T786.17-786.26.

100 Chapter 4, [4.73]-[4.74], [4.78].

101 Exhibit 114, Voluntary Statement of the Commonwealth of Australia (12 June 2020) [118], Documents 48, 49 and 50.

102 Exhibit 114, Voluntary Statement of the Commonwealth of Australia (12 June 2020) [119]-[120]; Exhibit 51, Email from Kelly-Anne Ressler to Sarah Marshall (18 March 2020).

103 Exhibit 114, Voluntary Statement of the Commonwealth of Australia (12 June 2020) [124]-[125], Documents 53-55.

104 Ibid [126], Document 56.

105 Exhibit 114, Voluntary Statement of the Commonwealth of Australia (12 June 2020) [121], Document 52.

Communications between the Ruby Princess, NSW Ambulance, the Port Authority, the ABF, the NSW Police Force and NSW Health on 18 and 19 March 2020

Communications between NSW Health, the Port Authority and Carnival on 18 March

7.70 At 3:11pm on 18 March 2020, Robert Rybanic, Senior Manager of Cruise Operations and Internal Operations, Port Authority, sent an email to Cameron Butchart, Port Services Manager and the Duty Harbour Master at the time, and other Port Authority employees to inform them that the Ruby Princess had requested to bring forward the time of its arrival in Sydney, to 2:30am on 19 March 2020. Mr Rybanic stated that the vessel was "unsure if NSW Health will be boarding though have some routine swaps [sic] to send off". In his statement to the NSW Police, Mr Rybanic stated that requests of this nature were "not unusual".[106]

7.71 At 3:26pm, Mr Butchart emailed Sarah Marshall, General Manager Operations of the Port Authority, to request that she contact NSW Health to enquire whether they planned to meet the Ruby Princess and conduct a health screening, as had occurred on 8 March 2020.

7.72 Shortly afterwards, Ms Marshall emailed Ms Ressler to enquire whether NSW Health intended to conduct a health screening on board the Ruby Princess on 19 March. In her reply at 4:38pm, Ms Ressler advised that the vessel had been "assessed as low risk, so we won't be there", although she noted that this decision had not yet been formally communicated to the Ruby Princess.

7.73 In her email, Ms Ressler noted that there were "elevated numbers of respiratory disease" on board and that "lots tested flu positive". She also noted that five COVID-19 tests performed in Wellington had all been negative, and that NSW Health would be testing 15 additional swabs, "just to be cautious". She explained that NSW Health would not be attending because:

- "All passengers are required to go into 14 days self-isolation following government announcement
- The ship has provided all contact details should we need them
- The ship is not taking on new passengers".[107]

106 Exhibit 21, Statement of Robert Rybanic (21 April 2020) [14].

107 Exhibit 23, Statement of Sarah Marshall (22 April 2020) [33]; Exhibit 16, Statement of Kelly-Anne Ressler (1 May 2020) [85], Annexure KAR-18.

7.74 Mr Butchart recalled being contacted by Ms Burrows at 3:58pm on 18 March, which was a daily occurrence during peak cruise ship season. He gave evidence that during this call, which was in relation to another cruise ship, Ms Burrows told him that "there were sick people on board the Ruby Princess" but they were not "COVID-19 related".[108]

7.75 Ms Burrows did not recall the conversation, but agreed that, at that point, she was not in a position to confirm that the ill people on board the Ruby Princess were not COVID-19 cases, because the vessel did not have the capability to test for COVID-19. She also conceded in her evidence that, at that time, she knew at least some of the ill passengers had symptoms consistent with COVID-19.[109] Ms Burrows said that she was surprised when she learnt that NSW Health did not intend to conduct a health screening aboard the Ruby Princess.[110] She also said that it was not the "normal process" of Carnival to advise of any illness on board an arriving vessel.[111]

7.76 Mr Mifsud recalled being told by Ms Burrows during the afternoon that NSW Health had decided not to conduct onboard health screenings, but he did not recall being sent the ARD Log emailed to Ms Burrows by Dr von Watzdorf. However, he did recall an informal meeting with Ms Tokovic and Ms Burrows that afternoon during which Ms Tokovic advised him that the medical disembarkations from the Ruby Princess were not "COVID-related bookings", and Ms Burrows informed him that there were "swabs to be landed" and tested "as quickly as possible", which he inferred were swabs to be tested for COVID-19.[112] He stated that Ms Tokovic did not tell him that the two passengers requiring ambulance transfer had febrile upper respiratory tract infections.[113] He also gave evidence that he was not briefed in any detail about the medical disembarkations or Ms Burrows' discussions with NSW Health, as Ms Burrows was "the main contact with Ms Ressler".[114]

7.77 At 5:30pm, Stephen Howieson commenced his shift as the Duty Manager for Vessel Traffic Services (**VTS**) for the Port Authority, reporting to Mr Butchart. The handover from the previous Duty Manager indicated that the Ruby Princess was expected to arrive at the "pilot boarding ground" at 1:00am on 19 March 2020, before docking at the OPT at 2:15am.[115]

108 Exhibit 24, Further Statement of Cameron Butchart (5 May 2020) [13] of Annexure A.

109 Transcript of the Commission, 8 May 2020 T784-876.

110 Transcript of the Commission, 8 May 2020 T786.34-786.43.

111 Transcript of the Commission, 8 May 2020 T788.14-15.

112 Transcript of the Commission, 8 May 2020 T815-816.38; T818-819.42; T859.10-45.

113 Transcript of the Commission, 11 May 2020 T860.03-11.

114 Transcript of the Commission, 11 May 2020 T862.23-43.

115 Exhibit 25, Statement of Stephen Howieson (27 April 2020) [6].

The '000' call

7.78 At 6:59pm, Ms Tokovic called the NSW Ambulance '000' Operations Centre and spoke with Ashley Nguyen. Ms Tokovic advised that she was calling on behalf of Carnival, and had been requested to book an ambulance for two passengers who were on board a cruise ship arriving at the OPT at 2:30am on 19 March. Ms Tokovic stated, "basically they're infectious" and that both had "febrile upper respiratory tract infections". She went on to explain that one of them, Mr Londero, required a cardiology consult and the other passenger, Mrs Bacon, had "severe lower back pain" and "femoral nerve radiculopathy". Ms Tokovic stated that they had been requested by "NSW" (presumably NSW Health) to take the passengers to Royal Prince Alfred Hospital (**RPA**). She also told Ms Nguyen that both passengers had been tested for COVID-19, and that Mrs Bacon had tested negative for influenza.[116] It is of note that the ARD Log provided to NSW Health by Dr von Watzdorf on 18 March indicated that Mr Londero had also tested negative for Influenza A and B.[117]

7.79 Ms Tokovic recalled receiving a telephone call from Dr von Watzdorf at around the time she made the '000' call. During this call, Dr von Watzdorf "reinforced" that "two patients had respiratory illnesses" and had tested negative to Influenza A, but that was "not the reason they needed the ambulance".[118]

7.80 Ms Tokovic gave evidence that sometime on 18 March she contacted Shane Murray, Border Force Supervisor for Shipping Operations for the ABF, to obtain permission for the ambulance transfers to occur prior to the scheduled disembarkation of the vessel, on the basis that the ABF had responsibility for the immigration clearance of arriving passengers.[119] Mr Murray denies that this occurred.[120]

7.81 Naomi Mannion was working that evening as the Acting Duty Control Centre Officer at the '000' Operations Centre. She reviewed the booking for two ambulances to attend the OPT and noted that it was for patients with "respiratory issues" who were "suspected or confirmed COVID-19". At 8:40pm, she telephoned Ms Tokovic to obtain more information. Ms Tokovic confirmed that only two passengers required transfer to hospital (it transpired that a passenger from another cruise ship also required hospital transfer) and indicated that both of them would require a stretcher. Ms Mannion enquired whether the two passengers could travel in the one ambulance, to "minimise potential paramedic exposure", however it became apparent to Ms Mannion that two ambulances would be required.[121]

116 Exhibit 20, Statement of Peter Dilonardo (30 April 2020), Table 1, Annexure A.

117 Exhibit 3, Acute Respiratory Illness Spreadsheet dated 18 March 2020.

118 Transcript of the Commission, 6 May 2020 T483.11-14.

119 Transcript of the Commission, 6 May 2020 T486.08-490.17.

120 Exhibit 114, Voluntary Statement of the Commonwealth of Australia (12 June 2020) [123].

121 Exhibit 17, Statement of Naomi Mannion (29 April 2020) [8]-[13] and Table 2, Annexure 1.

7.82 Following her conversation with Ms Tokovic, at 10:40pm, Ms Mannion called the RPA and spoke with the Nurse Unit Manager of the Emergency Department (**NUM**) to confirm that RPA was accepting the passengers given they were suspected COVID-19 cases. The NUM responded with words to the effect that they had not been informed of this incident. Ms Mannion indicated she would follow up and left a message for Ms Tokovic at 10:29pm asking her to advise who the receiving doctor at RPA was.[122]

7.83 Ms Mannion then spoke with Peter Dilonardo, the Senior Control Centre Officer at the '000' Operations Centre, about the call from Ms Tokovic. Mr Dilonardo had not been involved with a suspected COVID-19 case on a cruise ship before. He regarded the call as unusual because the ambulance booking was much earlier than the usual time that ambulances were dispatched to the OPT (generally around 6:00am) and because at that time he was of the belief (which was incorrect, but understandable in light of the so-called "cruise ship ban" put in place on 15 March 2020) that cruise ships with suspected COVID-19 cases were not allowed to dock in Sydney.[123]

7.84 Mr Dilonardo decided that he would contact the Port Authority to obtain further information about the arrival of the ship.[124] At approximately 10:31pm, Senior Constable Butler from the NSW Police Marine Area Command (**MAC**) received a telephone call from Mr Dilonardo requesting the contact details for the Port Authority so that he could obtain information about "a cruise ship" that was carrying "suspected corona patients" and "coming into port at 2:30am". Mr Dilonardo told the officer that he was unsure "if the proper channels [were] being followed".[125] The officer provided the number for VTS and briefed his supervisor, Sergeant Hollands.[126]

The Port Authority contacts the Ruby Princess re biosecurity information

7.85 At about 7:20pm, Mr Howieson sent an email to the Staff Captain of the Ruby Princess, Sebastiano Azzarelli, and a Port Agent of Carnival Australia, requesting that the vessel provide a declaration in relation to the six standard questions developed by the Port Authority.[127] The declaration was due at 7:00pm. At 8:03pm, Mr Howieson received an email from the Ruby Princess providing its declaration.[128] The declaration provided as follows:

- What were the last 5 ports of call? - **Napier 15/03/20, Wellington 14/03/20, Akaroa 13/03/20, Port Chalmers 12/03/20, Fiordland 11/03/20**
- Are there any ill passengers or crew on board? **Yes**
- Are any crew members showing symptoms of COVID-19 on board? **No**

122 Ibid [14]-[16] and Tables 3 and 4.

123 Exhibit 20, Statement of Peter Dilonardo (30 April 2020) [9]-[10].

124 Ibid [11].

125 Ibid Table 6, Annexure B.

126 Exhibit 39, Statement of Senior Constable Travis Butler (4 April 2020) [6].

127 Exhibit 94, Second Statement of Stephen Howieson (16 June 2020) [8], Annexure C; Exhibit 25, Statement of Stephen Howieson (27 April 2020) [10]-[12].

128 Exhibit 25, Statement of Stephen Howieson (27 April 2020) [13]-[14].

- Has the vessel been in mainland China, Iran, Republic of Korea or Italy in the last 14 days? **No**
- Has any person on the vessel been in contact with a proven case of novel coronavirus infection in the last 14 days. **No**
- Are there any crew or passengers who have left, or transited through, mainland China or Iran, Republic of Korea or Italy less than 14 days ago? **No**

7.86 The response to the third question was incorrect: there were a number of crew noted on the ARD Log sent to NSW Health on 18 March, two of whom had been identified as having an ILI on 17 March. A further six crew members presented on 18 March and were listed on the ARD Log provided to NSW Health on 20 March as having an ILI. Two of those crew tested negative for Influenza A and B.[129]

7.87 At 8:46pm, Mr Howieson received a telephone call from Mr Azzarelli seeking confirmation that the Port Authority had received the Ruby Princess's answers to the six questions. Mr Howieson regarded it as unusual for the Staff Captain of a ship to contact the VTS in relation to the questionnaire.[130] It is of note, however, that the questions and the declaration required in response were a measure that had only been in place for several weeks, which may explain the follow-up by Mr Azzarelli.[131]

NSW Ambulance seeks information from the Port Authority

7.88 At approximately 10:35pm on 18 March 2020, Mr Howieson at VTS received a phone call from Mr Dilonardo who was seeking further information on behalf of NSW Ambulance as to the arrival arrangements for a "Carnival Cruise" ship docking at 2:30am on 19 March. Mr Dilonardo stated that NSW Ambulance had been contacted by Carnival Australia in relation to providing two ambulances for unwell passengers on that ship who were "suspected" of having COVID-19.[132] Mr Howieson recalled doubting the veracity of this telephone call, in part because it was "common practice" (although not a requirement) for port agents to advise VTS if a medical disembarkation from a cruise ship was required.[133]

129 Exhibit 3.

130 Exhibit 25, Statement of Stephen Howieson (27 April 2020) [17]-[18].

131 Written submissions on behalf of Princess Cruise Lines and Carnival (13 July 2020) [20]-[21].

132 Exhibit 25, Statement of Stephen Howieson (27 April 2020) [22]; Exhibit 20, Statement of Peter Dilonardo (30 April 2020) [14] and Table 7, Annexure B.

133 Exhibit 25, Statement of Stephen Howieson (27 April 2020) [24]; Exhibit 94, Second Statement of Stephen Howieson (16 June 2020) [4].

7.89 Mr Howieson telephoned Mr Butchart at 10:44pm and raised his concerns in relation to the call received from Mr Dilonardo, noting that Mr Dilonardo had stated that there were suspected cases of COVID-19 on board a Carnival cruise ship berthing at 2:30am, but it was not clear which ship. Mr Howieson also told Mr Butchart about the telephone call he had received from Mr Azzarelli at 8:46pm.[134] Mr Butchart stated that he had spoken with Ms Burrows earlier in the evening and she had indicated that there was illness on the Ruby Princess, so it was likely that this was the ship to which Mr Dilonardo was referring.

7.90 Mr Howieson confirmed that the Ruby Princess had provided the declaration for the six standard questions of the Port Authority, which he forwarded to Mr Butchart shortly after their call ended. Mr Howieson stated that the vessel had answered "yes" to the question about whether there were ill passengers or crew on board and "no" to the "COVID-19 question". Out of concern for the health and safety of the marine pilot, Mr Butchart asked Mr Howieson to request a copy of the MARS report (ie. the Human Health Report required to be provided to DAWE) from Mr Azzarelli, which he did via email at 10:59pm.[135] The Port Authority does not have access to MARS by dint of it being a database maintained and accessed by Commonwealth government entities.[136]

7.91 Mr Butchart gave evidence that if he had been advised that there were suspected cases of COVID-19 among passengers on the vessel he would have raised the matter with the Port Authority Crisis Management Team, but would likely "have still moved that ship putting appropriate barriers in place for our pilot".[137]

7.92 Mr Butchart telephoned Mr Dilonardo at 10:51pm, at which point Mr Dilonardo advised him of the request for medical disembarkations made by Ms Tokovic earlier that evening. Mr Dilonardo told Mr Butchart that on the basis of the information received, NSW Ambulance would treat the patients as COVID-19 positive and convey them to RPA.[138]

7.93 Shortly after this call, at 10:56pm, Mr Butchart telephoned Emma Fensom, Acting Chief Operating Officer, Port Authority, to update her about the information provided by Mr Dilonardo.[139]

134 Exhibit 25, Statement of Stephen Howieson (27 April 2020) [23]-[24], [27]-[30].

135 Exhibit 25, Statement of Stephen Howieson (27 April 2020) [31]-[34]; Exhibit 24, Statement of Cameron Butchart (28 April 2020) [14].

136 Transcript of the Commission, 6 May 2020 T596.19-43.

137 Transcript of the Commission, 1 May 2020 T220.21-30.

138 Exhibit 24, Further Statement of Cameron Butchart (5 May 2020) [15] of Annexure A; Exhibit 24, Statement of Cameron Butchart (5 May 2020), Annexure D; Exhibit 20, Statement of Peter Dilonardo (30 April 2020) [15].

139 Exhibit 24, Further Statement of Cameron Butchart (5 May 2020) [20] of Annexure A; Exhibit 24, Statement of Cameron Butchart (5 May 2020), Annexure D.

The Port Authority makes further enquiries in relation to human biosecurity matters

7.94 At 11:03pm on 18 March 2020,[140] Mr Butchart telephoned Mr Howieson and asked him for the contact details of Franz Odermatt, whom Mr Howieson believed to be the relevant contact at NSW Health if any human biosecurity issues needed to be escalated.[141] (Mr Odermatt is in fact the Team Leader, Seaports Sydney and Regional Vessel Coordinator, Inspection Group, Biosecurity Operations Division, DAWE. Ms Burrows gave evidence that she routinely observed Mr Odermatt board vessels arriving in Sydney to investigate matters of biosecurity, including human biosecurity.[142])

7.95 According to the records of the Port Authority, at 11:06pm, Mr Butchart again telephoned Mr Howieson to advise that he had been unable to contact anyone at Carnival, and because information provided by the Ruby Princess indicated that they had ill passengers on board, he required further information. Mr Butchart told Mr Howieson to "deny that booking at the moment".[143] In a further call at 11:12pm, Mr Butchart and Mr Howieson discussed the fact that they had been unable to contact both Ms Tokovic and Ms Burrows. Mr Butchart indicated that he would attempt to contact another Carnival port agent, Mr Arnoldo Kretzig.[144]

7.96 At 11:07pm, Mr Butchart spoke with an officer at the MAC who advised that NSW Police were making further enquiries in relation to Mr Dilonardo. At that stage, Mr Butchart was still unsure which vessel Mr Dilonardo's call related to and was concerned about allocating a pilot to a vessel without further information. At 11:10pm, Mr Butchart provided Ms Fensom with an update by phone and Mr Dilonardo's phone number. Mr Butchart then checked the Port Authority's Sydney Integrated Port System (**ShIPS**) for details of incoming cruise ships and saw that the Ruby Princess was "due in the next few hours" and was the "only ship that came close to meeting the criteria set by NSW Ambulance".[145]

140 Where the recollection of a witness as to the time of a radio transmission or telephone call diverges with the transcripts and recordings in evidence before the Commission, the times recorded in the NSW Ambulance transcripts and recordings have been preferred, whilst also taking into account the evidence of Mr Howieson at [22] of Exhibit 25, and Mr Butchart at [19] of Exhibit 24.

141 Exhibit 25, Statement of Stephen Howieson (27 April 2020) [35]-[38]; Exhibit 94, Second Statement of Stephen Howieson (16 June 2020) [6].

142 Transcript of the Commission, 8 May 2020 T765-767.

143 Exhibit 25, Statement of Stephen Howieson (27 April 2020) [43].

144 Exhibit 25, Statement of Stephen Howieson (27 April 2020) [44]-[45]; Exhibit 24, Statement of Cameron Butchart (28 April 2020) [28].

145 Exhibit 24, Further Statement of Cameron Butchart (5 May 2020) [19], [21]-[24] of Annexure A.

7.97 At 11:13pm, Mr Butchart left a voicemail message for Mr Odermatt. Mr Butchart was aware that Mr Odermatt was the "biosecurity contact person" listed in the Port Authority scenario matrix for the scenario involving suspected COVID-19 cases on board a ship, which was the scenario he believed applied to the circumstances that evening.[146] Mr Butchart stated that he based his decision to "deny" the booking because: there were suspected COVID-19 cases; he was unable to contact a Port Agent or Biosecurity Officer; and he believed he needed more information about the reason for the medical disembarkations to make an assessment of any health and safety issues in relation to the marine pilot.[147]

7.98 In his statement to NSW Police, Mr Butchart stated he made "three phone calls each" to Ms Burrows and Ms Tokovic, between 11:14 and 11:17pm.[148] Ms Burrows gave evidence that she was asleep at that time, and that she believed that Mr Kretzig was also asleep in bed.[149] Ms Tokovic gave evidence that she turned her mobile phone off at 11:00pm that evening and went to sleep in order to wake at 1:00am and meet the Ruby Princess at the OPT.[150] Ms Burrows gave evidence that she would have expected Ms Tokovic to be available during this period of the evening, given that the arrival of the vessel had been brought forward.[151]

7.99 As will be plain from the explanation of events that follows, the unavailability of particular Carnival personnel during the evening of 18 March did not ultimately prevent the Port Authority from obtaining the information they required to consider and confirm the arrangements for pilotage for the Ruby Princess.

Further communication between the MAC, NSW Ambulance and the Port Authority

7.100 At 11:18pm on 18 March 2020, a MAC officer telephoned Mr Dilonardo who confirmed that he had called the Port Authority about two suspected cases of COVID-19 on a cruise ship docking in Sydney at 2:30am on 19 March. Mr Dilonardo told the officer that NSW Ambulance had received the information from 'Bibi' and provided her phone number, indicating that he was "guessing" she was a Port Agent for Carnival. Mr Dilonardo told the MAC officer that the reason he was making further enquiries was because RPA had told NSW Ambulance that they were unaware of the patients, and that although this sometimes occurs, "with all the whole coronavirus going on, they don't like surprises that just rock up, especially when … they're supposed to go through the Ministry of Health".[152]

146 Chapter 5, [5.4]-[5.5].

147 Exhibit 24, Further Statement of Cameron Butchart (5 May 2020) [24], [26], [29] of Annexure A, Appendix B.

148 Ibid [27] of Annexure A, Annexure D.

149 Transcript of the Commission, 8 May 2020 T782.

150 Transcript of the Commission, 6 May 2020 T503.

151 Transcript of the Commission, 8 May 2020 T790-701.

152 Exhibit 40, Statement of Marine Area Command Officer (9 April 2020) [7]; Exhibit 20, Statement of Peter Dilonardo (30 April 2020) [16], [18] and Table 9 of Annexure B.

7.101 At 11:24pm, Mr Dilonardo spoke with the NUM who indicated that RPA had not been provided with any further information.[153]

7.102 Shortly afterwards, the MAC officer confirmed with Mr Butchart that Mr Dilonardo's telephone number was linked to the '000' Control Centre and that the person who had made the '000' phone call to them was called 'Bibi'. The MAC officer also advised that he had attempted to contact her without success. Mr Butchart stated that he thought 'Bibi' was a "shipping agent for Carnival cruises" and that the Port Authority were expecting the Ruby Princess to dock at approximately 2:30am. The MAC officer advised Mr Butchart that the Port Authority needed to contact NSW Health in relation to the suspected COVID-19 cases.[154] Officers at the MAC then made a number of enquiries to attempt to obtain an after-hours number for NSW Health, to no avail.

MAC contacts the Australian Border Force

7.103 Subsequent to this phone call, the supervising officer at the MAC, Sergeant Gerard Hollands decided to contact the ABF to advise them of the information they had received about the situation. He said he did this because "the matter was becoming convoluted and all attempts to contact NSW Health were becoming futile". Sergeant Hollands called an after-hours number for the ABF and spoke to Karel Jenicek, an Intelligence Liaison Officer from the Department of Home Affairs. Mr Jenicek requested that Sergeant Hollands send an email setting out the "potential issues" with the Ruby Princess.[155]

Further communications between the Port Authority and the Ruby Princess

7.104 At 11:19pm on 18 March 2020, Mr Howieson made radio contact with the Ruby Princess and requested a copy of the ship's MARS report via email. He asked for further information about the ill passengers, informed them that the Port Authority had attempted to reach the ship's agent without success, and that "at this time, your arrival is denied into Sydney Harbour" and therefore a pilot had not been booked for the ship.[156] Mr Howieson later attempted to call Mr Kretzig at 11:28pm, without success.[157]

153 Exhibit 20, Statement of Peter Dilonardo (30 April 2020) [17] and Table 10 of Annexure B.

154 Exhibit 40, Statement of Marine Area Command Officer (9 April 2020) [9]; Exhibit 24, Further Statement of Cameron Butchart (5 May 2020) [19]-[21] of Annexure A.

155 Exhibit 97, Statement of Sergeant Gerard Hollands (12 April 2020) [9]-[12].

156 Exhibit 25, Statement of Stephen Howieson (27 April 2020) [50] at p 79 of Annexure B (Transcript of VHF recordings – South Head Terminal Channel 12).

157 Exhibit 25, Statement of Stephen Howieson (27 April 2020) [50].

7.105 At approximately 11:42pm, Mr Howieson received a telephone call from Mr Azzarelli during which Mr Howieson reiterated the need for further information to be provided in relation to the ill passengers. He advised Mr Azzarelli that if the required information was provided a pilot would be allocated to the Ruby Princess for approximately 3:00am on 19 March. Mr Howieson again advised that the Port Authority had not been able to reach the ship's agent. Mr Howieson stated that he regarded this as unusual, and that it is "extremely rare" to discuss any issues in relation to the arrival of a vessel with those on board, rather than through their agent.[158]

Internal communications of the Port Authority and contact with Carnival employees

7.106 At approximately 11:40pm on 18 March 2020, Mr Rybanic received a telephone call from Mr Butchart who advised of the call he had received from NSW Ambulance, and said he found this unusual. He also advised Mr Rybanic that he had been unable to contact any of the port agents for Carnival to obtain more information. Mr Rybanic indicated that he would call Mr Mifsud to obtain further information.[159]

7.107 At 11:54pm, Mr Rybanic spoke with Mr Mifsud and relayed the calls he had received from Mr Butchart. Mr Mifsud told Mr Rybanic that "NSW Health weren't going to meet the ship and that it was deemed a low risk ship".[160] Mr Mifsud gave evidence that he could not recall whether he had been specifically told the vessel had been deemed low risk, or whether he inferred this from the fact that NSW Health "had given the ship clearance to berth" and his understanding of NSW Health's risk categories for cruise ships.[161]

7.108 Mr Rybanic gave evidence that Mr Mifsud told him "it wasn't a COVID ship" and that the ambulances "weren't related to COVID".[162] However he later agreed that the phrase "not a COVID ship" was an expression he used to convey Mr Mifsud's statement that NSW Health had deemed the Ruby Princess as low risk, and he could not recall the exact words used by Mr Mifsud.[163]

7.109 At 11:52pm, Mr Butchart sent Mr Howieson an email, copying in Ms Fensom and Mr Rybanic, requesting that Mr Howieson "deny" the booking of the Ruby Princess, advise the vessel of this denial, seek further information as to the ill passengers and a copy of the MARS report and request that the Port Agent urgently contact VTS.[164]

158 Ibid [54]-[55].

159 Exhibit 21, Statement of Robert Rybanic (21 April 2020) [15]; Exhibit 24, Further Statement of Cameron Butchart (5 May 2020) [34] of Annexure A, Annexure D.

160 Exhibit 21, Statement of Robert Rybanic (21 April 2020) [15]-[17].

161 Transcript of the Commission, 11 May 2020 T868-868.20, T872.09-873.06.

162 Transcript of the Commission, 6 May 2020 T601.08-09, T603.28-604.09, T611.28-612.15.

163 Transcript of the Commission, 6 May 2020 T616.38-617.06.

164 Exhibit 25, Statement of Stephen Howieson (27 April 2020) [57].

7.110 At 11:59pm, Mr Howieson was contacted by Martin White, the Duty Pilot on shift that evening, who was responsible for allocating pilots to vessels booked to arrive in Sydney Harbour. They discussed the allocation of a pilot to the Ruby Princess. During the conversation Mr White stated that he thought that the "Skip" on the Ruby Princess had "made a false declaration last time". Mr Howieson stated that he believed that to be a reference to the arrival of the Ruby Princess in Sydney on 8 March 2020.[165]

7.111 At 11:59pm, Mr Rybanic telephoned Mr Butchart to advise that Mr Mifsud had confirmed that "there were no COVID-19 cases on board" the Ruby Princess.[166] Mr Rybanic recalled stating that he was told by Mr Mifsud that the medical disembarkations were not COVID-19 related.[167] At 12:02am on 19 March,[168] Mr Butchart joined Ms Fensom to the call with Mr Rybanic. Mr Butchart said that he sought direction from Ms Fensom about next steps, that it was determined the information that Mr Butchart had received from NSW Ambulance was incorrect, and that Ms Fensom "gave a direction that the ship be brought in".[169]

7.112 Shortly after that call, Ms Fensom contacted Mr Mifsud to verify the information he had provided to Mr Rybanic.[170] Mr Mifsud recalled Ms Fensom indicating that the Port Authority had safety concerns for the pilot who was to board the Ruby Princess.[171] Ms Fensom recalled him telling her that NSW Health had assessed the human health situation on the vessel as "low risk", that it was cleared for berthing, and that whilst there were ambulances meeting the ship, "health has not said the ambulances are for COVID", nor that "there was COVID on board". Mr Mifsud also told Ms Fensom that they were "landing swabs to be tested". [172] Ms Fensom gave evidence that she did not recall Mr Mifsud stating that the swabs were for COVID-19 testing.[173]

7.113 After speaking with Mr Mifsud, Ms Fensom made the decision to reverse the "cancellation of the supply of the pilotage" for the Ruby Princess.[174] Mr Mifsud sent a text message to Ms Burrows and Ms Tokovic advising that he had been contacted by the Port Authority and relaying the information he provided to Ms Fensom. He received a reply from Ms Tokovic indicating that one of the persons medically disembarked had a respiratory issue. He was then emailed a copy of the ARD Log by Ms Burrows.[175]

165 Ibid [59]-[60].

166 Exhibit 24, Further statement of Cameron Butchart (5 May 2020) [24](g).

167 Exhibit 21, Statement of Robert Rybanic (21 April 2020) [18].

168 Exhibit 24, Further Statement of Cameron Butchart (5 May 2020) [24](h), Annexure D.

169 Ibid [24](h).

170 Transcript of the Commission, 8 May 2020 T744.08-11.

171 Transcript of the Commission, 11 May 2020 T871.07-10.

172 Exhibit 22, Statement of Emma Fensom (5 May 2020) [45]; Transcript of the Commission, 8 May 2020 T745.08-24; 11 May 2020 T871.18-42, T873.22-25.

173 Transcript of the Commission, 8 May 2020 T745.26-29.

174 Transcript of the Commission, 8 May 2020 T749.36-44.

175 Transcript of the Commission, 11 May 2020 T875.39-878.33.

Dr von Watzdorf telephones VTS re the MARS report

7.114 Records of the Port Authority indicated that at 12:06am on 19 March 2020, Dr von Watzdorf, Commodore Pomata and Mr Azzarelli telephoned Mr Howieson at VTS to follow up in relation to the information provided in the MARS report. Dr von Watzdorf informed Mr Howieson that the vessel had just emailed him the MARS report but at that stage it had not been received.

7.115 Dr von Watzdorf said to Mr Howieson, "we've got quite a few upper respiratory tract infections. And we have a few isolated guests as well, and one crewman and a few guests". She then explained that there were 110-120 sick passengers and crew all of whom were isolated. She further advised that "these numbers" had been sent through to "NSW Public Health" who had cleared the Ruby Princess for disembarkation. She further advised that there were "two medical disembarks", both of whom had "upper respiratory tract infections" but that "the reason they're getting disembarked is not so much that", but rather for the following medical issues: cardiac ischemia in relation to the male passenger (Mr Londero); and a femoral nerve entrapment in relation to the female passenger (Mrs Bacon).[176]

7.116 Dr von Watzdorf noted that both of those passengers were in the medical centre and isolated from other crew and passengers. She further stated that "we don't have a diagnosis for that respiratory tract infection" and that will "obviously need to be investigated when they get to the hospital". [177]

7.117 Port Authority records indicate that at 12:14am, Mr Howieson sent a further email to the Ruby Princess, addressed to Mr Azzarelli, requesting the ship's answers to the following three questions:

1) "Are the sick persons onboard that you have previously declared passengers or crew?
2) What are their symptoms?
3) Please send a copy of your vessels MARS declaration to Sydney VTS by email."

7.118 At 12:15am, Mr Azzarelli sent an email to VTS attaching the Human Health Report for the Ruby Princess and advising that "all passengers and crew that are currently ill are isolated on board."[178] It appears that Mr Howieson received this email during his telephone call with Dr von Watzdorf.[179]

176 Exhibit 70, Transcript and audio recording of telephone conversation between Stephen Howieson and Dr von Watzdorf dated 19 March 2020 at approximately 12:06am.

177 Exhibit 25, Statement of Stephen Howieson (27 April 2020) [67]-[73].

178 Exhibit 22, Statement of Emma Fensom (5 May 2020), Annexure 24.

179 Exhibit 25, Statement of Stephen Howieson (27 April 2020) [73].

Further communication between the MAC, NSW Ambulance and the ABF

7.119 At 12:12am on 19 March 2020, an officer of the MAC telephoned Mr Dilonardo to provide him with an update in relation to the ambulance booking. He conveyed that the CEO of Carnival Australia had advised that the booking was "non-COVID related". During that call, Mr Dilonardo clarified that the Ruby Princess is the "Carnival ship" to which the booking for the two ambulances related. Mr Dilonardo stated that he would listen to the original call made by Ms Tokovic and contact the MAC to clarify whether the ambulance booking was "COVID-related".[180]

7.120 At 12:17am, Mr Dilonardo telephoned the MAC and advised that the information originally given to Ms Nguyen at 6:59pm was that both passengers had been tested for COVID-19 but no results were available. He stated that "if they've been tested for it, they're suspected until they're cleared".[181]

7.121 At 12:19am, Sergeant Hollands sent an email to Karel Jenicek of the ABF about the situation, including the updated information received from Mr Dilonardo. He requested that the ABF contact the Port Authority directly to "avoid any further miscommunication". At 12:31am, Mr Jenicek sent an email to the "RCUNSW mailbox", (which appears to pertain to the ABF Regional Coordination Unit in Sydney (**RCU**)), forwarding on the information provided by Sergeant Hollands. Mr Jenicek stated that he had spoken to "Cameron" from the Port Authority and "apparently that is not the case", which appears to be a reference to the advice from NSW Ambulance that the passengers to be medically disembarked were suspect COVID-19 cases.[182]

7.122 At approximately 12:33am, Mr Jenicek advised Sergeant Hollands that he had contacted the Port Authority.[183] At around the same time Mr Jenicek spoke to Sharon Khan, Duty Supervisor at the NSW RCU for the ABF.[184]

Communication between the Port Authority and the Department of Home Affairs

7.123 After speaking with Dr von Watzdorf, Mr Howieson telephoned Mr Butchart to relay the information she had provided, however the call was terminated by Mr Butchart because he received another call from a female who identified herself as being from the Department of Home Affairs.[185] Chronologies completed by the Port Authority were inconsistent as to the time that this call occurred.[186] However, Mr Butchart gave evidence that he believed the call occurred "around midnight" rather than around 2:00am.[187]

180 Exhibit 20, Statement of Peter Dilonardo (30 April 2020) [21] and Table 13, Annexure B.

181 Ibid [22]-[23] and Table 14, Annexure B.

182 Exhibit 114, Voluntary Statement of the Commonwealth of Australia (12 June 2020) [133]-[134].

183 Exhibit 97, Statement of Sergeant Gerard Hollands (12 April 2020) [11]-[12]; Exhibit 114, [136].

184 Exhibit 114, Voluntary Statement of the Commonwealth of Australia (12 June 2020) [135].

185 Exhibit 25, Statement of Stephen Howieson (27 April 2020) [75]-[76].

186 Exhibit 24, Further statement of Cameron Butchart (5 May 2020) [17]-[19], Annexures E, F and H.

187 Transcript of the Commission, 1 May 2020 T222-223.10, T224.14, T225-226.37.

7.124 Mr Butchart was told by the caller that she had received enquiries about the Ruby Princess and the request for ambulances for "suspected COVID-19 cases". Mr Butchart relayed a summary of the situation and advised her that the Port Authority had "since spoken with Carnival senior management" who had confirmed that the ambulances were not required for COVID-19 cases. The caller said she was going to pass the information to "SEOC".[188]

7.125 Mr Butchart telephoned Mr Howieson shortly afterwards, at 12:25am.[189] Mr Howieson relayed the information provided by Dr von Watzdorf, including the nature of the medical disembarkations and the clearance of the vessel by NSW Health "with general precautions". Mr Butchart asked whether there were any "COVID signs" among the 110-120 ill people on board the vessel and Mr Howieson stated he hadn't asked that question of Dr von Watzdorf and offered to call her back. Mr Butchart responded, "no, all good" and asked Mr Howieson to rebook the vessel.[190] Following this call, Mr Howieson made arrangements for the pilot and linesman to assist with the berthing of the Ruby Princess. He also sent an email to Ms Fensom attaching the Human Health Report of 7:21pm for the Ruby Princess.[191]

7.126 At 12:27am, Mr Butchart telephoned Ms Fensom to advise her of the information that had been provided to Mr Howieson by Dr von Watzdorf.[192]

7.127 Carnival submits that Mr Butchart's indication to Mr Howieson that there was no need to call Dr von Watzdorf to seek clarification about "COVID signs" undercuts his evidence that he was endeavouring to clarify information about the human health status on board the Ruby Princess.[193] However it may also be observed that by this time, Mr Butchart was apprised of the fact that the vessel had been cleared by NSW Health, had spoken with a representative from the Department of Home Affairs (see [7.123]-[7.124]), and perhaps most tellingly, he had received a direction from Ms Fensom as to next steps (see [7.111]).

188 Exhibit 24, Further statement of Cameron Butchart (5 May 2020) [44] of Annexure A; see also Exhibit 114 [129], which indicates that SEOC is part of the ABF.

189 Exhibit 24, Further statement of Cameron Butchart (5 May 2020) [24](j), Annexure D; Exhibit 25, Statement of Stephen Howieson (27 April 2020) [77]

190 Exhibit 25, Statement of Stephen Howieson (30 April 2020) [77]-[78].

191 Exhibit 22, Statement of Emma Fensom (5 May 2020) [46], Annexure 24.

192 Exhibit 24, Further statement of Cameron Butchart (5 May 2020) [24](k), Annexure D.

193 Written submissions on behalf of Princess Cruises Lines and Carnival (13 July 2020) [27].

The docking and disembarkation of the Ruby Princess on 19 March

The Ruby Princess enters Sydney Harbour

7.128 At 12:30am on 19 March 2020, Mr Howieson contacted the Ruby Princess via VHF radio and advised that on the basis of the further information provided, the vessel was cleared to enter Sydney Harbour. Mr Howieson advised that a pilot would board the vessel at approximately 1:10am.[194]

7.129 At 12:35am, Mr Butchart contacted Mr Dilonardo to advise that Dr von Watzdorf and representatives of Carnival Australia had confirmed to the Port Authority "that there were no COVID-19 cases on board". Mr Dilonardo reiterated that passengers being medically disembarked from the Ruby Princess would be treated as suspected COVID-19 cases and confirmed that two ambulance crews would attend at 2:30am.[195]

7.130 Shortly afterwards, Ms Fensom and Mr Butchart spoke on the telephone to discuss the information provided to them, including Mr Butchart's conversation with Mr Dilonardo.[196] At approximately 12:49am, Ms Fensom sent an email to the Incident Management Team for Transport for NSW to inform them that the Port Authority had been advised by both the doctor on board the Ruby Princess and Carnival Australia that:

> "1) Three ambulances are to meet the [Ruby Princess] for heart issues, septic ear infection & leg issue.
> 2) 120 people are in quarantine on board.
> 3) Samples are being landed for testing.
> 4) NSW Health have deemed [the Ruby Princess] low risk" and had cleared the vessel to berth.
> 5) NSW Health has not advised that there is COVID-19 on board."

7.131 Ms Fensom also stated that "on the basis of this new information the ship has been re-confirmed for its original pilotage time" (ie. 3:00am on 19 March 2020).[197] She gave evidence that she did this because she had been asked by the Chief Executive Officer of the Port Authority to keep Transport for NSW updated on events related to the COVID-19 response.[198]

194 Exhibit 25, Statement of Stephen Howieson (27 April 2020) [50] at p 81 of Annexure B (Transcript of VHF recordings – South Head Terminal Channel 12).

195 Exhibit 24, Further statement of Cameron Butchart (5 May 2020) [24](l); Exhibit 20, Statement of Peter Dilonardo (30 April 2020), Table 15 of Annexure B.

196 Exhibit 24, Further Statement of Cameron Butchart (5 May 2020) [49] of Annexure A; Exhibit 22, Statement of Emma Fensom (5 May 2020) [47]-[48].

197 Exhibit 22, Statement of Emma Fensom (5 May 2020), Annexure 25.

198 Transcript of the Commission, 8 May 2020 T741.31-32.

7.132 At some stage after Mr Butchart spoke with Ms Fensom he received a telephone call from a female from the ABF who was "in charge … of the disembarkation process at the OPT".[199] Mr Butchart did not take down the name of the person with whom he spoke and said that "I never deal with the ABF". However, the material available to the Commission fairly indicates that he spoke with Ms Khan from the RCU.

7.133 Mr Butchart believed the call occurred at approximately 2:15am,[200] whilst ABF telephone records indicate that Ms Khan called Mr Butchart at 12:40am.[201] In any event, Mr Butchart recalled that Ms Khan was "primarily concerned with the number of people in isolation" on the Ruby Princess. His evidence was that he advised Ms Khan that the vessel was at Bradleys Head and that the pilot could turn it around within the next 20 minutes.[202] Ms Khan recalled telling Mr Butchart that she needed to check "what information ABF's Maritime officers had on the ambulance cases".[203]

7.134 ABF telephone records indicate that Ms Khan subsequently called her supervisor, Mr Murray. Mr Murray asserts that he advised Ms Khan that NSW Health would not be conducting onboard screening and that the ambulances booked were for "non-COVID-19 cases".[204] Shortly afterwards, Ms Khan called Mr Butchart and conveyed the information provided to her by Mr Murray. Mr Butchart agreed he received this second call approximately five minutes after the first, and agreed that it must have occurred earlier than 2:30am.[205] It is also of note that Mr Butchart sent an email to the RCUNSW mailbox at 1:51am on 19 March, attaching the Human Health Report of 7:21pm for the Ruby Princess, presumably for the attention of Ms Khan.[206]

7.135 During this second call, Mr Butchart recalled that Ms Khan said words to the effect of "I've spoken to my supervisor, bring it in". Ms Khan does not recall using those words but believes she would have informed Mr Butchart that the Ruby Princess had clearance to dock.[207]

199 Transcript of the Commission, 1 May 2020 T228.06-07.

200 Transcript of the Commission, 1 May 2020 T226.37.

201 Whilst the time recorded by the ABF appears to be more accurate in light of the email Mr Butchart subsequently sent to Ms Khan at 1:51am, it is also of note that Mr Butchart's telephone records indicate that his call to Ms Fensom described at [7.126] commenced at 12:39am and lasted for seven minutes. See also Exhibit 40 [13].

202 Exhibit 24, Further Statement of Cameron Butchart (5 May 2020) [52] of Annexure A, Annexure D; Transcript of the Commission, 1 May 2020 T227.11-14, T234.12-18.

203 Exhibit 114, Voluntary Statement of the Commonwealth of Australia (12 June 2020) [137]-[140], Documents 66-68.

204 Ibid [139].

205 Transcript of the Commission, 1 May 2020 T225.41-226.09, T227.32-47.

206 Exhibit 114, Voluntary Statement of the Commonwealth of Australia (12 June 2020) [141], Document 69.

207 Exhibit 24, Further Statement of Cameron Butchart (5 May 2020) [52] of Annexure A; Exhibit 114, Voluntary Statement of the Commonwealth of Australia (12 June 2020) [140]-[141].

7.136 In his oral evidence, Mr Butchart said that although he didn't "fully understand the pratique process" he did understand that officers of DAWE were responsible for granting pratique, and that they would advise the ABF that those on board a vessel met the "criteria to disembark".[208] He further stated that in relation to the docking of a vessel, the role of the ABF was limited to "passport control" and distinct from the grant of pratique.[209] Notwithstanding his largely correct understanding of the relative roles and responsibilities of the ABF and DAWE, Mr Butchart said that because he didn't ordinarily "deal with ABF or Health" he thought that the ABF, as a Commonwealth agency, may have had some kind of power to order the vessel not to dock.[210] He also stated that he was willing to address the concerns expressed by Ms Khan and to explore whether he could have "held the ship … in a certain position" to provide time to gather more information. He stated that there were "certain technical things we could have done within the harbour to allow this".[211]

7.137 At 1:49am, VTS received radio confirmation that the Ruby Princess was at Fort Denison in Sydney Harbour.

7.138 At 2:20am, an officer from the MAC telephoned Mr Butchart to obtain an update on the situation and Mr Butchart advised that he was "waiting on a phone call from health or ABF to turn the ship around".[212]

7.139 During the day on 19 March, Ms Marshall and Ms Fensom spoke over the phone about the difficulties they had encountered obtaining timely information in relation to the Ruby Princess the previous evening. To this end, Ms Marshall sent an email to Ms Ressler about these matters and requested provisions of contact details for someone from NSW Health who could be contacted "during the night to ask questions and get clarity". Ms Marshall subsequently received a telephone call from Professor Mark Ferson, during which they discussed the issues faced by the Port Authority the previous evening. Professor Ferson provided a contact number for Dr Sean Tobin.[213]

208 Transcript of the Commission, 1 May 2020 T235.39-236.39; T237.16-31.

209 Transcript of the Commission, 1 May 2020 T235.01-05; T237.33-36; Transcript of the Commission, 6 May 2020 T631.10-35; 632.13-26.

210 Transcript of the Commission, 1 May 2020 T235.19, T235.22-27; T237.43-46, T239.42-240.05; Transcript of the Commission, 6 May 2020 T632.34-42.

211 Transcript of the Commission, 6 May 2020 T632.39-41.

212 Exhibit 40, Statement of Marine Area Command Officer (9 April 2020) [15].

213 Exhibit 23, Statement of Sarah Marshall (22 April 2020) [34].

The medical disembarkation of Mrs Bacon and Mr Londero

7.140 At some stage late on 18 March 2020, Mr Bacon and Ms Roope were advised that Mrs Bacon was to be medically disembarked from the Ruby Princess. Ms Roope gave evidence that she and Mr Bacon were asked to report to the medical centre on board the vessel at 2:00am on 19 March. Upon arrival they were asked why they didn't have their luggage with them. Ms Roope recalled stating that she and Mr Bacon intended to go home, rather than travel in the ambulance because "it is only the flu", and that Dr von Watzdorf stated "Yes, that's correct, it's only the flu". She also recalled being told that "there was nothing to worry about". Ms Roope agreed in her evidence that this conversation caused her to make the decision not to go with Mrs Bacon in the ambulance. Ultimately Ms Roope and Mr Bacon disembarked at about 10:00am. They were not given masks to wear.[214]

7.141 At 2:29am on 19 March, the Ruby Princess berthed at the OPT.[215]

7.142 At 2:48am, two NSW Ambulance paramedics, Mathew Symonds and Rebecca Orr, arrived at the OPT to transfer Mrs Bacon to the RPA. They had been notified by the Duty Operations Manager, Christopher Townsend, that Mrs Bacon was potentially COVID-19 positive, as she had been tested but results were pending. Mr Townsend advised that full PPE should be worn.[216]

7.143 Mr Symonds and Ms Orr attended the onboard medical centre where they were relayed information by Dr von Watzdorf regarding Mrs Bacon's condition, including that: she was "complaining of left leg pain with suspected femoral compression"; she was presenting with a "respiratory tract infection"; and she was "negative for Influenza A but that they could not rule out COVID-19". Mr Symonds and Ms Orr transferred Mrs Bacon to RPA, arriving at approximately 3:57am, where they took Mrs Bacon directly to the "designated COVID area". [217]

214 Exhibit 76, Statement of Josephine Roope (16 April 2020) [20], [23]-[25]; Transcript of the Commission, 22 June 2020 T1773.47 – 1776.13, T1777.18-21.

215 Exhibit 25, Statement of Stephen Howieson (27 April 2020) [101], Annexure D.

216 Exhibit 42, Statement of Mathew Symonds (30 April 2020) [2], [7], [12]-[14], Annexure A.

217 Ibid [17], [22].

7.144 At 2:57am, another NSW Ambulance paramedic, Jayden Hedt, and a trainee NSW Ambulance paramedic, Simeon Pridmore, arrived at the OPT to transfer Mr Londero to the RPA. Having been advised by Mr Townsend that the patient was "potentially COVID-19 positive", both had dressed in "full PPE" prior to boarding the Ruby Princess, which consisted of "a gown, glasses, gloves and a P2 face mask". Mr Pridmore told the Commission that upon arrival he understood that Mr Londero's medical issues were "cardiac related". Mr Pridmore and Mr Hedt attended the medical centre and were advised by Dr von Watzdorf that Mr Londero had presented with "Influenza or COVID-like symptoms", had tested negative for Influenza A, and had a "small troponin leak without any prior cardiac issues". They transferred Mr Londero and his wife to RPA, departing the OPT at 3:38am and arriving at the triage area for COVID-19 at RPA at 3:54am.[218]

Biosecurity clearance and the grant of pratique by DAWE

7.145 The legislative and administrative framework relevant to the grant of pratique to the Ruby Princess on 19 March 2020 is set out in Chapter 4 of this Report.

7.146 The DAWE employees based at the OPT were under the supervision of Mr Odermatt. The Biosecurity Officers that attended the arrival of the Ruby Princess at the OPT on 19 March 2020 were Traci Joseph, Jane Wallace and Alan George.[219]

7.147 Ms Joseph recalled having a conversation with Mr Odermatt on 18 March, in which he expressed uncertainty in relation to the cause of illness of roughly 128 passengers on the Ruby Princess and asked her "to find out the status of the passengers". Mr Odermatt does not recall this conversation.[220]

7.148 This detail is curious, given that Ms Joseph left work at 1:30pm that day and the updated Human Health Report, listing 128 ill passengers, was not submitted until 7:21pm that evening.[221]

7.149 Ms Joseph commenced her shift at the OPT on 19 March at 5:00am. Mr Odermatt arrived between 5:45am-6:00am.[222]

218 Exhibit 18, Statement of Simeon Joel Pridmore (30 April 2020); Transcript of the Commission, 6 May 2020 T561.24-38.

219 Exhibit 114, Voluntary Statement of the Commonwealth of Australia (12 June 2020) [97]-[98], Document 3.

220 Ibid [117].

221 Ibid [117], [130] and Document 60.

222 Exhibit 114, Voluntary Statement of the Commonwealth of Australia (12 June 2020) [146], [149]; Exhibit 43, Statement of Julie Taylor (13 May 2020) [53], Annexure 16.

7.150 At approximately 6:00am, Ms Joseph met Ms Tokovic at the gangway to the Ruby Princess at the OPT. Ms Joseph recalled asking Ms Tokovic about human health on the vessel, and was informed about passengers having been tested for "influenza and influenza A". Ms Tokovic also advised Ms Joseph that the vessel and/or passengers were "low risk" and that NSW Health was not attending to conduct an onboard screening.[223] There is no evidence before the Commission to suggest that Ms Tokovic informed Ms Joseph at this time that swabs for testing for COVID-19 were to be sent to a laboratory for testing.

7.151 ABF officers with responsibility for maritime operations, including Omer Ozger, Senior Border Force Officer, arrived at the OPT at approximately 6:15am and boarded the Ruby Princess shortly afterwards.[224] Material provided by the Commonwealth states that Mr Ozger asked Mr Odermatt if NSW Health would be conducting an onboard assessment, and was advised that NSW Health had assessed the vessel as low risk so would not be attending.[225]

7.152 Ms Tokovic then told Mr Ozger and another ABF officer, Julia Milosevic, that NSW Health would not conduct an onboard screening, that 11 passengers on board were in isolation, and that 2 passengers had been medically disembarked prior to the ABF arriving at the OPT. Ms Milosevic also recalled that Ms Tokovic said that COVID-19 related testing had been done on board.[226] After boarding the vessel, Mr Ozger recalled being told by a member of the Ruby Princess crew that the two passengers who had been medically disembarked earlier that morning had "issues unrelated to COVID-19".[227]

7.153 A Routine Vessel Inspection (**RVI**) for the Ruby Princess was booked between 6:00am–7:00am.[228] Ms Joseph boarded the vessel and inspected the landing orders, observing that there were "landing orders for swabs". Ms Joseph undertook an environmental inspection whilst on board. Contrary to the applicable DAWE Work Instructions explained and examined in Chapter 4 of this Report,[229] she did not administer a Traveller with Illness Checklist (**TIC**) whilst on board. Ms Joseph disembarked the vessel sometime between 6:45am-7:00am.[230]

223 Exhibit 114, Voluntary Statement of the Commonwealth of Australia (12 June 2020) [150]; Transcript of the Commission, 6 May 2020 T536.27-43

224 Exhibit 114, Voluntary Statement of the Commonwealth of Australia (12 June 2020) [151], [154]; Exhibit 43, Statement of Julie Taylor (13 May 2020) [53], Document 16.

225 Exhibit 114, Voluntary Statement of the Commonwealth of Australia (12 June 2020) [152], Document 73.

226 Ibid [153]; Transcript of the Commission, 6 May 2020 T537.05-24.

227 Ibid [156].

228 See Chapter 4, esp [4.46]-[4.49].

229 See Chapter 4, esp [4.50]-[4.55], [4.60].

230 Exhibit 114, Voluntary Statement of the Commonwealth of Australia (12 June 2020) [155], [164].

7.154 Information provided by the Commonwealth indicates that ABF officers inspected paperwork whilst on board the vessel, and a face-to-passport check was completed for passengers and crew who had joined the vessel after it embarked from Sydney on 8 March 2020.[231] [232]

7.155 Ms Tokovic gave evidence that on that morning she had to "get clearance for [passengers] to disembark" from the ABF and DAWE, which she did by asking "for consent" once ABF and DAWE officers had completed the relevant checks.[233]

7.156 Mr Ozger recalled being asked by a crew member of the Ruby Princess whether the vessel had clearance to disembark, to which he responded "yes".[234] Mr Ozger relevantly recorded the following in his notebook:

> "Vessel staff advised swabs conducted of sick passengers and sent for testing. Vessel was advised to keep isolated passengers on board until all other passengers and crew debarked from vessel. Remaining passengers were clear for debarkation".[235]

7.157 Ms Joseph does not recall being asked for clearance to disembark passengers or baggage. She also does not recall the ABF being asked for clearance to disembark.[236] After leaving the vessel, Ms Joseph spoke to Mr Odermatt about the swabs that had been sent for testing for COVID-19.[237] From around 7:31am, Mr Odermatt exchanged text messages with Ms Ressler, wherein Mr Odermatt, referring to "18 samples for testing" from the Ruby Princess, asked whether DAWE and ABF should be "concerned". Ms Ressler replied that the ship was assessed as low risk, that there was "no concern" and "[A]ll are ok to debark but all to go into home isolation…".[238]

7.158 At 7:37am, Ms Joseph updated MARS with the results of the RVI, which generated a further Biosecurity Status Document for the Ruby Princess. This had the effect of changing the 'amber' traffic light to 'green' in respect of pratique and ship sanitation. At 7:39am, a notice was sent to the operator of the vessel communicating the grant of pratique.[239]

7.159 According to an email sent by Mr Ozger, passengers commenced disembarking from the Ruby Princess between 6:30am and 7:00am on 19 March 2020.[240] Documentation from the Port Authority indicates that disembarkation commenced at 7:14am and concluded at 10.44am.[241]

231 Ibid [157].

232 As explained in Chapter 4 at [4.80]-[4.83], In light of the exemption applicable to the Ruby Princess as a "round trip cruise" it was not necessary for all passengers and crew to be subject to immigration clearance as per s 166 of the *Migration Act 1958* (Cth). See also Exhibit 114, Voluntary Statement of the Commonwealth of Australia (12 June 2020) [69]-[70].

233 Transcript of the Commission, 6 May 2020 T519.18-38.

234 Exhibit 126, Further Supplementary Voluntary Submission of the Commonwealth of Australia (3 August 2020) [5].

235 Exhibit 114, Voluntary Statement of the Commonwealth of Australia (12 June 2020) [158], Document 73.

236 Ibid [158].

237 Ibid [164].

238 Ibid [165].

239 Ibid [168]-[169].

240 Ibid [162], Document 77.

241 Exhibit 43, Statement of Julie Taylor (13 May 2020) [54]-[55], Annexure 16. *Cf* Exhibit 114, Voluntary Statement of the Commonwealth of Australia (12 June 2020) [181].

Disembarkation of passengers

7.160 In accordance with normal procedure, Ruby Princess staff had allocated passengers to groups with assigned marshalling areas and staggered disembarkation times.[242] Mr Verwaal recalled that there were somewhere between 20 and 50 groups for the 2,700 passengers.[243] He gave evidence that it generally takes approximately four to five hours for that many passengers to disembark.[244] He noted that the vessel also had a "regular crew disembarkation" on the day.[245] Mr Mifsud gave evidence that the disembarkation groups were usually comprised of about 100 people, disembarking at five to ten minute intervals.[246] He said that no special procedures were put in place on 19 March, given that the vessel had been cleared for disembarkation.[247]

7.161 Much of the evidence given by passengers was to the effect that they did not notice anything out of the ordinary regarding the disembarkation, save that the process occurred very quickly.[248] Passengers' recollections regarding the size of the disembarkation groups varied, although a common estimate was about 100 people.[249]

7.162 It appears that the remaining 11 passengers from whom COVID-19 swabs had been taken were kept isolated on board the vessel until all other passengers had disembarked.[250] Other passengers who had presented to the medical centre with respiratory symptoms reported being provided with masks and hand sanitiser prior to disembarkation.[251] However, this was not universal,[252] and appears in any event to have been the extent of precautions taken in relation to that cohort. Mrs Jones, who had been left a bag containing masks and hand sanitiser outside her cabin, described disembarking in a group of approximately 100 people, in "pretty close quarters".[253]

Activities of DAWE and ABF during disembarkation

7.163 As passengers disembarked the Ruby Princess, ABF officers collected incoming passenger cards. They also assisted DAWE staff to distribute the Commonwealth Department of Health *Information for international travellers* fact sheet.[254]

242 Transcript of the Commission, 23 April 2020 T124.13-28.

243 Transcript of the Commission, 23 April 2020 T136.38-42.

244 Transcript of the Commission, 23 April 2020 T141.8-11.

245 Transcript of the Commission, 23 April 2020 T145.24-32.

246 Transcript of the Commission, 11 May 2020 T881.21-44.

247 Transcript of the Commission, 11 May 2020 T882.03-08.

248 Transcript of the Commission, 19 June 2020 T1640.41-45, T1641.3-5.

249 Transcript of the Commission, 19 June 2020 T1640.41-45, T1641.3-5, T1626.20-35; 22 June 2020 T1696.33-38; 23 June 2020 T1824.13-21.

250 Transcript of the Commission 6 May 2020 T524.34-46; see also Exhibit 114, Voluntary Statement of the Commonwealth of Australia (12 June 2020) [150].

251 Exhibit 96, 255 police statements of Ruby Princess passengers and families, Tab 17; Exhibit 80, Statement of Lynette Jones (21 April 2020) [22]; Exhibit 86, Statement of Paul Reid (15 May 2020) [13], Transcript of the Commission, 23 June 2020 T1883.10-15.

252 Transcript of the Commission, 19 June 2020 T1661.37-47.

253 Transcript of the Commission, 23 June 2020 T1824.13-21.

254 See [7.49]; Transcript of the Commission, 6 May 2020 T526.038-527.25.

7.164 After disembarkation had commenced, but prior to 8:38am, Ms Tokovic told Mr Ozger that the test results for the passengers who had been swabbed for COVID-19 were negative.[255] He asked her to send this information to him in writing and she sent an email to him at 8:38am attaching a file called "Lab form for coronavirus testing from a cruise ship" (**lab form**).[256] The lab form had been completed by Dr von Watzdorf to accompany the 13 swabs that had been taken from passengers and crew onboard the vessel for COVID-19 testing.[257]

7.165 The last column on the lab form indicated that all those who were being tested for COVID-19 had tested negative for Influenza A and B. It did not contain the results of the COVID-19 testing. As explained below, those results were not available until the morning of 20 March.

7.166 After reviewing the lab form, Mr Ozger sent an email to Mr Snook at 9:07am, attaching the lab form and advising that the tests for COVID-19 from the Ruby Princess were negative.[258] He then used the lab form to create a table that replicated this incorrect information, and sent emails containing the table to Mr Snook and a 'Seaports Sydney' email address, maintained by DAWE. Mr Odermatt read that email.[259]

7.167 Mr Ozger recalled that on 20 March he telephoned Ms Tokovic with Mr Snook, and during that conversation Ms Tokovic denied having told him that the test results were negative.[260]

7.168 The foregoing makes plain that when Mr Ozger reviewed the lab form he misread the last column, misunderstanding it to mean that the results of COVID-19 testing from the Ruby Princess were negative.[261] However, what is also clearly evident upon review of the available evidence is that the error made by Mr Ozger, and the consequent communication of incorrect information, occurred over one hour after disembarkation commenced.[262] The "plan" formulated by NSW Health for the arrival and disembarkation of the Ruby Princess was not predicated on the receipt of COVID-19 test results prior to disembarkation. The error therefore had no impact upon the grant of pratique, nor any clearance given for disembarkation of the vessel.[263]

255 Exhibit 114, Voluntary Statement of the Commonwealth (12 June 2020) [172], Document 73; Exhibit 126, Further Supplementary Voluntary Submission of the Commonwealth of Australia (3 August 2020) [6]; *Cf* Transcript of the Commission, 6 May 2020 T531.28-29.

256 Ibid [173], Documents 84, 85.

257 See [7.64].

258 Exhibit 114, Voluntary Statement of the Commonwealth (12 June 2020) [173]-[174], Document 76.

259 Ibid [177]-[178], Documents 88, 89.

260 Ibid [172].

261 Ibid [173].

262 See [7.156]-[7.159].

263 See also Exhibit 126, Further Supplementary Voluntary Submission of the Commonwealth of Australia (3 August 2020) [7].

Further testing and confirmation of COVID-19 cases from the Ruby Princess

7.169 Shortly after the arrival of the Ruby Princess at the OPT, at approximately 3:00am on 19 March 2020, the 13 available swabs taken from passengers and crew on the vessel were collected from the onboard medical centre by Ms Tokovic, delivered to a driver and transported to the South Eastern Area Laboratory Services (**SEALS**) of NSW Health Pathology.[264] A decision had been made by the Expert Panel that the testing of the swabs would take place on the "10:00am run" on 19 March, rather than immediately upon their delivery to the laboratory.[265]

7.170 Upon their admission to RPA, Mrs Bacon and Mr Londero were separately tested for COVID-19. They were confirmed as having tested positive in an email sent by NSW Health Pathology at 9:04pm on 19 March 2020.[266] The delay in this information being reviewed by the NSW Health Public Health Emergency Operations Centre and received by either the SES PHU and Carnival is further explored in Chapter 13.

7.171 Regrettably, the swabs sent to SEALS were not tested on the 10:00am run as intended. Commendably, Ms Ressler attempted to obtain the results during the afternoon on 19 March, but found that they were not yet available. Her evidence was that upon making enquiries, she discovered that the relevant technician had not realised that they were cruise ship samples and had put them into the normal queue without giving them any priority.[267]

7.172 At approximately 8:30am on 20 March, Ms Ressler "logged on" to check the results from the COVID-19 testing of the swabs and ascertained that there were three positive test results.[268] The steps subsequently taken by Ms Ressler are set out in detail in Chapter 13.

264 Transcript of the Commission, 6 May 2020 T505.25-508.13.

265 Exhibit 29, Annexures to the NSW Health Witness Statements, Tab 51.

266 Exhibit 59, Email from Khoi Nguyen (NSW Health Pathology) sent at 9:04pm on 19 March 2020 re: "SARS testing after 3pm today".

267 Transcript of the Commission, 5 May 2020 T170.6-9. See also [13.16].

268 The Commission has confirmed that the SEALS result obtained for Anthony Londero was positive for COVID-19 on 20 March 2020. See [7.37]. See further Chapter 13 at [13.19].

The updated ARD Log

7.173 At some stage on 20 March, Ms Ressler noticed that there were passengers who had been tested for COVID-19 who were not listed on the ARD Log sent to NSW Health by Dr von Watzdorf on 18 March 2020. At 5:01pm on 20 March, Ms Ressler and Dr von Watzdorf sent each other the following messages on WhatsApp:

> "Kelly Ressler: Do you have an updated [ARI] log? Some of the later people swabbed aren't on the one I have. Did you add any more patients after you sent it to me?
>
> Ilse Ruby Princess Dr: I'll send it now.
>
> Ilse Ruby Princess Dr: Sorry, I forgot that the last one was from the morning. It was so crazy."[269]

7.174 At 5:22pm, Dr von Watzdorf emailed Ms Ressler an updated ARD Log which indicated that as at 19 March 2020, of the persons on board the Ruby Princess, 120, or 3.26%, had presented to the medical centre with acute respiratory disease. Of those 120 persons, 48, or 1.26%, had presented with an ILI.

269 Exhibit 16, Statement of Kelly-Anne Ressler (1 May 2020) [92], [94]-[95], Annexure KAR-2.

8

The risk assessment of 18 March 2020

The NSW Health Expert Panel

8.1 The NSW Health expert panel for the risk assessment of the Ruby Princess on 18 March 2020 comprised Dr Sean Tobin, Professor Mark Ferson, Dr Isabel Hess and Associate Professor Bradley Forssman (**Expert Panel**).

8.2 Although Dr Tobin was the Chief Human Biosecurity Officer (**CHBO**) for New South Wales,[1] it could be said that Professor Ferson was the senior physician on the panel – as Director and Senior Staff Specialist of the Public Health Unit of the South Eastern Sydney Local Health District (**SES PHU**), he had been involved in the surveillance of illness on cruise ships as part of the SES PHU's "cruise ship surveillance program" since the late 1990s.[2]

8.3 Dr Tobin (also a public health physician), is a senior medical officer in the Communicable Diseases Branch of Health Protection NSW, which is a unit of NSW Health.[3] He began working as a Senior Medical Advisor in the Public Health Emergency Operations Centre (**PHEOC**) after it commenced operations to respond to COVID-19 on 21 January 2020.[4]

8.4 Dr Tobin was appointed CHBO for New South Wales on 5 September 2019, pursuant to an appointment made by the Commonwealth Director of Human Biosecurity under the *Biosecurity Act 2015* (Cth). Prior to that, he had been a Human Biosecurity Officer (**HBO**) from 15 June 2016, and before that a Human Quarantine Officer under the then *Quarantine Act 1908* (Cth).[5]

1 Exhibit 28, Statement of Dr Sean Tobin (29 May 2020) [9].
2 Exhibit 38, Statement of Professor Ferson (29 May 2020) [3] and [9].
3 Exhibit 28, Statement of Dr Sean Tobin (29 May 2020) [3].
4 Ibid [4].
5 Ibid [6].

8.5 Dr Hess (also a public health physician) is a Staff Specialist in the Public Health Unit of the Sydney Local Health District (**Sydney PHU**). She reports to Dr Leena Gupta, who is the Clinical Director of the Sydney PHU. Prior to mid-February 2020, Dr Hess had not previously been involved in the surveillance of diseases on cruise ships.[6]

8.6 Associate Professor Forssman (also a public health physician) was the Director of Public Health for the Nepean Blue Mountains Local Health District. Although he had prior experience in making health risk assessments in relation to disasters, he too had not been involved in the cruise ships surveillance program prior to February 2020.[7]

The documents provided for the risk assessment

8.7 At 10:55am on 18 March 2020, Laura-Jayne Quinn, an Environmental Health Officer from the SES PHU, sent an email to Professor Ferson and Kerry-Anne Ressler, a Senior Epidemiologist in the SES PHU, attaching a completed pre-arrival risk assessment form for the Ruby Princess (**risk assessment form**), a copy of the ship's acute respiratory diseases log (**ARD Log**), and a document containing all passengers' contact details.[8] Dr Vicky Sheppeard (Professor Ferson's deputy at the SES PHU) was copied in to the email, but was not part of the Expert Panel for the 18 March risk assessment.

8.8 The risk assessment form had been completed by Ms Quinn based on the ship's ARD Log and an 18 March email from the Senior Doctor of the Ruby Princess, Dr Ilse von Watzdorf. A pro-forma of the risk assessment form had been developed by various NSW Health physicians and epidemiologists in the course of drafting their cruise ship screening procedures in mid to late February 2020.

8.9 Included in the chain of Ms Quinn's email was the email sent to her by Dr von Watzdorf at 9:38am on 18 March, which enclosed the ARD Log, and provided answers to various questions posed by Ms Quinn the previous day.[9] This email was in the following terms:[10]

> "From: Ruby Senior Doctor
>
> Sent: 18 March 2020 09:38
>
> To: SESLHD-PublicHealthUnit-CruiseShipSurv
>
> Cc: Kelly-Anne Ressler (South Eastern Sydney LHD); Valerie.burrows; Ruby Doctor; Ruby Hotel General Manager (RU); Ruby Captain; Ruby Administration Officer; Ruby Customer Services Director; sydney.portagent
>
> Subject: RE: Ruby Princess Arrival to Sydney COVID-19 assessment

6 Exhibit 52, Statement of Dr Isabel Hess (29 May 2020) [3]-[4] and [10].

7 Exhibit 56, Statement of Associate Professor Bradley Forssman (29 May 2020) [3] and [6].

8 Exhibit 29, Annexures to NSW Health Witness Statements, Tab 48.

9 Exhibit 29, Annexures to NSW Health Witness Statements [48]; Exhibit 16, Statement of Kelly-Anne Ressler (1 May 2020) [11].

10 Exhibit 2, Email: Ruby Senior Doctor (Dr Ilse von Watzdorf) to SESLHD-Public Health Unit-CruiseShipSurv sent on Wednesday 18 March 2020 at 9:39AM; Exhibit 29, Annexures to NSW Health Witness Statements, Tab 48; Exhibit 16, Statement of Kelly-Anne Ressler (1 May 2020) [11].

Good morning Laura

Apologies it's a little late. Got caught up doing a set of XRays.

Please see below answer and attachments as added.

Please be aware, we have collected viral swabs for a few cases of "febrile, Influenza test negative" individuals, and have kept the guests isolated. Please advise on how to proceed on these guests, and whether you will be processing these tests tomorrow.

1) The full ARD log (with details of ALL passengers and crew presenting with fever OR acute respiratory symptoms OR both), including travel history in the 14 days before onset, whether a rapid flu test was collected and the result, and current condition for all passengers and crew assessed **PLEASE SEE ATTACHED**

2) A list of passengers who
   a) have left or transited through mainland China or Iran in the last 14 days **NONE**
   b) have left or transited through the Republic of Korea on or after 5 March 2020; **NONE**
   c) have been in close contact with a confirmed case of coronavirus. **NONE**

3) A list of any planned medical disembarkations
   - **Mr ANTHONY LONDERO, A537** (Australian, no travel history of significance outside of NSW and NZ; febrile upper respiratory tract infection which is improving on Oseltamivir, Influenza test neg; reason for medical disembarkation: signs of rate related cardiac ischaemia, likely secondary to infective process on initial presentation, which has since improved. He requires a cardiology consult with investigations prior to proceeding home) **Ambulance transfer required**
   - **Mrs LESLEY BACON, C518** (Australian, no travel history of significance outside of NSW and NZ; febrile upper respiratory tract infection started on Oseltamivir, Influenza tests neg; reason for medical disembarkation: severe lower backpain with signs suggestive of a femoral nerve radiculopathy. This is pre-existing to the respiratory tract infection. She needs assessment in the ED with imaging and specialist referral as needed) **Ambulance transfer required**

4) A list of any deaths during the cruise **NONE**

5) The ship's itinerary in the past 14 days and a future itinerary for the next 14 days **PLEASE SEE ATTACHED**

6) Please advise if your medical centre is charging a fee for respiratory consultations **NO**

7) Please confirm you have made announcements requesting people with respiratory symptoms come to your medical centre for assessment. **YES**

8) Please advise if your systems are able to provide us with a full contact list, including name, residential address, mobile phone number and email address of all passengers on board, should COVID-19 contact tracing be required at a later date. **PLEASE SEE ATTACHED.**"

8.10 The ARD Log, which had also been emailed to Ms Ressler by Valerie Burrows (Port Agent for Carnival) at 9:13am, contained the following information concerning patients of the clinic:[11]

- the date they reported to the medical clinic;
- the date of the onset of their symptoms;
- their recorded temperature;
- whether they were diagnosed with an acute respiratory illness (**ARI**) or influenza-like illness (**ILI**);
- whether they had been tested for influenza and the results of that test;
- their country of residence; and
- comments regarding symptoms and treatment, and whether their symptoms were resolving or improving.

8.11 Ms Ressler made minor amendments to the risk assessment form before she sent it to Professor Ferson and Dr Sheppeard at 12:25 pm.[12] She did not attach the ARD Log to her email, as Professor Ferson had received a copy of it by way of Ms Quinn's earlier email. In her covering email, she stated:

> "Plan: Receive swabs at lab as soon as ship embarks (midnight tonight), allow disembarkation, all passengers to go into home isolation. Passengers who are swabbed and plan to fly, can't do so until result is received. Dr has been advised to tell Ambos about 2 people who need medical transfer."[13]

8.12 A copy of the risk assessment form is **Appendix I** to this report. That form contained the following relevant information:

- the various ports the ship had visited in the last 14 days;
- the number of passengers (2,647) and crew (1,148); and
- the "number of passengers and crew who have been in mainland China, Iran, South Korea or Italy within 14 days of embarking" (zero).

8.13 To the question "Has the ship actively asked passengers and crew if they have respiratory symptoms or fever AND asked them to present to the ship's doctor for assessment before arrival?", the answer recorded in the form was "Yes - confirmed by doctor". It was also recorded in the form that this assessment had been free of charge. The following information was then provided:

11 Exhibit 16, Statement of Kelly-Anne Ressler (1 May 2020) [12].

12 Exhibit 16, Statement of Kelly-Anne Ressler (1 May 2020) [74]-[75] and Annexure KAR-14.

13 Exhibit 16, Statement of Kelly-Anne Ressler (1 May 2020) [76].

- the number of passengers and crew who had presented to the ship's clinic with acute respiratory illness this cruise – **104/3795 (2.7%)**;[14]
- the number of passengers and crew who had influenza-like illness – **36/3795 (0.94%**);
- the number of ill passengers and crew who have been in countries included in the Australian COVID-19 testing criteria in the 14 days before embarkation – **0**;
- the total number of passengers and crew swabbed for "flu", and the number tested positive this cruise – **48 (24 positive for Influenza A)**;
- the number of swabs available for COVID-19 testing – **10** (with the comment "Another five tested onboard as negative for COVID-19"); and
- medical disembarkations – **Mr Londero and Mrs Bacon** (with details regarding their medical condition).

The Expert Panel's risk assessment

8.14 At 1:00pm on 18 March 2020, Professor Ferson emailed risk assessment forms for three ships, including the Ruby Princess, to Dr Tobin, Associate Professor Forssman, and Dr Hess.[15] In that email Professor Ferson said:

> "Ruby Princess – probably low, but higher rate of ARI (none are travellers), but ILI >1% and flu A POS, needs discussion about getting swabs to the lab."

8.15 By email sent at 1:11pm, Associate Professor Forssman responded as follows:[16]

> "Thanks Mark, I agree with low risk for all three, but swabs needing to be tested from Ruby Princess. Not sure about how they will get from OPT to the lab at midnight though. Can the crew's company arrange for transport?"

8.16 Dr Hess sent her email response at 1:52pm, which was in these terms:[17]

> "Hi all, I agree low risk all three and also agree swabs need testing."

8.17 Dr Tobin responded by email at 2:17pm, in these terms:[18]

> "I also agree low risk. Also happy with the testing plan."

14 It should be noted that, due to there being multiple entries in the ARD Log for three persons, there were in fact only 101 persons recorded as presenting with acute respiratory illness.

15 Exhibit 29, Annexures to NSW Health Witness Statements, Tab 51.

16 Ibid.

17 Ibid.

18 Ibid.

8.18 Of the members of the Expert Panel, only Professor Ferson was provided with a copy of the ARD Log.

8.19 At 2:40pm, Professor Ferson emailed Dr Tobin, Associate Professor Forssman, and Dr Hess stating, "I have spoken with SEALS - they won't be testing in the middle of the night, it will be on the 10AM run, which I think is OK, as long as you guys agree". The reference to "SEALS" was to the laboratory which would undertake the testing of swabs for COVID-19. Only Dr Hess appears to have replied, in an email sent at 5:00pm on 18 March, stating "yes thanks Mark, just noticed I hadn't replied".[19]

8.20 Prior to and following these email exchanges amongst the Expert Panel, Ms Ressler had been exchanging text messages with Dr von Watzdorf on WhatsApp. The relevant messages, between 11:38am and 6:46pm on 18 March, were as follows:

> "[18/3/20, 11:38:29 am] Kelly Ressler: Hi ilsa you have 5 patients in your log you said are negative for COVID, how were they tested? Is that a mistake?
>
> [18/3/20, 11:46:49 am] Ilse Ruby Princess Dr: Hi Kelly. Wellington tested them for us
>
> …
>
> [18/3/20, 3:13:36 pm] Ilse Ruby Princess Dr: Hi Kelly. Do you want me to swab all US guests? Or only if febrile/ worsening symptoms/ unwell
>
> [18/3/20, 3:14:07 pm] Ilse Ruby Princess Dr: We are consulting them all personally now
>
> [18/3/20, 3:14:24 pm] Kelly Ressler: You'll have to prioritise based on the availability of swabs.
>
> [18/3/20, 3:14:43 pm] Ilse Ruby Princess Dr: Ok. I'll see what they are doing clinically
>
> …
>
> [18/3/20, 3:15:57 pm] Kelly Ressler: Ok your agent has taken a big box of masks and hand gel. I don't think we're coming on board but will get those swans [sic] tested. Just waiting for final instructions
>
> …
>
> [18/3/20, 4:22:19 pm] Ilse Ruby Princess Dr: Do you know whether you will want them at midnight, or tomorrow? And are we keeping the individuals that are getting tested in isolation until we have results like last time?
>
> [18/3/20, 4:22:49 pm] Ilse Ruby Princess Dr: The Americans all are better/ asymptomatic and temp free except two we are still waiting to see
>
> [18/3/20, 4:39:36 pm] Ilse Ruby Princess Dr: And, could you please send me an electronic copy of your request forms? Then I can complete them so long?
>
> …

19 Ibid.

> [18/3/20, 6:01:28 pm] Kelly Ressler: No we don't need you to keep anyone isolated. We figure they are now all under the commonwealth guidance which says they can transit home then go into isolation. I emailed you one lab form for all specimens, they don't need individual forms.
>
> …
>
> [18/3/20, 6:02:11 pm] Kelly Ressler: I'm telling the lab they will be there about 4am
>
> [18/3/20, 6:10:15 pm] Ilse Ruby Princess Dr: Perfect
>
> [18/3/20, 6:10:15 pm] Ilse Ruby Princess Dr: Who will take the samples?
>
> [18/3/20, 6:45:30 pm] Ilse Ruby Princess Dr: Don't worry - spoke with Val. It's sorted. I have one last question. Their are 13 samples in total. The 2 admissions / ambulance cases - shall I send their samples with Val or with the patient themselves."[20]

8.21 In an email sent at 5:07 pm on 18 March, Ms Ressler advised Dr von Watzdorf (and the Ruby Princess' Captain and Hotel Manager, as well as Carnival) that:

> "The NSW Health expert panel have assessed the Ruby Princess as NOT requiring onboard health assessment in Sydney. We would however, ask you to send 15 samples to our lab for COVID testing. I have attached our lab form, please include the details of each person on one form, include a copy with the specimens and email a copy to me. You are free to disembark tomorrow, however according to the new Australian Government Guidance, all passengers must go into self-isolation for 14 days."[21]

8.22 Thirteen swabs were taken from the Ruby Princess and tested for COVID-19. These included swabs from the passengers disembarked to ambulances for transfer to the Royal Prince Alfred Hospital (**RPA**): Mrs Bacon and Mr Londero. Following separate testing by the RPA of Mr Londero and Mrs Bacon, confirmation that they had tested positive for COVID-19 was sent to the PHEOC at 9:04pm on 19 March. [22] For reasons that will be discussed later in this Report, in Chapter 13, the test results for the swabs taken from the ship were not available until early on the morning of 20 March, which appears to be when NSW Health first became aware that passengers from the Ruby Princess had tested positive for COVID-19.[23]

20 Exhibit 16, Statement of Kelly-Anne Ressler (1 May 2020), Annexure KAR-2.

21 Exhibit 16, Statement of Kelly-Anne Ressler (1 May 2020) [19].

22 Exhibit 59, Email from Khoi Nguyen (NSW Health Pathology) sent at 9:04pm on 19 March 2020 re: "SARS testing after 3pm today".

23 Exhibit 58, Second Statement of Dr Jeremy McAnulty (18 June 2020) [20] and Annexure 1; Exhibit 59, Email from Vicky Sheppeard dated Friday, 20 March 2020 at 8.56 am.

The rationale for the "low risk" assessment

The evidence of Professor Mark Ferson

8.23 The risk Professor Ferson considered he was assessing was the "risk that COVID-19 may be circulating on the ship".[24] As will be discussed in the next chapter, this was not done for the purposes of curiosity. Professor Ferson agreed in examination – as did other members of the Expert Panel – that the reason for assessing the risk of COVID-19 on the ship was so that decisions could be made concerning what steps or precautions should be taken to prevent the spread of the disease to the New South Wales community.[25]

8.24 Professor Ferson gave evidence that he took into account the following matters in forming the view that there was a low risk of COVID-19 being on the Ruby Princess:

- The number of positive Influenza A diagnoses based on rapid testing of patients with ILI (the assessment form indicated that 36 people on the ship had ILI, and that 48 Influenza A tests had been performed, with 24 positive results).[26] He said he was not aware as at 18 March that someone infected with influenza might also be infected with COVID-19, even though "the theoretical possibility always existed".[27] He considered that, although the ILI rate on the ship (0.94%) was close to 1%, that "rate [was] explained by the presence of Influenza A";[28]
- The fact that five COVID-19 tests were performed in Wellington, all of which returned a negative result;[29] and
- The "travel history of passengers and crew".[30] In examination, he explained that this related to the fact that the ship had only traveled to New Zealand, and there were no passengers or crew who had recently been in countries like China, Iran, South Korea and Italy.[31]

8.25 While Professor Ferson had a "sense" that the "rate of ARI on the ship was higher than usual", it did not cause him to change from his low risk assessment, as he regarded ARI to be a very common illness.[32]

24 Exhibit 38, Statement of Professor Mark Ferson (29 May 2020) [51].

25 Transcript of the Commission, 9 June 2020 T916.1-10; 15 June 2020 T1231.12-16, T1309.43-47.

26 Exhibit 38, Statement of Professor Mark Ferson (29 May 2020) [72].

27 Exhibit 38, Statement of Professor Mark Ferson (29 May 2020) [73].

28 Exhibit 38, Statement of Professor Mark Ferson (29 May 2020) [76].

29 Exhibit 38, Statement of Professor Mark Ferson (29 May 2020) [72].

30 Exhibit 38, Statement of Professor Mark Ferson (29 May 2020) [82].

31 Transcript of the Commission, 15 June 2020 T1250.34-38.

32 Exhibit 38, Statement of Professor Mark Ferson (29 May 2020) [93].

8.26 While Professor Ferson said that he received and "read the ARD Log",[33] he did so "quickly". [34] He did not, for example, notice that there were passengers from the United States on the ARD Log, [35] nor was he "conscious" of the rising rate of ARI/ILI on board the ship, a matter that would have become clear to him had he considered the ARD Log more closely.[36] In his statement he explained that he "would have expected numbers of presentations to rise remarkably in the final days of the cruise" as he "knew that cruise ships were making announcements towards the end of each cruise encouraging all symptomatic passengers to attend the onboard clinic".[37] An announcement had been made to passengers on 17 March requesting them to present to the medical clinic if they were experiencing symptoms of respiratory illness (such as a sore throat, fever or a cough), although there is no evidence that the rising rate of ARI/ILI on the ship as evidenced on the ARD Log had anything to do with this announcement.[38] Prior to this, when passengers boarded the ship, they would have found a written notice in their rooms from Carnival requesting them to go to the medical clinic for assessment if they experienced symptoms of respiratory illness.[39]

8.27 One additional matter that Professor Ferson acknowledged that he did not consider for the purposes of his risk assessment was the change to the definition of a "suspect case" of COVID-19 in the revised version of the guidelines for COVID-19 published by the Communicable Diseases Network Australia on 10 March 2020 (**CDNA Guidelines**).[40] While the clinical criteria for a suspect case of COVID-19 had consistently remained: "fever" or "acute respiratory infection (e.g. shortness of breath, cough, sore throat (with or without fever)", on 10 March the epidemiological criteria changed from "travel to (including transit) a country considered to pose a risk of transmission in the 14 day before the onset of illness (High Risk: mainland China, Iran, Italy, South Korea; Moderate Risk: Cambodia, Hong Kong, Indonesia, Japan, Singapore and Thailand)", to "international travel in the fourteen days before illness onset".[41]

8.28 Had this new suspect case definition for COVID-19 been at the forefront of Professor Ferson's mind when he made his risk assessment on 18 March, his evidence was that he "think[s]" he would have assessed the ship as "medium risk".[42]

33 Exhibit 38, Statement of Professor Mark Ferson (29 May 2020) [69].

34 Transcript of the Commission, 15 June 2020 T1250.13.

35 Transcript of the Commission, 15 June 2020 T1250.45-1251.15.

36 Exhibit 38, Statement of Professor Mark Ferson (29 May 2020) [92].

37 Exhibit 38, Statement of Professor Mark Ferson (29 May 2020) [92].

38 Exhibit 85, Announcements onboard during Ruby Princess cruise from 8-19 March 2020.

39 Exhibit 75, Health advisory: Coronavirus, signed by Dr Grant Tarling.

40 Exhibit 32, CDNA National Guidelines for Public Health Units re 2019-nCoV, Version 1.18.

41 Exhibit 32, CDNA National Guidelines for Public Health Units re 2019-nCoV, Version 1.18 at p 5.

42 Exhibit 38, Statement of Professor Mark Ferson (29 May 2020) [85].

8.29 In his statement, Professor Ferson emphasised that it was always the intention of NSW Health that passengers would be disembarked from cruise ships as quickly as possible, in all the circumstances.[43] In examination, however, Professor Ferson accepted that there was never a binary choice between letting passengers off the ship immediately and requiring them to quarantine on board for a lengthy period. He accepted that hotel quarantine of passengers and crew was a third option available to NSW Health, and said that cost and expenditure of resources would not have weighed against consideration of that option.[44]

The evidence of Dr Sean Tobin

8.30 Dr Tobin's evidence was that the most significant factor for his "low risk" assessment was the "absence of passengers or crew who travelled through China, South Korea, Iran or Italy within 14 days of embarkation".[45] This appears to be a reference to the epidemiological criteria for a suspect case of COVID-19 under the CDNA Guidelines prior to 10 March 2020. Dr Tobin felt that the absence of passengers or crew who had travelled to these countries meant that there were "therefore no high-risk passengers or crew" on board the ship.[46]

8.31 Other matters said to influence his opinion were:[47]

- the fact that less than 1% of passengers and crew had presented with an ILI;
- "the relatively high number" of positive test results of Influenza A;
- the five negative COVID-19 test results performed in Wellington; and
- the fact that the ship had only travelled to and from New Zealand.

8.32 When considering the risk assessment form for the purposes of determining the risk of COVID-19 circulating on the ship, Dr Tobin also did not have at the forefront of his mind the 10 March change to the suspect case definition for COVID-19.[48] His understanding was that the risk assessment form was to reflect the suspect case definition for COVID-19 in the CDNA Guidelines. As noted at [8.27] above, the epidemiological criteria for a suspect case of COVID-19 according to the CDNA Guidelines was, by 18 March, "international travel within 14 days of the onset of illness".

43 Exhibit 38, Statement of Professor Mark Ferson (29 May 2020) [55].

44 Transcript of the Commission, 15 June 2020 T1241.15-1242.10.

45 Exhibit 28, Statement of Dr Sean Tobin (29 May 2020) [75].

46 Ibid.

47 Ibid.

48 Transcript of the Commission, 9 June 2020 T1003.21-34.

8.33 Dr Tobin described his failure to notice that the risk assessment form did not reflect the current CDNA Guidelines for a suspect case of COVD-19 as a "mistake" on his part.[49] Given the change to the suspect case definition, his evidence was that the Ruby Princess should have been classified as a "medium risk" ship, not low risk.[50]

8.34 Dr Tobin was not provided with a copy of the ship's ARD Log, nor did he ask to see a copy of it. He was unaware of the nationality of the passengers or crew who presented to the ship's medical clinic with an ARI or ILI. He was equally unaware of the number of passengers on board the ship who had come from countries outside Australia, or their nationality.

8.35 As to the option of delaying disembarkation pending test results, Dr Tobin accepted that there was never a concern that the state of infection on board the Ruby Princess was such that NSW Health had to get people off the ship to prevent further infection.[51] As to the other precautionary options available to NSW Health, such as hotel quarantine, Dr Tobin confirmed that a concern about expenditure of costs and labour resources did not play any role in forming the view that it was not necessary to take such precautions in relation to the Ruby Princess.[52]

The evidence of Dr Isabel Hess

8.36 Dr Hess gave evidence that she considered the following matters in assessing the ship as "low" risk:

- She placed a "lot of importance" on the countries where passengers and crew had been the 14 days prior to embarkation.[53] This evidence from her statement can really only be taken as a reference to where passengers "had not been" – the risk assessment form did not provide any information regarding the travel history of persons on board save that the ship had travelled to New Zealand and back and none of the passengers and crew had been in mainland China, Iran, South Korea or Italy within 14 days of embarkation;
- She placed weight on the fact that the ILI rate was less than 1%, although she acknowledged that 0.94% was "very close" to this;[54]
- She took into account that "many people had tested positive for Influenza A";[55]
- She noted that five passengers had tested negative for COVID-19 in Wellington;[56]

49 Exhibit 28, Statement of Dr Sean Tobin (29 May 2020) [97].

50 Exhibit 28, Statement of Dr Sean Tobin (29 May 2020) [98].

51 Transcript of the Commission, 10 June 2020 T1115.20-25.

52 Transcript of the Commission, 9 June 2020 T1064.30-35, T1043.45-1044.5.

53 Exhibit 52, Statement of Dr Isabel Hess (29 May 2020) [48].

54 Exhibit 52, Statement of Dr Isabel Hess (29 May 2020) [49]-[51].

55 Exhibit 52, Statement of Dr Isabel Hess (29 May 2020) [51], [53].

56 Exhibit 52, Statement of Dr Isabel Hess (29 May 2020) [53].

- She did not consider the 104 persons (the correct figure was 101) diagnosed with an ARI "to be a very large number", particularly given that the ship "had asked such patients to come forward and present for a medical assessment free of charge".[57] Dr Hess' assumption in this regard was wrong. While onboard announcements and information had been provided to passengers on board the ship asking them to attend the medical clinic for an assessment if they were experiencing symptoms of respiratory illness, no announcement was made that such assessment would be provided for free;[58]
- She placed weight on the fact that Professor Ferson had assessed the ship as low risk, given his experience;[59] and
- She was "reassured by the fact that all passengers would be told to self-isolate for 14 days after disembarking … and [she] understood those passengers who had been swabbed for COVID-19 … could not fly … until their results were known".[60]

8.37 Like Dr Tobin and Professor Ferson, Dr Hess said that the change on 10 March to the "suspect case" definition for COVID-19 in the CDNA Guidelines "must not have been on [her] mind"[61] when she carried out her risk assessment, a matter she described as an "oversight".[62]

8.38 Had the 10 March suspect case definition been part of her analysis on 18 March, her evidence was that she would have assessed the ship as "at least" medium risk for the presence of COVID-19 on board.[63]

The evidence of Associate Professor Bradley Forssman

8.39 At [36] of his statement, Associate Professor Forssman stated that he did not remember why he agreed with Professor Ferson that the ship was low risk.[64] He speculated that he would have taken into account that the ILI rate was less than 1%, there were positive Influenza A results, and "no travelers from countries of concern".[65]

8.40 Like his colleagues, Associate Professor Forssman did not notice on 18 March that the pre-arrival risk assessment form did not reflect the current CDNA Guidelines for a suspect case of COVID-19.[66]

57 Exhibit 52, Statement of Dr Isabel Hess (29 May 2020) [53].

58 Exhibit 85, Announcements onboard during the Ruby Princess cruise from 8-19 March 2020.

59 Exhibit 52, Statement of Dr Isabel Hess (29 May 2020) [54].

60 Exhibit 52, Statement of Dr Isabel Hess (29 May 2020) [58].

61 Exhibit 52, Statement of Dr Isabel Hess (29 May 2020) [64].

62 Exhibit 52, Statement of Dr Isabel Hess (29 May 2020) [64]-[65].

63 Transcript of the Commission, 15 June 2020 T1321.46-1322.1-13.

64 Exhibit 56, Statement of Associate Professor Bradley Forssman (29 May 2020) [36].

65 Exhibit 56, Statement of Associate Professor Bradley Forssman (29 May 2020) [36].

66 Exhibit 56, Statement of Associate Professor Bradley Forssman (29 May 2020) [44].

9

Analysis of the risk assessment of 18 March 2020

Introduction

9.1 A Commission such as this, by its nature, tends to be an inquiry into aspects of decision-making where something has gone wrong – whether by "mistake",[1] "oversight",[2] or some other means.

9.2 In their expert report to the Commission, Professor Kelleher and Professor Grulich have expressed the view that "the public health response to COVID-19 in NSW, and more widely across Australia, has in general been exemplary… The high degree of control of SARS-CoV-2 is a tribute to our public health authorities. There are few countries which have controlled SARS-CoV-2 as well as NSW has done."[3] Noting that this opinion was expressed in a report dated 17 June, it is hoped that the "high degree of control" continues as a matter of fact.

9.3 Although this Commission is not authorised to inquire into the public health response to COVID-19 in NSW beyond matters pertaining to the Ruby Princess, the Professors' view provides an element of context for the purposes of this chapter. Despite how it may sometimes seem, the decisions of the physicians within NSW Health concerning the Ruby Princess on 18 March were by no means the only decisions made by either those physicians or others within the NSW Health bureaucracy since the emergence of COVID-19.

1 Exhibit 28, Statement of Dr Sean Tobin (29 May 2020) [97].

2 Exhibit 52, Statement of Dr Isabel Hess (29 May 2020) [65].

3 Exhibit 99, Expert Report of Professors Anthony Kelleher and Andrew Grulich (17 June 2020) p 10.

9.4 Equally, the decisions and actions of those within NSW Health with responsibility and authority concerning the Ruby Princess were undoubtedly made at a time of stress, and where those physicians were, it is accepted, stretched to their limits by their workloads. This neither absolves those professionals of their responsibilities, nor lessens the level of care expected of them in the performance of their duties. It is, however, an appropriate human (and humane) matter to take into account in any critical analysis of their actions and decisions.

9.5 One further matter can be noted, even if one beyond the power of a Commission like this, and perhaps extraneous to its Terms of Reference. It is not lost on the Commissioner that the many good decisions made by witnesses who gave evidence to this Commission that have no doubt informed the opinion expressed by Professor Kelleher and Professor Grulich referred to above do not, as a general rule, often form the basis for much commentary in the news media. Exceptional mistakes and oversights do so feature, unfortunately if understandably.

Nature of the disease

9.6 Each of the four public health physicians on the Expert Panel for the risk assessment of 18 March considered that the risk they were assessing was the risk of "COVID-19 circulating" on the Ruby Princess. Each agreed, as a matter of obviousness, that this risk assessment was not academic, but rather was made for a practical, public health purpose: to make decisions about putting in place precautions, based on that risk, to prevent the spread of the disease in NSW.[4]

9.7 Part of the context for that risk assessment then, and any precautions taken to address that risk, is the nature of the disease COVID-19 itself. By 18 March, these matters concerning the nature of the disease (and the factual background to the risk assessment) were known (in the provisional and empirical sense of being appreciated as a consensus of state-of-art stage of medical understanding):

a) The virus that causes the disease COVID-19 (SARS-CoV-2) is a novel coronavirus. Humans have no immunity to it, and there is no vaccine or cure.

b) COVID-19 is readily transmissible from human to human via droplets (caused by an infected person coughing or sneezing) or fomites. (There is now evidence of airborne transmission, but that is knowledge that has more recently emerged).

4 Transcript of the Commission, 9 June 2020 T916.1-10; 15 June 2020 T1231.12-16, T1309.43-47; Exhibit 56, Statement of Associate Professor Bradley Forssman (29 May 2020) [12].

c) COVID-19 causes a mild illness in about 80% of infected persons. Typical symptoms involve those associated with an acute respiratory illness (**ARI**), including a cough, a sore throat, and difficulty breathing. Fever is a frequent symptom, but not in every case.[5] About 14% of people develop a serious illness and about 6% a critical illness.[6] The disease tends to have more serious consequences for (but not exclusively) persons over 70 years of age, and those with comorbidities.

d) The World Health Organisation had reported from its joint mission to China in February 2020 a crude fatality ratio of 3.8%.[7] [8]

e) The frequency of the infected needing hospital treatment meant that there was a concern that the capacity of hospital emergency departments and intensive care units could be placed under considerable strain should the disease rapidly spread through the community.

f) The incubation period for the disease was thought to be 1-14 days, with a mean of 5-6.[9]

g) It was well-known that asymptomatic and pre-symptomatic people could test positive for the disease. There was, and is, evidence that asymptomatic and pre-symptomatic people can transmit the disease to others.[10]

5 World Health Organisation, *Report of the WHO-China Joint Mission on Coronavirus Disease 2019 (COVID-19)* (16-24 February 2020) World Health Organisation 14 <https://www.who.int/docs/default-source/coronaviruse/who-china-joint-mission-on-covid-19-final-report.pdf>, 12; see also Exhibit 99, Expert Report of Professors Anthony Kelleher and Andrew Grulich dated 17 June 2020, p 5.

6 World Health Organisation, *Report of the WHO-China Joint Mission on Coronavirus Disease 2019 (COVID-19)* (16-24 February 2020) World Health Organisation 14 <https://www.who.int/docs/default-source/coronaviruse/who-china-joint-mission-on-covid-19-final-report.pdf>, 12.

7 Ibid.

8 As noted in Chapter 3 at [3.20], calculation of the mortality rate for COVID-19 has been a particularly challenging exercise for epidemiologists worldwide. More recent studies suggest an infection fatality ratio of 0.5-1%.

9 World Health Organisation, *Report of the WHO-China Joint Mission on Coronavirus Disease 2019 (COVID-19)* (16-24 February 2020) World Health Organisation 14 <https://www.who.int/docs/default-source/coronaviruse/who-china-joint-mission-on-covid-19-final-report.pdf>, 12.

10 Exhibit 99, Expert Report of Professors Kelleher and Grulich (17 June 2020) p 5, citing Hiroshi Nishiura et al, 'The Rate of Underascertainment of Novel Coronavirus (2019-nCoV) Infection: Estimation Using Japanese Passengers Data on Evacuation Flights' (2020) 9(2) *J Clin Med* 419, and Xiao-Lin Jiang et al, 'Transmission Potential of Asymptomatic and Paucisymptomatic Severe Acute Respiratory Syndrome Coronavirus 2 Infections: A 3-Family Cluster Study in China (2020) 222(12) *Journal of Infectious Diseases* 1948-1952; World Health Organisation, *Report of the WHO-China Joint Mission on Coronavirus Disease 2019* (COVID-19) (16-24 February 2020) World Health Organisation 14 <https://www.who.int/docs/default-source/coronaviruse/who-china-joint-mission-on-covid-19-final-report.pdf>, 12.

h) On 10 March, the Communicable Diseases Network Australia (**CDNA**) issued an updated version of its guidelines for public health units regarding COVID-19 (**CDNA Guidelines**), in which its definition for a "suspect case" of COVID-19 was changed to the following:

> "*Epidemiological Criteria*
>
> - International travel in the fourteen days before illness onset
>
> OR
>
> - close or casual contact … in 14 days before illness onset with a confirmed case of COVID-19
>
> *Clinical Criteria*
>
> - Fever
>
> OR
>
> - Acute respiratory infection (e.g. shortness of breath, cough, sore throat) with or without fever."[11]

i) By 11 March, the World Health Organisation had declared COVID-19 a pandemic.

j) On 13 March, the Prime Minister announced that the Commonwealth, State and Territory governments had agreed to provide public advice against holding non-essential, organised public gatherings of more than 500 people from 16 March.[12]

k) By 14 March, at least 142,539 people had been infected with the disease globally, with at least 5,393 deaths.[13] There were 295 confirmed cases of COVID-19 in Australia, with 22% of those linked to travel from the USA (as compared to 8% linked to travel from China).[14]

l) On 14 March, the Centers for Disease Control and Prevention in the United States issued a "No Sail Order", which effectively brought the cruise line industry in the United States to a halt.[15] This decision was made against the factual backdrop of wide spread of the disease on two cruise ships: the Diamond Princess in early February 2020, and the Grand Princess in early March 2020.

m) On 15 March, the Commonwealth Government announced, with agreement from the States and Territories, that persons arriving in Australia from overseas would be required to observe a 14-day period of "self-isolation". It also announced that international cruise ships would not be allowed into Australian ports with the exception of those sailing back to Australia before midnight on 15 March (which included the Ruby Princess).[16]

11 Exhibit 32, CDNA National Guidelines for Public Health Units re 2019-nCoV, Version 1.18 (10 March 2020) p 5.

12 Scott Morrison PM, 'Advice on Coronavirus' (Media Release, 13 March 2020), < https://www.pm.gov.au/media/advice-coronavirus>.

13 Exhibit 33, Epidemiology Reports re COVID-19 of Communicable Diseases Intelligence, Department of Health, Report Number 7, p 12.

14 Exhibit 33, Epidemiology Reports re COVID-19 of Communicable Diseases Intelligence, Department of Health, Report Number 7, p 2.

15 Centers for Disease Control and Prevention (US), *Order under sections 361 & 365 of the Public Health Service Act* (14 March 2020)

16 Scott Morrison PM, 'Transcript Press Conference – 15 March 2020' (Media Release, 15 March 2020), <https://www.pm.gov.au/media/transcript-press-conference>.

n) On 16 March, the NSW Minister for Health and Medical Research made a Public Health Order under the *Public Health Act 2010* for the purposes of giving formal effect to the self-isolation requirements that had been announced by the Australian Government the day prior.[17] The order, which took effect from 17 March, relevantly directed any person arriving in NSW from another country to:

> "a) travel from the point of arrival in NSW to premises suitable for the person to reside in during the quarantine period [defined as the period commencing when the person arrives in NSW and ending at midnight on the 14th day after that arrival];
>
> b) except in exceptional circumstances, reside in the premises during the quarantine period; and
>
> c) not leave the premises during the quarantine period except—
>
> (i) for the purposes of obtaining medical care or medical supplies, or
>
> (ii) because of an emergency; or
>
> (iii) in circumstance where the person is able to avoid close contact with other persons.
>
> …"

o) On 18 March, the Australian Government announced a number of new measures to control the spread of COVID-19, including social distancing measures and a limit of no more than 100 people for non-essential indoor gatherings.[18]

9.8 No doubt because of some of the matters outlined above – in particular (a) to (g) – Dr McAnulty expressed the view that even if there was assessed to be a low risk of COVID-19 circulating on a ship, it would be a "very big problem" if passengers were allowed to disembark in circumstances where some of them were infected with the disease.[19]

CDNA Guidelines

9.9 The CDNA Guidelines define a "suspect case" of COVID-19 as a patient satisfying both epidemiological and clinical criteria. The clinical criteria for a suspect case have not changed materially since the first suspect case definition issued in late January 2020. However, the "epidemiological criteria" were updated on multiple occasions in February and March to reflect the spread of COVID-19 across the globe.[20]

17 *Public Health (COVID-19) Quarantine Order 2020* (16 March 2020).

18 Scott Morrison PM, 'Update on coronavirus measures' (Media Statement, 18 March 2020), <https://www.pm.gov.au/media/update-coronavirus-measures>.

19 Exhibit 29, Annexures to the NSW Health Witness Statements, Tab 6.

20 Exhibit 32, CDNA National Guidelines for Public Health Units re 2019-nCoV, Versions 1.2 to 2.4.

9.10 It is of great significance to this Commission that, on 10 March, the "epidemiological criteria" in the CDNA Guidelines were updated to include any "international travel in the 14 days before illness onset."[21] Prior to 10 March, the relevant epidemiological criterion had been limited to: "travel to (including transit through) a country considered to pose a risk of transmission in the 14 days before the onset of illness", which had only recently been expanded on 2 March to cover countries other than China.[22] It should be noted in this regard that while prior iterations of the epidemiological criteria were expressed only in the form of "travel to" countries of concern, logic demands that these words be read as "travel from".

9.11 As Professor Wilson indicated by inference in his desktop review of the NSW Health Report, and more specifically in his statement to the Commission, the change to the epidemiological criteria for a suspect case of COVID-19 brought anyone on board the Ruby Princess with an ARI (up to 101 persons as at 18 March) within the definition of a suspect case of COVID-19.[23]

9.12 All of the physicians who comprised the Expert Panel agreed with this, as did Professor Kelleher and Professor Grulich in their expert report.[24] [25] This meant that from 10 March, the Ruby Princess had one or more suspect cases of COVID-19 on board the ship, with that number rising significantly in the last three days of the cruise.

9.13 Each of the members of the Expert Panel who gave evidence said that while they were aware of the change to the CDNA Guidelines for a suspect case of COVID-19 made on 10 March, this somehow escaped their attention when they considered the risk assessment form of 18 March, and when they made their low risk assessment.

9.14 Dr Hess described this as an "oversight".[26] Dr Tobin described it as a "mistake".[27]

21 Exhibit 32, CDNA National Guidelines for Public Health Units re 2019-nCoV, Version 1.18 (10 March 2020).

22 Exhibit 32, CDNA National Guidelines for Public Health Units re 2019-nCoV, Version 1.14 (2 March 2020) and Version 1.15 (3 March 2020).

23 Exhibit 98, Statement of Professor Andrew Wilson (29 June 2020) [10] and Annexure C [8](b).

24 Exhibit 99, Expert Report of Professors Anthony Kelleher and Andrew Grulich (17 June 2020) 7; Exhibit 38, Statement of Professor Mark Ferson (29 May 2020) [85]-[86]; Transcript of the Commission, 15 June 2020 T1223.15-35; Exhibit 28, Statement of Dr Sean Tobin (29 May 2020) [98]; Transcript of the Commission, 9 June 2020 T1033-1044; 10 June 2020 T1321.15-1322.10; Exhibit 52, Statement of Dr Isabel Hess (29 May 2020) [63]-[64]; Transcript of the Commission, 15 June 2020 T1321.20-30; Exhibit 56, Statement of Associate Professor Bradley Forssman (29 May 2020) [43]-[44].

25 To the extent that NSW Health suggested in its submissions that there might be some doubt as to whether everyone on the ARD Log fell within the suspect case definition for COVID-19 from 10 March 2020 (see written submissions on behalf of NSW Health (13 July 2020) [50]), that suggestion is rejected.

26 Exhibit 52, Statement of Dr Isabel Hess (29 May 2020) [65].

27 Exhibit 28, Statement of Dr Sean Tobin (29 May 2020) [97].

9.15 Had they had the current CDNA definition for a suspect case of COVID-19 at the forefront of their minds when they made their risk assessment on 18 March, both Professor Ferson and Dr Tobin considered they would have assessed the risk as medium, not low. Dr Hess's evidence was she would have assessed the risk as "at least" medium. The consequences of that would have been that upon docking, passengers would not have commenced disembarking the ship until, at a minimum, a NSW Health assessment team had boarded the ship, and carried out an assessment of relevantly symptomatic passengers in accordance with NSW Health's enhanced procedures.

9.16 Part of the mistake had its origin in the risk assessment form itself.

9.17 The template of this form apparently began in the Ministry of Health. Thereafter, various iterations of it became the drafting work of all the physicians who gave evidence before the Commission, as well as Ms Ressler.[28]

9.18 In an early iteration of this form, one of the "key questions" was "Number of passengers and crew who have been in mainland China within 14 days of embarking".[29] This reflected the epidemiological criteria for a suspect case of COVID-19 at the time.

9.19 By the time of the 7 March risk assessment for the Ruby Princess, this question had been broken into two parts, as follows:

- "Number of passengers and crew who have been in mainland China within 14 days of embarking".
- "Number of passengers and crew who have been in another country of concern* within 14 days of embarking (*currently Hong Kong, Japan, Indonesia, Singapore, South Korea, Cambodia, Italy, Iran and Thailand)".[30]

9.20 For the risk assessment of 18 March, the question was: "Number of passengers and crew who had been in mainland China, Iran, South Korea or Italy within fourteen days of embarking".[31] Ms Ressler was responsible for the update to the 18 March risk assessment form. Clearly, the wrong question was asked. The form should have been updated to reflect the fact that because of the change to the epidemiological criteria for a suspect case of COVID-19, and because all passengers and crew were international travellers, those who had presented to the ship's clinic and were suffering an ARI fell within the definition of a suspect case of COVID-19. Information conveyed in this way would undoubtedly have focused the panellists' minds on the updated CDNA definition for a suspect case of COVID-19, which likely would have resulted in the higher risk assessment – medium – described by the Expert Panel in their evidence.

28 Transcript of the Commission, 5 May 2020 T341.5, T346.29-44.

29 Exhibit 29, Annexures to the NSW Health Witness Statements, Tab 12.

30 Exhibit 29, Annexures to the NSW Health Witness Statements, Tab 41.

31 Exhibit 29, Annexures to the NSW Health Witness Statements, Tab 50.

9.21 There was an even more serious deficiency in the risk assessment form for 18 March. It contained this question and answer:

> "Number of ill passengers and crew who have been in countries included in the Australian COVID-19 testing criteria in the 14 days before embarkation – **0**"[32] (emphasis added).

9.22 This question again failed to address the change to the CDNA Guidelines on 10 March. The question should have been along the lines of "Number of persons on board that fall within the 'suspect case' testing criteria for COVID-19". The answer to this question, on 18 March, was "101".

9.23 The failure of the members of the Expert Panel to apply the CDNA definition for a suspect case of COVID-19 in their risk assessment on 18 March was a mistake. It was a serious mistake. It was a serious mistake that materially affected the assessed level of the risk, and hence the actions taken by NSW Health. Each member of the Expert Panel is responsible for this mistake.

9.24 Ms Ressler's failure to appropriately amend the risk assessment form was also a serious mistake. However, that is not a finding that she bears sole responsibility for the "low risk" assessment. Regardless of the questions asked, each member of the Expert Panel should have recognised, from the information in the risk assessment form, that up to 104 suspect cases of COVID-19 were on the ship as of the morning of 18 March.

"Free" health assessment

9.25 On 22 February 2020, the Chief Health Officer for NSW, Dr Kerry Chant, sent a letter to various cruise ship industry representatives, which enclosed NSW Health's "Enhanced COVID-19 Procedures for the Cruise Line Industry" (**22 February Enhanced Procedure**).[33] This document, which set out various requirements for cruise ships, relevantly contained this instruction:

> "… cruise ship vessel staff should ensure that:
>
> - They actively identify and [sic] passengers or crew with respiratory symptoms (cough, sore throat, fever or difficulty breathing) and ask them to attend the medical clinic for free assessment and management 12-24 hours before arrival" (emphasis added).

9.26 As Dr Tobin explained in his evidence, the purpose behind requiring ships to offer free assessment for symptoms of respiratory illness was to remove the "barrier" of passengers thinking they would have to pay, which might cause an under-reporting of illness.[34]

32 Exhibit 29, Annexures to the NSW Health Witness Statements, Tab 50.

33 Exhibit 29, Annexures to the NSW Health Witness Statements, Tab 23.

34 Transcript of the Commission, 9 June 2020 T965.10-14.

9.27 The 22 February Enhanced Procedure was updated in draft several times, ultimately resulting in a document published on 9 March with the same title (**9 March Enhanced Procedure**).[35]

9.28 The 9 March Enhanced Procedure relevantly contained the following:

> "During this period of increased risk of COVID-19, cruise companies are also requested to consider making medical assessments for ARI/ILI free to passengers as well as crew. Ships not providing free consultations are at greater risk of being considered at risk of COVID-19 as ARI/ILI cases may be less likely to have been identified" (emphasis added).

9.29 What had been styled as a requirement ("should ensure") for the provision of free assessment in the 22 February Enhanced Procedure, had, by 9 March, been downgraded to a request. This seems to have occurred because Carnival had made the following submission to NSW Health on 26 February 2020 in the context of a dialogue between the cruise line industry and the public health authorities regarding the industry's capacity to comply with the 22 February Enhanced Procedure:

> "We already encourage reporting of illness throughout the voyage. We will continue to message throughout the cruise. We do not consider the offer of a free assessment for all guests to be necessary or manageable onboard and request this point be reconsidered. Our operation over time has provided us with feedback that our current practices are working and we have no evidence to suggest that guest do not present when ill or suffering symptoms."[36]

9.30 There may be good reasons for inviting a cruise line company to comment on a proposed health procedure, including in the early stages of an outbreak of a pandemic for a novel virus. Given the supposed utility of free assessment for passengers and crew with symptoms of respiratory illness, however, it seems doubtful that NSW Health should have watered down its requirements. There can be no doubt that the public health of the NSW community outweighs any management difficulties Carnival perceived it might have in relation to being required to assess passengers and crew with symptoms relevant to a novel coronavirus without charge.

9.31 Equally, the cost to, or profit of, Carnival in relation to the assessment of passengers and crew for symptoms of respiratory illness in the circumstances was entirely irrelevant. Carnival's own views of what was "working" or not should have been placed a distant second to any view within NSW Health that requiring ships to inform passengers of the waiver of fees for assessments of respiratory symptoms was important to ensure that there was no suppression of the number of passengers attending a ship's clinic with those symptoms. No-one was requesting that any other medical services be free of charge.

9.32 In any event, the risk assessment form for the Ruby Princess on 18 March contained these questions and answers:

35 Exhibit 29, Annexures to the NSW Health Witness Statements, Tab 44.

36 Exhibit 104, Email from Carnival to Ministry of Health annexing Enhanced COVID-19 Procedures of 26 February 2020; Transcript of the Commission, 26 June 2020 T1982.45.

- "Has the ship actively asked passengers and crew if they have respiratory symptoms or fever AND asked them to present to the ship's doctor for assessment before arrival? **Yes – Confirmed by Doctor**.
- Is assessment free of charge? **Yes – Confirmed by Doctor**."[37] (emphasis added).

9.33 In relation to the first question, the answer "Yes" was correct. On 17 March, an announcement was made over the ship's public address system that passengers with symptoms of respiratory illness should attend the ship's medical clinic for assessment. Further, passengers had been provided with a written document on 8 March which relevantly contained the following:

> "If you experience any symptoms of respiratory illness which may include fever or feverishness, chills, cough, or shortness of breath, please contact the Medical Center".[38]

9.34 The answer to the second question was more problematic. Passengers were sometimes charged, but ultimately all were refunded. Sometimes the refund was immediate, following the creation of an invoice.[39]

9.35 It appears that the basis for the answer to these questions in the risk assessment form was the responses given by the senior doctor on board the Ruby Princess, Dr Ilse von Watzdorf, to the questions sent to her by Laura-Jayne Quinn in her email of 4:01pm on 17 March.

9.36 In the email sent by Dr von Watzdorf back to Ms Quinn at 9:38am on 18 March, which is reproduced at [8.9] above, the questions and answers were as follows:

> "6) Please advise if your medical center is charging a fee for respiratory consultations. NO
>
> 7) Please confirm you have made announcement requesting people with respiratory symptoms come to your medical center for assessment. YES".[40]

9.37 The answer given by Dr von Watzdorf to both of these questions was truthful (as discussed in Chapter 12 at [12.54]). However, what she should have been asked in order for there to be real utility to these questions was whether, when passengers were advised to attend the medical clinic (if experiencing symptoms of respiratory illness) they were also advised that such assessment would be for free. The answer to that question would have been "No".

9.38 It seems though that the members of the Expert Panel gained the impression from the risk assessment form that passengers and crew had been told that assessment for symptoms of respiratory illness would be free. This was not the case.

37 Exhibit 29, Annexures to the NSW Health Witness Statements, Tab 50.

38 Exhibit 91, Statement of Ms Janette Moore (14 April 2020), Annexure 5 ; Exhibit 75, Health advisory: Coronavirus, signed by Dr Grant Tarling.

39 See also Chapter 12, especially at [12.26].

40 Exhibit 29, Annexures to the NSW Health Witness Statements, Tab 48.

9.39 The effect of Professor Ferson's evidence was that had he understood that the health assessment was not free of charge he would have been concerned that this had a potentially reducing effect on the true rate of acute respiratory illness or influenza-like illness (**ILI**) on the ship as compared with the Acute Respiratory Diseases Log provided by the ship on 18 March (**ARD Log**). This may have caused him to ask questions of the doctor or alter his risk assessment.[41]

9.40 Dr Hess's evidence was that she "would have expected under-reporting" if the assessment for symptoms of respiratory illness was not free.[42]

9.41 What should have occurred, and what would have most assisted the Expert Panel, was for the ship's doctor to be asked whether the passengers and crew knew that if they went to the medical clinic for the assessment of symptoms of respiratory illness, that assessment would be for free. They were not told that. To that extent then, the email sent to the ship's doctor, and the risk assessment form, posed the wrong questions about free assessment.

The ARD Log of 18 March

The log should have been read by all members of the Expert Panel

9.42 The ARD Log, which was sent by the ship's doctor to NSW Health just after 9:30 am on 18 March,[43] was used by Ms Quinn to prepare the risk assessment form from its template.

9.43 There is an immediate problem with this. The ARD Log contained no information regarding passengers diagnosed with ARI/ILI beyond 17 March. The ship was not due to disembark passengers until the morning of 19 March. The log was therefore missing more than 30 hours' worth of relevant information. For that reason alone, the Expert Panel should have deferred their risk assessment – made by them between 1:00pm and 2:17pm on 18 March – until they had been provided, at their insistence, with a more up to date ARD Log. They should have deferred their risk assessment until at least the evening of 18 March. This should have happened based on the number of passengers and crew recorded as having been diagnosed with ARI/ILI on the ARD Log. It was even more crucial given that the number of passengers who had presented with symptoms of ARI/ILI was increasing rapidly.

41 Transcript of the Commission, 15 June 2020 T1263.16-41.

42 Transcript of the Commission, 15 June 2020 T1323.34-43.

43 Exhibit 3, Current Acute Respiratory Illness Log dated 18 March 2020.

9.44 On 17 March, 52 travellers on the ship were diagnosed with an ARI. Thirteen of these were diagnosed with an ILI, with some having tested negative to influenza. This meant that in the space of 24 hours, half of the 101 people identified on the ARD Log had presented with symptoms in a single 24-hour period. It is little wonder that Greg Jackson of Carnival sent a text to Peter Little (Senior Vice President, Guest Experience, for P&O Cruises) stating, "… Ruby numbers gone Berserk in last 48 hrs. I took my eyes of the game yesterday".[44] To similar effect, in an email sent on 17 March to people within Princess Cruises and Carnival, Mr Little said of the Ruby Princess:

> "Ship has seen a significant spike in ARI and ILI cases in the past few days …It is likely that NSW PH unit will classify the ship as Medium to High risk on arrival and so this may slow the disembark process as secondary medical screening will almost certainly apply."[45]

9.45 Only Professor Ferson was sent the ARD Log. In his evidence, he said he "looked through the log very quickly".[46] Perhaps because of how quickly he assessed the ARD Log, Professor Ferson said in his statement that he was "not conscious of the fact that the number of presentations with ARIs were increasing towards the end of the trip at the time [he] carried out the risk assessment".[47] He added that this would not have caused him much concern because he "knew that the cruise ships were making announcements towards the end of each cruise encouraging all symptomatic passengers to attend the onboard clinic" and hence would have "expected numbers of presentations to rise markedly in the final days of the cruise".[48]

9.46 This is not a satisfactory explanation. First, Professor Ferson did not know whether or not such announcements had only been made towards the end of the cruise. Second, there also seems to be a great deal of speculation rather than hard evidence in associating any particular announcement with a rise in the number of passengers and crew attending the clinic with symptoms of respiratory illness. The purpose of an announcement is that people will come forward for assessment and, if they have signs or symptoms of an ARI, will be placed on the ARD Log. The utility of such an announcement is severely undermined if the reviewing public health physicians then discount the importance of the case numbers by reference to the announcement.

44 Exhibit 105, Text messages exchanged between Peter Little and Greg Jackson on 17 March 2020.

45 Exhibit 92, Statement of Peter Little (26 June 2020) Exhibit PWL-1, Tab 52.

46 Transcript of the Commission, 15 June 2020 T1250.13.

47 Exhibit 38, Statement of Professor Mark Ferson (29 May 2020) [92].

48 Exhibit 38, Statement of Professor Mark Ferson (29 May 2020) [92].

9.47 The one fact that would have been known by a more than quick look at the ARD Log was that no less than half of the passengers and crew on that log had presented during the course of single day. Professor Ferson acknowledged in his statement that this rapid increase "may in part have been explained by the presence of COVID-19 on the ship", and had he appreciated this at the time of his risk assessment he "would have asked the ship's doctor if she had any theories about the reason for the increase in ARI and whether she thought there was COVID-19 on board".[49] This acknowledgment, properly viewed, is a recognition that the ARD Log should have been more closely considered. This was not an onerous task, and would have only taken a few minutes at most. The three members of the panel who did not have it should have asked for it, and also read it to better inform their views.

9.48 Had the members of the Expert Panel considered the information in the ARD Log, it is inevitable that they would have had a similar reaction, if less dramatically expressed, to that of Mr Jackson. They would have seen that there was a rapid escalation in the number of passengers with ARI/ILI on 17 March, including a number with ILI who tested negative to Influenza A and B. Any proper analysis of the ARD Log would have revealed that there was good evidence of the outbreak of disease causing a respiratory illness and an influenza-like illness.

An updated ARD Log should have been requested by the Expert Panel

9.49 As discussed at [9.43] above, given the significant rise of ARI/ILI rates on 17 March, the Expert Panel should have sought an updated ARD Log from the ship on the evening of 18 March, or early on 19 March before passengers were disembarked. NSW Health submits that Dr von Watzdorf should have sent an updated ARD Log "on the afternoon or evening of 18 March".[50] This is a separate matter considered in Chapter 12. The Expert Panel had their responsibility, and they should have asked for an updated ARD Log.

9.50 Seeking an ARD Log later on 18 March (in the evening), or on the morning of 19 March prior to disembarkation, would have revealed to the Expert Panel that 120 persons on board the ship had been diagnosed during the cruise with an ARI, and that the ILI number had risen from 36 (0.94%) to 48 (1.26%).[51]

49 Exhibit 38, Statement of Professor Mark Ferson (29 May 2020) [92].

50 Written submissions on behalf of NSW Health (13 July 2020) [44].

51 Exhibit 3, Final Acute Respiratory Illness Spreadsheet dated 20 March 2020.

9.51 Professor Ferson said in his oral evidence that if he had seen numbers above the 1% marker for ILI, he would have asked the ship's doctor if she had "any explanation for … the increase", and "questions about the pattern of illness, [and] whether she thought coronavirus might be an explanation."[52] He would also have "asked more questions about travel history, for instance".[53] This, it is likely, would have caused Professor Ferson to become aware of the fact that a large number of passengers on board the ship (over 500) were from the United States, and some of those passengers had been recorded as having had an ARI on the log. This too would have caused him to elevate his risk assessment of the ship.[54]

9.52 Dr Hess's evidence was that had she been aware of an upward spike or trend for ARI/ILI numbers she "probably" would have elevated her risk assessment, although she would have wanted to know "whether the presentations went up because the ship had asked people to come forward or whether it was just because they were ill".[55] Dr Hess may be misleading herself here. Only persons diagnosed with an ARI/ILI are added to the log. The purpose of an announcement is to make sure symptomatic persons come forward. All of the passengers and crew on the ARD Log were known to have an acute respiratory illness, which in some cases was presenting as an influenza-like illness. Dr Hess also would have elevated her risk assessment had she known that there were over 500 passengers from the United States onboard, and that some of these had presented to the medical clinic with an acute respiratory illness.[56]

9.53 Dr Tobin did not think that even the combination of an upward trend of ARI/ILI rate onboard the ship, or that there were over 500 passengers onboard the ship from the United States would have altered his risk assessment, or he was "not sure" of this.[57] While Dr Tobin's sincerity and honesty are not doubted, his evidence is not consistent with that of his colleagues. His supposed hypothetical response lacks cogency.

52 Transcript of the Commission, 15 June 2020 T1261.5-29.

53 Transcript of the Commission, 15 June 2020 T1261.28-29.

54 Transcript of the Commission, 15 June 2020 T1251.44-1252.4.

55 Transcript of the Commission, 15 June 2020 T1322.35-47.

56 Transcript of the Commission, 15 June 2020 T1322.21-28.

57 Transcript of the Commission, 9 June 2020 T1049.1-19.

Summary re the ARD Log

9.54 That only one member of the Expert Panel was provided with the ARD Log was a flaw in the process. All four members of the panel should have been sent or asked for the ARD Log. They should have examined it closely. These are serious failures with the process.

9.55 Even relatively brief consideration of the ARD Log of 18 March would have revealed a very significant rise in the number of cases of ARI/ILI on the ship, including cases of ILI with negative results from rapid influenza testing. It was a serious failure not to recognise this rise in the level of illness, and to consider what it might have meant. Such consideration would, it is likely, have resulted in the Expert Panel elevating its risk assessment for that reason alone.

9.56 The number of cases of ARI on the ship, and its rising trend, warranted a higher level of risk assessment than "low". However, the Expert Panel should have recognised that it was essential, not just desirable, to obtain more information from the ship than they had from an ARD Log which had as its last entry a passenger presenting to the medical clinic on 17 March. If they were seriously contemplating a risk assessment of "low risk", they should have, at a minimum, deferred that decision until they had an ARD Log that contained the details of any further passengers and crew diagnosed with ARI/ILI following the close of the medical clinic on 18 March. This might have meant a late night, or an early start on 19 March, but that step was warranted for obvious reasons. The failure to do this was also a serious failure.

9.57 The Expert Panel should have been informed by others within NSW Health, or should have insisted on being informed prior to completing their risk assessment, of the countries of origin of the passengers and crew. This would have informed them that there were over 500 persons on board the ship from the United States, a country with the most direct links to confirmed cases of COVID-19 in Australia as at 14 March. The ARD Log would have revealed that some of those passengers from the United States had been diagnosed with ARI. This too would have, on the panel's evidence, raised the risk profile for the ship. That the Expert Panel was unaware of these matters, and did not seek to make themselves aware, was also a serious error.

"Low, medium, high" risk assessment

9.58 As discussed at [9.6], the risk that the members of the Expert Panel considered they were assessing was the risk of COVID-19 circulating on a ship.

9.59 Pursuant to the "Draft Cruise Ship COVID-19 Assessment Procedure for Ports of First Entry into Australia" of 19 February (**19 February Assessment Procedure**) which was still being used for the risk assessment of 18 March, the risk level was divided into three categories: low, medium and high.[58]

9.60 High risk was defined as follows:

> "**Where**:
>
> - **a respiratory outbreak (affecting at least 1% of those onboard) is reported on a cruise ship that is not explained by positive Influenza tests, and**
> - **affected passengers or crew have visited a mainland China in the 14 days before embarkation OR had contact with a confirmed case in the 14 days before embarkation.**"

9.61 While the term "respiratory outbreak" was not defined in the assessment procedure, the evidence of all members of the Expert Panel was that it was a reference to an influenza-like illness rather than to the wider group of conditions that can be described as acute respiratory illness (which, unlike an ILI, does not require the presence of a fever (usually defined as a temperature of 37.8°C or 38°C)).[59]

9.62 The consequences of a high-risk assessment were as follows:

> "Where the Chief Human Biosecurity Officer assesses there is a high risk that COVID-19 may be circulating on the ship:
>
> - An Assessment Team will meet the ship.
> - The ship must urgently provide swabs from any person suspected with fever or respiratory infection for testing prior to disembarkation.
> - The ship will **not** be allowed to disembark passengers and crew until given the clearance by the Chief Human Bio Security Office [sic].
> - Clearance to disembark can only be granted following results of COVID-19 testing.
> - **if the swabs tests positive then**:
>   - all passengers and crew must be asked about fever or respiratory symptoms by the assessment team.
>   - passengers and crew who report fever or respiratory symptoms must be isolated and assessed for COVID-19; if COVID-19 is excluded they move to home quarantine for fourteen days in case infection later develops.
> - **If the swabs test negative, then the assessment team will assess passengers and crew as for low risk assessment**."

58 Exhibit 29, Annexures to the NSW Health Witness Statements, Tab 18.

59 Exhibit 28, Statement of Dr Sean Tobin (29 May 2020) [51]-[52]; Exhibit 38, Statement of Professor Mark Ferson (29 May 2020) [29], [34]-[36]; Exhibit 52, Statement of Dr Isabel Hess (29 May 2020) [31]; Exhibit 56, Statement of Associate Professor Forssman (29 May 2020) [47].

9.63 A medium risk assessment was defined as follows:

> **"Where:**
>
> - **a respiratory outbreak (affecting at least 1% of those onboard) is reported on a cruise ship, and either:**
> - **passengers or crew have visited a country included in Australian COVID-19 testing criteria in the 14 days before embarkation, or**
> - **there are other features of concern (such as where one or more cases has severe respiratory illness, or the outbreak is not explained by positive Influenza tests)**."

9.64 The consequences of a medium risk assessment were as follows:

> "Where the Chief Human Bio Security Officer assesses that there is a medium risk that COVID-19 may be circulating on the ship:
>
> - An Assessment Team will meet the ship.
> - Prior to the ship disembarking, the Assessment Team will review passengers and crew who report fever of [sic] respiratory symptoms, or who have visited a country included in Australian COVID-19 testing criteria in the 14 days before embarkation.
> - The Assessment Team will measure temperature, review symptoms and exposure history and will swab for COVID-19 where clinically appropriate for unwell passengers and crew. Passengers and crew may be disembarked to isolation.
> - Any samples taken onboard for influenza testing must be forwarded to the lab for COVID-19 testing on arrival into the port.
> - The Assessment Team will provide clearance for other passengers and crew who are well to disembark."

9.65 As can be seen from the above, it was contemplated in the circumstance of a medium risk assessment that a NSW Health "Assessment Team" would clear so-called "well" passengers and crew to disembark the ship prior to any COVID-19 test results being known. This is what happened with the Ruby Princess when it docked on 8 March, causing a delay of embarkation of passengers for the next cruise for about five hours. This approach is discussed below, as to its shortcomings.

9.66 A low risk assessment was defined as follows:

> "**Where there is:**
>
> - **no respiratory outbreak, or**
> - **a respiratory outbreak that is explained by positive influenzas test results and no one onboard has visited a country included in the Australian COVID-19 testing criteria in the 14 days before embarkation, or had contact with a confirmed case in the 14 days before embarkation.**"

9.67 The consequence of the low risk assessment was that "[n]o further assessment is required".

9.68 As can be seen from each of the definitions above, there was an attempt to pick up the then epidemiological criteria for a suspect case of COVID-19 according to the CDNA Guidelines – namely, travel from China or any other specified country in the 14 days before onset of illness.

9.69 The phrase "not explained by positive Influenza test" was not defined, but appeared to be a reference to some undefined number of test results for influenza being positive. The only clear thing is that this did not require every influenza test to be positive, on the basis that rapid testing for Influenza A and B not uncommonly – perhaps 30% of the time – produces a false negative.[60]

9.70 The criteria for defining a high or medium risk in the assessment procedure did not require some determination to be made about the balance of probabilities, such as whether it was more likely than not that COVID-19 was circulating on a ship. As Dr Sheppeard explained in her evidence, in contrast to some numerically expressed prediction, the medium and high risk grades were directed more to the potential "gravity of the outcome and the proportionality of response" to it.[61]

9.71 To some extent, this tends to undermine the utility or effectiveness of a low, medium or high risk gradient for a disease such as COVID-19. A risk, while it can never be zero, might be reasonably assessed as being "low". If that risk comes in – for example, if it were reasonable to assess that the risk of COVID-19 circulating on a ship was low, but it was in fact circulating – it does not mean that the risk was not properly described or graded as low. What it means is that the low risk has materialised. That brings to the forefront of consideration what precaution should be taken from a public health perspective even for a low risk.

60 Transcript of the Commission, 5 May 2020 T102.45; Exhibit 120, Minutes of Ruby Princess Cruise Ship Teleconference of 22 March 2020, p 3.

61 Transcript of the Commission, 17 June 2020 T1466.34-T1467.9.

9.72 If that risk comes in, and adequate precautions for that risk are not in place (for example, ensuring that all passengers and crew remain on the ship pending the outcome of test results) you move suddenly into the "very big problem" territory identified by Dr McAnulty in his 13 February email.[62]

9.73 In their 17 June report to the Commission, Professors Kelleher and Grulich advised that it is common to devise graded risk scales for the purposes of decision-making in public health.[63] That graded risk assessments are common, and that they can be a useful tool or "helpful framework"[64] for public health decision-making can be accepted as a general rule. For a novel coronavirus, however, because of the "very big problem" of even a low risk coming in, that can be doubted. Certainly, Professor Ferson now seems to doubt it, as evidenced by this exchange with the Commissioner:

> "COMMISSIONER: Finally, I wonder if you can help me with this: when high, medium and low were proposed as conceptual categories --- not to be applied rigidly but as an aid to thought and analysis and decision for action --- and in particular as an aid to decisions concerning the allocation of resources, including human resources, what body of information, necessarily historical, could have justified rating a particular ship high, medium or low, as opposed to who knows?
>
> PROF. FERSON: I'm sorry, I don't know the answer to that.
>
> COMMISSIONER: There were no historical data, were there, about how you could look at a group of people with not unexpected proportions of coughing and sneezing, of unexpected proportions of fever, but with fine antecedents, in close proximity for the better part of a fortnight, there were no historical data, that you could say that ship is more likely than this ship, which in turn is more likely than this other ship to be harbouring COVID-19 infected people who may transmit to people in Australia. I'm right, aren't I?
>
> PROF. FERSON: You're right.
>
> COMMISSIONER: That just seems to me, at a fundamental level, to augur against high, medium and low, if in fact truly aids to analysis and plans for action and allocation of resources, and it would have been better if there had been no such tripartite approach but that all ships had been approached on the basis that with any history of foreign antecedents in the sufficiently recent past with symptoms which were by then regarded as consistent with if not indicative of COVID-19, there should have been an appropriate level of testing before release and scattering? What do you say to that?
>
> PROF. FERSON: I think in retrospect you're correct."[65]

62 Exhibit 29, Annexures to the NSW Health Witness Statements, Tab 6.

63 Exhibit 99, Expert Report of Professors Anthony Kelleher and Andrew Grulich (17 June 2020) p 1.

64 Written submissions on behalf of NSW Health (13 July 2020) [5].

65 Transcript of the Commission, 15 June 2020 T1276.6-34.

9.74 The principal difficulty with the "low, medium and high" risk assessment, at least for a novel coronavirus that causes a disease with the characteristics of COVID-19, is that the risk assessment itself – the intellectual process of determining low, medium or high – is a distraction from the crucial question to be asked from a public health perspective: what precautions are necessary? This brings the assessment into a realm that (good) common lawyers would be familiar with.

9.75 That a risk of an event or an occurrence may be low, or even very low, is only one factor to consider. Of greater importance is this question: what are the consequences of the low risk coming in? If the consequences are trifling, then no precaution might need be taken against the low risk. If they are grave, or catastrophic, then that is a different matter. Relevantly here, Dr McAnulty, and Dr Leena Gupta, identified in mid-February that the consequences of even a low risk coming in would create the "very big problem". As Dr Hess considered in her evidence, in circumstances where it was a given that there was some risk of COVID-19 circulating on a ship, the low, medium and high determination process was not just a distraction to the real issue – what precautions should be imposed – but probably misleading as well.[66]

9.76 Consequently, the Commissioner's view is that a low, medium and high risk assessment grading was at no stage useful for determining what precaution should be taken in relation to cruise ships entering NSW ports in February and March 2020 where there were any passengers onboard with symptoms clinically consistent with the disease COVID-19.

9.77 Until 10 March 2020, not all international travellers with clinical symptoms of COVID-19 would have been within the suspect case definition for COVID-19, as many would not have satisfied the epidemiological criteria, but there was nevertheless at least some risk that they had COVID-19. The real issue to be addressed – raised by Dr Gupta in her mid-February emails in which she consistently took the view that no passengers or crew should disembark a ship until COVID-19 test results were known – was what precaution should be taken to guard against the possibility of a low risk coming in? That requires greater focus on the consequences of the risk coming in (the very big problem), rather than focus on the inexactly assessed level of risk itself.

66 Transcript of the Commission, 15 June 2020 T1327.7-37.

9.78 Even if a graded risk assessment had some utility, this was only realised if the criteria for assessing risk were accurate, reliable, and based on up-to-date facts. It was well-recognised by the NSW Health physicians who gave evidence before the Commission's hearings that whatever the worth was of the 19 February Assessment Procedure, it was redundant by 10 March. As Dr McAnulty said in his oral evidence:

> "COMMISSIONER: … Could you answer my question concerning what, with all the benefit of hindsight, in order to avoid what happened on 19 March, should now, according to your best efforts now, should have been different in this procedure as a procedure to guide, not to straitjacket, but to guide decisions on 18 and 19 March?
>
> DR McANULTY: With the change in the communicable disease --- CDNA, Communicable Diseases Network of Australia definition of who should be tested for COVID, which included on 10 March --- which brought into bear travellers who had been overseas in the previous 14 days from any country, and for acute respiratory illness or --- with or without fever, then the risk assessment process was no longer relevant at this point."[67]

9.79 What this meant – as recognised by Dr McAnulty in his evidence[68] – is that there should have been an immediate change to the approach advocated by Dr Gupta in mid-February: all passengers and crew should have been required to stay on all ships, including the Ruby Princess, pending the outcome of the testing of swabs for COVID-19. There was therefore a failure to upgrade the 19 February Assessment Procedure to reflect the 10 March CDNA Guidelines for a suspect case of COVID. This is in a similar category to the failure to take account of the 10 March change referred to previously, and the failure to update the risk assessment form. It was a serious mistake, and a serious failure.

The 1% marker for influenza-like illness

9.80 Whatever role the 1% marker might have played in assessing whether an "outbreak" of influenza-like illness was occurring on a cruise ship, it was of limited utility for assessing what precaution should have been taken for the Ruby Princess.

9.81 It is accepted, as the members of the Expert Panel said in their evidence, that a 1% rate of ILI onboard a ship did not represent a clear dividing line or a "hard and fast rule"[69] between an outbreak, and no outbreak. It is also accepted that the rate of ILI on a cruise ship was one criterion for risk assessment, to be assessed in the context of others, such as travel history. Whatever historical data there were on the rate and the significance of ILI onboard a cruise ship, the real significance was of any data related to the greater range of infections captured by the description "acute respiratory illness".

67 Transcript of the Commission, 18 June 2020 T1531.25-37.

68 Transcript of the Commission,18 June 2020 T1554.31-36.

69 Transcript of the Commission, 9 June 2020 T1027.11.

9.82 While for reasons expressed below the rate of ILI was of limited utility for a public health assessment of the risk of COVID-19 circulating on a ship, and what precautions would be taken in response to the threat posed by that disease, the Expert Panel's consideration of the rate of ILI was problematic.

9.83 The rate of ILI from the ship's ARD Log was 0.94% (36/3795 persons). This should have been treated as 1%. If 1% was not an inflexible rule, then a pandemic would seem to be the right circumstances to round up by 0.06%. Further, an examination of the ARD Log (which contained no details beyond 17 March) would have indicated that by the time the ship docked in Sydney on the morning of 19 March the rate of ILI was extremely likely to exceed 1% (it was in fact 1.26%). This of itself would have altered the panel's risk assessment.[70]

9.84 If there was some utility in knowing the ILI numbers on the ship for the purposes of assessing whether an outbreak was occurring, it was much more useful if consideration was given to whether the rate was rising (it was) and likely to exceed the 1% rate by the time the ship arrived back in the Port of Sydney (it had).

9.85 A real curiosity of using an ILI rate of 1% as any part of the decision-making process were these:

- COVID-19 is not influenza. While a frequent symptom is fever, the reported data (as at 18 March) indicated that perhaps 30% of people infected with COVID-19 did not have fever as a symptom.[71]
- The CDNA clinical criteria for a suspect case of COVID-19 had, from the beginning, included persons with fever or an acute respiratory illness with or without a fever.

9.86 Professor Ferson ultimately recognised in his oral evidence that because of the novel nature of the coronavirus that causes COVID-19, and the lack of historical data on it, the 1% ILI rate, even as "rule of thumb", was of limited usefulness.[72]

70 Transcript of the Commission, 9 June 2020 T1031.34, T1032.1; 15 June 2020 T1260.11, T1261.39, T1330.11, T1331.9.

71 Exhibit 33, Epidemiology Reports re COVID-19 of Communicable Diseases Intelligence, Department of Health - Numbers 1 to 9, CDI Report week ending 14 March 2020, p 3.

72 Transcript of the Commission, 15 June 2020 T1279.19-33.

9.87 Most importantly, however, from 10 March, persons not within the clinical criteria for an ILI (which requires a fever) were nevertheless suspect cases of COVID-19. The 1% rate for ILI was therefore, like the low, medium, high risk assessment criteria, redundant by 10 March. The critical matter was whether there were suspect cases of COVID-19 on board the Ruby Princess on 18 and 19 March. Depending upon the unreliable factor whether you discount persons said to have recovered in the ARD Log, there were somewhere between 80-120 persons on board the ship that either currently were within the definition of a suspect case of COVID-19 or had been. Discounting anyone, including those said to have recovered, seems inadvisable. A suspect case of COVID-19, even if supposedly recovered (ie without the benefit of testing), is a suspect transmitter of the disease. It was the fact that there were suspect cases of COVID-19 onboard the ship that was the critical issue, not the rate of ILI. As Dr McAnulty said in his evidence, consideration of the ILI rate was "misplaced" given that there were persons onboard with symptoms which meant they were suspect cases of COVID-19 within the CDNA Guidelines.[73] A proxy measure of doubtful reliability misled the risk assessment.

Dissemination of the CDNA Guidelines

9.88 A finding has been made that it was a serious mistake for the Expert Panel to conduct their risk assessment without the up-to-date "suspect case" definition for COVID-19 in mind. The Commissioner has considered whether NSW Health should have gone further – should NSW Health have ensured that cruise ships were aware of the change to the suspect case definition?

9.89 In Chapter 12, consideration is given to the obligations of Carnival in this regard. NSW Health, however, has its own obligations and responsibilities in relation to public health in this State. It should have ensured that cruise ships such as the Ruby Princess were aware of changes to the CDNA Guidelines, such as that made on 10 March.

9.90 In submissions to the Commission, NSW Health resists such a finding. It submits that the CDNA Guidelines "do not provide general advice to the public and they do not indicate any warnings or announcements which should be made".[74] Perhaps not, but they identify who is a "suspect case" of COVID-19, and hence who should be tested. That is a rather fundamental matter. NSW Health submits it has "no obligation to inform vessel owners" to keep up to date with suspect case definitions, such as those issued by the CDNA, and that requiring it to do so "is both unrealistic, impractical and absolves the 'vessels' of responsibility".[75]

73 Transcript of the Commission, 18 June 2020 T1562.23-35.

74 Supplementary written submissions on behalf of NSW Health (31 July 2020) [5].

75 Supplementary written submissions on behalf of NSW Health (31 July 2020) [7].

9.91 Those submissions go too far. The world is in a pandemic. It cannot be too much to expect NSW Health in such circumstances to ensure that cruise ships are up to date with the definition of a suspect case of a lethal and easily transmissible disease before such ships enter a NSW port. Had NSW Health passed on the definition change to the cruise line industry on 10 March, it and the Ruby Princess would have been aware that there was a rapidly growing number of suspect cases of COVID-19 on the ship as it returned from New Zealand on its way to the Port of Sydney. Those suspect cases should have been identified, and isolated in cabins at the insistence of NSW Health.

9.92 NSW Health submitted that its responsibilities were "more than satisfied" by the "dissemination of the 22 February and 9 March Enhanced Procedures".[76] No, they were not. Carnival has its own responsibilities, but NSW Health is responsible for precautions being taken to protect the citizens of this State from the spread of communicable diseases like COVID-19.

9.93 The entirely practicable, realistic and warranted step of informing cruise lines of a significant change to the definition of a suspect case for COVID-19 should have been taken by NSW Health. This would have ensured the identification (by 18 March) of more than 100 persons on the Ruby Princess who satisfied the criteria for testing for the disease the moment the ship docked.

Procedures relating to swabs for COVID-19 testing

9.94 The 19 February Assessment Procedure was an internal document. That is, it was drafted by and circulated amongst the NSW public health physicians, but not provided to the industry representatives of cruise ships or to individuals cruise ships.

9.95 In relation to swabs and testing, the 19 February Assessment Procedure contained the following:

> "Pre-arrival respiratory illness screening:
>
> - Where passengers or crew present with respiratory illness, the ship's doctor must: …
>   - Collect 2 swabs – perform rapid Influenza test and store second sample for COVID-19 testing." [77]

76 Supplementary written submissions on behalf of NSW Health (31 July 2020) [8].

77 Exhibit 29, Annexures to the NSW Health Witness Statements, Tab 18.

9.96 This part of the assessment procedure was not followed either on the 24 February or 8 March cruises of the Ruby Princess. The risk assessment form for the arrival of the Ruby Princess on 8 March showed that 30 persons had been swabbed for influenza, but no swabs were available for COVID-19 testing.[78] The risk assessment form dated 18 March showed that 48 persons had been swabbed for influenza (with 24 testing positive) but only 10 swabs were available for COVID-19 testing.[79]

9.97 The 22 February Enhanced Procedure and the 9 March Enhanced Procedure placed similar requirements on cruise ships regarding taking swabs from passengers and crew. In the 9 March Enhanced Procedure, the following was required:

> "Procedures to identify and manage cases of respiratory infection
>
> Cruise ship staff should ensure that: …
>
> - For all people with influenza-like illness (ILI) AND those with acute respiratory illness (ARI) with a history of travel to countries on the Australian list of countries at risk of COVID-19 transmission, two swabs – one nasopharyngeal swab and one oropharyngeal swab should be collected and stowed in the fridge for possible SARS-COV-2 testing using droplet persuasions. A further swab should also be collected for rapid Influenza virus testing onboard
> - Every sample retained for SARS-COV-2 testing is labelled with at least 3 points of ID (name, DOB, address), and accompanied by a pathology request form.
> - Details of any sample collected and tests results are noted on the ARD Log."[80] (emphasis added)

9.98 In relation to the words "history of travel to countries on the Australian list of countries at risk of COVID-19 transmission", the 9 March Enhanced Procedure stated as follows:

> "As of 9 March 2020 this included: mainland China, Iran, Italy, South Korea, Cambodia, Hong Kong, Indonesia, Japan, Singapore, and Thailand".

9.99 By the next day, however, the epidemiological criteria for a suspect case of COVID-19 had been expanded by the CDNA to include any international travel within 14 days of the onset of the illness. This should have prompted an immediate further updating of the 9 March Enhanced Procedure.

78 Exhibit 29, Annexures to the NSW Health Witness Statements, Tab 37.

79 Exhibit 29, Annexures to the NSW Health Witness Statements, Tab 50.

80 Exhibit 29, Annexures to the NSW Health Witness Statements, Tab 44.

9.100 One possible construction of the requirement to take two (plus one more) swabs "for all people with influenza-like illness (ILI) AND those with acute respiratory illness (ARI) with a history of travel to countries on the Australian list of countries at risk of COVID-19 transmission" is that the words underlined apply not only to passengers and crew with an ARI, but also those with an ILI. The Enhanced Procedure is not to be interpreted as though it was part of a statute. The natural reading of the words is that the underlined words relate only to ARI, not an ILI. This construction seems in keeping with both the 19 February Assessment Procedure, and the understanding of the physicians who gave evidence at the public hearings.[81]

9.101 It should have been obvious from the information in the risk assessment form for the Ruby Princess that the requirements in the 9 March Enhanced Procedure had not been followed on the Ruby Princess. Thirty-six persons on the ARD Log were identified with an ILI, and yet only ten swabs were apparently available for COVID-19 testing. This was substantial noncompliance. It should also have been clear to the NSW Health physicians on the Expert Panel that swabs now also needed to be taken from all passengers with an ARI, not just those with an ILI.

9.102 There was evidence of some difficulties being experienced by the ship in sourcing a sufficient number of swabs. On 7 March, the day before the ship docked in Sydney, Dr von Watzdorf sent an email to Kelly-Anne Ressler asking her to bring additional swabs on board the ship the following day, or advise where she could source them.[82] Ms Ressler responded by advising Dr von Watzdorf that she would bring more swabs (and masks) on the ship the next day, and by telling her she should try and "purchase more in one of your next ports".[83] Dr von Watzdorf responded with an email stating, "We have placed large amounts on order since I've taken over onboard the Ruby on the 24th of Feb. Unfortunately, our lead time for delivery is quite long (2-4 weeks). During this cruise I tried to obtain in New Zealand, but they were not as forthcoming as I had hoped they would be."[84]

9.103 Both Mr Little and Dr Grant Tarling (the Chief Medical Officer for Carnival Cruise Line and the Holland America Group) gave evidence concerning the system of logistics supply for the cruise line "brands" of the Holland America Group, which included Princess Cruises. That system was described in detail by Dr Tarling commencing at [63] of his statement. It evidences Dr von Watzdorf placing an order for 30 swabs on 28 February, and further details of her attempts to obtain swabs over the following two weeks.[85]

81 Transcript of the Commission, 10 June 2020 T1092.5-9; 16 June 2020 T1405.45-T1406.7; 17 June 2020 T1454.19-33.

82 Exhibit 55, Emails commencing with email from Ruby Princess Senior Doctor of 7 March 2020 at 9:30pm.

83 Exhibit 55, Emails commencing with email from Ruby Princess Senior Doctor of 7 March 2020 at 9:30pm.

84 Exhibit 55, Emails commencing with email from Ruby Princess Senior Doctor of 7 March 2020 at 9:30pm.

85 Exhibit 106, Statement of Dr Grant Tarling (29 June 2020) [63]-[68].

9.104 Whatever difficulties were involved in having sufficient swabs on the ship – and it seems odd that a corporate entity as large as the Holland America Group and its "brands" such as Princess Cruises could not (quickly) source sufficient quantities of swabs – Dr von Watzdorf cannot be said to have ignored the requirements, but, through no fault of hers (including that the ship did not make its journey to Auckland where more swabs were awaiting collection) did not have enough swabs in the ship to comply with the 9 March Enhanced Procedure.

9.105 At this point, the responsibility shifted to NSW Health. The physicians on the Expert Panel should have noted from the risk assessment form of 18 March that there was substantial noncompliance with the requirement for swabs to be taken from passengers who had been diagnosed with ILI, and that there was now a requirement for further testing from those diagnosed with an ARI because of the change to the definition in the CDNA Guidelines for a suspect case of COVID-19. This is at the core of the definition in the CDNA Guidelines for a "suspect case". It is those persons who fall within that definition who should be tested for the disease. The noncompliance was so great that pratique should not have been granted until the situation was rectified. That is, the Expert Panel should have determined that an assessment team would have to go on board the ship to ensure that symptomatic passengers and crew were swabbed in accordance with the 9 March Enhanced Procedure.

9.106 While this did not occur, there was always the possibility that testing of such a limited number of swabs from the Ruby Princess would not have detected the presence of COVID-19 on board. A greater number of swabs would increase, as a matter of obviousness, the prospects of confirming cases of the disease if the disease is circulating (as it was). Professor Ferson frankly conceded a failure by NSW Health to ensure the requirements for swabbing were complied with,[86] and Dr McAnulty agreed that there was no reason why the noncompliance with swabbing requirements could not have been addressed on 19 March as a "condition of pratique".[87]

9.107 The failure to ensure swabs were collected in accordance with requirements of the 9 March Enhanced Procedure was a serious failure of NSW Health.

86 Transcript of the Commission, 15 June 2020 T1268.38-41.

87 Transcript of the Commission, 18 June 2020 T1542.28-34.

Final observations and key findings

9.108 As outlined at [9.44] above, Mr Little observed a "significant spike" in ARI/ILI numbers on the Ruby Princess on 17 March. He thought it likely that NSW Health would classify the ship as "medium to high risk". Mr Jackson thought the ARI/ILI numbers had "gone berserk".

9.109 Mr Little and Mr Jackson are not public health physicians. Their observations are not treated as expert by this Commission. Their views – perhaps more accurately, their reactions – are, however, not entirely irrelevant. It is one thing to break up an analysis of what the Expert Panel did into components such as risk gradient, the ILI rate, the failure to consider the current definition of a "suspect case", and the failure to consider the ARD Log.

9.110 However, there is also a kind of 'sanity check' that can be applied to the circumstances (something that bears no relationship to, and is avowedly not, a 'pub test', whatever that might signify). That sanity check involves this: when the Ruby Princess docked in Sydney on 19 March, it did so during a pandemic. The cause of that pandemic, COVID-19, is a nasty, easily transmissible virus for which we have no immunity. Even putting aside the CDNA definition of a "suspect case", the Expert Panel were informed that the Ruby Princess had on board 104 (really 120) persons who had been diagnosed with an ARI, of which 36 (really 48) had an ILI. 48 tests for influenza were conducted, of which 24 were negative. The response of the Expert Panel should not only be seen as assessing the ship as "low risk" for COVID-19. It should be seen for what it really was: a decision to do nothing. Professor Ferson saw all of this as amounting to "probably low" risk.[88] "[P]robably low" should have itself been seen as a 'red flag'. It indicates a degree of uncertainty that should not have resulted in a "do nothing" approach. That sanity check is not just reflected in the observations of Mr Little and Mr Jackson outlined above. In an email to other Port Authority employees on 10 March 2020, Neil Mackenzie, a Port Authority employee, made the following observations regarding the health assessment of the Ruby Princess on 8 March:

> "Reading about the US response to the Grand Princes it seems to me that the Ruby Princess incident was similar except that in the end the … testing was negative. Surely everyone should have been kept on board until testing took place & then, quarantined if a positive result was detected. Instead the health authorities allowed approximately 2500 people who may have been contagious to just walk off the ship onto the streets of Sydney. Is this a serious response?" [89]

88 Exhibit 29, Annexures to the NSW Health Witness Statements, Tab 51.

89 Exhibit 22, Statement of Emma Fensom (5 May 2020), Annexure 14.

Mr Mackenzie is not a public health physician. He was also expressing an opinion about the health assessment made on board the ship on 8 March, not about the risk assessment of 18 March. However, his reaction is entirely consistent with the views expressed by Dr Gupta and Dr Durrheim in mid-February. On 8 March, or 19 March, the "very big problem" identified by Dr McAnulty on 13 February was always a risk – that is, there was a risk that relevantly symptomatic passengers or crew had COVID-19. The precaution of waiting for test results before passengers were allowed to disembark was always an appropriate precaution. At the risk of sounding crude, this is not "rocket science". It is simply an obvious precaution against the "very big problem".

9.111 No evidence provided to this Commission, or given by witnesses in the public hearings, comes even reasonably close to satisfactorily explaining how a decision to "do nothing" by means of precaution was adequate, or rational. The suggestion that people would have to self-isolate at home is no answer. They had to get home first.

Key findings

9.112 On 10 March 2020, the CDNA amended its Guidelines, such that all persons on board the Ruby Princess with an ARI or ILI became suspect cases for COVID-19: meaning they should all have been tested for the disease. The Expert Panel did not have this suspect case definition in mind when they conducted their risk assessment on 18 March. This was a serious and material error.

9.113 The Expert Panel was not helped by the drafting of the risk assessment form, which was not updated with the new "suspect case" definition. This too was a serious error.

9.114 The risk assessment form should have been drafted so as to clarify for the Expert Panel whether persons on this ship who had symptoms of respiratory illness were told in advance of assessment at the onboard medical centre that the consultation would be free of charge.

9.115 The ARD Log should have been read by all members of the Expert Panel. They should have noticed the "significant spike" in ARI/ILI rates on the ship, particularly on 17 March. They should have requested an updated log either late on 18 March, or early on 19 March. These are serious errors.

9.116 A graded risk assessment approach may at times provide a useful framework for public health risk assessments. It did not here, either before 10 March, or after. It was a distraction from the real questions: what are the consequences of the risk eventuating, and what are the appropriate precautions to take in light of such consequences?

9.117 An ILI rate of 1% or more had some utility for the assessment of whether COVID-19 was circulating on the Ruby Princess during the 8 March voyage. That utility was limited. The more important question was: are there suspect cases of COVID-19 on board the ship?

9.118 NSW Health should have ensured that cruise ships were aware of the change to the definition of a "suspect case" for COVID-19 made on 10 March. This would have resulted in the identification of such cases on the Ruby Princess. 101 persons fell within the suspect case definition by 18 March, and 120 by the time the ship docked. NSW Health should also have ensured that such persons were isolated in cabins. These were serious mistakes by NSW Health.

9.119 The failure to ensure that swabs were collected by an onboard health assessment team in accordance with the requirements of the 9 March Enhanced Procedure was a serious failure by NSW Health.

9.120 The delay in obtaining test results for the swabs taken from the Ruby Princess on the morning of 19 March is inexcusable. Those swabs should have been tested immediately.

9.121 In light of all the information the Expert Panel had, the decision to assess the risk as "low risk" – meaning, in effect, "do nothing" – is as inexplicable as it is unjustifiable. It was a serious mistake.

Recommendations

9.122 Various mistakes and failures have been identified above. It should not be thought though that, by some misguided reflex, recommendations should follow.

9.123 It perhaps need not be said, but nevertheless will be, that it is pointless to recommend (particularly to experts) that they should not make mistakes. No such recommendation will be made here. The Commissioner, for one, is in no position to speak as if he has never erred. Striving against mistakes is, simply, what professionals and all serious workers are committed to as a basic value. A recommendation would be superfluous and condescending.

9.124 Other findings also do not lend themselves properly to recommendations. For example, a finding has been made that the "high, medium, low" risk assessment gradient was a distraction to assessment (and response) in this case, and not a useful tool. The circumstances being addressed here though are almost unique, and no recommendation ought to be made that such a risk gradient is never a useful framework for public health decision-making, or when it should be used. That is a matter for public health professionals, not this Commission.

9.125 The mistakes and failures in decision-making here have, to a large extent, been recognised by the physicians of the Expert Panel, and by NSW Health more broadly. They would do things differently if they had their time again. They do not need this Commission to recommend to them that they should have done things differently. It would be unhelpful for this Commission to make recommendations about what processes expert public health physicians should follow in the future regarding the assessment of risk of a particular disease circulating on a cruise ship. It is sufficient that those mistakes have been identified – and accepted – in this instance.

9.126 It is inappropriate and unhelpful to make recommendations to experts that in truth amount to no more than 'do your job'. The mistakes made by NSW Health public health physicians were not made here because they failed to treat the threat of COVID-19 seriously. They were not made because they were disorganised, or did not have proper processes in place to develop a plan to assess the risks posed by this disease, and how to limit those risks. Those physicians relied on the best science, not pseudoscience or matters of political convenience. They were diligent, and properly organised. There are no 'systemic' failures to address. Put simply, despite the best efforts of all, some serious mistakes were made.

10

Review of cruise ship procedures

A better procedure

10.1 In response to the assertion that his 12 February 2020 draft procedure (which required a NSW Health assessment team to meet all incoming cruise ships) was "overkill", Dr Jeremy McAnulty told his public health colleagues that:

> "It is a lot of work, but it's trying to balance the very low risk with the very big problem if we have a case on the ship. Local transmission is currently mainland China, but it may change in the future".[1]

10.2 Local transmission did soon expand beyond mainland China – to the entire globe. And, on 19 March 2020, when passengers disembarked the Ruby Princess carrying COVID-19, "the very big problem" confronted NSW Health.

10.3 Shortly after Dr McAnulty sent his "very big problem" email, Dr Leena Gupta "strongly recommended" a protocol whereby no passengers were to disembark a ship from which swabs had been taken until test results for COVID-19 were known. Among her concerns were:

> "…people don't have an Aussie Sim so no contact number, numbers can be wrong or ring through, hotels get concerned if people are discharged pending test results. There will also be community expectation in light of the Japan incident".[2]

10.4 The "Japan incident" referred to by Dr Gupta was a reference to the Diamond Princess, where passengers were kept on board that ship for several weeks from 4 February in the Port of Yokahama, as the virus slowly – and then much more quickly – spread amongst passengers and crew. Leaving that aside, Dr Gupta's concerns were about potential difficulties with tracing, and hence containment of the virus, if infected passengers were allowed to disembark the ship, and move freely thereafter.

1 Exhibit 29, Annexures to the NSW Health Witness Statements, Tab 6.

2 Exhibit 29 Annexures to the NSW Health Witness Statements, Tab 5.

10.5 Dr Gupta's view was supported by Dr David Durrheim, who responded with an email in which he said:

> "Given the Japanese experience, it appears that this virus spreads quickly in this petri-dish environment. Once the horse (or should that be pangolin) has bolted off the vessel, we have lost control."[3]

Dr Durrheim went on to echo Gupta's concerns about tracing, but in this extract identified another key problem with this virus – it spreads easily and quickly in an environment like a cruise ship. If one person has become infected, it is likely there are many.

10.6 In a subsequent email of 15 February, Dr Gupta restated her view this way:

> "Main point of difference is that its my view, and current situation is that we should wait for test results irrespective of risk category before announcing pratique… Better to be clear no one has the virus before leaving."[4]

10.7 In relation to Dr Gupta's recommendation – that all passengers and crew should be required to remain on board pending test results – the main considerations against such an approach were said to be, first, issues of personal liberty, and, secondly, inconvenience issues such as passengers missing connecting flights.

10.8 The Commissioner agrees that both matters are relevant considerations. The deprivation of liberty, and the requirement to either self-isolate at home, or being placed in secure, enforced quarantine, are not trivial intrusions on a person's usual right to move freely about. Equally, there is a potentially not insignificant amount of inconvenience in a person missing onwards travel connections.

10.9 The outbreak of an infectious disease has, however, long been considered an appropriate basis for placing restrictions on individuals' rights to move freely about, and on the right of free assembly. Indeed, such restrictions have been essential for preventing the spread of communicable diseases. COVID-19 has resulted in a number of public health orders that have placed restrictions on people's movements, the size of assemblies and crowds, the conduct of sporting events and other mass gatherings, and the operation of small businesses amongst other matters. Liberty and inconvenience are not matters that should have prevented appropriate precautions being taken with respect to the Ruby Princess. Nor is the inconvenience of missing a flight. Nor is cost.

10.10 Members of the Expert Panel (Professor Ferson and Dr Hess), and their colleagues who gave evidence, embraced the proposition – at least in hindsight – that passengers and crew should have been made to wait on the ship pending the outcome of the testing of the swabs for COVID-19.

3 Exhibit 30, Email from Dr David Durrheim dated 13 February 2020 at 3:34pm, p 24.

4 Exhibit 29 Annexures to the NSW Health Witness Statements, Tab 8.

10.11 In his oral evidence, Professor Ferson, when asked to assume the presence of many persons on board the ship who were suspect cases of COVID-19 as a result of the new definition brought in on 10 March, conceded that " … in practice, we would likely have kept the whole ship until we received the results".[5] Dr Hess gave evidence to similar effect.[6] Although not on the Expert Panel for the assessment of the Ruby Princess on 18 March, Dr Gupta also agreed all passengers should have had to wait on board until COVID-19 test results were known.[7] Additionally, Dr Sheppeard, when asked to assume there were people on board who satisfied the suspect case definition, said she would have advised that disembarkation not take place until COVID-19 test results were known.[8]

10.12 This, in effect, was the action taken by the Victorian Department of Health and Human Services (**DHHS**) for the cruise ship the Golden Princess which departed the Port of Melbourne on 10 March 2020, and arrived back, following a cruise to New Zealand, at 5:00am on 19 March. That ship had on board "31 passengers of concern, with 24 quarantined to cabins, six passengers with Flu like symptoms and 16 passengers with 'common cold'".[9] Previously, on 14 March, DHHS had been advised of two passengers who flew on Qantas flight QF0094 from Los Angeles to Melbourne that were close contacts of a confirmed case of COVID-19.

10.13 Officials from the DHHS determined to deny giving advice for pratique to be granted until health officials had boarded the ship, conducted swabbing for COVID-19 testing, and those test results were known. DHHS staff attended the ship at about 7:00am, and test results were known by 4:00pm, all of which (24) were negative. Following those negative results, pratique was granted.

10.14 No rational person would suggest that the experience of the passengers and crew of the Diamond Princess should be repeated – where they were detained on that ship in a Japanese port for weeks as the number of confirmed COVID-19 cases mounted exponentially. However, allowing passengers to disembark a ship with over 100 suspect cases of COVID-19 on board before test results are known for such cases is also not a rational decision.

5 Transcript of the Commission, 15 June 2020 T1235.09-29.

6 Transcript of the Commission, 15 June 2020 T1325.6-18.

7 Transcript of the Commission, 16 June 2020 T1379.29-1380.10.

8 Transcript of the Commission, 17 June 2020 T1476.07-37.

9 Exhibit 115, Chronology dated 19 June 2020 and supporting material from the Victorian Department of Health and Human Services, p 3.

10.15 The Ruby Princess set sail from Sydney to New Zealand on the evening of 8 March. It returned in the early hours of 19 March, having stopped at five ports in New Zealand where passengers were able to disembark. 19 March was eight days after the declaration of a COVID-19 pandemic by the World Health Organisation. That disease, as noted a number of times previously in this Report, frequently causes serious or critical illness (in up to 20% of cases) and is easily transmissible. There were 120 suspect cases of COVID-19 onboard the Ruby Princess when it docked in Sydney on 19 March. In those circumstances, the proper response would have been as follows:

- The swabs taken off the ship at 3:00am should have been immediately tested.
- A NSW Health assessment team should have boarded the ship and taken swabs from all passengers who were suspect cases of COVID-19 – that is, everyone with an acute respiratory illness. These swabs should have been sent for urgent testing too.
- A decision should have been made that pratique would not be granted until all test results were known. Passengers should have been confined to their cabins.
- Once the first positive tests results were known – a matter taking perhaps six hours – all passengers and crew should have been considered suspect cases for COVID-19 regardless of symptoms. It follows that all passengers and crew would then have been characterised as a "close contact" of a confirmed case. Making passengers and crew wait on board for test results for several hours may have led to additional onboard transmission. The risk of this, however, as Professors Kelleher and Grulich noted in their expert report, "could have been ameliorated to some degree by giving masks to people in these cabins and by disinfecting surfaces in the cabins. Further transmission from the infected crew members could be reduced by having food service to the cabin door only and by eliminating other interactions with crew during this time."[10]
- Pratique should then have been granted subject to the condition that all passengers and crew be taken by secure transport and placed in enforced quarantine.

10 Exhibit 99, Expert Report of Professors Anthony Kelleher and Andrew Grulich (17 June 2020) [9].

10.16 The risk of asymptomatic and pre-symptomatic spread of the disease warranted that all passengers and crew be placed in quarantine, not just symptomatic passengers and crew. Secure transportation of all passengers and crew to premises for enforced quarantine would have significantly reduced the risk of the spread of the disease to transport operators of all kinds and to the community generally.[11] Preventing or reducing the spread of a communicable disease is at the heart of public health decision-making. No consideration of personal liberty, inconvenience, or cost is any answer to not putting in place secure transport and enforced quarantine in the circumstances facing the Ruby Princess on 19 March.

10.17 Ultimately, every passenger and crew member of the Ruby Princess should have been tested for COVID-19 while in enforced quarantine. Those who tested negative could then have been released, at appropriate times.

11 Exhibit 99, Expert Report of Professors Anthony Kelleher and Andrew Grulich (17 June 2020) [9].

11

Analysis and conduct of human biosecurity arrangements

Introduction

11.1 'Biosecurity' is the label ascribed to the protection of Australia's plants, animals, environment and communities from harmful pathogens. Many such pathogens arrive on aircraft and vessels entering Australian territory. The international border is, therefore, biosecurity's front line. It is, accordingly, unsurprising that the *Constitution* grants the quarantine power to the Commonwealth.

11.2 The Commonwealth Department of Agriculture, Water and the Environment (**DAWE**) has the primary responsibility under the *Biosecurity Act 2015* (Cth) (***Biosecurity Act***). The Commonwealth Department of Health is responsible for human biosecurity. Human biosecurity refers to the reduction of pathological threats to human health posed by viruses, bacteria and other microorganisms.

11.3 The following can be observed in relation to the *Biosecurity Act*:

a) Pratique falls within Chapter 2 which is concerned with managing human biosecurity risks;

b) Notwithstanding that Chief Human Biosecurity Officers (**CHBO**s) and Human Biosecurity Officers (**HBO**s) have primary responsibility for clinical assessments in relation to human biosecurity, a Biosecurity Officer (a DAWE officer) grants pratique;

c) According to the *Biosecurity Act* and the *Biosecurity (Negative Pratique) Instrument 2016* a Biosecurity Officer may grant pratique without advice from or consultation with a CHBO or HBO;

d) However, policies promulgated by the Commonwealth Department of Health and DAWE provide that where there is (or has been) a person on board a vessel with symptoms consistent with a LHD, a Biosecurity Officer cannot grant pratique without obtaining advice or permission from a HBO or CHBO.

11.4 Whilst the Commonwealth Department of Health has the primary responsibility for matters of human biosecurity, it does not have officers or physicians at Australia's borders and has entered into arrangements with DAWE and NSW Health for the provision of frontline human biosecurity services.[1]

11.5 In the lead up to the Ruby Princess passengers' disembarkation on 19 March 2020, those human biosecurity arrangements did not operate as intended. There was poor communication between responsible agencies. Policies were ignored. The Biosecurity Officers' practices deviated from the written requirements. And HBOs did not have a clear understanding of their role.

The arrangement between NSW and the Commonwealth

The terms of the arrangement

11.6 The arrangement, pursuant to s 564, between NSW and the Commonwealth is couched in broad terms. That arrangement does not, in and of itself, provide a detailed insight into the requirements and expectations applicable to a CHBO and HBOs.

11.7 The breadth of the services described in the arrangement is not necessarily a cause for criticism. There is good reason why such arrangements should be described in ways which allow for flexibility of approach.

Policies concerning human biosecurity

11.8 Good practice, however, demands that the details of the practical arrangements – and how they are applied in the day-to-day administration of the *Biosecurity Act* – should be committed to writing. The parts of the arrangements to be performed by DAWE are articulated in admirable detail in Work Instructions and Guidelines. Officers within NSW Health had some knowledge of the detailed procedures to be followed by Biosecurity Officers.[2]

11.9 NSW Health had created its own procedures, protocols and standard operating procedures concerning the assessment of public health risks posed by cruise ships but these were not obviously or self-consciously concerned with the State's biosecurity arrangement with the Commonwealth or the role its officers (the CHBO and the HBOs) performed in that arrangement. The result was a disturbing disconnectedness between the Commonwealth's and the State's respective biosecurity operations. There was inadequate communication and coordination between each government's parallel operations.

1 These arrangements are considered in more detail in Chapter 4.

2 Transcript of the Commission, 10 June 2020 T1157.25.

11.10 Dr Sean Tobin is the Chief Human Biosecurity Officer of NSW, and the person responsible for overseeing the work of the 27 Human Biosecurity Officers in the State. In his second statement to the Commission he produced a NSW policy entitled *Human Biosecurity Officer Guideline* dated 3 March 2017 (**HBO Guideline**). The HBO Guideline notes that:

a) Biosecurity Officers are not medically trained and will contact a HBO when instructed to by the Traveller with Illness Checklist (**TIC**) algorithm;

b) The HBO is to provide advice to the Biosecurity Officer to determine the possibility of a Listed Human Disease (**LHD**) being present by a combination of clinical indicators, geographic epidemiological criteria and other exposure risks;

c) The HBO may grant or withhold pratique. In this regard, the HBO Guideline notes:

> "**Pratique should generally be granted** once the assessment is complete, unless there is a compelling reason why it is unsafe to let passengers disembark. Such a reason might be a genuine belief other passengers were exposed to a [LHD] and themselves need to be identified and assessed before a mass of passengers is allowed to disembark."[3] (emphasis in original text)

11.11 The HBO Guideline was, generally speaking, an appropriate tool. But it played no role in the grant of pratique for the Ruby Princess on 19 March 2020. It was only produced to the Commission in Dr Tobin's second statement, at the Commissioner's request.[4]

11.12 The HBO Guideline sets out a responsive role for HBOs. There is no criticism of the fact that the HBOs' role was reactive rather than proactive. That role is in line with that set out by the *Biosecurity (Negative Pratique) Instrument 2016*: a Biosecurity Officer contacts a HBO where the DAWE policies and the TIC demand clinical advice be sought.[5]

11.13 However one criticism should be made of the HBO Guideline. The explicit bias towards granting pratique in the passage set out above[6] is unfortunate. The HBO Guideline effectively provides that the grant of pratique is the default position and pratique should only ever be withheld where there is a compelling reason to deny it such as where a HBO has a "genuine belief" that other passengers "were exposed" to a LHD. That formulation is contrary to the precautionary principle which, it was generally accepted in evidence before the Commission,[7] ought to suffuse public health decisions.

3 Exhibit 93, Second Statement of Dr Sean Tobin (19 June 2020), Annexure SNT-5.

4 Transcript of the Commission, 10 June 2020, T1160.43.

5 Exhibit 119, Voluntary Submission of the Commonwealth of Australia (16 July 2020) [18].

6 At [11.10](c).

7 See, eg, Transcript of the Commission, 18 June 2020, T1546.43.

Communication and coordination

11.14 From February 2020, when COVID-19 began to present a serious risk to the Australian community, the human biosecurity procedures conducted by DAWE and NSW Health were not coordinated.

11.15 The Commission heard evidence that Biosecurity Officers make contact, from time to time, with HBOs in relation to ill passengers arriving by plane. There was very little evidence before the Commission to indicate the frequency and nature of such communications in relation to cruise ships.

11.16 As detailed in Chapter 5, the South Eastern Sydney Local Health District's Public Health Unit (**SES PHU**) had been running a public health program in relation to cruise ships for over 20 years. There was some integration between NSW's Cruise Ship Program and DAWE (eg certain persons within the Program had access to the Maritime Arrivals Reporting System (**MARS**) portal). There was little evidence of:

a) any established relationships between the HBOs and DAWE's Biosecurity Officers;

b) well-established lines of communication between the HBOs and DAWE's Biosecurity Officers; or

c) a consciousness, within the Cruise Ship Program, of the particular statutory role of HBOs (or the CHBO) in decisions made on public health grounds, and the overlapping or intersection of the roles being discharged for NSW and the Commonwealth.

11.17 By 13 February 2020, NSW Health were attending cruise ships to conduct on-site risk assessments. DAWE officers reported that, due to the presence of NSW Health, Biosecurity Officers were not administering the TIC. On 21 February 2020, Craig Hall, Assistant Director, Inspections Group, Biosecurity Operations Division of DAWE noted that NSW Health had not informed DAWE of their increased surveillance of arriving cruise ships. [8]

11.18 On 21 February 2020, Kelly-Anne Ressler and Professor Mark Ferson of the SES PHU alerted Franz Odermatt (Team Leader, Seaports Sydney and Regional Vessel Coordinator, Inspection Group, Biosecurity Operations Division, DAWE) that the NSW Health Expert Panel (**Expert Panel**) would undertake a risk assessment for each cruise ship, decide whether or not to attend to conduct an onboard assessment, and advise DAWE of its decision.[9]

11.19 However, communications with DAWE relaying the Expert Panel's determinations "ceased in the days leading up to 18 March 2020".[10]

8 Exhibit 114, Voluntary Statement of the Commonwealth of Australia (12 June 2020), Document 30.

9 Exhibit 114, Voluntary Statement of the Commonwealth of Australia (12 June 2020) [97].

10 Exhibit 114, Voluntary Statement of the Commonwealth of Australia (12 June 2020) [97].

11.20 Mr Hall's email of 21 February 2020 suggests that DAWE decided that its Biosecurity Officers would not administer the TIC on those occasions where NSW Health was going to attend the arrival of a vessel and conduct an onboard assessment. It is inferred that, where NSW Health attended the arrival of a ship, DAWE decided that it would perform none of the human biosecurity functions accorded to it pursuant to to the Memorandum of Understanding (**MOU**) between it and the Commonwealth Department of Health, and that its Biosecurity Officers would not follow the DAWE Work Instructions relevant to human health risks.

11.21 Problematically, it appears that neither DAWE nor NSW Health had any real understanding of how the Expert Panel's assessment would affect the grant of pratique by a Biosecurity Officer. The Expert Panel members gave evidence that they did not believe that the Expert Panel was performing any role in relation to the *Biosecurity Act*.[11] There is no evidence that the panel considered how their risk assessment would be understood by DAWE. Nor is there is any evidence that, having been informed of the Expert Panel's determinations from about 21 February 2020 to sometime in mid-March, DAWE advised NSW Health how it would respond to each risk assessment decision. In particular, DAWE did not inform NSW Health that it would not follow its Work Instructions or administer the TIC where NSW Health had deemed a vessel to be 'medium' or 'high' risk, nor whether it would continue to perform those tasks in the case of a 'low' risk determination.[12]

11.22 The Commonwealth has told the Commission that:

a) "The practice of [DAWE] at the Port of Sydney was not to require biosecurity officers to interview the Master, and was for biosecurity officers to rely on the Pre-arrival Report and Human Health Update forms submitted in completing the Human Health section of the routine vessel inspection forms";[13]

b) In undertaking the Routine Vessel Inspection in relation to the arrival of the Ruby Princess on 19 March, Traci Joseph (the DAWE Biosecurity Officer who attended the arrival of the vessel) did not review the ARD Log as is required by the relevant Work Instruction;[14]

c) "Notwithstanding stipulations in [DAWE] work instructions and guidelines, both prior to and after the advent of COVID-19, a practice existed within [DAWE] of not administering the TIC to each sick passenger on cruise ships arriving in Australia at the Port of Sydney";[15] and

11 Exhibit 28, Statement of Dr Sean Tobin (29 May 2020) [10].

12 Exhibit 114, Voluntary Statement of the Commonwealth of Australia (12 June 2020), Document 30.

13 Exhibit 119, Voluntary Submission of the Commonwealth of Australia (16 July 2020) [38].

14 Exhibit 119, Voluntary Submission of the Commonwealth of Australia (16 July 2020 [39]. See also Exhibit 114, Voluntary Statement of the Commonwealth of Australia (12 June 2020), Document 23 p 25.

15 Exhibit 119, Voluntary Submission of the Commonwealth of Australia (16 July 2020 [40].

d) While the TIC is well-adapted to the arrival of passenger planes, it was considered impractical to administer the TIC to ill passengers on a cruise ship, "particularly where there had been a significant outbreak of illness on board. In that circumstance, the assumption of biosecurity officers at the Port of Sydney was that the human health risk posed by that outbreak would be managed by NSW Health, as they would attend the vessel in such cases".[16]

11.23 Part of the problem, identified earlier in this chapter,[17] is that DAWE did not inform NSW Health that they departed from the relevant Work Instructions. Indeed, Dr Tobin appears to have been under the impression that those Work Instructions would be adhered to.[18] In circumstances where the administration of the TIC is found to be impractical for cruise ships, it is fairly obvious that the solution is not to ignore it but, rather, to develop a procedure which is better suited to the assessment of human biosecurity risks posed by cruise ships.

11.24 To add to this unsatisfactory state of coordination, in mid-March, when the Expert Panel ceased communicating its risk assessments to DAWE, DAWE did nothing in response. DAWE did not contact anyone from NSW Health to seek those risk assessments.[19]

11.25 And so it was that, in the lead up to the Ruby Princess's arrival on 19 March 2020, there was silence between NSW Health and DAWE. NSW Health would have been justified to assume that Biosecurity Officers would follow their Work Instructions and administer the TIC. On the other hand, it was not unreasonable for Biosecurity Officers, on discovering the Expert Panel's assessment of the Ruby Princess, to have concluded that "NSW Health had assessed the human health risk… as low, and as not warranting further action, and to rely on that assessment in granting pratique".[20] DAWE only learned through a Carnival Port Agent, Bibi Tokovic, that NSW Health had deemed the Ruby Princess to be 'low risk' and would not be attending.

11.26 The Commonwealth has conceded that this is unsatisfactory, accepting that there should be explicit confirmation of a HBO's advice and that "there is a need to improve lines of communication" with the CHBO, HBOs and NSW Health.[21] The Commonwealth has informed the Commission that new protocols are being developed which set out explicit requirements for the receipt of written advice from a HBO.[22] That is comforting.

16 Exhibit 119, Voluntary Submission of the Commonwealth of Australia (16 July 2020) [40].

17 At [11.21].

18 Transcript of the Commission, 10 June 2020 T1157.25

19 Exhibit 119, Voluntary Submission of the Commonwealth of Australia (16 July 2020) [34].

20 Exhibit 119, Voluntary Submission of the Commonwealth of Australia (16 July 2020) [25].

21 Exhibit 119, Voluntary Submission of the Commonwealth of Australia (16 July 2020) [35].

22 Exhibit 119, Voluntary Submission of the Commonwealth of Australia (16 July 2020) [36].

The establishment and role of the Expert Panel

11.27 When NSW Health developed its COVID-19 cruise ship response in February 2020, the fact that the CHBO and HBOs were members of the various expert panels appeared to be the product of happenstance rather than design. Dr Tobin expressly disavowed that, whilst sitting as a panel member, he was performing any function under the *Biosecurity Act*.[23] The Commonwealth appears to embrace Dr Tobin's view.[24]

11.28 Notwithstanding the lack of a self-conscious discharge of any *Biosecurity Act* function, the Expert Panel (and, in particular, the CHBO and HBOs who sat on it) were making decisions about the public health risk posed by cruise ships which were capable of being understood as the sort of advice which Biosecurity Officers would seek from HBOs.

11.29 There is an inference that, on the morning of 19 March 2020, the Expert Panel's decision that the Ruby Princess was 'low-risk' and the consequence that there would be no attendance by NSW Health may have provided unfortunate reassurance to Ms Joseph. It may be inferred that that information played some role in DAWE's decision not to conduct the Human Health Assessment or administer the TIC. That is a conclusion urged upon the Commission by the Commonwealth.[25]

11.30 As already noted, certain persons within NSW Health (eg Ms Ressler) had access to the MARS portal administered by DAWE. When a vessel uploads a Pre-arrival Report, a Human Health Report or a Human Health Update to MARS, the system sends an automatically-generated Biosecurity Status Document to the operator.[26] The system has not been designed so as to provide Human Health Updates to NSW Health or any HBO. This may well be an unsatisfactory state of affairs.

11.31 Sometime after 8:54am on 18 March 2020, Laura-Jayne Quinn of the SES PHU accessed MARS to obtain data to inform the risk assessment of the Expert Panel later that day and complete the pre-arrival risk assessment form. It appears that the human health information contained in MARS was not reviewed by anyone from the SES PHU.[27] In particular there was no reference in the risk assessment form to the MARS data, which showed 110 ill persons, 17 of whom had a temperature over 38°C, and no persons who had persistent coughing and difficulty breathing with no apparent cause. Rather, it appears that Ms Quinn did not review those figures, and instead relied on the information provided by Dr von Watzdorf (which in fact showed 101 ill persons, 36 of whom had an influenza-like illness at some stage, and at least several of whom had undiagnosed respiratory illnesses).[28]

23 Exhibit 28, Statement of Dr Sean Tobin (29 May 2020) [10].

24 Exhibit 114, Voluntary Statement of the Commonwealth of Australia (12 June 2020) [116].

25 Exhibit 119, Voluntary Submission of the Commonwealth of Australia (16 July 2020) [25].

26 Transcript of the Commission, 6 May 2020 T468.2; Exhibit 19, (1) Pre Arrival Report and Human Health Update dated 16 March 2020 (2) Human Health Updates dated 18 March 2020; Exhibit 114, Voluntary Statement of the Commonwealth of Australia (12 June 2020) [107].

27 Exhibit 102, Supplementary Statement of Kelly-Anne Ressler (23 May 2020) [3].

28 Exhibit 16, Statement of Kelly-Anne Ressler (1 May 2020) [67], Annexure KAR-11; Exhibit 3.

11.32 The Ruby Princess provided an updated Human Health Report at 7:21pm on 18 March 2020 (**the updated HHR**). No one within NSW Health was informed of that update. Had the TIC been administered by DAWE in compliance with its own Work Instructions and Guidelines, it would have included an inspection on the morning of 19 March by a Biosecurity Officer of an updated ARD Log detailing the information in the updated HHR, and provided DAWE with accurate information about the human health status of the vessel as it was at the time of docking. The Commonwealth concedes that the Human Health Inspection to be carried out by DAWE is important for this very reason, as a way of "verifying the information provided by a cruise ship operator, which may be material to the assessment of human health risk in circumstances where there are inaccuracies in the information reported by a cruise ship operator".[29]

11.33 Had the Expert Panel been provided with the updated information they may have been concerned about the quickly escalating number of cases of respiratory illness onboard the vessel, and would have had an opportunity to re-evaluate their decision. They may have caused direct enquiries to be made with Dr von Watzdorf. It is impossible to know whether the receipt of updated information from MARS would have changed the risk assessment of the Expert Panel, however it is of note that Professor Ferson's initial suggestion that the Ruby Princess was "probably low risk" indicated that the decision was borderline. In any event, it is unnecessary to determine whether a different outcome might have ensued. It is sufficient to say that the Expert Panel and HBOs generally should consider the most up-to-date information. In this instance, the completion of the TIC and inspection of the ARD Log from the vessel by DAWE on the morning of the 19 March would have created an opportunity for them to obtain that up-to-date information.

The performance of DAWE's human biosecurity role

The grant of pratique to the Ruby Princess on 19 March 2020

11.34 There is a question about whether – and if so, when and by whom – pratique was granted to the Ruby Princess.

11.35 As already noted, at about 6:00am on 19 March 2020, Ms Tokovic met Ms Joseph on the gangway to the Ruby Princess and informed her that NSW Health would not be attending and NSW Health had assessed the vessel as 'low risk'.[30]

11.36 Ms Joseph and a number of Australian Border Force (**ABF**) officers subsequently boarded the Ruby Princess. DAWE's Work Instructions in relation to human biosecurity were not observed and the TIC was not administered.

29 Exhibit 119, Voluntary Submission of the Commonwealth of Australia (16 July 2020) [46](a).

30 Exhibit 119, Voluntary Submission of the Commonwealth of Australia (16 July 2020) [150].

11.37 The Commonwealth has submitted that, in relation to the human health component of the grant of pratique, DAWE Biosecurity Officers relied entirely on the Expert Panel's risk assessment.[31] So much may be accepted.

11.38 The situation pertaining throughout February and March 2020 – a time of seriously increased biosecurity risk due to COVID-19 – was that DAWE had compromised its responsibility for human biosecurity matters. There were breaches of its own policies, which brought about a breach of DAWE's MOU with the Commonwealth Department of Health. Moreover, DAWE did not inform NSW Health that it had ceased to perform its human biosecurity role.

11.39 Ms Tokovic's evidence was to the effect that she orally received disembarkation clearance (pratique) from the ABF and DAWE.[32] Omer Ozger, Senior Border Force Officer, Maritime Operations, contemporaneously recorded in his notebook that permission to disembark was granted.[33] Mr Ozger does not say who granted that permission. It is clear that whilst the ABF may have had responsibilities for immigration, ABF officers did not have the power to grant pratique. Ms Joseph does not recall ever granting oral pratique but, it may be inferred that, by this time, she had determined that she would do so. It appears that Ms Joseph was prevented from formalising the grant of pratique as she was unable to obtain an online connection to MARS whilst onboard the Ruby Princess. Ms Joseph disembarked at around 6:45am or 7:00am and at 7:37am, she updated MARS which then automatically issued a Biosecurity Status Document (**BSD**) to the ship's operator, thereby formally communicating that grant of pratique at 7:39am.[34] The Commonwealth says that pratique was granted by the issue of the BSD, notwithstanding that this post-dated the commencement of disembarkation.[35] That submission appears to be correct.

11.40 The only direct communication between DAWE and NSW Health around the time of the Ruby Princess's arrival and disembarkation was a series of text messages exchanged between Mr Odermatt and Ms Ressler at around 7:30am, in which Ms Ressler confirmed what Ms Tokovic had earlier told Ms Joseph, namely that "the ship was assessed as low risk".[36]

11.41 The Commission notes the submission made by Carnival to the effect that pratique had been granted by Ms Ressler's communication to the Ruby Princess on 18 March 2020 of the Expert Panel's low risk assessment, with the consequence that passengers were "free to disembark".[37] For the reasons explained in Chapter 4, that argument cannot be accepted.[38]

31 Exhibit 119, Voluntary Submission of the Commonwealth of Australia (16 July 2020) [53].

32 Transcript of the Commission, 6 May 2020 T519.20ff.

33 Exhibit 119, Voluntary Submission of the Commonwealth of Australia (16 July 2020) [158].

34 Exhibit 114, Voluntary Statement of the Commonwealth of Australia (12 June 2020) [167]–[168].

35 Exhibit 114, Voluntary Statement of the Commonwealth of Australia (12 June 2020) [169].

36 Exhibit 114, Voluntary Statement of the Commonwealth of Australia (12 June 2020) [165].

37 Exhibit 16, Statement of Kelly-Anne Ressler (1 May 2020), KAR-19; Written Submissions of Princess Parties [79].

38 At [4.22]-[4.23].

The Commonwealth's response to issues raised by the Commission

11.42 The Commonwealth accepts that the Human Health Inspection carried out by DAWE's Biosecurity Officers plays an important role in the verification of information reported by a cruise ship to MARS and assessing any human health risk prior to granting pratique.[39]

11.43 In relation to the assessment of risk to human health, the Commonwealth, in its Voluntary Submission said that "is a policy outcome that the Commonwealth considers to be critically important and which, in hindsight, should have been pursued by the Commonwealth engaging with NSW Health at a policy level to ensure that process is reflected this policy outcome…".[40]

11.44 The Commonwealth has acknowledged that its treatment of the Ruby Princess has highlighted that Biosecurity Officers at the Port of Sydney were not following DAWE policies and that practices had emerged in Sydney which were contrary to those policies.[41]

11.45 The Commonwealth has commenced a process of review which will:

a) Update instructional material;

b) Administer training to Biosecurity Officers (and also offer it to CHBOs and HBOs);

c) Reconsider the utility of the TIC in relation to cruise ships; and

d) Review the use of technology in the performance of biosecurity-related duties.[42]

11.46 The Commonwealth acknowledges that practices in relation to the grant of pratique should be addressed.[43] Whilst s 49 of the *Biosecurity Act* allows for an oral grant of pratique (which must be formalised as soon as practicable), given the potential for misunderstanding and confusion (manifest in the case of the Ruby Princess on 19 March 2020) it is desirable that those systems and procedures be reviewed with the object of providing safeguards and better formality to minimise the potential for error and confusion.

39 Exhibit 119, Voluntary Submission of the Commonwealth of Australia (16 July 2020) [46].

40 Exhibit 119, Voluntary Submission of the Commonwealth of Australia (16 July 2020) [46](b).

41 Exhibit 119, Voluntary Submission of the Commonwealth of Australia (16 July 2020) [47]-[48].

42 Exhibit 119, Voluntary Submission of the Commonwealth of Australia (16 July 2020) [49].

43 Exhibit 119, Voluntary Submission of the Commonwealth of Australia (16 July 2020) [53].

11.47 The Commission notes the Commonwealth intends to extend an invitation for CHBOs and HBOs to undergo further training. The Commonwealth may feel somewhat constrained in mandating training for CHBOs and HBOs given that those officials are officers of State health agencies. Sections 562(5) and 563(5) of the *Biosecurity Act*, however, provide that the Director of Human Biosecurity must determine training and qualification requirements for CHBOs and HBOs respectively. In light of the lack of communication and coordination between the Commonwealth and State biosecurity apparatuses, serious consideration ought to be given to requiring all officers who undertake responsibilities for human biosecurity to receive further instruction.

Updated TIC on 18 March

11.48 The TIC was updated on 18 March 2020. That update reduced the number of countries with increased risk of COVID-19 to include only mainland China, Korea, Iran and Italy. The countries which were removed from the TIC[44] were those which the Communicable Diseases Network of Australia (**CDNA**) had listed, from 3 to 10 March 2020 as having a 'moderate risk' of transmission (Cambodia, Hong Kong, Indonesia, Japan, Singapore and Thailand).[45]

11.49 From 10 March 2020, the CDNA eliminated any reference to particular countries from the geographic epidemiological criteria for a suspect case of COVID-19 and replaced that reference with a single criterion of "international travel in the 14 days before illness onset".[46]

11.50 In the context of the newly declared pandemic and the CDNA Guidelines updated on 10 March and confirmed on 13 March 2020 listing all international travel as posing a risk of transmission of COVID-19, it is startling that the TIC was updated on 18 March 2020 to reduce the number of countries of concern.

11.51 When Mr Odermatt received the updated TIC, he forwarded it on to his team of 13 Biosecurity Officers. Considering the Commonwealth's statement that a practice existed in Sydney where the Biosecurity Officers would not administer the TIC,[47] it is not clear why Mr Odermatt forwarded the updated TIC to his team.

44 Exhibit 119, Voluntary Submission of the Commonwealth of Australia (16 July 2020) [69], Document 97.

45 Exhibit 32, CDNA National Guidelines for Public Health Units re 2019-nCoV – Versions 1.15 to Versions 1.17 at Tabs 14 to 16.

46 Exhibit 32, CDNA National Guidelines for Public Health Units re 2019-nCoV – Version 1.18 at Tab 17 p 5.

47 Exhibit 119, Voluntary Submission of the Commonwealth of Australia (16 July 2020) [40].

The Human Health forms in MARS

11.52 Reference has been made earlier in this Chapter[48] to the unsatisfactory state of affairs which meant that NSW Health (including the CHBO and HBOs) was not provided with automatically updated human biosecurity information from MARS.[49] The Commission also heard evidence of the Port Authority's unsuccessful attempts to gain access to MARS data.[50] The Commission also received evidence of difficulty in having the questions in the Human Health Report form updated. Dr Tobin gave evidence that on 17 February 2020, he sent the Commonwealth Department of Heath suggestions for improvements to the form, including additional questions concerning numbers of influenza-like illnesses and influenza test results.[51] Dr Tobin's suggestions received a tepid response: the "possibility" of changes would be raised with DAWE, but the questions are "hard-coded" in the software and difficult to change.[52] Those suggestions would also – and appropriately – need to be circulated to the other States' CHBOs to ensure national consistency.

11.53 It should be uncontroversial to observe that the technology which underpins MARS is there to serve a biosecurity function. It would never be satisfactory for limitations in that system to dictate, and potentially undermine, the purpose for which it is designed and employed. Bureaucratic processes are necessary but should not be so cumbersome as to stymie the biosecurity objectives. During a pandemic, where science moves fast, the systems should be designed to respond and adapt with alacrity.

11.54 During February and March 2020, changes were made to the Pre-arrival Report and Human Health Update forms in MARS.[53] Three new questions were added specifically concerned with COVID-19. From 6 March 2020, those questions asked whether the vessel, or any person on it, had left mainland China, Iran, the Republic of Korea or Italy "in the last 14 days" or whether any person had been in contact with a proven case of COVID-19 "in the last 14 days".[54]

11.55 Some immediate problems can be seen with the form and content of these questions. First, the questions are being asked of the Master of a vessel at the end of a cruise. For a 13-day cruise (as the Ruby Princess's was intended to be), there is little chance that any of the travel history questions would have been answered affirmatively. In any event, it is the wrong question to ask. The correct question, to obtain information useful for human biosecurity purposes, is whether anyone had been in any of those high-risk countries in the 14 days prior to embarkation.

48 See [11.32]-[11.33].

49 And see Exhibit 119, Voluntary Submission of the Commonwealth of Australia (16 July 2020) [62].

50 Exhibit 22, Statement of Emma Fensom (5 May 2020) [34], Annexures 13 and 15.

51 Exhibit 29, Annexures to NSW Health Witness Statements, Tab 15.

52 Transcript of the Commission, 9 June 2020 T918-920.

53 Exhibit 114, Voluntary Statement of the Commonwealth of Australia (12 June 2020) [90]*ff*.

54 Exhibit 114, Voluntary Statement of the Commonwealth of Australia (12 June 2020) [93].

11.56 By the time the Ruby Princess docked on 19 March, it was known that the USA had deficient testing and that community transmission was much more widespread than had been reported. In the week ending 14 March 2020, the USA accounted for the greatest proportion of international arrivals into Australia with COVID-19 (22%).[55] There were over 500 passengers from the USA on the 8 March voyage of the Ruby Princess. However the questions, as framed in the updated forms, would have missed any international passengers who had arrived in Australia prior to 4 March.

11.57 Secondly, on 11 March 2020, the CDNA had effectively deemed COVID-19 a pandemic (a global health threat) and had amended its suspect case definition accordingly.[56] The reference to four countries in the Pre-arrival Report and the Human Health Update forms was an anachronism and apt to mislead by providing a false sense of security from any negative responses to those questions.

11.58 There are two other criticisms which may be made of the Human Health reporting forms within MARS. First, there was a lack of clarity in the drafting of certain questions. For example, Question 2.1.7 asked whether any person on board had symptoms of:

> "Persistent coughing and difficulty breathing with no apparent cause and no history of similar symptoms (but not persistent coughing and difficulty breathing caused by asthma, heart disease, obesity, chronic bronchitis or emphysema)."[57]

11.59 It is unclear why the question refers to persistent coughing and difficulty breathing. One would think that either of those conditions, separately, would be useful for an assessment of human biosecurity risk. The words "with no apparent cause" are also problematic: what if the coughing was caused by an unidentified upper respiratory infection? Is that a sufficiently apparent cause? Or is a confirmed diagnosis required before there is an "apparent cause"? Dr von Watzdorf was unsure about the meaning of that phrase and had wondered about it herself.[58] The reference to no history of similar symptoms may also be ambiguous. If a person had a history of previous influenza-like illnesses, would that satisfy the condition?

11.60 Secondly, the arrangement of questions on the form was badly designed. The question concerning total passenger and crew numbers (Question 2.3.2) was placed in part 2.3 of the form which dealt with Gastro-intestinal Illness. Question 2.3.3 asked whether there was "any situation on board which may lead to infection or the spread of disease". That question, too, fell into the gastro-intestinal Illness section. One would think that would be a good question to ask generally, and not with limited reference to gastro-intestinal illness.[59]

55 Exhibit 33, COVID-19, Australia: Epidemiology Report 7, p 1.

56 Exhibit 32, CDNA National Guidelines for Public Health Units re 2019-nCoV – Versions 1.2 to Versions 2.4.

57 Exhibit 19, (1) Pre Arrival Report and Human Health Update dated 16 March 2020, (2) Human Health Updates dated 18 March 2020.

58 Transcript of the Commission, 22 April 2020 T85.46.

59 See Exhibit 114, Voluntary Statement of the Commonwealth of Australia (12 June 2020) [104]; Exhibit 119, Voluntary Submission of the Commonwealth of Australia (16 July 2020) [63].

The adequacy of training provided to CHBOs and HBOs

11.61 The issues as to the communication and coordination of DAWE and NSW Health's biosecurity functions have been explored above. As mentioned above, one troubling aspect is that there was a lack of consciousness, amongst the members of the Expert Panel, about whether (and, if so, how) their risk assessments would impact on the grant of pratique.

11.62 The evidence of NSW's CHBO, Dr Tobin, and other HBOs disclosed a lack of detailed awareness of the statutory regime and the roles to be performed by each agency. A question therefore arises as to the adequacy of the training and instruction provided to CHBOs and HBOs.

11.63 There is no doubt that the CHBO and HBOs received training. The *Biosecurity (Training and Qualification Requirements for Human Biosecurity Officials) Determination 2016* requires CHBOs and HBOs to complete a training module which relevantly covers their role, the management of LHDs, assessing travellers at the border, administration of the TIC and human biosecurity emergencies.[60]

11.64 The Commission has received evidence of a slide presentation which may be associated with the training module referred to in the Commonwealth's Voluntary Statement.[61] Whilst that presentation is broad and summary in its nature, the Commission does not know the full extent of the instruction provided. In circumstances where the core service provided by the CHBO and HBOs is their clinical judgment, it may be that their instruction was quite appropriate to inform them about the *Biosecurity Act* and the arrangement of powers and responsibilities within it.

11.65 If there is a problem with the training, it is that it failed to produce the desired effect in the CHBO and HBOs. There was little evidence that such training had the effect of imbuing the HBOs with a consciousness of the human biosecurity architecture and the roles they played within it. There was little evidence of any coordination between the HBOs and DAWE in relation to the former's Cruise Ship Program. Even in the context of the COVID-19 pandemic, there was no serious consideration of how to organise and harmonise each agency's operations. Nor was there any consideration given to how the Expert Panel's risk assessment might be construed by DAWE. It is of concern that the NSW CHBO was a member of the Expert Panel for the risk assessment for the Ruby Princess on 18 March, yet failed to grapple with his Commonwealth human biosecurity role.

60 Exhibit 114, Voluntary Statement of the Commonwealth of Australia (12 June 2020) [19].

61 Exhibit 114, Voluntary Statement of the Commonwealth of Australia (12 June 2020) [19]; Exhibit 124, Slideshow presentation for the training of Human Biosecurity Officers, sent to NSW Health by the Australian Government Department of Health on 6 February 2020.

NSW Quarantine Order

11.66 On 16 March 2020, the NSW Health Minister made a Public Health Order which provided that a person arriving in NSW and who had been in any country other than Australia within 14 days before that arrival must isolate themselves for 14 days in their homes or in other suitable accommodation: *Public Health (COVID-19 Quarantine) Order 2020* (the **Quarantine Order**). That Order came into effect on 17 March 2020. It was, therefore, in effect when the Ruby Princess arrived on 19 March 2020.

11.67 Whilst Ms Ressler gave evidence that she was not aware of the exercise of statutory authority by Minister Hazzard,[62] she was aware of the isolation requirement. In the email to Professor Ferson and Dr Sheppeard attaching the Ruby Princess risk assessment, her suggested 'plan' included that "all passengers to go into home isolation".[63]

11.68 As discussed in Chapter 4, the Quarantine Order should be understood to prohibit any travel other than going directly to their isolation accommodation. Onward travel outside NSW should not have been allowed. [64]

11.69 Of the 2,647 passengers aboard the Ruby Princess for the 8 March voyage, about 955 lived in NSW, 727 lived in other States and Territories and 965 came from overseas.[65] Presumably, most of the 1,692 passengers who lived outside NSW travelled to their homes in breach of the Quarantine Order.

11.70 Chapter 13 contains details of the divergent and confusing communication to passengers about the self-isolation requirements. The present focus is on those communications in light of the Quarantine Order.

11.71 The ABF Notice provided to passengers on board the Ruby Princess permitted onward travel.[66] On 16 March 2020, Commodore Pomata made an onboard announcement, informing passengers that onward travel was permitted by the Commonwealth Government.[67] Upon disembarkation, passengers were provided with a fact sheet published by the Commonwealth Department of Health. That fact sheet said that domestic transits were allowed prior to the commencement of their 14-day self-isolation period. The fact sheet said nothing about onward international travel.[68]

62 Transcript of the Commission, 22 April 2020 T59.31.

63 Exhibit 16, Statement of Kelly-Anne Ressler (1 May 2020), Annexure KAR-14.

64 At [4.90]*ff*.

65 See Chapter 13, [13.8].

66 Exhibit 92, Statement of Peter Little (26 June 2020) p 111.

67 Exhibit 85, Onboard announcements during Ruby Princess cruise from 8-19 March 2020.

68 Exhibit 114, Voluntary Statement of the Commonwealth of Australia (12 June 2020), Document 14.

11.72 On 20 March 2020, passengers received an email (and some received a text message) from NSW Health informing them that there were confirmed cases of COVID-19 on the Ruby Princess, that each of them was considered a 'close contact' and that all of them were to remain in "home isolation" for 14 days.[69] That email provided a website link to a NSW Health fact sheet dated 15 March[70] which stated that it was permissible for close contacts to catch public transport home and, provided that they were well, continue with onward flights. On 21 March, that fact sheet was updated. The revised advice forbade onward travel. Anyone clicking on the link to the fact sheet would have received that updated advice. However NSW Health did not send any further emails or text messages to alert the passengers to the change of travel advice, perhaps assuming – and, perhaps, correctly assuming – that most passengers would have already commenced or completed their onward travel by the time the fact sheet was updated on 21 March 2020.

11.73 It is regrettable that the Quarantine Order did not play a role in the advice given to passengers. It was made three days prior to the Ruby Princess's arrival and ought to have been included in the public health response to the risk posed by the Ruby Princess. That is true even in the circumstances of the flawed "low risk" assessment made by the Expert Panel on 18 March.

11.74 This is another instance of the confusion created by a lack of communication and coordination between various agencies. The failure to ensure against onward interstate and international travel contributed to the spread of COVID-19 in every Australian State and Territory and many other countries.

11.75 Australia has obligations under the International Health Regulations (2005) to prevent the spread of disease to another country. Those obligations are recognised in the *Biosecurity Act*. Preventing onward travel in adherence to the Quarantine Order would have limited the spread of COVID-19 within Australia and overseas.

69 Exhibit 58, Second Statement of Dr Jeremy McAnulty (15 June 2020), Annexure 3.

70 Ibid, Annexure 22.

Possible improvements to the *Biosecurity Act*

The potential for group Control Orders in the Biosecurity Act

11.76 A future review of the *Biosecurity Act* may wish to entertain the possibility of making group Control Orders as, presently, the administrative machinery is so cumbersome as to make it impracticable.[71] Under the *Biosecurity Act* a CHBO and HBO has powers to make Human Biosecurity Control Orders including the power to order home isolation and mandatory quarantine. Control Orders, however, can only be issued to individuals and the administrative burden of issuing them on a large scale makes them impractical.

11.77 Presently, quarantine orders are made under the *Public Health Act 2010* (NSW).[72] Public Health Orders made under that Act apply to the whole population. It may be prudent and convenient if the powers were provided under the *Biosecurity Act* were expanded so that they may be practicably applied to a class of persons.

The requirement for updated human health information

11.78 As adverted to in Chapter 4,[73] it is not clear that s 194 of the *Biosecurity Act* placed a positive obligation on vessels' Masters to update superseded human health information. Whilst, in this case, the Ruby Princess provided updated human health information (twice), it would be preferable if this obligation was explicit.

71 See, for example, [4.37].

72 See, for example, [4.39].

73 At [4.42].

Recommendations

11.79 That the NSW HBO Guideline should be reconsidered in light of the criticism made at [11.13], namely that it regards a grant of pratique as the default position, and indicates that pratique should only ever be withheld where there is a compelling reason to deny it, for example, where a HBO has a "genuine belief" that other passengers "were exposed" to a LHD. The current HBO Guideline does not appear to satisfactorily reflect an appropriately precautionary public health approach.

11.80 That Human Biosecurity Officers, DAWE, the Commonwealth Department of Health and NSW Health develop:

a) better awareness (amongst each of them) of their own and each other's roles and responsibilities for human biosecurity; and

b) more formal protocols for their interaction and communication. This includes, but is not limited to, the grant of pratique.

11.81 That human health reporting within MARS be reviewed with a view to:

a) improving its ability to be readily adapted to novel circumstances and suggested improvements (see, eg, [11.52]);

b) improving its clarity of expression and the coherence and intelligence of the format of its design and presentation (see, eg, [11.54] to [11.60]); and

c) improving access to other agencies (such as the Port Authority) with a legitimate interest in receiving the data for their own operations.

11.82 That any future review of the *Biosecurity Act* consider the utility and possible expansion of human biosecurity control orders so as to be applicable to persons or groups.[74]

11.83 That the *Biosecurity Act* make explicit a requirement to update superseded human health information.[75]

74 [11.76]-[11.77].

75 [11.78].

12

The conduct and actions of Princess Cruise Lines and Carnival plc

Introduction

12.1 The Ruby Princess is owned by Princess Cruise Lines Ltd (**Princess Cruises**). From October 2019 until May 2020, the ship was under a time charter to Carnival plc.[1] In Australia, Carnival plc trades as Carnival Australia.[2]

12.2 The medical team on board the Ruby Princess comprised seven persons: the Senior Doctor, Dr Ilse von Watzdorf, a "crew doctor", the senior nurse, two other nurses, and two paramedics.

12.3 Many of the obligations and requirements set out in the 22 February and 9 March Enhanced Procedures fell to Dr von Watzdorf. The decisions and actions of Dr von Watzdorf in relation to these requirements, and in relation to cases of "respiratory infection" on the Ruby Princess, fall within Term of Reference A of this Commission. The "knowledge, decisions and actions" of Princess Cruises "with respect to cases or potential cases of respiratory infections" on the Ruby Princess also fall within Term of Reference A.

12.4 Equally, "policies and protocols" of Princess Cruises "with respect to managing suspected or potential COVID-19 cases" concern aspects of decision-making and actions of the ship's senior doctor and the medical team, but more particularly relate to those of Princess Cruises itself, which are examined first.

1 Exhibit 92, Statement of Peter Little (26 June 2020) [5].

2 See also Appendix F.

Enhanced hygiene procedures

12.5 In the written submissions lodged on behalf of Princess Cruises and Carnival, reference is made to certain "enhanced hygiene procedures" put in place for all ships within the Carnival fleet (including the Ruby Princess) from February 2020, in response to what has become the COVID-19 pandemic.[3]

12.6 These enhanced hygiene procedures are discussed in, and exhibited to, the statement of Dr Grant Tarling.[4] Dr Tarling is the Chief Medical Officer for the Carnival Cruise Line and for the "four brands" of the Holland America Group (**HAG**), which includes Princess Cruises. He provided a statement to the Commission dated 29 June 2020.

12.7 From [32] onwards of that statement, Dr Tarling explained that from 23 January 2020, Carnival released certain "Instructional Notices" regarding COVID-19 that were sent to the ships in the Carnival fleet, including the Ruby Princess. These Instructional Notices contained information concerning COVID-19, and also outlined a variety of measures to be adopted on cruises from a particular date. For example, for the Instructional Notices issued on 23 January 2020,[5] a "Standardised Traveller's Health Declaration" (**THD**) was introduced as identification for passengers and crew who had travelled to Wuhan. As can be expected, Instructional Notices became more detailed. For example, in the Instructional Notice issued on 5 March 2020,[6] all guests and crew were required to complete a THD prior to embarkation, which posed certain questions concerning travel to particular countries in the previous 14 days, and questions relating to the health of passengers and crew, in particular whether they had symptoms of either fever or a respiratory illness. No doubt this THD was a screening aid to ensure that passengers and crew who had travelled from or through certain high-risk countries and who were symptomatic for respiratory illness were prevented from embarking on cruises. The 5 March Instructional Notice also contained information for the medical staff concerning the clinical management of suspected COVID-19 cases, and other guidance and requirements related to the disease.

12.8 The final relevant Instructional Notice was issued on 15 March 2020.[7] Amongst other changes, this required temperature screening prior to embarkation. This Instructional Notice is not relevant to the 8 March voyage of the Ruby Princess.

3 Written submissions on behalf of Princess Cruise Lines and Carnival (13 July 2020) [120]-[124].

4 Exhibit 106, Statement of Dr Grant Tarling (29 June 2020).

5 Exhibit 106, Statement of Dr Grant Tarling (29 June 2020), Exhibit GT-1 at p 22-23.

6 Exhibit 106, Statement of Dr Grant Tarling (29 June 2020), Exhibit GT-1 at p 43.

7 Exhibit 106, Statement of Dr Grant Tarling (29 June 2020), Exhibit GT-1 at p 48.

12.9 In addition to the Instructional Notices referred to above, HAG issued several "Operational Directives" relating to COVID-19, commencing on 25 January 2020. The details of the Operational Directives are set out at [44]-[52] of Dr Tarling's statement. These directives were complementary to the Instructional Notices and were issued with other instructional-type documents, including instructions to guide the medical staff in relation to "Identification, Assessment, and Management of Patients for Coronavirus Disease 2019".[8] Whilst onboard testing to confirm COVID-19 was not possible, these directives provided guidance as to how to manage and treat patients who presented to the onboard medical centre with symptoms of either acute respiratory illness (**ARI**) or influenza-like illness (**ILI**).

12.10 Further, from 27 February 2020, "Enhanced Cleaning Protocols" were introduced, as well as some changes to the manner in which, for example, buffet stations were operated.[9]

Pre-embarkation screening

12.11 Prior to embarking on the Ruby Princess on 8 March 2020, all passengers were required by Princess Cruises to complete a THD. While this matter is also outlined in Chapter 7 (at [7.5] to [7.14]), it is in part repeated here so as to comprehensively cover Carnival's actions and decisions, and as an aid to readability.

12.12 In "Section A" of the THD, passengers were required to answer the following questions:

> "In the past 14 days, have you or any of the persons listed above:
>
> 1) Travelled from or through mainland China, Hong Kong, Macau, South Korea or Iran (including transiting through an airport in these locations)?
> 2) Had any contact with a suspected or confirmed case of coronavirus (COVID-19) or a person under monitoring for coronavirus?
> 3) Have you travelled from, or through any of the locations listed below (including transiting through an airport in these locations)?
>
> Italy – Japan – Singapore – Taiwan – Thailand."[10]

8 Exhibit 121, "Identification, Assessment and Management of Patients for COVID-19", issued February 2020 by Holland America Group.

9 Exhibit 106, Statement of Dr Grant Tarling (29 June 2020) [53]-[55] and pp 51-53 of Exhibit GT-1.

10 Exhibit 103, Statement of Johanna Bosman (30 June 2020), Exhibit JB-1, p 7.

12.13 In "Section B" of the THD, the following question was asked:

> 4) "In the past fourteen days, have you or any person listed above had fever, cough, or difficulty breathing?"

12.14 Johanna Bosman is a registered nurse (**RN**) who was part of the medical team for the Ruby Princess cruises commencing on 24 February, and 8 March. RN Bosman provided a statement to the Commission dated 30 June 2020.[11] In her statement, RN Bosman explained that prior to the embarkation of passengers on 8 March, Dr von Watzdorf asked her to conduct further health screening of any passengers who answered "Yes" to any of the questions in Section A of the THD.[12] Part of this assessment included undertaking temperature checks of passengers, as well as asking passengers whether they were experiencing any symptoms of respiratory illness.[13]

12.15 Fifty-nine passengers that were due to embark the Ruby Princess on 8 March underwent this additional health screening process as a result of the responses provided on their THD. Ultimately, all were cleared to embark the ship.[14]

NSW Health Enhanced Procedures

12.16 On 22 February 2020, NSW Health sent to representatives of the cruise line industry the 22 February Enhanced Procedure.[15] This procedure was in place when the Ruby Princess departed Sydney on 8 March. However, within 24 hours of embarkation, the 22 February Enhanced Procedure was replaced by the 9 March Enhanced Procedure.

12.17 Given the update implemented on 9 March, the main requirement of importance in the 22 February Enhanced Procedure related to medical supplies, and in particular the supply of viral swabs. The 22 February Enhanced Procedure advised cruise ships that they should "ensure that they have sufficient supplies of materials to manage a respiratory outbreak on board". While viral swabs were not specifically mentioned, there is no doubt it was understood that ships needed sufficient supplies for use on passengers exhibiting ARI or ILI symptoms during the cruise.

11 Exhibit 103, Statement of Johanna Bosman (30 June 2020).

12 Exhibit 103, Statement of Johanna Bosman (30 June 2020) [23].

13 Exhibit 103, Statement of Johanna Bosman (30 June 2020) [25].

14 Exhibit 103, Statement of Johanna Bosman (30 June 2020) [28]. See also [7.5]-[7.13].

15 Exhibit 29, Annexures to the NSW Health Witness Statements, Tab 23.

12.18 Underneath the heading "Reporting requirement to NSW Health" the following requirement was in place:

> "**At least 24 hours before arrival of port** – each cruise ship vessel should ensure that the following information is provided to NSW Health:
>
> …
>
> - Number of swabs collected for COVID-19 testing. If respiratory swabs are collected during a cruise (i.e. for rapid flu testing) please store at fridge temperature so they can be taken for COVID-19 testing."

12.19 One curiosity with this requirement was that no indication was given as to when, and in what circumstances, passengers or crew should be swabbed for COVID-19 testing. The second page of the 22 February Enhanced Procedure contained a heading "Pre-arrival preparations for Health Screening". Thereafter was a series of requirements to be followed if NSW Health was to conduct "enhanced health screening for COVID-19" following the ship docking in a Sydney port. That is, these requirements were outlined in circumstances where a medium or high risk assessment had been made. In this section of the 22 February Enhanced Procedure, requirements were laid out concerning the collection of nasopharyngeal swabs, including the collection of two viral swabs: one for rapid influenza testing onboard and the other to be stored in a refrigerator "in preparation for disembarkation and COVID-19 testing".

12.20 It seems odd that the procedure did not outline that respiratory swabs for the purposes of later COVID-19 testing should be taken from passengers and crew at least in circumstances where they presented to the medical centre at any stage during the cruise with symptoms of ILI. Without better guidance as to when swabs should be taken, it was no doubt difficult for the ship to know how many swabs it should have on board. Nevertheless, the evidence reveals that Dr von Watzdorf was making attempts to source swabs, and was provided with a box of 25 by NSW Health during the course of its health assessment onboard the Ruby Princess on 8 March.

12.21 The 22 February Enhanced Procedure also contained this requirement:

> "Cruise ship vessel staff should ensure that:
>
> - They actively identify and [sic] passengers or crew with respiratory symptoms (cough, sore throat, fever or difficulty breathing) and ask them to attend the medical centre for free assessment and management 12-24 hours before arrival".

12.22 Following comments made by Carnival about the 22 February Enhanced Procedure, stating that it did not consider it was necessary to advise passengers that any health assessment for respiratory illness would be for "free", this requirement was modified in the 9 March Enhanced Procedure.[16]

12.23 In the 9 March Enhanced Procedure, cruise ship staff were required to ensure that:

> "They actively identify passengers and crew with acute respiratory illness (ARI) – including cough, sore throat, fever or difficulty breathing – by making regular announcements throughout the cruise, inviting them to attend the clinic for assessment."

12.24 What was deleted from this further version was the requirement that the assessment be for "free", although the 9 March Enhanced Procedure contained the following:

> "…cruise companies are also requested to consider making medical assessment for ARI/ILI free to passengers as well as crew. Ships not providing free consultations are at greater risk of being considered at risk for COVID-19 as ARI/ILI cases may be less likely to have been identified".[17]

12.25 It is perhaps debateable whether the requirement to make "regular announcements throughout the cruise" was complied with on the 8 March voyage of the Ruby Princess. The evidence established that it was not until the penultimate full day of the voyage (17 March) that the Cruise Director made an onboard announcement inviting any passenger with respiratory symptoms to attend the medical centre.[18] However, at the commencement of the cruise on 8 March, a notice signed by Dr Tarling was placed in every cabin which reminded passengers of certain hygiene matters (washing hands regularly, avoiding close contact with people with respiratory illness etc), and also contained the following:

> "if you experience any symptoms of respiratory illness which may include fever or feverishness, chills, cough, or shortness of breath, please contact the medical centre".[19]

12.26 Although neither the form left in passenger's cabins on 8 March, nor the onboard announcement made on 17 March, mentioned that assessment for respiratory illness would be free of charge, (which was the matter of most significance to the public health physicians of NSW Health), passengers ultimately did not pay for any assessment at the medical centre for symptoms of respiratory illness. The process appears to have been that they were invoiced, but then refunded the cost for the assessment on that invoice.[20] To the extent that this did not occur promptly on every occasion, it was submitted that this was in the nature of administrative error or oversight.[21]

16 Exhibit 29, Annexures to the NSW Health Witness Statements, Tab 44.

17 Exhibit 29, Annexures to the NSW Health Witness Statements, Tab 44.

18 Exhibit 85, Announcements onboard during Ruby Princess cruise from 8-19 March 2020.

19 Exhibit 75, Health advisory: Coronavirus, signed by Dr Grant Tarling; Exhibit 91, Statement of Janette Moore (14 April 2020), Annexure 5.

20 Exhibit 78, Folio C518 of Mrs J Roope.

21 Written submissions on behalf of Princess Cruise Lines and Carnival (13 July 2020) [97].

Swabs

12.27 In the 9 March Enhanced Procedure, cruise ships were expressly required to ensure that they had sufficient supplies of "sterile transport swabs for respiratory sample collection". Of course, by the time the 9 March Enhanced Procedure came into force, the Ruby Princess had departed Sydney for its cruise to New Zealand. The 9 March Enhanced Procedure was also updated in relation to advice given to ships as to when to take respiratory swabs from passengers. It included the following:

> "for all people with influenza like illness (ILI) AND those with acute respiratory illness (ARI) with a history of travel to countries on the Australian list of countries at risk of COVID-19 transmission, two swabs - one nasopharyngeal swab and one oropharyngeal swab should be collected and stored in the fridge for possible SARS-COV-2 testing using droplet precautions. A further swab should be collected for rapid influenza virus testing onboard."[22] (The list of countries at risk were mainland China, Iran, Italy, South Korea, Cambodia, Hong Kong, Indonesia, Japan, Singapore, and Thailand).

12.28 This requirement has been discussed in Chapter 9. Although not free from doubt, the Commissioner has interpreted this requirement to mean that the words "with a history of travel to countries … at risk of COVID-19 transmission" relate only to those people with an ARI, not an ILI. Of course, by 10 March, the words "with a history of travel to countries…" became redundant. All international travel accompanied by symptoms of an ARI fell within the "suspect case" definition of COVID-19 set out in the updated guidelines published by the Communicable Diseases Network of Australia on 10 March (**CDNA Guidelines**), not just those with the more specific travel history set out above. However, no change was made by NSW Health to the 9 March Enhanced Procedure to reflect this development.

12.29 It would seem that this requirement was complied with, as far as the number of swabs onboard the ship permitted. The pre-arrival risk assessment form sent to the NSW Health Expert Panel (**Expert Panel**) on 18 March indicated that there were ten swabs available for COVID-19 testing,[23] although there were 13 in fact, including one each from the two passengers who were medically disembarked from the ship and transported to the Royal Prince Alfred Hospital on the morning of 19 March. Those chosen to be swabbed had all tested negative for Influenza A and B. Whether the ship had enough swabs on board is discussed below.

22 Exhibit 29, Annexures to the NSW Health Witness Statements, Tab 24.

23 Exhibit 29, Annexures to the NSW Health Witness Statements, Tab 50.

ARD Log

12.30 The 9 March Enhanced Procedure required the Ruby Princess to create an Acute Respiratory Diseases Log (**ARD Log**) for the cruise, which included "details of patients presenting with fever OR ARI OR both, a list of countries they had visited in the 14 days prior to illness onset, and results of rapid influenza testing".[24] The 9 March Enhanced Procedure required the ARD Log to be provided to NSW Health at least 24 hours before the ship's arrival at port. In the case of the 8 March voyage, it was requested to be provided by 9:00am on 18 March. The creation and maintenance of the ARD Log, and its provision 24 hours prior to the ship arriving at port, were complied with by the Ruby Princess. However, the ARD Log provided to NSW Health at 9:38am[25] on 18 March only contained information in relation to passengers and crew diagnosed with an ARI or ILI up to and including 17 March. On the morning of 20 March, approximately 24 hours after passengers had disembarked, an updated ARD Log (**the 20 March ARD Log**) was provided by Dr von Watzdorf to NSW Health.[26] Nevertheless it is unarguable that the ship complied with the requirements of the 9 March Enhanced Procedure, and that Dr von Watzdorf responded to all questions posed of her in an email sent by NSW Health on 17 March, the details of which are set out in Chapter 8 at [8.9].

Requirement to isolate

12.31 The 9 March Enhanced Procedure also required the ship's staff to "ensure that:

> ...
>
> - Passengers with ARI/ILI who may be infectious are appropriately isolated, and provided with alcohol hand rub and face mask. If sharing a cabin, please also provide roommates with alcohol hand rub and face masks, and educate on how to protect themselves."

12.32 Read literally, this would appear to be a requirement that would see all passengers suffering from ARI isolated in their cabins. This would include passengers who could be described as having, colloquially, a "sniffle". Dr von Watzdorf did not read this requirement literally. She explained in her evidence that passengers and crew who were required to isolate were those that met the "ILI criteria".[27] Those passengers and crew who were required to isolate had their temperature checked over a 24 hour period, and if they no longer had fever, they were released from isolation.[28]

24 Exhibit 29, Annexures to the NSW Health Witness Statements, Tab 44.

25 Exhibit 16, Statement of Kelly-Anne Ressler (1 May 2020) [67], Annexure KAR-11.

26 Exhibit 16, Statement of Kelly-Anne Ressler (1 May 2020) [95], Annexure KAR-20.

27 Transcript of the Commission, 22 April 2020 T37.5-6.

28 Transcript of the Commission, 22 April 2020 T37.17-32.

12.33 Dr von Watzdorf's interpretation of this requirement is reasonable. The enhanced procedure are not to be read or construed as though they are legislation. The words "appropriately isolated" tend to indicate that an element of clinical judgment is not only allowed, but desirable. This was confirmed by Dr Sheppeard in her evidence to the Commission, where she explained (in relation to the draft Standard Operating Procedure with respect to identical wording) that the words "appropriately isolated" were designed to give discretion to the ship's doctor about which ill people needed to be isolated, consistent with the observation above that isolation may not be appropriate for someone with very mild symptoms, particularly if due to another known cause. The isolation of passengers with respiratory symptoms absent fever was a matter appropriately left to the discretion of the ship's doctor,[29] at least until 10 March. After that date, passengers on the ship with even an ARI fell within the definition of a "suspect case" of COVID-19. This meant, under the CDNA Guidelines, they should be tested for the disease. As discussed below, as arbitrary as it might seem, this changed how passengers and crew exhibiting symptoms of an ARI should be treated.

Additional communication between NSW Health and Ruby Princess

12.34 Beyond the provision of the ARD Log and answering the questions set out in Chapter 8 at [8.9], Dr von Watzdorf and Ms Ressler exchanged information via WhatsApp during the course of the cruise. Some of these messages of relevance are set out at [8.20]. Dr von Watzdorf and Mr Ressler also exchanged emails on 14 and 15 March, which are of some significance, and are relevantly in the following terms:

> 14 March (3:04pm) Ruby Senior Doctor to Ms Ressler: "I wanted to ask - do you want me to keep you updated as we have respiratory cases present onboard, every few days, or do you prefer for us to update you only in the days prior to arrival? We obviously have a few cases of the sniffles and Influenza A again, as before, but nothing I am currently concerned about clinically in terms of COVID19"
>
> 14 March (5:55pm) Ms Ressler to Ruby Senior Doctor: "We are happy for you to stay in touch if you have concerns. Otherwise we will collect information prior to your arrival."
>
> 15 March (18:57pm) Ruby Senior Doctor to Ms Ressler: "Where we are at the moment … It seems we are in the early phases of an Influenza A outbreak onboard. Luckily they seem to all be presenting within 24-36, (some 48) hours. … So far, all except 1 febrile patient, are Influenza A positive. The febrile patient (and 4 others that were febrile at the time, and confirmed Influenza A) were tested for Coronavirus in Wellington yesterday – all 5 tests were negative for COVID-19 … Here is our current epi-curve...".[30]

12.35 Professor Ferson's gave evidence that he thought Ms Ressler did pass onto him Dr von Watzdorf's comment that on 15 March she thought the ship was in the "early phases of an Influenza A outbreak".[31]

29 Exhibit 53, Statement of Dr Vicky Sheppeard (9 June 2020) [30].

30 Exhibit 50, Email exchange between Ruby Senior Doctor (Dr Ilse von Watzdorf) and Ms Kelly-Anne Ressler (15 March 2020).

31 Transcript of the Commission, 15 June 2020 T1269.1.

Project Gladiator

12.36 Peter Little is the Senior Vice President, Guest Experience, for P&O Cruises, one of the four brands of the HAG. He is based in Sydney.[32] He is an employee of Carnival.[33]

12.37 If being a Senior Vice President for a cruise line during a pandemic is not burden enough, on 11 March 2020, Mr Little was appointed as "Incident Commander" for the "Green Team", which was a team that was part of a broader kind of task force that someone in the HAG thought appropriate to name "Project Gladiator".[34]

12.38 Five incident command teams were formed as part of Project Gladiator. Each incident team was assigned a group of ships in the Princess Cruises and P&O fleet based on geographical location. The "Green Team" was based in Sydney and covered seven ships, including the Ruby Princess.[35] The incident command teams were formed "to manage any COVID-19 related issues or questions that arise from the fleet for any … locations".[36]

12.39 During the course of the 8 March voyage of the Ruby Princess, Mr Little drafted a series of "situation reports" commencing on 11 March 2020.[37] These reports were emailed to, amongst others, relevant personnel within the HAG, including Princess Cruises. He explained that these "SITREPs" were provided to him in template form,[38] with him then supplying details for various matters such as: the number guest or crew onboard who had presented with ILI; the number of swabs taken for COVID-19 testing; and summaries of reports from various departments such as Guest Operations and the Logistics/Care Team. Other details of significance, such as decisions of governments to close their borders, were also included.

12.40 Mr Little was also in communication with the staff onboard the Ruby Princess during the 8 March voyage, in the sense that he sent emails to the ship's captain, Commodore Pomata, to advise him of important developments, such as the decision to cut the cruise short on 15 March as a result of decisions of the Australian and New Zealand Governments to shut their respective borders.[39] Mr Little also sent emails to Commodore Pomata containing the script for onboard announcements concerning, for example, the curtailing of the cruise, and the fact that the ship would be departing New Zealand directly for Sydney on 15 March.[40]

32 Exhibit 92, Statement of Peter Little (26 June 2020) [1]-[4].

33 Transcript of the Commission, 26 June 2020 T1960.22.

34 Exhibit 92, Statement of Peter Little (26 June 2020) [39]-[43].

35 Exhibit 92, Statement of Peter Little (26 June 2020), Exhibit PWL-1 at p 62.

36 Exhibit 92, Statement of Peter Little (26 June 2020), Exhibit PWL-1 at pp 62-63.

37 Exhibit 92, Statement of Peter Little (26 June 2020), Exhibit PLW-1 at pp 60, 65, 72, 76, 129 and 142.

38 Transcript of the Commission, 26 June 2020 T2015.39.

39 Exhibit 92, Statement of Peter Little (26 June 2020), Exhibit PWL-1 at p 81.

40 Exhibit 92, Statement of Peter Little (26 June 2020), Exhibit PWL-1 at p 99, 134.

12.41 In one of his final situation reports, sent on 16 March, Mr Little explained that "the decision was made to abort the remainder of the itinerary and return the ship [the Ruby Princess] to the home port of Sydney. We are working on pulling the arrival forward to March 19 … Guests were informed this evening via a Commodore's announcement".[41]

12.42 On 17 March, Mr Little sent an email to various people within Carnival and Princess Cruises which contained as follows:

> "Ruby Princess
>
> On route to Sydney ETA, 0630 19/03
>
> **Ship has seen a significant spike in ARI & ILI cases in the past few days**
>
> Last 48 hours ILI – 13
>
> Total count ILI – 30 ARI – 70
>
> **It is likely that the NSW PH unit will classify the ship as Medium to High risk** on arrival and so this may slow the disembark process as secondary medical screening will almost certainly apply.
>
> Therefore, onward travel arrangements could be affected….[a]s a precautionary measure, sourcing Hotel rooms has been completed should onward travel be affected".[42] (emphasis added)

12.43 Mr Little's assumption that the ship would be classified as "medium to high risk" was misplaced, although his judgment (albeit a non-medical judgment) was not. In any event, Mr Little's comments about the "significant spike" in respiratory illness on the ship preceded a text message sent to him by Greg Jackson (also an employee of Carnival), who messaged Mr Little on 17 March to advise:

> "also Ruby numbers gone Berserk in last 48 hrs. I took my eyes of the game yesterday".[43]

41 Exhibit 92, Statement of Peter Little (26 June 2020), Exhibit PWL-1 at p 131.

42 Exhibit 92, Statement of Peter Little (26 June 2020), Exhibit PWL-1 at p 158.

43 Exhibit 105, Text messages exchanged between Peter Little and Greg Jackson (17 March 2020).

Specific issues

Swabs

12.44 For its 8 March voyage, the Ruby Princess had fewer swabs onboard than became needed. At a minimum, under the 9 March Enhanced Procedure, all 36 passengers who were identified as having an ILI on the earlier ARD Log should have had viral swabs taken for COVID-19 testing. The ship's 20 March ARD Log indicated that 48 passengers had been diagnosed with an ILI; those additional passengers should have all been swabbed for COVID-19 testing. Further, had the revised definition for a "suspect case" of COVID-19 under the CDNA Guidelines been recognised by the ship's medical team, all persons on the ARD Log (101 on 18 March and 120 on 20 March) should have had viral swabs taken.

12.45 The issue to be determined is whether the ship failed to ensure it had enough swabs onboard for the COVID-19 testing required under the 9 March Enhanced Procedure.

12.46 Commencing at [63] of his statement,[44] Dr Tarling has provided evidence to the Commission of HAG's system of logistics supply, known as "Crunchtime", and also the attempts made by Dr von Watzdorf to obtain swabs for the ship from 28 February. As a consequence, the following is established:

a) On 28 February, Dr von Watzdorf placed an "urgent" order for 30 viral swabs on the Crunchtime system.

b) Also during the 24 February voyage of the Ruby Princess, Dr von Watzdorf attempted to obtain additional swabs in New Zealand, but could only obtain six.

c) On 7 March, Dr von Watzdorf placed a further order for another 40 swabs on the Crunchtime system.

d) On the same date, Dr von Watzdorf sent an email to Dr Sheppeard asking where she could procure more swabs. She sent a further email to Ms Ressler asking for additional swabs. Ms Ressler indicated that any swabs not used during the 8 March health assessment would be left with the ship, but that Dr von Watzdorf should otherwise find a means of obtaining more swabs. Dr von Watzdorf indicated in her response to Ms Ressler that the delivery time for her urgent orders on the Crunchtime system was about two to four weeks.

12.47 As has been outlined in Chapter 7 at [7.36], the Ruby Princess had an independent stock of 27 viral swabs when it departed Sydney on 8 March, in additional to a separate supply of rapid influenza testing kits, each of which contained a viral swab.[45]

44 Exhibit 106, Statement of Dr Grant Tarling (29 June 2020).

45 Written submissions on behalf of Princess Cruise Lines and Carnival (13 July 2020) [135].

12.48 On 9 and 10 March, Dr von Watzdorf asked another medical staff member to ascertain when they could expect to receive their requested medical supplies. It would appear that arrangements were made for these supplies to be delivered by air freight in Auckland, which were to be collected by the ship when it docked there on 17 March. Unfortunately, the ship never made it to Auckland and had, by that date, already commenced its return journey to Sydney. Thus, on 15 March, Dr von Watzdorf sought to have the shipment of viral swabs re-routed to Sydney.

12.49 How many viral swabs a ship would need for the purposes of COVID-19 testing on any cruise in accordance with the 9 March Enhanced Procedure was not capable of being known in advance to a numerical certainty. It was always uncertain how many passengers and crew would become relevantly symptomatic to warrant being tested for COVID-19. Relying on what he refers to as the "standard cruise industry public health definitions", and prior data in relation to the percentage of passengers and crew diagnosed with ILI on cruise ships over a four year period, Dr Tarling expressed the view that the number of viral swabs available on the Ruby Princess for COVID-19 testing, plus the additional influenza test kits containing a separate viral swab, "was reasonable to meet the requirements of the NSW Health Protocol dated 22 February 2020 when the ship left Sydney on 8 March 2020".[46]

12.50 In the circumstance of a growing global health concern (noting that a pandemic had not yet been declared on 8 March when the Ruby Princess left Sydney) the stocking on board of more swabs than might normally be needed would have been prudent, particularly in light of the enhanced procedures requiring swabs to be taken for COVID-19 testing. Nevertheless, the chronology of facts outlined in Dr Tarling's statement revealed that genuine attempts were made by Dr von Watzdorf to obtain what she thought would be a sufficient number of swabs for COVID-19 testing. No criticism is made of her in relation to the number of swabs onboard when the Ruby Princess departed Sydney on 8 March. After the ship departed Sydney on 8 March, Dr von Watzdorf continued to follow up the prior order she made for delivery of swabs in an appropriate manner.

12.51 The pre-arrival risk assessment form of 18 March informed the Expert Panel that despite there being 36 passengers on board diagnosed with an ILI, only ten viral swabs were available for COVID-19 testing.[47] At that point, the Ruby Princess was only one day away from its arrival in Sydney. It was open to NSW Health to board the ship on the morning of 19 March, prior to passengers disembarking, with enough swabs to test all persons on board with an ILI and ARI. That should have happened. The responsibility for that rests with NSW Health, not with Princess Cruises.

46 Exhibit 106, Statement of Dr Grant Tarling (29 June 2020) [67].

47 Exhibit 29, Annexures to the NSW Health Witness Statements, Tab 50.

"Free" health assessment

12.52 In the email Dr von Watzdorf sent to NSW Health at 9:38am on 18 March 2020,[48] she responded "No" to the question "Please advise if your medical centre is charging a fee for respiratory consultations".[49]

12.53 This response found its way into the pre-arrival risk assessment form, which relevantly provided:

> "Is assessment free of charge? **Yes - confirmed by Doctor**".[50]

12.54 Carnival has made a submission to the Commissioner, relying on an "understanding" of Dr Tarling,[51] that passengers were told when presenting to the medical centre with a respiratory illness that an automatic charge recorded on their cruise account would be reversed at checkout.[52] For some passengers this occurred; for others it did not. Records provided to the Commission showed that some passengers who attended the medical centre with respiratory symptoms were not charged for their assessment. To the extent that a charge for such an assessment was recorded, and not refunded immediately upon disembarkation, Carnival submits that the reason for this was "that either there was a belief by the medical staff at the time that the consultation covered more than a basic respiratory illness screening, or an administrative error by the medical staff of failing to direct a customer services officer to process the reversal".[53] Whatever the case may be, it is accepted that Dr von Watzdorf thought such a charge was being reversed for assessment of respiratory illness, and hence she answered the question directed to her truthfully.

"Significant spike" in ARI/ILI cases

12.55 During the course of his evidence, Mr Little was asked about Mr Jackson's text message to him (concerning the Ruby numbers going "berserk"), and about his 17 March email indicating the "significant spike" in ARI/ILI cases on the Ruby Princess.

12.56 Mr Little was asked if he should have ensured NSW Health was made aware of the "significant spike". Mr Little conceded that "in hindsight it was – it was something I could have – I could have done".[54]

48 The entire email is set out in Chapter 8 at [8.9].

49 Exhibit 16, Statement of Kelly-Anne Ressler (1 May 2020) [67], Annexure KAR-11.

50 Exhibit 29, Annexures to the NSW Health Witness Statements, Tab 48.

51 Exhibit 106, Statement of Dr Grant Tarling (29 June 2020) [71].

52 Written submissions on behalf of Princess Cruise Lines and Carnival (13 July 2020) [97].

53 Written submissions on behalf of Princess Cruise Lines and Carnival (13 July 2020) [97].

54 Transcript of the Commission, 23 June 2020 T2031.6-7.

12.57 Mr Little is to be commended for his honesty. As the Incident Commander for the Green Team, he could have been expected to contact NSW Health about the "significant spike", or at a minimum, contact the HAG medical team in California and have them liaise with NSW Health. He could also have independently contacted Dr von Watzdorf to gain what insights and opinions she had about the significant spike in ARI/ILI cases on the ship. That is not to suggest he should have given medical advice, or needed to proffer any opinion about the numbers. Even "significant spike" is potentially laced with an observation or opinion Mr Little is not qualified to make. He could, though, have ensured that the raw data was known and considered by those with relevant expertise.

12.58 However, Mr Little's concession must be balanced against the provision of the ARD Log by the Ruby Princess on 18 March. While this log did not contain alarming phrases such as "numbers gone berserk" or "significant spike", its raw data, if examined with more than a fleeting glance, displayed the essence of these concerns to NSW Health. The 18 March ARD Log clearly showed the "significant spike" in ARI/ILI cases on the ship that Mr Little identified in his 17 March email; a matter he recognised later in his evidence.[55] When all the evidence is considered – but in particular, the provision of the ARD Log by the ship to NSW Health – no criticism should be made of Mr Little that he did not contact NSW Health regarding his own observations of the rate of ARI/ILI on the ship, or that of Mr Jackson.

Suspect cases of COVID-19

12.59 As has already been addressed in Chapter 9 of this Report, the Expert Panel made a serious mistake in not recognising that there were more than 100 persons on board the ship who were suspect cases of COVID-19 under the revised definition contained in the CDNA Guidelines. Nor did Carnival.

12.60 Mr Little conceded that the ship's doctor should have been aware that all persons onboard with an ARI or ILI fell within the definition of a suspect case of COVID-19.[56]

12.61 After careful consideration, the Commissioner does not make any adverse finding against Dr von Watzdorf in relation to this. She was the senior doctor (of two) on a cruise ship carrying over 3,700 persons. It is reasonable to assume that the medical centre on the Ruby Princess was busy during the 8 March voyage. The change to the CDNA Guidelines for a "suspect case" of COVID-19 was made on 10 March, two days after the ship departed Sydney for New Zealand.

12.62 The Commissioner has previously found that NSW Health should have advised both Carnival and the ship of the change made on 10 March, and to make onboard announcements that there were suspect cases of COVID-19 onboard. Those suspect cases should have been required to isolate in their cabins.

55 Transcript of the Commission, 26 June 2020 T2041.31-2042.46.

56 Transcript of the Commission, 26 June 2020 T2033.24-44.

12.63 A similar finding is made against Carnival and Princess Cruises. Cruise line companies, with ships operating in foreign ports, can and should be expected during a pandemic to keep abreast of any relevant definitions of that particular disease. Carnival's medical team in the United States should have informed its fleet of ships travelling to and from Australian ports of the definition of a "suspect case" of COVID-19. Carnival should have advised Dr von Watzdorf of the definition of a "suspect case" of COVID-19 following 10 March.

12.64 In their written submissions, Carnival have said that the CDNA Guidelines "do not purport to be advice to the public on how to assess the risk of COVID-19 being present in any particular location, or on warnings that should be given to others",[57] and that they are "not advice to the operators of ships in international waters or warnings that should [be] given to passengers and crews of those ships."[58] That is true, but of itself does not mean no actions or decisions should have been taken by Carnival (and thereafter, those with relevant authority on board) in light of the new "suspect case" definition. By 17 March, 101 passengers on board the Ruby Princess fell within the "suspect case" definition of COVID-19. Under the CDNA Guidelines, they were persons who should be tested for the disease. This could not happen on board the ship. As a consequence, the decisions and actions Carnival should have taken were:

1) To advise the ship's senior doctor, Dr von Watzdorf, of the change to the CDNA Guidelines for a "suspect case" of COVID-19;
2) Have Dr von Watzdorf inform all those with ARI or ILI on the ship that they were considered "suspect cases" of COVID-19;
3) Announce to the other passengers on the ship that there were "suspect cases" of COVID-19 onboard; and
4) Have all suspect cases isolate in their cabins for the duration of the voyage.

12.65 It is true, as Carnival point out in their submissions, that neither NSW Health or the Commonwealth informed the ship or Carnival of the change to the "suspect case" definition on 10 March.[59] The Commission has found NSW Health should have done so. That, however, does not mean Carnival should not have made their own decision about this, and taken the actions outlined above.

57 Written submissions on behalf of Princess Cruise Lines and Carnival (13 July 2020) [108].

58 Written submissions on behalf of Princess Cruise Lines and Carnival (13 July 2020) [109].

59 Written submissions on behalf of Princess Cruise Lines and Carnival (13 July 2020) [111].

20 March ARD Log

12.66 Dr von Watzdorf was asked to provide an ARD Log to NSW Health on 9:00am on 18 March. She did this; that she was marginally late is a matter of no consequence to the Commission. That ARD Log contained details of persons on the ship with ILI (36) and acute respiratory disease (101 in total including those with ILI). Fifty-two of those persons had been diagnosed with an ARI or ILI on 17 March.

12.67 Because of the requirement to send the ARD Log by 9:00am on 18 March, it consequently had no information concerning passengers diagnosed with ARI/ILI after provision of the log (20 persons in total, including 13 with ILI). Dr von Watzdorf provided no information to NSW Health about those passengers, nor was she requested to. As has been addressed in Chapter 9 of this Report, the Commission has found that Dr von Watzdorf should have been requested by NSW Health to provide an updated ARD Log prior to disembarkation of the ship on the morning of 19 March.

12.68 No request was made by NSW Health for Dr von Watzdorf to supply any updated ARD Log after 9:00am on 18 March. Further, she was advised by about 5:00pm on 18 March that NSW Health would not be conducting a health assessment when the ship docked. This was a matter that surprised her (and Mr Little).

12.69 Dr von Watzdorf should have notified NSW Health late on the evening of 18 March, or sometime early in the morning of 19 March prior to passengers disembarking, of the 20 extra persons who had been diagnosed with an ARI/ILI. That a pandemic had been declared, and that NSW Health were concerned with the risk of COVID-19 circulating on cruise ships were matters well known to Dr von Watzdorf. She was aware from the request for the ARD Log that NSW Health was vitally interested in the numbers of passengers and crew with both ARI and ILI. She had a line of communication with NSW Health (Ms Ressler) via both email and WhatsApp. In the circumstances, she should have advised NSW Health late on 18 March of the additional persons diagnosed with ARI or ILI on 18 March, in case it made any difference to the decision made by the Expert Panel earlier that day to not board the ship for the purposes of a health assessment.

12.70 This is an oversight by Dr von Watzdorf. It should be emphasised as such, but no more. It was not something that was deliberate or calculated. It was not something she was asked or required to do under the enhanced procedures. Given the lengthy hours she was working, and the pressure she was no doubt under in the final stages of the cruise, it is understandable why it did not enter Dr von Watzdorf's mind to inform NSW Health about the additional persons who had been diagnosed with an ARI/ILI on 18 and 19 March. It also needs to be seen in the context of the fact that she expressly asked Ms Ressler in an email of 14 March whether NSW Health wanted her to keep it updated about "respiratory cases present on board, every few days" (see [12.34] above).[60] The response she received was "we will collect information prior to your arrival". In all the circumstances, Dr von Watzdorf's failure to inform NSW Health of the further number of passengers diagnosed with an ARI/ILI throughout the course of 18 and 19 March should be seen as no more than an unintended and inadvertent oversight.

12.71 Had Dr von Watzdorf advised NSW Health of the extra numbers of ARI/ILI cases diagnosed on 18 March (presumably by email or WhatsApp message to Ms Ressler) and had this information been conveyed to the Expert Panel prior to passengers disembarking, it is unclear whether any different decision would have been made. Professor Ferson may have contacted Dr von Watzdorf given the rise of ILI numbers above the 1% rule of thumb, but what may have transpired in truth is in the realms of unhelpful speculation.

60 Exhibit 50, Email exchange between Ruby Senior Doctor (Dr Ilse von Watzdorf) and Kelly-Anne Ressler (14 March 2020).

Key Findings

12.72 The Ruby Princess had fewer swabs on board when it departed Sydney on 8 March than it ultimately needed for testing under the 9 March Enhanced Procedure. No criticism is made, however, of Dr von Watzdorf in relation to her attempts to secure a supply of swabs for the ship either before or during the 8 March voyage.

12.73 Dr von Watzdorf's response to being asked whether health assessment for respiratory illness was "free" was truthful.

12.74 No criticism is made of Mr Little for not informing NSW Health of what he perceived as the "significant spike" in ARI/ILI numbers on the Ruby Princess on 17 March. The significant increase in numbers was conveyed to NSW Health by provision of the ARD Log.

12.75 Carnival should have ensured Dr von Watzdorf was made aware of the change to the CDNA Guidelines for a "suspect case" of COVID-19 on 10 March. Carnival should have ensured that passengers and crew on the ship were informed that there were suspect cases of COVID-19 on board. Those persons who fell within the suspect case definition should have been required to isolate in their cabins.

12.76 Dr von Watzdorf should have notified NSW Health of the additional passengers and crew diagnosed with an ARI/ILI on 18-19 March. This was an inadvertent oversight on her behalf, rather than a failure to comply with a requirement.

13

The Public Health Response After Disembarkation

Advice provided to passengers on 19 March 2020

Self-isolation

13.1 As has been detailed at Chapter 7 of this Report, all passengers were advised in the days leading up to the arrival of the Ruby Princess in Sydney on the morning of 19 March 2020 that they would be required to self-isolate for a 14-day period following their disembarkation. This advice stemmed from announcements made by the Prime Minister on 15 March 2020.

13.2 Passengers were initially provided with written advice prepared by the Australian Border Force (**ABF**),[1] which was accompanied by an onboard announcement made by Commodore Pomata on 16 March 2020.[2] The ABF's advice stipulated that the 14-day self-isolation period commenced from the date of departure from the last overseas port visited by a vessel.[3] In effect, this meant that passengers were directed to commence their self-isolation period from 15 March 2020, following the Ruby Princess's departure from Napier.

1 Evidence received by the Commission indicates this written advice was received by a number of passengers (see Exhibits 96 and 108).

2 Exhibit 85, Onboard announcements during Ruby Princess cruise from 8-19 March 2020.

3 Exhibit 92, Statement of Peter Little (26 June 2020) p 111.

13.3 By the time of disembarkation on the morning of 19 March 2020, however, it is apparent that the ABF's advice to passengers about self-isolation had been discarded by authorities. Alternatively, passengers were advised that they were required to self-isolate for 14 days from their arrival in Sydney. This updated requirement was communicated through a fact sheet for international travellers developed by the Commonwealth Department of Health,[4] which was provided to passengers by Department of Agriculture, Water and Environment (**DAWE**) staff and ABF officers following their disembarkment at the Overseas Passenger Terminal (**OPT**) in Sydney.[5] According to Mr Ozger, a Senior Border Force Officer who attended the OPT on the morning of 19 March 2020, passengers were also advised of the updated self-isolation requirements during onboard announcements made prior to their disembarkation.[6]

13.4 The Commonwealth stated that the ABF's advice for cruise ship passengers was prepared in consultation with DAWE and drafted on the basis of advice from the Commonwealth Department of Health as at 17 March 2020.[7] If that is accepted, it is difficult to comprehend how any inconsistency arose between the directions given to passengers about the commencement of their mandatory self-isolation periods. This is particularly so in circumstances where the Commonwealth Department of Health fact sheet for international travellers had been published on 15 March 2020 and clearly directed that "all travellers must isolate for a period of 14 days after they have entered Australia".[8]

13.5 Notwithstanding those inconsistencies, it was well-understood by many passengers who gave evidence before the Commission that they were required to undertake a period of self-isolation following disembarkation on 19 March 2020. Percy Anderson and William Wright both recalled during their evidence that they had received the Commonwealth Department of Health fact sheet for international travellers as they disembarked at the OPT.[9] Similarly, Graeme Lake stated that he was "well aware" of the requirement to go into self-isolation after disembarking from the ship.[10] Other passengers, such as Lynda De Lamotte, were aware of the requirement to self-isolate, although she and her husband understood the instructions consistently with the ABF advice provided to passengers during the voyage.[11]

4 Exhibit 114, Voluntary Statement of the Commonwealth of Australia (12 June 2020), Document 14.

5 Exhibit 114, Voluntary Statement of the Commonwealth (12 June 2020) [170].

6 Exhibit 114, Voluntary Statement of the Commonwealth of Australia (12 June 2020), Document 76.

7 Exhibit 119, Voluntary Submission of the Commonwealth (16 July 2020) [56].

8 Exhibit 114, Voluntary Statement of the Commonwealth of Australia (12 June 2020), Document 14.

9 Transcript of the Commission, 19 June 2020 T1626.41-42; 22 June 2020 T1713.23-26.

10 Transcript of the Commission, 19 June 2020 T1639.8.

11 Transcript of the Commission, 22 June 2020 T1798.16-20.

13.6 It is beyond doubt that there was advice provided to passengers, both during the later stages of the cruise and following their disembarkation in Sydney, directing that they would be required to self-isolate after returning home. Nonetheless, the documents produced to the Commission have shown there were significant discrepancies between the instructions distributed by the ABF and the Commonwealth Department of Health fact sheet provided to passengers as they disembarked at the OPT on 19 March 2020. Ideally, passengers should have always been instructed to self-isolate for 14 days following their arrival in Sydney, consistent with the announcement made by the Commonwealth Government on 15 March 2020 and the ensuing Public Health Order made by the NSW Minister for Health the following day.[12]

13.7 While those discrepancies do not appear to have had deleterious public health consequences, insofar as passengers were at least aware of the need to self-isolate after disembarking, undoubtedly the inconsistent messaging would have added to the sense of confusion felt by many passengers, particularly in what was already an uncertain and chaotic return journey.

Onward domestic and international travel

13.8 Onward travel, both domestically and internationally, was a reality for most passengers on board the Ruby Princess.[13] Accordingly, in addition to directions about self-isolation, passengers were also provided with guidance about onward travel after their arrival in Sydney on the morning of 19 March 2020. During the voyage, the ABF's advice in relation to onward travel was as follows:

- Australian passengers with domestic connections were permitted to travel to the airport for their flight. Where they were not heading directly to the airport for their flight, they were required to self-isolate in their hotel or other accommodation in the interim; and
- International passengers with onward connections were permitted to complete their onward travel, irrespective of whether they had booked a domestic or international connection. Those passengers were also required to self-isolate until travelling to the airport for their return home.[14]

12 *Public Health (COVID-19 Public Events) Order 2020*.

13 Of the 2,647 passengers on board the Ruby Princess when it arrived in Sydney on the morning of 19 March 2020, approximately 965 (36%) resided internationally, while approximately 727 (27%) of the 1,682 Australian passengers resided outside NSW.

14 Exhibit 92, Statement of Peter Little (26 June 2020) p 111.

13.9 On 16 March 2020, Commodore Pomata relayed that advice to passengers during an onboard announcement, informing them that onward domestic and international travel had been permitted by the Commonwealth Government, although passengers would be required to self-isolate until they travelled to the airport for their return home.[15] Behind the scenes, senior executives from Carnival Australia (**Carnival**) were less certain of the position on onward travel. A situational update sent by Peter Little at 9:11am on 17 March reported:

> "For ships that are coming from foreign ports, and that require pax and crew to self-quarantine, we think that passengers will be allowed to directly transfer to both domestic and international airports for onward travel home. This is a key point that we are seeking clarification on."[16]

13.10 A further update sent by Mr Little at 6:52pm confirmed that onward travel arrangements had been re-booked in anticipation of the ship's earlier arrival in Sydney on 19 March. However, Mr Little also indicated that "as a precautionary measure, sourcing Hotel rooms has been completed" in the event that onward travel arrangements were affected. Those precautions appear to have been adopted because of an expectation that disembarkation would be delayed while NSW Health conducted a screening of the ship.[17]

13.11 NSW Health officials were equally uncertain as to the advice given to passengers about onward domestic and international travel as at disembarkation on 19 March. Dr Christine Selvey gave evidence that she was not explicitly aware that the ABF had advised passengers that they were permitted to onward travel,[18] although she understood that was the policy at the time for international travellers who were not identified as close contacts of a confirmed COVID-19 case.[19]

13.12 The Commonwealth Department of Health fact sheet provided to passengers at the OPT was even less clear about onward travel. While it provided that domestic transits could be completed prior to the commencement of their 14-day self-isolation period, the document was silent in relation to onward international travel.[20] Given the Commonwealth stated that this fact sheet had been issued to all incoming passengers (at airports and vessels) by DAWE since around 26 January 2020,[21] it is curious that the fact sheet did not contemplate international cruise ship passengers and no advice was tailored to that effect.

15 Exhibit 85, Onboard announcements during Ruby Princess cruise from 8-19 March 2020.

16 Exhibit 92, Statement of Peter Little (26 June 2020) pp 142-146.

17 Exhibit 92, Statement of Peter Little (26 June 2020) pp 158-160.

18 Transcript of the Commission, 29 June 2020 T2077.18.

19 Transcript of the Commission, 29 June 2020 T2077.26-28.

20 Exhibit 114, Voluntary Statement of the Commonwealth (12 June 2020), Document 14.

21 Exhibit 119, Voluntary Submission of the Commonwealth (16 July 2020) [36].

13.13 It should be observed that this advice had not been updated to consider or comply with the terms of the Public Health Order made by the NSW Minister for Health on 16 March. That Public Health Order, which came into effect on 17 March, required any person entering NSW within 14 days of visiting any other country to isolate themselves in suitable accommodation for 14 days.[22] The only persons exempted from that requirement were: (a) a person arriving in NSW as a member of a flight crew; or (b) a person arriving in NSW at an airport and who does not leave the airport before departing NSW.[23] On that basis, it would appear that all onward domestic and international travel by Ruby Princess passengers from 19 March onwards was prohibited by the Public Health Order enforced in New South Wales (**State**). It follows that suitable accommodation should have been arranged by the State Government to enable those passengers to complete their mandatory 14-day self-isolation period in the State prior to any onward travel.

13.14 Regardless, as has already been observed during the public proceedings of the Commission, onward travel would invariably have been prevented from 19 March had the testing of passengers for COVID-19 been completed prior to disembarkation, given the presence of the disease on the ship would have been known by State and Commonwealth authorities.[24] In that respect, it is clear the position of NSW Health with respect to onward travel by passengers rapidly evolved as soon as cases of COVID-19 were confirmed on the ship. This evolution is discussed in further detail below, in the context of NSW Health's attempts to contact passengers from 20 March onwards.

22 *Public Health (COVID-19 Public Events) Order 2020* s 5(1).

23 *Public Health (COVID-19 Public Events) Order 2020* s 5(2).

24 Transcript of the Commission, 18 June 2020 T1573.27-28.

Events following detection of COVID-19 on the Ruby Princess

Confirmation of COVID-19 positive cases

13.15 As has already been outlined at Chapter 7 of this Report, at approximately 3:00am on 19 March 2020, 13 swabs were taken off the Ruby Princess and delivered to the South Eastern Area Laboratory Services (**SEALS**) of NSW Health Pathology for COVID-19 testing.[25] This included swabs taken from Lesley Bacon and Anthony Londero, who were medically disembarked from the ship and transported to Royal Prince Alfred Hospital (**RPA**). Dr Ilse von Watzdorf gave evidence that it had been decided during discussions with the Public Health Unit of the South Eastern Sydney Local Health District (**SES PHU**) that the swabs should be kept together to ensure they were not lost and also because, in her impression, the SEALS testing pathway might be faster.[26]

13.16 Kelly-Anne Ressler said it was her expectation that the swabs would be tested with the 10:00am run and results would be available by 4:00pm on 19 March.[27] Shortly before 4:00pm, Ms Ressler logged into the online pathology system and discovered that the swabs taken from the Ruby Princess had still not been tested. At that point, Ms Ressler telephoned SEALS and was advised by a laboratory technician that the swabs would be put on the next run, meaning that they would be tested at some stage overnight on 19-20 March.[28] Ms Ressler was not in a position to explain the cause of the delay to the Commission, although she understood that the SEALS technician was unaware that the samples belonged to cruise ship passengers, with the result that their analysis had not been expedited. Ms Ressler also conceded that the samples had not been marked as a priority in recognition of the ship's assessment as low risk.[29]

25 Transcript of the Commission, 6 May 2020 T504-506.

26 Transcript of the Commission, 22 April 2020 T28.42-29.9.

27 Transcript of the Commission, 5 May 2020 T446.15.

28 Exhibit 16, Statement of Kelly-Anne Ressler (1 May 2020) [91].

29 Transcript of the Commission, 5 May 2020 T447.12-15.

13.17 Separate to the swabs taken off the Ruby Princess, two further samples were taken from Mrs Bacon and Mr Londero following their admission at RPA on the morning of 19 March. Those samples were identified as positive for COVID-19 in an email sent by NSW Health Pathology at 9:04pm on 19 March.[30] However, for reasons that are not clear to this Commission, the notification provided by NSW Health Pathology and the subsequent handover prepared by Camperdown Public Health Unit medical staff did not identify either Mrs Bacon or Mr Londero as patients who had been admitted as passengers from a cruise ship. Further, and in any event, the Commission was informed that the email confirmation sent by NSW Health Pathology was not reviewed until the following day.[31]

13.18 In those circumstances, confirmation that Ruby Princess passengers had tested positive to COVID-19 did not ultimately occur within NSW Health until the morning of 20 March. At around 8:30am, Ms Ressler logged back into the online results system and confirmed that three swabs had tested positive to COVID-19. Ms Ressler immediately notified Dr Vicky Sheppeard, who in turn notified Dr Sean Tobin and Professor Mark Ferson and took steps to alert NSW Health's Public Health Emergency Operations Centre (**PHEOC**).[32]

13.19 At 10:26am, Ms Ressler emailed Dr Grant Tarling, the Chief Medical Officer for Carnival Cruise Line, attaching the passenger swab results received from SEALS earlier that morning. Ms Ressler indicated to Dr Tarling that the three positive results came from two passengers and one crew member (a buffet steward). For reasons that are not clear to this Commission, the SEALS results for Mr Londero were not properly uploaded and he was not immediately identified as one of the COVID-19 positive passengers.

13.20 However, by 5:23pm on the afternoon of 20 March, Professor Ferson advised in an email to the Port Authority of New South Wales that Mr Londero had been confirmed as the fourth COVID-19 positive passenger on the Ruby Princess.[33]

30 Exhibit 59, Email from Khoi Nguyen (NSW Health Pathology) sent at 9:04pm on 19 March 2020 re: "SARS testing after 3pm today".

31 Transcript of the Commission, 18 June 2020 T1579.31-32.

32 Exhibit 16, Statement of Kelly-Anne Ressler (1 May 2020) [92].

33 Exhibit 23, Statement of Sarah Marshall (22 April), Annexure O.

Locating the first positive COVID-19 passengers

13.21 At 8:56am on 20 March 2020, the PHEOC was notified by the SES PHU of the positive COVID-19 cases detected from passengers on the Ruby Princess. In an email to the PHEOC, Dr Sheppeard advised that the initial action of NSW Health would be to notify the infected passengers of their positive swab results and alert the affected Public Health Units (**PHU**) that residents within their Local Health District (**LHD**) had tested positive to COVID-19.[34]

13.22 One of the positive swab results was taken from Mrs Bacon, who had already been admitted to RPA and was by that stage becoming critically ill. Sadly, Mrs Bacon passed away some days later.

13.23 The other positive swab result was taken from Kim Walters, a resident of Tasmania who had travelled on the cruise with her husband, David Walters. At around 10:30am, Dr Selvey contacted Dr Mark Veitch, the Director of Public Health in Tasmania, to alert him of Mrs Walters' positive COVID-19 test.[35] Attempts were then made to locate Mr and Mrs Walters. As it turned out, the couple had stayed overnight at the Marriott Hotel in Sydney after disembarking the Ruby Princess on 19 March 2020 and were scheduled to fly back to Tasmania on the late morning or early afternoon of 20 March 2020.[36]

13.24 Mr and Mrs Walters departed the Marriott Hotel at 10:00am in a taxi bound for Sydney Airport. Approximately 45 minutes before boarding their flight, Mrs Walters received a call from NSW Health advising that she had tested positive to COVID-19. Mr and Mrs Walters were instructed to remain at the airport, before being escorted to an isolated area and transferred to RPA by an ambulance.[37]

13.25 Although the detection of Mrs Walters prior to her departure at Sydney Airport may well have prevented significant onward transmission of COVID-19, her discovery on 20 March can only be characterised as fortuitous, rather than the product of any close supervision of swabbed passengers conducted by NSW Health after disembarkment.

13.26 The plan initially formulated by the SES PHU following the risk assessment of the Ruby Princess on 18 March was to restrict all passengers who had been swabbed for COVID-19 from onward flight travel until their testing results were known.[38] However, there is no evidence before the Commission that suggests this plan was ever put into effect. Conversely, Mr Walters stated that he and his wife were free to disembark without any follow up or instructions to remain in isolation until their test results were known.[39]

34 Exhibit 58, Second Statement of Dr Jeremy McAnulty (15 June 2020), Annexure 1.

35 Exhibit 100, Statement of Dr Christine Selvey (22 June 2020) [22].

36 Exhibit 65, Statement of David Walters (25 April 2020) [45]-[46].

37 Exhibit 65, Statement of David Walters (25 April 2020) [48]-[50].

38 Exhibit 16, Statement of Kelly-Anne Ressler (1 May 2020), Annexure KAR-15.

39 Exhibit 65, Statement of David Walters (25 April 2020) [43]; Transcript of the Commission, 19 June 2020 T1660.18-19.

First communications sent to Ruby Princess passengers

13.27 At 9:30am on 20 March 2020, a teleconference between members of the PHEOC and the SES PHU was convened to discuss, *inter alia*, NSW Health's plan to communicate with all passengers about the positive COVID-19 cases detected on the ship.[40]

13.28 At 10:02am, Ms Ressler provided the PHEOC with a list of all passengers who had disembarked the Ruby Princess the previous day.[41]

13.29 At 10:46am, the PHEOC sent an email to all passengers[42] advising them that there were confirmed cases of COVID-19 on the Ruby Princess and, as a result, all passengers were now considered a "close contact". Passengers were advised to immediately contact health authorities or seek medical attention if they developed any symptoms of COVID-19. Passengers were also asked to confirm that they had received the email by sending a separate email to another NSW Health email address.[43]

13.30 Between 11:43am and 12:12pm, the PHEOC also sent an SMS message to all passengers.[44] The SMS message was an abbreviated form of the earlier email sent by the PHEOC, advising passengers that they were required to remain in home isolation until 2 April 2020.[45] According to NSW Health's records, only 37% of the SMS messages sent were successfully transmitted. A second SMS message was subsequently sent to passengers between 3:38pm and 4:05pm, with an identical success rate.[46]

13.31 In a statement provided to the Commission, Dr Jeremy McAnulty attributed the limited success rate of the SMS messages to two factors. First, the system used by NSW Health was unable to send SMS messages to international mobile numbers. Second, the guest contact list provided to NSW Health by Carnival Australia excluded the "0" at the commencement of many passenger mobile numbers, resulting in incomplete contact data being entered into the system.[47]

40 Exhibit 58, Second Statement of Dr Jeremy McAnulty (15 June 2020) [20].

41 Exhibit 58, Second Statement of Dr Jeremy McAnulty (15 June 2020), Annexure 2.

42 The email distribution utilised NSW Health's account with Prodocom. This is a mass communication system that can send bulk emails, facsimile, SMS or voice messages to a customised contact list.

43 Exhibit 58, Second Statement of Dr Jeremy McAnulty (15 June 2020), Annexure 3.

44 Exhibit 58, Second Statement of Dr Jeremy McAnulty (15 June 2020) [20].

45 Exhibit 58, Second Statement of Dr Jeremy McAnulty (15 June 2020), Annexure 5.

46 Exhibit 58, Second Statement of Dr Jeremy McAnulty (15 June 2020) [20].

47 Exhibit 58, Second Statement of Dr Jeremy McAnulty (15 June 2020) [20].

Concerns about the authenticity of communications from NSW Health

13.32 According to NSW Health's records, 96.5% of the emails sent to passengers were successfully transmitted.[48] Many passengers who gave oral evidence before the Commission verified that they had received the initial email from the PHEOC.[49] However, because the email emanated from a generic account created by NSW Health, which was somewhat clumsily identified as the "Bunker",[50] some passengers recalled being sceptical about the veracity of the communications. The Commission heard from David Annesley that his mother-in-law, Helen Rhodes, had forwarded him a copy of the email because she thought it was fictitious and didn't feel comfortable responding.[51] Similarly, Ms De Lamotte stated that she was suspicious of the communications received from NSW Health and ignored many of them.[52]

13.33 Such concerns were also apparently echoed by NSW Health in a teleconference with officials from the Commonwealth Government and senior executives from Carnival on 22 March, during which Carnival agreed to distribute any further correspondence to passengers on NSW Health's behalf.[53] This ultimately occurred on the same day, when Carnival emailed all passengers attaching a letter signed by Dr Selvey.[54] The letter sought to confirm that passengers had received the email sent by the PHEOC on 20 March 2020 and relayed advice to the same effect.

13.34 Undoubtedly, the decision to engage Carnival to provide further communications to passengers would have been driven by a pragmatic concern to ensure that as many passengers as possible received, opened and accepted communications sent about cases of COVID-19 on the Ruby Princess. Nonetheless, it was disappointing to learn that the initial communications system utilised by the PHEOC caused some passengers to doubt the authenticity of vital information sent from NSW Health, particularly during such a volatile phase of the contact tracing attempts.

48 Exhibit 58, Second Statement of Dr Jeremy McAnulty (15 June 2020) [20].

49 Exhibit 63, Statement of Percy Anderson (24 April 2020) [16]; Exhibit 71, Statement of Jill Whittemore (28 April 2020) [25]; Exhibit 72, Statement of William Wright (15 April 2020) [44]; Exhibit 73, Statement of David Annesley (21 May 2020) [19]; Exhibit 83, Statement of Sharon Schofield (6 May 2020) [19]; Transcript of the Commission, 19 June 2020 T1629.13-15; 22 June 2020 1751.23; 23 June 2020 T1843.40.

50 The email received by passengers emanated from the address "bunker@doh.health.nsw.gov.au".

51 Transcript of the Commission, 22 June 2020 T1727.15-24.

52 Exhibit 79, Statement of Lynda De Lamotte (20 May 2020) [26].

53 Exhibit 120, Minutes of Ruby Princess Cruise Ship Teleconference of 22 March 2020.

54 Exhibit 58, Second Statement of Dr Jeremy McAnulty (15 June 2020), Annexure 16.

Engagement of Service NSW to contact passengers by telephone

13.35 In addition to sending emails and text messages, the PHEOC also determined that all Ruby Princess passengers should be contacted by telephone.[55]

13.36 At around 10:30am on 20 March, the Close Contact Tracing Team of NSW Health was tasked with this undertaking and its resources were surged accordingly. Due to the large number of passengers who would need to be contacted, the PHEOC separately engaged Service NSW[56] to provide the Close Contact Tracing Team with contact centre assistance.[57]

13.37 By 12:45pm, the PHEOC had developed the script for Service NSW operators to utilise during their telephone contact with passengers. This script was moulded from a template version developed by NSW Health in late February 2020 as part of the Confirmed Case Procedure.[58] The framework for the script was as follows: [59]

a) Advise passengers that there were confirmed cases of COVID-19 from the Ruby Princess;

b) Advise that all passengers were considered close contacts and therefore required to self-isolate at home for 14 days until 2 April 2020;

c) Enquire whether passengers were experiencing any symptoms of COVID-19; and

d) Offer to resend the email sent by the PHEOC at 10:46am on 20 March 2020.

13.38 The script did not contain any advice or directions regarding onward travel.

13.39 Initially, the PHEOC's priority for telephone contact was international passengers who intended to onward travel to their home countries. From 3:38pm to 8:56pm on 20 March, the Close Contact Tracing Team attempted to telephone 570 international passengers. Unfortunately, only 44 of those passengers could be successfully contacted. Their contact details were subsequently provided to Service NSW.[60]

13.40 Between 6:12pm on 20 March and 2:44pm on 21 March, Service NSW contact centre operators attempted 1,849 telephone calls[61] to Ruby Princess passengers. Of the 2,647 passengers listed on the Ruby Princess contact list, Service NSW was able to speak to 1,195 passengers. Of those successfully contacted, 386 reported experiencing symptoms consistent with COVID-19.

55 Exhibit 58, Second Statement of Dr Jeremy McAnulty (15 June 2020) [29].

56 Service NSW is a separate NSW Government agency which possesses a contact centre staffed by non-clinicians.

57 Exhibit 58, Second Statement of Dr Jeremy McAnulty (15 June 2020) [20].

58 Exhibit 57, Statement of Dr Jeremy McAnulty (15 June 2020), Annexure 45.

59 Exhibit 58, Second Statement of Dr Jeremy McAnulty (15 June 2020), Annexures 10 and 11.

60 Exhibit 58, Second Statement of Dr Jeremy McAnulty (15 June 2020) [20].

61 All duplicate phone numbers contained on the Ruby Princess guest list provided by Carnival Australia were removed by Service NSW. Each phone number was attempted up to three times if the call was unanswered. In circumstances where a phone number was invalid, further contact was not attempted.

13.41 At 1:27pm on 21 March, Service NSW provided the PHEOC with a list of all passengers who had reported COVID-19 symptoms. By 4:17pm, the PHEOC had requested the Close Contact Tracing Team to follow-up all symptomatic passengers with a further telephone call. A separate script was developed for those follow-up telephone calls, which recommended that all symptomatic passengers arrange to be tested for COVID-19 as soon as possible. Any passengers who reported experiencing difficulty breathing were advised to immediately telephone '000' and request an ambulance.[62]

13.42 In its report to the PHEOC, Service NSW also advised that there were 43 passengers who had openly indicated they were non-compliant with the direction to self-isolate for 14 days.[63] Unfortunately, there is no evidence before the Commission to suggest that any steps were taken by the PHEOC to re-engage with those passengers. When asked about the 43 identified non-compliant passengers, Dr Selvey gave evidence that she had not been informed of the responses and was consequently unaware of any follow-up performed by the PHEOC.[64] In circumstances where a Public Health Order was already in force mandating a 14-day self-isolation requirement for all returned travellers, this evidence was somewhat disconcerting.

13.43 To her credit, Dr Selvey conceded that it would have been reasonable for NSW Health to have informed passengers in its communications that a Public Health Order was in effect and that required passengers, by law, to self-isolate for a period of 14 days following their disembarkment from the Ruby Princess.[65]

Communication with Commonwealth agencies

13.44 Shortly before midday on 20 March 2020, Dr Selvey spoke with Rhonda Owen, an Assistant Secretary at the Commonwealth Department of Health, to advise that passengers from the Ruby Princess had tested positive to COVID-19. During that telephone discussion, Dr Selvey enlisted the assistance of the National Incident Room (**NIR**) in providing the passengers list to other State and Territory health authorities and alerting overseas International Health Regulations National Focal Points (**NFP**)[66] that international passengers "may have already departed Australia".[67] At 12:02pm, Dr Selvey sent an email to the NIR attaching the passenger list and expressing her appreciation for their assistance in contacting State and Territory health authorities and NFPs.[68]

62 Exhibit 58, Second Statement of Dr Jeremy McAnulty (15 June 2020), Annexure 15.

63 Exhibit 58, Second Statement of Dr Jeremy McAnulty (15 June 2020), Annexure 15.

64 Transcript of the Commission, 29 June 2020 T2098.7, T2098.14.

65 Transcript of the Commission, 29 June 2020 T2098.22.

66 Pursuant to the International Health Regulations, each State Party is required to designate or establish a National Focal Point as the designated point of contact between the World Health Organisation and State Parties.

67 Exhibit 100, Statement of Dr Christine Selvey (22 June 2020) [23].

68 Exhibit 58, Second Statement of Dr Jeremy McAnulty (15 June 2020), Annexure 7.

13.45 At the same time, Dr Sevley participated in a teleconference with the Communicable Diseases Network of Australia (**CDNA**),[69] during which she informed her colleagues of the confirmed COVID-19 cases on board the Ruby Princess. Dr Selvey also indicated that NSW Health was attempting to contact all passengers to "re-emphasise the 14-day quarantine requirement" and confirmed that a list of passengers would be sent to each member via the NIR.[70] At 3:25pm, Dr Selvey forwarded her earlier email to the NIR to all members of the Australian Health Protection Principal Committee and the CDNA.[71]

13.46 On 21 March, representatives from Qantas contacted the NIR to raise concerns about passengers from the Ruby Princess boarding international flights. That evening, 170 passengers boarded a Qantas flight from Sydney to Dallas, Texas. The NIR duly informed the United States NFP. Carnival also indicated on 22 March 2020 that it had informed the Centers for Disease Control and Prevention and that "[t]hese passengers were screened upon entry to the US".[72] No evidence has been received by the Commission that would indicate any such health screening of those passengers took place.[73]

13.47 At 11:09am on 22 March, the PHEOC contacted the NIR to enquire whether, in light of the evidence of Ruby Princess passengers flying to Dallas the previous evening, the ABF could assist in preventing further passengers from boarding flights. By 8:11pm, the ABF had notified the PHEOC that a "do not fly" recommendation would be placed against all Ruby Princess passengers attempting to board flights.[74] The extent to which that recommendation was enforced has not been made clear to the Commission, although some passengers disclosed that they were able to able to rebook flights with other airlines after being refused boarding on Qantas international flights in Sydney.[75] Furthermore, as will be outlined below, the instalment of that notification was evidently too late to prevent a multitude of passengers boarding domestic and international flights after their disembarkment from the Ruby Princess.

69 Dr Selvey is the NSW Health representative on the Communicable Diseases Network of Australia.

70 Exhibit 100, Statement of Dr Christine Selvey (22 June 2020) [24];

71 Exhibit 58, Second Statement of Dr Jeremy McAnulty (15 June 2020), Annexure 13.

72 Exhibit 120.

73 Exhibit 108, Further 171 witness statements from Ruby Princess passengers, Tabs 68, 82 and 171.

74 Exhibit 58, Second Statement of Dr Jeremy McAnulty (15 June 2020), Annexure 21.

75 Exhibit 108, Further 171 witness statements from Ruby Princess passengers, Tab 83. One passenger stated that their travelling party was refused boarding on Qantas Flight QF141 from Sydney to Auckland on 23 March 2020, but were subsequently able to rebook and board Air New Zealand flight NZ104 on the same date.

13.48 Dr Selvey was asked during her evidence whether any consideration was given by NSW Health to advising the airlines about the positive COVID-19 infections among passengers of the Ruby Princess once they became known on 20 March. Dr Selvey responded that NSW Health would not normally speak with the airlines directly and such discussions would be facilitated by the Commonwealth.[76] Dr Selvey's rationale for that response was that because the airlines were a "national company", it was appropriate for discussions to take place with agencies of the Commonwealth.[77] Even if this approach were for some odd reason a convention among agencies of the State in normal circumstances, it is difficult to justify within the context of an emerging and rapidly intensifying pandemic. NSW Health was not being called upon here to issue a directive to airlines about overseas travel, but simply to convey a warning that passengers of the Ruby Princess who had been identified as close contacts of multiple cases of COVID-19 may be imminently seeking to board domestic and international flights. Given the concerns raised by Qantas on 21 March, any earlier warning would likely have been met with appreciation, rather than perceived as an attempted interference by an agency of the State. There is, of course, no "federal" reason for the State to refrain from communicating with anyone or any corporation.

Advice about onward travel included in the passenger communications

13.49 Neither the email nor the SMS text message sent to passengers on 20 March 2020 included any explicit advice or directions about onward travel. Information about onward travel was conveyed in a link embedded in the email from the PHEOC, which directed passengers to a NSW Health fact sheet dated 15 March and titled: *Home isolation guidance for close contacts and recently returned travellers*. The fact sheet did not distinguish in its guidance between returned travellers, on the one hand, and close contacts, on the other.[78] Accordingly, in relation to onward travel, it specified that:

> "Getting to your home or hotel
>
> If you are currently well, or if you have minor symptoms and have been tested for COVID-19 after arriving in Australia and your test result is negative, you can travel directly to your home or hotel by public transport, taxi or ride-share, or continue with onward flights." [79]

76 Transcript of the Commission, 29 June 2020 T2082.39-41.

77 Transcript of the Commission, 29 June 2020 T2082.45-46.

78 Written submissions on behalf of NSW Health (13 July 2020) [68].

79 Exhibit 58, Second Statement of Dr Jeremy McAnulty (15 June 2020), Annexure 22.

13.50 Dr Selvey conceded that this advice should not have applied to close contacts, as all Ruby Princess passengers were then characterised.[80] In any event, the fact sheet was updated by NSW Health the following day and made available to passengers if they accessed the email link on or after the evening of 21 March 2020.[81] A link to the updated fact sheet was also embedded in the correspondence signed by Dr Selvey and emailed to passengers by Carnival on 22 March 2020.[82] The updated fact sheet provided:

> "Getting to your home or hotel if you are a returned traveller
>
> You can travel directly to your home or hotel by private car, public transport, taxi or ride-share, or continue with onward flights if:
>
> - you are a returned traveller and have not been identified as a close contact of a confirmed case; and
> - you are currently well; or
> - you have minor symptoms and have been tested for COVID-19 overseas and your test result is negative.
>
> Please note: If you are a returned traveller and have subsequently been identified as a **close contact** (e.g. from a cruise ship or flight) you are now considered a **close contact**. You cannot continue with onward flights, trains or buses. You can travel directly to your home or hotel by private car, taxi or ride-share (provided you are wearing a surgical mask and sit in the back seat) to begin your period of home isolation."[83] (emphasis added)

13.51 Although the updated fact sheet rectified earlier inaccuracies insofar as onward travel for passengers was concerned, the communication could hardly be praised for its clarity. The fact that a returned traveller had been identified as a close contact should have made it self-evident that they were considered a close contact by NSW Health. It would have been preferable and more effective if the fact sheet simply stated that any returned travellers identified as close contacts were not permitted to onward travel under any circumstances.

80 Transcript of the Commission, 29 June 2020 T2073.33-35.

81 Exhibit 100, Statement of Dr Christine Selvey (22 June 2020) [27].

82 Exhibit 100, Statement of Dr Christine Selvey (22 June 2020) [28].

83 Exhibit 58, Second Statement of Dr Jeremy McAnulty (15 June 2020), Annexure 23.

13.52 Dr Selvey was unable during her evidence to recall the circumstances which led to the publication of the updated fact sheet by the PHEOC on 21 March.[84] In the absence of any recollection, it can only be concluded that the PHEOC had by then recognised that passengers of the Ruby Princess were not clearly or sufficiently instructed about refraining from onward travel once the presence of COVID-19 on the ship had been confirmed. Indeed, Dr McAnulty, to his credit, conceded that the subsequent communications with passengers were, in effect, a "better late than never" attempt to prevent further onward travel by passengers.[85]

13.53 One further observation should be made about the PHEOC's attempts to communicate with passengers after 20 March. A review of both the email sent by the PHEOC and the subsequent letter signed by Dr Selvey reveals no advice or information about onward travel; it was only through accessing a link to a separately held and generic NSW Health fact sheet that passengers could ascertain whether onward travel was permitted. The assumption that all passengers reviewing the correspondence would – or could – access the link and understand the information contained therein was inherently problematic, particularly in light of the demographic of passengers who had travelled on the ship. Dr Selvey acknowledged that a better approach would have been to simply and directly communicate from the outset that close contacts were not permitted to continue with onward travel.[86]

13.54 Unfortunately, the initially inaccurate and obscure manner in which passengers were instructed as to onward travel proved to be a missed opportunity to prevent onward travel by many passengers who contracted COVID-19 from the Ruby Princess. The Commission received a considerable body of evidence from passengers who confirmed onward domestic and international travel in the hours and days after disembarking the ship on 19 March, many of whom disconcertingly disclosed that they were symptomatic during transit.[87] The Commission also benefited from evidence provided by members of the Flight Attendants' Association of Australia, which highlighted glaring concerns about symptomatic passengers boarding several international flights to the United States in the days following disembarkment.[88]

84 Transcript of the Commission, 29 June 2020 T2074.45.

85 Transcript of the Commission, 18 June 2020 T1572.34-45.

86 Transcript of the Commission, 29 June 2020 T2090.1.

87 Exhibit 96, 255 police statements of Ruby Princess passengers and families; Exhibit 108, Further 171 witness statements from Ruby Princess passengers.

88 Exhibit 111, Statement and annexures of Teri O'Toole (19 June 2020); Exhibit 112, Statement and annexures of Toni Lockyer (22 June 2020); Exhibit 113, Statement and annexures of David Horsfall (22 June 2020).

Case management, contact tracing and testing of passengers

13.55 Passengers of the Ruby Princess who were residents of NSW and who tested positive for COVID-19 were predominantly case managed by the PHU situated within their respective LHD. That factor likely explains the wide-ranging experiences of passengers in their interactions with NSW Health after testing positive to COVID-19.[89]

13.56 Following confirmation of a positive COVID-19 test, local PHU staff interviewed passengers using a questionnaire developed by NSW Health.[90] This questionnaire would attempt to elicit specific information about the particular passenger including: usual residence, travel history, contact with confirmed COVID-19 cases, symptomatology, medical history and travel history. The interviewer would also provide information in relation to self-isolation, including an outline of the process for release and clearance by NSW Health.[91]

13.57 Any information captured about close contacts of passengers would be entered into NSW Health's Notifiable Conditions Incident Management System (**NCIMS**).[92] Close contacts would then be separately contacted by either the applicable PHU or the Close Contact Tracing Team. When contacted, close contacts would be directed to self-isolate. They were also provided with information about the symptoms of COVID-19 and instructions on how to get tested if they became symptomatic.[93]

13.58 Between 25 and 28 March, passengers were also surveyed on a daily basis by NSW Health to ascertain whether they had experienced any symptoms of COVID-19. Any passengers who responded affirmatively were identified in the NCIMS for follow-up contact by the Close Contact Tracing Team or the applicable PHU.[94] Unfortunately, the volume of responses received from passengers evidently exceeded the technical capacity of the automated survey system, resulting in its disablement. Thereafter, the Close Contact Tracing Team opted to telephone passengers every second or third day, with the frequency of follow-up determined by the age (and thereby risk category) of the passenger in question.[95]

89 The Commission received a wide range of evidence from passengers about their experiences with NSW Health after testing positive. Some passengers told the Commission that they were in constant contact with their Local Health District until receiving formal clearance from self-isolation. Other passengers had significantly more limited contact with their respective Local Health District and in some circumstances had to proactively seek formal clearance from self-isolation.

90 Exhibit 58, Second Statement of Dr Jeremy McAnulty (15 June 2020), Annexure 24.

91 Exhibit 58, Second Statement of Dr Jeremy McAnulty (15 June 2020) [34]-[36].

92 The Notifiable Conditions Incident Management System is a data management and workflow system used by public health staff within NSW Health to assist with the surveillance of and response to notifiable diseases.

93 Exhibit 58, Second Statement of Dr Jeremy McAnulty (15 June 2020) [38].

94 Exhibit 58, Second Statement of Dr Jeremy McAnulty (15 June 2020) [23].

95 Exhibit 58, Second Statement of Dr Jeremy McAnulty (15 June 2020) [24].

13.59 The procedure applied by NSW Health to the testing of passengers for COVID-19 was significantly less expansive. Until the morning of 24 March, when the Secretary of NSW Health directed that COVID-19 testing for any persons declaring themselves as a cruise ship passenger should be prioritised,[96] only passengers displaying symptoms were permitted to be tested. This initial approach was evident through the experience of Mr Wright, who said that his wife was refused testing at Wollongong Hospital on 22 March because she was not displaying any symptoms of COVID-19.[97]

13.60 During her evidence, Dr Selvey strongly backed this approach and remained entirely resistant to the notion that asymptomatic passengers of the Ruby Princess should have been tested from 20 March 2020 onwards.[98] Dr Selvey's position was aptly summarised by the following written submissions provided to the Commission by NSW Health:

> "As Dr Selvey explained, a negative test from someone who is asymptomatic would not exclude the possibility that they are infected. In those circumstances, a negative test result could have detrimental effects, as it may give a person false confidence that they are well, such that they become more lax in their approach to self-isolation, thereby putting others at risk. While asymptomatic testing may identify positive cases earlier than they might otherwise be identified, the net benefit of such early identification is minimal in circumstances where passengers and crew are already self-isolating, and so their circumstances would not change upon their being identified as a positive case."[99]

13.61 This submission is difficult to accept for two reasons. First, an overarching concern that asymptomatic passengers could falsely test negative exhibits an unnerving view of the rigour of the testing system established by NSW Health since the emergence of COVID-19. Even at that stage of the pandemic, it would be hoped that the possibility of a series of false negatives was remote. Regardless, any concerns about false confidence among passengers testing negative for COVID-19 could have been addressed by a direction from NSW Health, as is currently imposed, for all passengers to remain in self-isolation for 14 days irrespective of their testing results.

96 Exhibit 58, Second Statement of Dr Jeremy McAnulty (15 June 2020), Annexure 26.

97 Transcript of the Commission, 22 June 2020 T1716.8-9.

98 Transcript of the Commission, 29 June 2020 T2066-2069.

99 Written submissions on behalf of NSW Health (13 July 2020) [114].

13.62 Second, and more importantly, the conclusion that there was a minimal net benefit in identifying all asymptomatic passengers is detached from the reality that, as at 20 March, very little was known by NSW Health about the presence of COVID-19 on board the Ruby Princess and about the spread of the virus on cruise ships generally. For reasons that have already been expounded in this Report, only an extremely limited sample of the ship's population had been swabbed for COVID-19 at the time the ship disembarked on 19 March. This sample was certainly not enough to inform authorities about the extent to which the virus may have been transmitted onboard and the likelihood of asymptomatic or pre-symptomatic transmission during and after disembarkation on 19 March. Accordingly, as soon as cases of COVID-19 were confirmed among passengers on the morning of 20 March, NSW Health should have utilised the opportunity to analyse and trace the spread of COVID-19 on the Ruby Princess, especially in light of emerging studies about outbreaks of the virus on the Diamond and Grand Princesses in the preceding months.

Key Findings

13.63 Passengers were incorrectly advised by the ABF during the cruise that their 14-day period of self-isolation would commence from the date of departure from the last overseas port visited by the Ruby Princess, being Napier on 15 March. This inaccuracy was later clarified during disembarkation at the OPT on 19 March, when passengers were provided with a fact sheet published by the Commonwealth Department of Health which relevantly instructed them to self-isolate for 14 days from their arrival in Sydney.

13.64 The directive to allow passengers to onward travel interstate and internationally after disembarkation on 19 March did not appropriately contemplate or comply with the terms of the Public Health Order that came into effect on 17 March, which required all cruise ship passengers entering the State from any other country to isolate themselves in suitable accommodation for 14 days. Under the terms of the Public Health Order, the State Government should have arranged suitable accommodation for all passengers who were not residents of the State.

13.65 The fact sheet linked to an email sent to passengers at 10:46am on 20 March incorrectly advised that they were permitted to continue with onward travel, despite being identified as "close contacts" of a confirmed COVID-19 case. Although this advice was corrected by NSW Health by the evening of 21 March, it was at that stage too late to prevent a considerable number of interstate and international passengers from onward travelling, including some passengers who were symptomatic during transit.

14

Epilogue

14.1 A fundamental driver for the establishment of this Commission was the far-reaching public health consequences arising from the disembarkation of passengers from the Ruby Princess on the morning of 19 March 2020.

14.2 To a considerable extent, the public health consequences are illuminated by the number of passengers and crew who ultimately contracted COVID-19 during and following the 8 March voyage of the Ruby Princess. As to those numbers, the Commission has confirmed as follows:

- Of the 120 passengers and crew listed on the final ARD Log, **21** (17.5%) contracted COVID-19;[1]
- Of the 1,682 passengers from Australia, **663** (39.4%) contracted COVID-19;[2]
- Of the 955 passengers from New South Wales, **367**[3] (38.4%) contracted COVID-19; and
- Of the 1,148 crew, **191** (16.6%) contracted COVID-19.

14.3 As a tragic supplement to the above figures, the Commission has also been advised of **28** deaths associated with passengers from the Ruby Princess, including 20 deaths reported in Australia and a further eight deaths reported in the United States.[4]

14.4 It must, of course, not be forgotten that close to one third of passengers on board the Ruby Princess were international guests. For various reasons, the capacity for this Commission to accurately catalogue all confirmed cases of COVID-19 from international passengers was severely restricted. Unfortunately, as a result, it is almost certain that the total number of passengers from the Ruby Princess who contracted COVID-19 will never be known.

1 This figure includes the four passengers who were confirmed as testing positive for COVID-19 on the morning of 20 March 2020. The Commission has subsequently confirmed that an additional 15 passengers tested positive for COVID-19 following a review of medical records, statements and questionnaire responses produced by NSW Health and/or the Commissioner for NSW Police.

2 Exhibit 119, Voluntary Submission of the Commonwealth of Australia (16 July 2020) [71]. The Commission acknowledges the limitations set out at [72] of the Voluntary Submission. However, in the absence of contradictory evidence, the Commission has relied on this data.

3 In addition to the 367 confirmed cases from passengers based in New South Wales, NSW Health has also indicated that there are three passengers who have been classified as "probable cases" of COVID-19 from the Ruby Princess.

4 Exhibit 123, List of deceased persons associated with the Ruby Princess.

14.5 Notwithstanding, the Commission has greatly benefited from the receipt of a number of statements and submissions provided by passengers from the United States, Canada, the United Kingdom, New Zealand and a host of other countries.[5] This evidence has acutely demonstrated that the outbreak of COVID-19 from the Ruby Princess was not merely confined to the Australian population.

14.6 A significant number of international passengers reported that they tested positive for COVID-19 following their return home from the Ruby Princess. A further and substantial proportion of international passengers indicated that they were symptomatic for COVID-19 but were, frustratingly in many cases, precluded from being tested for the disease. This phenomenon particularly emerged from the evidence of passengers residing in the United Kingdom, who almost universally disclosed an inability to be tested for COVID-19 as a result of policies implemented by Her Majesty's Government at the time.

14.7 It must also be recognised that the reach of COVID-19 from the Ruby Princess extended beyond the passenger population of the ship. The Commission has confirmed that in Australia, there have been **62** reported secondary and tertiary cases[6] of COVID-19 from the Ruby Princess. This included multiple cases of COVID-19 reported from transport workers assisting passengers at the Overseas Passenger Terminal on the morning of 19 March 2020,[7] at least one of whom became critically ill from the disease.[8]

14.8 An interim report into the COVID-19 outbreak at North West Regional Hospital (**NWRH**) released by the Tasmanian Department of Health on 29 April 2020 also found that the original source of the then 114 reported cases was "most likely to have been one (or both) of two inpatients who were admitted to the NWRH with COVID-19 acquired on…the Ruby Princess".

14.9 On 5 August 2020, in response to an invitation from the Commission to provide updated information available in relation to the COVID-19 outbreak at NWRH, the Tasmanian Health Minister advised the Commission that there had been 138 confirmed cases associated with the outbreak, including, sadly, ten deaths. The Commission understands that the circumstances surrounding that outbreak are the subject of an ongoing and independent review established by the Premier of Tasmania on 24 July 2020.

5 Exhibits 96, 255 police statements of Ruby Princess passengers and families; Exhibit 109, Police statement of Colin White (5 May 2020).

6 Exhibit 119, Voluntary Submission of the Commonwealth of Australia (16 July 2020) [71].

7 Exhibit 58, Second Statement of Dr Jeremy McAnulty (15 June 2020) [50].

8 Transcript of the Commission, 23 June 2020 T1913-1914.

14.10 Occurrences such as this are an especially egregious by-product of the relatively unfettered disembarkation of the ship, which resulted in undue and unnecessary suffering for many people in Australia and undoubtedly across the world as well.

14.11 If nothing else, the quantum of COVID-19 cases highlighted in this chapter showcases the rampant transmissibility of SARS-CoV-2, which continues to impart devastating effects on populations and economies worldwide. However, the final tally of cases is not in and of itself the complete story of the Ruby Princess. The events surrounding the ship's voyage and disembarkation on 19 March 2020 will sadly have a lasting effect for many passengers and their families. It can only be hoped that this episode serves as a precautionary tale should public health authorities ever again encounter similarly challenging circumstances.

APPENDIX A

Letters Patent

NEW SOUTH WALES

ELIZABETH THE SECOND, by the Grace of God Queen of Australia and Her other Realms and Territories, Head of the Commonwealth:

TO

Bret Walker SC

GREETING

By these our Letters Patent, made and issued in Our name by Our Governor on the advice of the Executive Council and under the authority of the *Special Commissions of Inquiry Act 1983* (NSW) and every other enabling power, We hereby authorise you as Commissioner to inquire into and report and make recommendations to Our Governor of the said State on:

A. The knowledge, decisions and actions of Ruby Princess crew, medical staff and the ship operator, Princess Cruises, with respect to cases or potential cases of respiratory infections on the ship.

B. The information provided to, communications between, and decisions and actions of Commonwealth and NSW agencies, including the Australian Border Force, the Federal Department of Agriculture, Water and the Environment, NSW Health, the NSW Police Force, NSW Ambulance and the Port Authority of NSW.

C. Policies and protocols applied by Princess Cruises and Commonwealth and NSW Government agencies with respect to managing suspected or potential COVID-19 cases.

D. Communications by Commonwealth and NSW Government agencies to passengers disembarking the Ruby Princess.

E. Any other related matters that the Commissioner considers appropriate.

AND hereby establish a Special Commission of Inquiry for this purpose.

AND We direct you, in conducting the inquiry, to have regard to the global COVID-19 pandemic and:

F. the departure from Sydney of the Ruby Princess on 8 March 2020;

G. the voyage of the Ruby Princess between 8 March and 19 March 2020;

ENTERED on the Record by me in Register of Patents No. 92 Page 454 this 16th day of April 2020.

For SECRETARY
DEPARTMENT OF PREMIER AND CABINET

H. the docking and disembarkation of the Ruby Princess at Sydney on 19 March 2020; and

I. subsequent efforts to diagnose and treat, and to contain the community transmission of COVID-19 by, Ruby Princess passengers.

AND We direct you in conducting the inquiry, where you consider appropriate, to collaborate and share information with any investigation established by Australian or New Zealand authorities in relation to the Ruby Princess.

AND pursuant to section 21 of the *Special Commissions of Inquiry Act 1983* (NSW) it is hereby declared that sections 22, 23 and 24 shall apply to and in respect of the Special Commission issued to you by Our Letters Patent.

AND OUR further will and pleasure is that, on or before 14 August 2020, you deliver your final report in writing of the results of your inquiry to the offices of the Premier and Our Governor in Sydney.

IN WITNESS, We have caused these Our Letters to be made Patent and the Public Seal of Our State to be hereunto affixed.

WITNESS Her Excellency the Honourable Margaret Beazley, Companion of the Order of Australia, Queen's Counsel, Governor of the State of New South Wales in the Commonwealth of Australia.

Dated this 15th day of April 2020.

Margaret Beazley Governor

By Her Excellency's Command,

Premier.

3

APPENDIX B

Abbreviations and Acronyms

ABF	Australian Border Force
ACE2	angiotensin-converting enzyme 2
Agreement	Schedule to a Standing Funding Agreement
AHPPC	Australian Health Protection Principal Committee
AIMPE	Australian Institute of Marine Powered Engineers
AMOU	Australian Maritime Officers Union
ARD	acute respiratory disease
ARD Log	acute respiratory diseases log
ARI	acute respiratory illness
Assessment Procedure	Cruise Ship COVID-19 assessment procedure
Biosecurity Act	*Biosecurity Act 2015* (Cth)
Biosecurity Instrument	*Biosecurity (Negative Pratique) Instrument 2016* (Cth)
Biosecurity Regulation	*Biosecurity Regulation 2016*
BSB	Biosecurity Status Document
Carnival	Carnival plc
CCDC	Chinese Centre for Disease Control and Prevention
CDC	United States Centers for Disease Control
CDI	Communicable Diseases Intelligence
CDI Report	Communicable Diseases Intelligence epidemiological report
CDNA	The Communicable Diseases Network Australia
CDNA Guidelines	Series of National Guidelines (SoNGs) developed by the CDNA
CHBO	Chief Human Biosecurity Officer
CMO	Commonwealth Chief Medical Officer
Confirmed Case Procedure	NSW Health COVID-19 cruise ship response procedure for confirmed cases in passenger or crew
Control Orders	Human Biosecurity Control Orders
COVID-19	Novel Coronavirus 2019-nCoV
Customs Act	*Customs Act 1901* (Cth)
DAWE	Department of Agriculture, Water and the Environment
Determination	*Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements) Determination 2020*

DHB	Director of Human Biosecurity
Enhanced COVID-19 Procedures	Enhanced COVID-19 Procedures for the Cruise Industry
Expert Panel	NSW Health Risk Assessment Panel
HAG	Holland America Group
HBO	Human Biosecurity Officer
HBO Guideline	Human Biosecurity Officer Guideline
Health Team	NSW Health Assessment Team
ILI	influenza-like illness
IHR	International Health Regulations 2005
ITF	The International Transport Workers Federation
LHD	Listed Human Disease
LHDs	Local Health Districts
MAC	Maritime Area Command
Marine Safety Act	*Marine Safety Act 1988* (NSW)
MARS	Maritime Arrivals Reporting System
MOU	Memorandum of Understanding
MERS	Middle East Respiratory Syndrome
Ministry of Health	Health Administration Corporation
MNCC	Maritime National Coordination Centre
MTPC	Maritime Traveller Processing Committee
MUA	Maritime Union of Australia
National Protocol	National protocol for managing novel coronavirus disease (COVID-19) risk from cruise ships
NCIMS	NSW Health's Notifiable Conditions Incident Management System
Nepean LHD	Nepean Blue Mountains Local Health District
NFP	National Focal Points
NIR	National Incident Room
NUM	Nurse Unit Manager
NWRH	North West Regional Hospital
OPT	Overseas Passenger Terminal
PANSW guidelines	Coronavirus Working Guidelines
PAR	Pre-arrival Report
PHEIC	Public Health Emergency of International Concern
PHEOC	Public Health Emergency Operations Centre
PHU	Public Health Unit
Port Authority	Port Authority of New South Wales
POW	Prince of Wales Hospital
PPE	Personal Protective Equipment

Princess Cruises	Princess Cruise Lines Ltd
Public Health Act	*Public Health Act 2010* (NSW)
RCU	Regional Coordination Unit of the Australian Border Force
risk assessment form	Pre-arrival risk assessment form
RN	registered nurse
RPA	Royal Prince Alfred Hospital
RTC	Round-Trip Cruise
RVI	Routine Vessel Inspection
SARS	severe acute respiratory syndrome
SARS-CoV-2	severe acute respiratory syndrome coronavirus 2
SEALS	South Eastern Area Laboratory Services
SESLHD	South Eastern Sydney Local Health District
SES PHU	Public Health Unit of the South Eastern Sydney Local Health District
ShIPS	Sydney Integrated Ports System
SLHD	Sydney Local Health District
SoNGs	Series of National Guidelines developed by the CDNA
SOP	Standard Operating Procedure
State	New South Wales
Sydney PHU	Sydney Local Health District, Public Health Unit
the 8 March voyage	Ruby Princess voyage of 8 March to 19 March 2020
the 20 March ARD Log	Acute Respiratory Diseases Log of 20 March
the Investigation Form	novel coronavirus Patient Investigation Form
the updated HHR	updated Human Health Report at 7:21pm on 18 March 2020
the Quarantine Order	*Public Health (COVID-19 Quarantine) Order 2020*
TIC	Traveller with Illness Checklist
THD	Travellers Health Declaration
VHS	Very High Frequency
VTS	Vessel Traffic Services
WHO	World Health Organisation
19 February Assessment Procedure	Draft Cruise Ship COVID-19 Assessment Procedure for Ports of First Entry into Australia
22 February Enhanced Procedure	Enhanced COVID-19 Procedures for the Cruise Line Industry (22 February version)
9 March Enhanced Procedure	Enhanced COVID-19 Procedures for the Cruise Line Industry (9 March version)

APPENDIX C

Staff of the Commission

Counsel Assisting the Commission

Richard Beasley SC

Nicolas Kirby

Staff seconded from the NSW Crown Solicitor's Office

The Special Commission was assisted during its term by the following personnel seconded from the Crown Solicitor's Office:

Jennifer Hoy, Senior Solicitor Asssiting

James Loosley, Senior Solicitor Assisting

Luke Teo, Solicitor Assisting

Valentina Markovina, Paralegal

Executive Assistant to the Commission

Susan Kent

Media Liaison Officer

Lesley Parker, Folio Media

IT Assistance

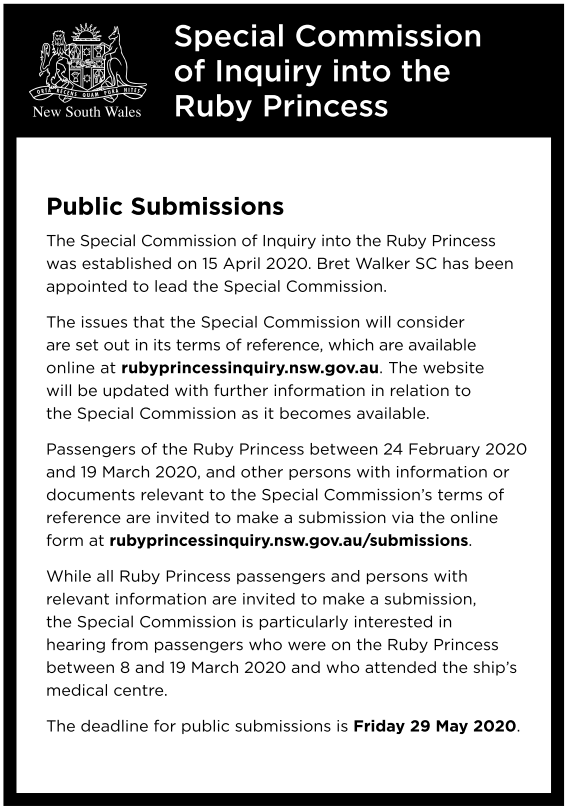
The Commission staff acknowledge the kind assistance of Mark Taylor, of the NSW Department of Premier and Cabinet, in relation to the Special Commission website.

APPENDIX D

The Special Commission Website and Advertisements

Following the commencement of the Special Commission, a website was established at https://www.rubyprincessinquiry.nsw.gov.au/ hosted by the NSW Department of Premier and Cabinet. The Commission's public hearings were recorded and streamed live on the website and, as soon as it became available, all significant information concerning the progress of the Commission was published on the website, including exhibits tendered and transcripts pertaining to public hearings, subject to any order of the Commissioner.

On Friday 1 May 2020, advertisements were placed in nine major metropolitan newspapers, in every State and Territory, inviting passengers of the Ruby Princess between 24 February and 19 March 2020, and other persons with information relevant to the Commission's terms of reference, to make a submission via the online form on the Commission's website. The Commission was particularly interested in hearing from passengers who travelled on the Ruby Princess between 8 and 19 March 2020 and who attended the ship's medical centre. Appendix K contains further information as to the submissions received by the Commission.



New South Wales

Special Commission of Inquiry into the Ruby Princess

Public Submissions

The Special Commission of Inquiry into the Ruby Princess was established on 15 April 2020. Bret Walker SC has been appointed to lead the Special Commission.

The issues that the Special Commission will consider are set out in its terms of reference, which are available online at **rubyprincessinquiry.nsw.gov.au**. The website will be updated with further information in relation to the Special Commission as it becomes available.

Passengers of the Ruby Princess between 24 February 2020 and 19 March 2020, and other persons with information or documents relevant to the Special Commission's terms of reference are invited to make a submission via the online form at **rubyprincessinquiry.nsw.gov.au/submissions**.

While all Ruby Princess passengers and persons with relevant information are invited to make a submission, the Special Commission is particularly interested in hearing from passengers who were on the Ruby Princess between 8 and 19 March 2020 and who attended the ship's medical centre.

The deadline for public submissions is **Friday 29 May 2020**.

APPENDIX E

The Approach of the Special Commission

Establishment of the Special Commission of Inquiry

On 15 April 2020, her Excellency the Honourable Margaret Beazley AC QC, Governor of New South Wales, issued Letters Patent appointing Bret Walker SC, under the *Special Commissions of Inquiry Act 1983* (NSW) (**the Act**) as Special Commissioner. In conducting his inquiries, the Commissioner was to have regard to the global COVID-19 pandemic and to inquire into and report on the departure of the Ruby Princess from 8 March 2020 and the ensuing voyage; the docking and disembarkation of the Ruby Princess on 19 March 2020; and subsequent efforts to diagnose and treat, and to contain the community transmission of COVID-19 by, Ruby Princess passengers. The Letters Patent can be found at **Appendix A** to this Report.

Terms of Reference

The issues that the Commissioner was required to consider are set out in the terms of reference. A copy of the terms of reference is at **Appendix A** to this Report.

Accommodation

Following the announcement of the Special Commission, arrangements were made for the staff of the Special Commission to be accommodated at Level 3, Registrar General's Building, 1 Prince Albert Road, Sydney. The Commission's public and private hearings were conducted at those premises. In accordance with health advice concerning the COVID-19 pandemic, members of the media and the general public were not able to attend the Commission's hearings in person.

Processes through which the Special Commission acquired information

Public Submissions

On 24 April 2020, the Commission made a public call for submissions for information or views about matters falling within the terms of reference via advertisements and the Commission's website. On 18 and 19 May 2020, direct emails were sent to passengers and family members of passengers who departed Sydney on the Ruby Princess on 8 March 2020.

The Commission provided persons making submissions with the following options with respect to making submissions on either a confidential or non-confidential basis:

a) agree to your submission being published in your name;

b) agree to your submission being published anonymously; or

c) do not agree to your submission being published.

The deadline for submissions was midnight on Friday, 29 May 2020 by which time the Commission had received a total of 149 submissions from persons and organisations. Three submissions were received after the deadline on 30 May 2020. Of the total 152 submissions received, 50 were provided on an anonymous basis, 81 submissions were received with permission to publish in the name of the submitter and 21 submissions either did not wish for their submission to be published or did not indicate an option.

The Commission received 102 submissions from passengers of the Ruby Princess on the voyage of 8 to 19 March 2020, and 17 submissions from passengers of the Ruby Princess on the voyage of 24 February to 8 March 2020. Ten submissions were received from passenger of other cruises and 23 other submissions were received from the general public.

Individuals and organisations who provided submissions are listed in **Appendix K** as follows:

Table 1: Submissions received from passengers of the Ruby Princess on voyage of 8 March to 19 March 2020;

Table 2: Submissions received from passengers of the Ruby Princess on voyage of 24 February to 8 March 2020

Table 3: Submissions received from passengers of other cruises

Table 4: Other submissions received from the public

As at 3 August 2020, all publishable submissions were placed on the website. A publishable submission is one that has not been marked by the contributor as confidential, does not breach relevant legislative provisions in relation to the publication of information, and does not contain offensive or defamatory comments, that is, material which on investigation was found to be manifestly without foundation such that its further publication would not serve any legitimate purpose.

Documents produced on summons

To obtain material needed to address the terms of reference, summonses were issued to various government agencies, organisations or individuals to produce specified documents and classes of documents. The Commissioner's powers to summons material are derived from the Act. In providing material pursuant to summons, individuals, organisations or government agencies were able to provide information and assistance to the Commission without breaching confidentiality or secrecy requirements that otherwise would have prevented them from providing material to the Commission.

The Special Commission issued 21 summonses to produce documents. Six of these were directed to the Commissioner of Police, five to the NSW Ministry of Health, two to Princess Cruise Lines Ltd and Carnival plc t/a Carnival Australia, and the remainder to various other government agencies and individuals.

From 21 April 2020 to 17 July 2020, the Special Commission issued summonses to produce directed to:

a) Commissioner of Police, NSW Police Force
b) NSW Ministry of Health
c) NSW Ambulance
d) Port Authority of New South Wales
e) NSW State Coroner
f) The Department of Health and Human Services, Victoria
g) Princess Cruise Lines Ltd / Carnival plc
h) Associate Professor Brad Forssman
i) Professor Mark Ferson
j) Dr Isabel Hess
k) Dr Sean Tobin

All documents produced to the Special Commission were analysed by the staff of the Commission. The Commission generated a database containing over 4800 documents.

The Commissioner of Police, NSW Police Force produced 420 statements from passengers (and relations of passengers) of the Ruby Princess on the voyage of 8 to 19 March 2020.

Summonses to Attend

The Commission issued 47 summonses to attend to individuals from whom Counsel Assisting sought to hear evidence at either a public or private hearing, in person or via audio visual link. Summonses to attend were issued between 21 April 2020 and 7 July 2020.

Twenty-one individuals who were issued with a summons to attend were ultimately not required to give evidence before the Commission. Passengers of the Ruby Princess and relations of passenger who appeared before the Commission to give evidence did so in response to invitations made by way of email or phone call.

Individuals who gave evidence at the hearings are listed in **Appendix G**.

Hearings of the Special Commission

The Special Commission of Inquiry into the Ruby Princess held hearings at Level 3, 1 Prince Albert Road, Sydney. The Commission's public hearings were recorded and streamed live on the Commission's website.

Public hearings for the Commission commenced on 22 April 2020 and concluded on 17 July 2020. Notification for the first day of hearings was made on the Commission's website on 21 April 2020.

The decision to commence hearings on 22 April 2020, and the short notice given as to the commencement, was due to the unexpected delay of the Ruby Princess vessel leaving New South Wales, which had been scheduled for 19 April, but ultimately occurred on 23 April. Given the limited window for convening hearings, urgent steps were taken by the staff of the Commission to summons crew members and staff that remained on the vessel. Service of those summonses was effected late on 21 April 2020 and public notice was subsequently effected on the Commission website.

Individuals who were summonsed or invited to evidence at the Commission's hearings did so either:

a) In public, or
b) In private, if the Commissioner was satisfied that that was desirable given the confidential nature of any evidence or for any other reason.

In accordance with health advice concerning the COVID-19 pandemic, individuals summonsed or invited to give evidence at the hearings could do so either in person or via audio-visual link.

The Commission heard from a total of 40 witnesses in the public hearings, and a further four witnesses gave evidence in private. A complete list of public hearings, together with the witnesses who gave evidence in those hearings, is at **Appendix G**.

Legal Representation

Those with leave to appear and cross-examine

The following persons were authorised to appear at the substantive hearings and to cross-examine witnesses pursuant to s 12 of the Act:

- Counsel assisting the Commission, Richard Beasley SC, with Nicolas Kirby instructed by Jennifer Hoy, Luke Teo and James Loosley.
- Princess Cruise Lines Ltd and Carnival plc represented by David McLure SC and Greg O'Mahoney, instructed by Ernest van Buuren and Jacob Smit of Clyde & Co;
- Health Administration Corporation (**Ministry of Health**) and NSW Ambulance, South Eastern Sydney Local Health District (**SES LHD**), Sydney Local Health District (**Sydney LHD**), Nepean Blue Mountains Local Health District (**Nepean LHD**) represented by Gail Furness SC and Kate Lindeman, instructed by Brad Woodhouse and Mark Cessario of Corrs Chambers Westgarth;
- Port Authority of New South Wales, represented by Matthew Hutchings, instructed by Ashley Tsacalos, Andrew Moore and Elizabeth Forbes of Clayton Utz;
- The International Transport Workers Federation (**ITF**), the Maritime Union of Australia (**MUA**), the Australian Institute of Marine Powered Engineers (**AIMPE**) and the Australian Maritime Officers Union (**AMOU**), represented by Kylie Nomchong SC and Bronwyn Byrnes, instructed by Howard Rapke of Holding Redlich; and
- The Commissioner of the NSW Police Force, represented by Jade Francis, on behalf of Natalie Marsic of the Office of the General Counsel, NSW Police Force.

Further information about each entity authorised to appear before the Commission can be found in **Appendix F** to this report.

Exhibits

A list of the exhibits tendered in the Special Commission can be found at **Appendix H** to this report.

APPENDIX F

Dramatis Personae

1) The following entities were authorised to appear before the Commission pursuant to s 12 of the *Special Commissions of Inquiry Act 1983* (NSW).

Port Authority of New South Wales

2) The Port Authority of NSW (**Port Authority**) is responsible for the navigation, security and operational needs of the six commercial ports in NSW (Sydney Harbour, Port Botany, Newcastle Harbour, Port Kembla, Eden and Yamba).[1]

3) The Port Authority employs harbour masters in respect of the ports under its authority. Each harbour master is appointed by the Minister under the *Marine Safety Act 1998* (NSW) and has statutory responsibilities and powers in relation to marine safety, including the power to control the time and manner in which a vessel may enter or leave the port.[2]

4) One of the key services provided by the Port Authority is "pilotage", which is compulsory under the *Marine Safety Act* for large vessels seeking to enter a commercial port in New South Wales.[3] Where this service is required, a marine pilot from the Port Authority meets an incoming vessel at the offshore "pilot boarding ground", goes aboard and assists the Master to safely navigate the vessel into the harbour and to its allocated berth. The pilot boarding ground for Sydney Harbour is four nautical miles east of Hornby Lighthouse at South Head.[4]

5) The Port Authority's Vessel Traffic Services team (**VTS**) coordinates vessel traffic in Sydney Harbour and Botany Bay.[5] The position of VTS is accredited under Marine Order 64 (vessel traffic services) 2013, which is made pursuant to the *Navigation Act 2012* (Cth).

1 *Ports and Maritime Administration Act 1995.*

2 *Marine Safety Act 1998*, ss 85 and 88.

3 *Marine Safety Act 1998*, s 74.

4 Exhibit 26, Statement of Sam Chell (22 April 2020) [5].

5 Exhibit 23, Statement of Sarah Marshall (22 April 2020) [3].

NSW Health

6) NSW Health comprises a number of statutory agencies. Authorisation to appear at the Commission was granted to the specific agencies with involvement (to varying extents) in the circumstances surrounding the arrival of the Ruby Princess on 19 March 2020; namely, the Health Administration Corporation (Ministry of Health), NSW Ambulance, the South Eastern Sydney Local Health District (**SES LHD**), the Sydney Local Health District (**SLHD**), and the Nepean Blue Mountains Local Health District (**Nepean LHD**).

7) The Health Administration Corporation is a corporation created under the *Health Administration Act 1982* to facilitate the State-wide administration of health services by the Secretary of the Ministry of Health. NSW Ambulance is a unit of the Health Administration Corporation.

8) The SESLHD, the SLHD and the Nepean LHD are statutory corporations established under the *Health Services Act 1997* for the purposes of providing health services in their respective Local Health Districts.

Princess Cruise Lines Ltd and Carnival plc

9) Carnival Corporation and Carnival plc collectively own and operate a number of subsidiaries, including nine cruise line brands. In Australia, Carnival plc trades as Carnival Australia.

10) The Holland America Group (**HAG**) incorporates four of these brands, namely Princess Cruise Lines Ltd (**Princess Cruises**), Holland America Line, Seabourn Cruise Line and P&O Cruises Australia. All four brands within the HAG operate within the Asia-Pacific region and use the Port of Sydney.

11) Princess Cruises is the owner of the Ruby Princess. From October 2019 to May 2020, the Ruby Princess was under a time charter to Carnival plc, meaning that the vessel was being operated by Princess Cruises, but tickets and other revenue activities were being sold or conducted by Carnival plc.

12) Princess Cruises (the owner of the Ruby Princess) and Carnival plc (the time charterer of the Ruby Princess) were authorised to appear before the Commission pursuant to s 12 of the Act.In this Report, Princess Cruises, Carnival Corporation and Carnival plc have been collectively referred to as "Carnival", except where it is appropriate to specifically refer to one of the entities.

The Commissioner of Police, NSW Police Force

13) The Commissioner of Police, as appointed under the *Police Act 1990* (NSW), is the head of the NSW Police Force. The Commissioner of Police was authorised to appear at the Commission having regard to the involvement of officers from the NSW Police Maritime Area Command in the events surrounding the Ruby Princess' arrival at Sydney on 19 March 2020, as well as the ongoing investigation being conducted by Strike Force Bast in relation to the docking and disembarkation of the Ruby Princess on 19 March 2020.

International Transport Workers Federation, Maritime Union of Australia, Australian Institute of Marine Powered Engineers and Australian Maritime Officers Union

14) The International Transport Workers Federation (**ITF**) is an international federation of transport workers unions, comprising 670 unions and representing over 18 million transport workers in 147 countries. The Maritime Union of Australia (**MUA**), the Australian Institute of Marine Powered Engineers (**AIMPE**) and Australian Maritime Officers Union (**AMOU**) are all affiliate unions of the ITF.

15) The ITF comprises unions who have coverage over employees of the Ruby Princess who undertake work as cleaners, in food and hospitality, in onboard entertainment, vessel maintenance, navigation and engineering.

16) The MUA represents maritime workers who work in port authorities in towage and wharf activities, including the operation of gangplanks or passageways used for the embarkation and disembarkation of passengers, and the loading and unloading of luggage, waste and cargo from vessels.

17) The AIMPE represents marine and power engineers and the cutter crews for pilots who board and guide vessels into port, including the Ruby Princess into Sydney on 18 and 19 March 2020.

18) The AMOU represents ships' officers and other technical and administrative staff in the port and marine authorities.

APPENDIX G

Schedule of Hearings and Witnesses who appeared before the Special Commission

Witness	Role	Transcript reference
22 April 2020		
Dr Ilse von Watzdorf	Senior Doctor, Ruby Princess Cruise Ship	T7-106
Sebastiano Azzarelli	Staff Captain, Ruby Princess Cruise Ship	T107-113
23 April 2020		
Charles Verwaal	Hotel Manager, Ruby Princess Cruise Ship	T116-146
1 May 2020 – Private Hearing		
Sarah Marshall	General Manager, Operations – Sydney, Port Authority NSW	P152-196
Cameron Butchart	Port Services Manager and Duty Harbourmaster, Port Authority NSW	P196-242
Kelly-Anne Ressler	Senior Epidemiologist, Public Health Unit, South-Eastern Sydney Local Health District	P243-276
5 May 2020		
Kelly-Anne Ressler	Senior Epidemiologist, Public Health Unit, South-Eastern Sydney Local Health District	T295-449
6 May 2020		
Dobrila Tokovic	Port Agent, Carnival Australia	T456-538
Naomi Mannion	Dispatcher, Sydney Control Centre, NSW Ambulance	T538-548
Simeon Joel Pridmore	Trainee Paramedic, NSW Ambulance	T548-571
Mathew Symonds	P1 Ambulance Paramedic, NSW Ambulance	T584-592
Robert Rybanic	Senior Manager of Cruise and Internal Operations, Port Authority NSW (White Bay Cruise Terminal and Overseas Passenger Terminal)	T592-621

Witness	Role	Transcript reference
Cameron Butchart	Port Services Manager and Duty Harbourmaster, Port Authority NSW	T621-633
8 May 2020		
Cameron Butchart	Port Services Manager and Duty Harbourmaster, Port Authority NSW	T647-679
Emma Fensom	Acting Chief Operating Officer, Port Authority NSW	T680-757
Valerie Anne Burrows	Port Agent Manager, Carnival Australia	T762-792
Paul Mifsud	Senior Director, Port Operations Asia-Pacific, Carnival Australia	T792-820
11 May 2020		
Paul Mifsud	Senior Director, Port Operations Asia-Pacific, Carnival Australia	T856-901
9 June 2020		
Dr Sean Tobin	Medical Epidemiologist at the Ministry of Health and the Chief Human Biosecurity Officer for New South Wales; Expert Panel Member	T907-1050
10 June 2020		
Dr Sean Tobin	Medical Epidemiologist at the Ministry of Health and the Chief Human Biosecurity Officer for New South Wales; Expert Panel Member	T1053-1184
Professor Mark Ferson	Director, Public Health Unit, South Eastern Sydney Local Health District; Expert Panel Member	T1185-1185
15 June 2020		
Professor Mark Ferson	Director, Public Health Unit, South Eastern Sydney Local Health District; Expert Panel Member	T1215-1302
Dr Isabel Hess	Staff Specialist, Sydney Local Health District Public Health Unit; Expert Panel Member	T1302-1335
16 June 2020 – Private Hearing		
Dr Leena Gupta	Clinical Director, Public Health Unit, Sydney Local Health District	P1339-1417
17 June 2020		
Dr Vicki Sheppeard	Deputy Director, Public Health, South-Eastern Sydney Local Health District	T1423-1495
18 June 2020		
Dr Jeremy McAnulty	Executive Director, Health Protection, NSW Health	T1499-1593

Witness	Role	Transcript reference
19 June 2020		
Anthony Londero	Ruby Princess Passenger	T1597-1615
Percy Anderson	Ruby Princess Passenger	T1620-1632
Graeme Lake	Ruby Princess Passenger	T1633-1651
David Walters	Ruby Princess Passenger	T1652-1688
Wendy Williams	Ruby Princess Passenger	T1668-1686
22 June 2020		
Jill Whittemore	Ruby Princess Passenger	T1692-1704
William Wright	Ruby Princess Passenger	T1704-1722
David Annesley	Relative of Ruby Princess Passenger, Helen Rhodes	T1723-1735
Andrew Saulys and Joan Saulys	Ruby Princess Passengers	T1736-1759
Josephine Roope	Ruby Princess Passenger	T1761-1786
Lynda De Lamotte	Ruby Princess Passenger	T1787-1812
23 June 2020		
Lynette Jones	Ruby Princess Passenger	T1816-1834
Sharon Schofield	Ruby Princess Passenger	T1835-1854
Ann Kavanagh	Ruby Princess Passenger	T1856-1868
Paul Reid	Ruby Princess Passenger	T1871-1900
Laraine Fenton	Ruby Princess Passenger	T1901-1918
Kristy McMahon	Ruby Princess Passenger	T1919-1933
26 June 2020		
Janette Moore	Ruby Princess Passenger	T1938-1958
Peter Little	Senior Vice-President Guest Experiences, P&O Cruises	T1959-2046
15 July 2020 – Closing Submissions and Submissions of Authorised Parties		
Richard Beasley SC	Senior Counsel Assisting the Special Commission	T2114-2167, T2191
Nicolas Kirby	Counsel Assisting the Special Commission	T2167-2190
David McLure SC	Senior Counsel for Princess Cruise Lines Ltd and Carnival plc t/a Carnival Australia	T2192-2215
17 July 2020 – Submissions of Authorised Parties		
Matthew Hutchings	Counsel for the Port Authority NSW	T2224-2231
Gail Furness SC	Senior Counsel for the Health Administration Corporation	T2231-2272

APPENDIX H

Exhibits Tendered in the Commission

Exhibit	Document	Date of Tender
Exhibit 1	Email: Laura-Jayne Quinn (South Eastern Sydney LHD) to Ruby Senior Doctor, sent on Tuesday 17 March 2020 at 4:01PM	5 May 2020
Exhibit 2	Email: Ruby Senior Doctor (Dr Ilse von Watzdorf) to SESLHD-Public Health Unit-CruiseShipSurv sent on Wednesday 18 March 2020 at 9:39AM.	5 May 2020
Exhibit 3	1. Current Acute Respiratory Illness Log dated 18 March 2020 2. Acute Respiratory Illness Spreadsheet dated 18 March 2020 3. Final Acute Respiratory Illness Spreadsheet dated 20 March 2020	5 May 2020
Exhibit 4	NSW Ambulance Incident Detail Report for call from "BIBI" at 19:01PM on 18 March 2020 for patient "LONEERO (sic) ANTHONY".	5 May 2020
Exhibit 5	NSW Ambulance Incident Detail Report for call from "BIBI" at 19:01PM on 18 March 2020 for patient "BACON, LESLEY"	5 May 2020
Exhibit 6	Australian Government, Department of Health document titled "Novel coronavirus (COVID-19)"	5 May 2020
Exhibit 7	NSW Government Document to "Cruise Ship Industry Representative" from Dr Kerry Chant, Deputy Secretary, Population and Public Health and Chief Medical Officer, NSW Ministry of Health, dated 22 February 2020.	5 May 2020
Exhibit 8	NSW Government document titled "Enhanced COVID-19 Procedures for the Cruise Line Industry", updated 9 March 2020	5 May 2020
Exhibit 9	Australian Government, Department of Health, document titled "NATIONAL PROTOCOL FOR MANAGING NOVEL CORONAVIRUS DISEASE (COVID-19) RISK FROM CRUISE SHIPS", endorsed 3 March 2020	5 May 2020
Exhibit 10	"CRUISE SHIP SCREENING PROCEDURE FOR PORTS OF FIRST ENTRY INTO AUSTRALIA", pre-arrival risk assessment form for the Ruby Princess	5 May 2020
Exhibit 11	Australian Government Human Health Report (Maritime Arrivals Reporting System – MARS) report for the vessel Ruby Princess submitted on 18 March 2020 at 19:21PM	5 May 2020
Exhibit 12	Email: SY_VTS to Ruby Bridge; Ruby Captain sent on Wednesday 18 March 2020 at 9:20PM re "BIO SECURITY DECLARATION"	5 May 2020
Exhibit 13	Email: Ruby Bridge (F Savarese, 1st Officer) to SY_VTS sent on Wednesday 18 March 2020 at 8:03PM	5 May 2020

Exhibit	Document	Date of Tender
Exhibit 14	Email: SY_VTS (Stephen Howieson, Vessel Traffic Services Operator) to Ruby Bridge sent on Wednesday 18 March 2020 at 11:59PM re "BIO SECURITY DECLARATION"	5 May 2020
Exhibit 15	Email: Ruby Staff Captain 1 to SY_VTS sent on Thursday 19 March 2020 at 12:15AM re "BIO SECURITY DECLARATION"	5 May 2020
Exhibit 16	Statement of Kelly-Anne Ressler dated 1 May 2020 (including annexures)	5 May 2020
Exhibit 17	Statement of Naomi Mannion dated 29 April 2020 (including annexures)	6 May 2020
Exhibit 18	Statement of Simeon Joel Pridmore dated 30 April 2020 (including annexures)	6 May 2020
Exhibit 19	1. Pre Arrival Report and Human Health Update dated 16 March 2020 2. Human Health Updates dated 18 March 2020	6 May 2020
Exhibit 20	Statement of Peter Dilonardo dated 30 April 2020 (including annexures)	6 May 2020
Exhibit 21	Statement of Robert Rybanic dated 21 April 2020 (including annexures)	6 May 2020
Exhibit 22	Statement of Emma Fensom dated 5 May 2020 (including annexures)	8 May 2020
Exhibit 23	Further Statement of Sarah Marshall dated 5 May 2020 (including annexures)	8 May 2020
Exhibit 24	Further Statement of Cameron Butchart dated 5 May 2020 (including annexures)	8 May 2020
Exhibit 25	Statement of Stephen Howieson dated 27 April 2020 (including annexures)	11 May 2020
Exhibit 26	Statement of Sam Chell dated 22 April 2020	11 May 2020
Exhibit 27	Email: Bibi Tokovic (Carnival Australia) to multiple recipients sent on Wednesday 18 March 2020 at 4:10PM	11 May 2020
Exhibit 28	Statement of Dr Sean Tobin dated 29 May 2020	9 June 2020
Exhibit 29	Annexures to NSW Health Witness Statements	9 June 2020
Exhibit 30	Email from Dr David Durrheim dated 13 February 2020 at 3:34pm	10 June 2020
Exhibit 31	Schedule to Standard Funding Agreement with a commencement date of 1 July 2016	10 June 2020
Exhibit 32	CDNA National Guidelines for Public Health Units re 2019-nCoV – Versions 1.2 to Versions 2.4	10 June 2020
Exhibit 33	Epidemiology Reports re COVID-19 of Communicable Diseases Intelligence, Department of Health - Numbers 1 to 9	10 June 2020
Exhibit 34	Draft of NSW Health COVID-19 Cruise Ship Response Procedure for Confirmed Cases in Passengers or Crew, dated 24 February 2020	10 June 2020
Exhibit 35	NSW Health Report on the Ruby Princess	10 June 2020
Exhibit 36	Port Authority of NSW Daily Report Form	10 June 2020
Exhibit 37	Analysis of NSW Health Risk Assessment Form at Tab 49, Exhibit 29 prepared by Carnival (e&o)	10 June 2020
Exhibit 38	Statement of Professor Mark Ferson dated 29 May 2020	10 June 2020

Exhibit	Document	Date of Tender
Exhibit 39	Statement and annexures of Senior Constable Travis Butler dated 4 April 2020	15 June 2020
Exhibit 40	Statement of Marine Area Command Officer dated 9 April 2020	15 June 2020
Exhibit 41	Statement of Marine Area Command Officer dated 6 May 2020	15 June 2020
Exhibit 42	Statement and annexures of Mathew Symonds dated 30 April 2020	15 June 2020
Exhibit 43	Statement and annexures of Julie Taylor dated 13 May 2020	15 June 2020
Exhibit 44	Statement and annexures of Julie Taylor dated 25 May 2020	15 June 2020
Exhibit 45	Statement and annexures of Doug Hanshaw dated 20 May 2020	15 June 2020
Exhibit 46	Statement and annexures of Michael Kelly dated 25 May 2020	15 June 2020
Exhibit 47	Statement and annexures of Katie Barker dated 6 June 2020	15 June 2020
Exhibit 48	Statement and annexures of Peta Pippos dated 6 June 2020	15 June 2020
Exhibit 49	Statement and annexures of Dr Laura Collie dated 11 June 2020	15 June 2020
Exhibit 50	Email from Dr Ilse von Watzdorf to Kelly-Anne Ressler dated 15 March 2020	15 June 2020
Exhibit 51	Email from Kelly-Anne Ressler to Sarah Marshall dated 18 March 2020	15 June 2020
Exhibit 52	Statement of Dr Isabel Hess dated 29 May 2020	15 June 2020
Exhibit 53	Statement of Dr Vicky Sheppeard dated 9 June 2020	17 June 2020
Exhibit 54	NSW Health Media Release: Covid-19 (Coronavirus) statistics as at 8pm, Friday 20 March 2020	17 June 2020
Exhibit 55	10 page bundle of emails commencing with email from Ruby Senior Doctor of 7 March 2020 at 9:30pm	17 June 2020
Exhibit 56	Statement of Associate Professor Bradley Forssman dated 29 May 2020	17 June 2020
Exhibit 57	Statement of Dr Jeremy McAnulty dated 15 June 2020 (with annexures)	18 June 2020
Exhibit 58	Second Statement of Dr Jeremy McAnulty dated 15 June 2020 (with annexures)	18 June 2020
Exhibit 59	Bundle of emails with attached spreadsheet, commencing with an email from Vicky Sheppeard dated Friday, 20 March 2020 at 8.56 am	18 June 2020
Exhibit 60	Statement of Anthony Londero dated 16 April 2020	19 June 2020
Exhibit 61	Email of K Gill re refund from Princess Cruises dated 24 April 2020	19 June 2020
Exhibit 62	Email from K Londero to Ruby Senior Doctor dated 20 April 2020	19 June 2020
Exhibit 63	Statement of Percy Anderson dated 24 April 2020	19 June 2020
Exhibit 64	Statement of Graeme Lake dated 12 May 2020	19 June 2020
Exhibit 65	Statement of David Walters dated 25 April 2020	19 June 2020
Exhibit 66	Ruby Princess Medical Centre Invoices for David and Kim Walters, dated 17 March 2020	19 June 2020
Exhibit 67	Statement of Wendy Williams dated 11 May 2020	19 June 2020
Exhibit 68	Statement of Sean Devitt dated 9 June 2020	22 June 2020
Exhibit 69	Transcript and audio recording of telephone conversation between Cameron Butchart and Stephen Howieson dated 18 March 2020 at approximately 10:44pm	22 June 2020

Exhibit	Document	Date of Tender
Exhibit 70	Transcript and audio recording of telephone conversation between Stephen Howieson and Dr von Watzdorf dated 19 March 2020 at approximately 12:06am	22 June 2020
Exhibit 71	Statement of Jill Whittemore dated 28 April 2020	22 June 2020
Exhibit 72	Statement of William Wright dated 15 April 2020	22 June 2020
Exhibit 73	Statement of David Annesley dated 21 May 2020	22 June 2020
Exhibit 74	Statement of Andrew Saulys dated 14 May 2020	22 June 2020
Exhibit 75	Health advisory: Coronavirus, signed by Dr Grant Tarling	22 June 2020
Exhibit 76	Statement of Josephine Roope dated 16 April 2020	22 June 2020
Exhibit 77	Mrs J Roope case summary	22 June 2020
Exhibit 78	Folio C518 of Mrs J Roope	22 June 2020
Exhibit 79	Statement of Lynda De Lamotte dated 20 May 2020	22 June 2020
Exhibit 80	Statement of Lynette Jones dated 21 April 2020	23 June 2020
Exhibit 81	Case Summaries: Lynette and Donald Jones	23 June 2020
Exhibit 82	Statement of Donald Jones dated 20 April 2020	23 June 2020
Exhibit 83	Statement of Sharon Schofield dated 6 May 2020	23 June 2020
Exhibit 84	Statement of Ann Kavanagh dated 28 April 2020	23 June 2020
Exhibit 85	Onboard announcements during Ruby Princess cruise from 8 to 19 March 2020	23 June 2020
Exhibit 86	Statement of Paul Reid dated 15 May 2020	23 June 2020
Exhibit 87	Case Summary: Paul Reid	23 June 2020
Exhibit 88	Text Chat History (x 2)	23 June 2020
Exhibit 89	Statement of Laraine Fenton dated 5 May 2020	23 June 2020
Exhibit 90	Statement of Kristy McMahon dated 7 May 2020	23 June 2020
Exhibit 91	Statement of Janette Moore dated 14 April 2020	26 June 2020
Exhibit 92	Statement of Peter Little dated 26 June 2020 (with Exhibit PWL-1)	29 June 2020
Exhibit 93	Second statement of Dr Sean Tobin dated 19 June 2020 (with annexures)	29 June 2020
Exhibit 94	Second statement of Stephen Howieson dated 16 June 2020 (with annexures)	29 June 2020
Exhibit 95	Statement of James Dargaville dated 16 April 2020 (with annexures)	29 June 2020
Exhibit 96	255 police statements of Ruby Princess passengers and families	29 June 2020
Exhibit 97	Statement of Sergeant Gerard Hollands dated 12 April 2020	29 June 2020
Exhibit 98	Statement of Professor Andrew Wilson dated 10 June 2020 (with annexures)	29 June 2020
Exhibit 99	Expert Report of Professors Anthony Kelleher and Andrew Grulich dated 17 June 2020	29 June 2020
Exhibit 100	Statement of Dr Christine Selvey dated 22 June 2020 (with annexures)	29 June 2020
Exhibit 101	Statement of Dr Leena Gupta dated 12 June 2020 (with annexures)	8 July 2020
Exhibit 102	Supplementary Statement of Kelly-Anne Ressler dated 23 May 2020	15 July 2020
Exhibit 103	Statement of Johanna Bosman dated 30 June 2020 (with annexures)	15 July 2020

Exhibit	Document	Date of Tender
Exhibit 104	Email from Carnival to Ministry of Health annexing Enhanced COVID-19 Procedures of 26 February 2020	15 July 2020
Exhibit 105	Text messages exchanged between Peter Little and Greg Jackson on 17 March 2020	15 July 2020
Exhibit 106	Statement and Exhibit of Dr Grant Tarling dated 29 June 2020	15 July 2020
Exhibit 107	Statement of Johan Wilhelm Mathee dated 13 July 2020	15 July 2020
Exhibit 108	Further 171 witness statements from Ruby Princess passengers *N.B Subject to a non-publication order*	15 July 202
Exhibit 109	Police statement of Colin White dated 5 May 2020	15 July 202
Exhibit 110	Letter and attachment from the Flight Attendants' Association of Australia dated 22 June 2020	15 July 202
Exhibit 111	Statement and annexures of Teri O'Toole dated 19 June 2020	15 July 2020
Exhibit 112	Statement and annexures of Toni Lockyer dated 22 June 2020	15 July 2020
Exhibit 113	Statement and annexures of David Horsfall dated 22 June 2020	15 July 2020
Exhibit 114	Voluntary Statement of the Commonwealth of Australia dated 12 June 2020 and accompanying documents	15 July 2020
Exhibit 115	Chronology dated 19 June 2020 and supporting material from the Victorian Department of Health and Human Services	15 July 2020
Exhibit 116	Special Commission of Inquiry into the Ruby Princess - Issues List for Parties	15 July 2020
Exhibit 117	Table cross-referencing Patient Log of Princess Cruise Lines/Carnival Australia and ARI-ILI spreadsheets	17 July 2020
Exhibit 118	Risk Assessment Form prepared by NSW Health for the arrival of Ruby Princess on 24 February 2020	17 July 2020
Exhibit 119	Voluntary Statement of the Commonwealth of Australia dated 16 July 2020 and accompanying documents	17 July 2020
Exhibit 120	Minutes of Ruby Princess Cruise Ship Teleconference of 22 March 2020	3 August 2020
Exhibit 121	"Identification, Assessment and Management of Patients for COVID-19", issued February 2020 by Holland America Group	3 August 2020
Exhibit 122	Carnival Corporation Public Health and Sanitation Procedure 1120 "Management of Acute Respiratory Disease", dated 1 February 2018	3 August 2020
Exhibit 123	List of deceased persons associated with the Ruby Princess *N.B. Subject to a non-publication order*	
Exhibit 124	Slideshow presentation for the training of Human Biosecurity Officers, sent to NSW Health by the Australian Government Department of Health on 6 February 2020.	3 August 2020
Exhibit 125	Supplementary Voluntary Submission of the Commonwealth of Australia dated 31 July 2020 and accompanying documents	4 August 2020
Exhibit 126	Further Supplementary Voluntary Submission of the Commonwealth of Australia	4 August 2020

APPENDIX I

Risk Assessment Form

CRUISE SHIP SCREENING PROCEDURE FOR PORTS OF FIRST ENTRY INTO AUSTRALIA

Pre-arrival risk assessment form
Completed by: Laura-Jayne Quinn

Key questions	**Answer**	**Details (names and dates, etc.)**
Name of ship	Ruby Princess	83997 net tonnage (medium/large)
Date and time of **arrival** in NSW	19 March 06:00	
Terminal of arrival	Overseas Passenger terminal ***NB: Ship has advised of the possibility of them coming to anchorage 2am to land specimens and begin clearance***	
Port of **origin** of this cruise	Sydney, Australia	
Date of **departure**	8 March 2020	
Has the ship been in a **foreign** port during this cruise in last 14 days?	Yes	
Ports visited and dates during this cruise in last 14 days	4 March- Dunedin, New Zealand 5 March- Fiordland, New Zealand 8 March- Sydney, Australia 11 March Fiordland, New Zealand 12 March- Dunedin, New Zealand 13 March- Akaroa, New Zealand 14 March- Wellington, New Zealand 15 March- Napier, New Zealand 16 March- Tauranga, New Zealand 17 March- Auckland, New Zealand (May not have stopped at all ports)	
Has the ship had a health **assessment** at the previous port?	Unknown	Have cut cruise short
Number of **passengers** on board	2647 (MARS)	
Number of **crew** on board	1148 (MARS)	

CRUISE SHIP SCREENING PROCEDURE FOR PORTS OF FIRST ENTRY INTO AUSTRALIA

Number of passengers and crew have been in **contact** with a confirmed case	0	
Number of passengers and crew who have been in mainland **China, Iran, South Korea or Italy** within 14 days of embarking	0	
Has the ship obtained accurate **contact information** (mobile phone and email addresses) for all passengers?	Yes- confirmed by Doctor and attached to correspondence.	
Has the ship ensured all passengers with respiratory symptoms and fever are **isolated** while on board and provide them with hand **rub** and **masks** for onward travel?	Yes	Advised via email and confirmed isolation of passengers
Has the ship actively **asked** passengers and crew **if** they have respiratory symptoms or fever AND asked them to present to the ship's doctor for assessment before arrival?	Yes	Confirmed by Doctor
Is assessment **free** of charge?	Yes- confirmed by Doctor	
Number of passengers and crew who **presented** to ship's clinic with acute respiratory illness this cruise	104	104/3795 2.7%
% of ship's crew/passengers who had influenza like illness	0.94%	36/3795
Number of **ill** passengers and crew who have been in countries included in the **Australian CoVID-19 testing** criteria in the 14 days before embarkation	0	
Total number of passengers and crew **swabbed** for flu, and number tested positive this cruise	48	24 positive for influenza A
Number of swabs **available** for COVID-19 testing	10	Another 5 tested Wellington as negative for COVID-19.
Other	No deaths 2 medical disembarkations (see below) No further itinerary planned ***Ship has advised of the possibility of them coming to anchorage today (18 March) to land specimens.***	
Considering • the exposures of the passengers and crew, and • the nature of the illness and the results of flu testing What is the risk that COVID-19 is circulating on board?		

CRUISE SHIP SCREENING PROCEDURE FOR PORTS OF FIRST ENTRY INTO AUSTRALIA

If **low**, then **additional assessment** of the ship is not generally required.	

Medical disembarkations

Mr ANTHONY LONDERO, A537 (Australian, no travel history of significance outside of NSW and NZ; febrile upper respiratory tract infection which is improving on Oseltamivir, Influenza test neg; reason for medical disembarkation: signs of rate related cardiac ischaemia, likely secondary to infective process on initial presentation, which has since improved. He requires a cardiology consult with investigations prior to proceeding home) **Ambulance transfer required**

Mrs LESLEY BACON, C518 (Australian, no travel history of significance outside of NSW and NZ; febrile upper respiratory tract infection started on Oseltamivir, Influenza tests neg; reason for medical disembarkation: severe lower backpain with signs suggestive of a femoral nerve radiculopathy. This is pre-existing to the respiratory tract infection. She needs assessment in the ED with imaging and specialist referral as needed) **Ambulance transfer required**

APPENDIX J

Expert Reports and Statements

Professor Anthony Kelleher and Professor Andrew Grulich

Professor Kelleher is Director of the Kirby Institute at the University of New South Wales dedicated to the prevention and treatment of infectious diseases. Professor Kelleher is also Head of the Kirby Institute's Immunovirology and Pathogenesis Program, and is the Principal of the Infection Immunology and Inflammation Theme at UNSW Medicine.

Professor Grulich is a medical epidemiology and public health physician. He is the Director of the Population and Prevention Theme and Head of the HIV Epidemiology and Prevention Program at the Kirby Institute at the University of New South Wales.

The Commission engaged Professors Kelleher and Grulich to provide views, from the perspective of public health, on matters relevant to the terms of the Special Commission, including the risk assessment for COVID-19 on cruise ships and possible changes to existing procedures for managing risk of transmissions should a similar situation arise in the future concerning ships entering NSW ports.

Professors Kelleher and Grulich addressed several questions asked by the Commission in letters of instruction dated 27 May 2020 and 12 June 2020, and produced a joint report dated 17 June 2020.

The report was tendered before the Commission as Exhibit 99. Professors Kelleher and Grulich did not give oral evidence at the Commission's hearings.

Professor Andrew Wilson

Professor Wilson is Co-Director of the Menzies Centre for Health Policy at the University of Sydney. He is a public health physician and has a PhD in epidemiology.

Professor Wilson was engaged by NSW Health to conduct a "desktop review" of the "NSW Health Report on the Ruby Princess Cruise of 8 March to 19 March 2020".

At the request of the Commission, Professor Wilson produced a statement dated 10 June 2020 providing clarification on parts of his desktop review. The statement was tendered before the Commission as Exhibit 98. Professor Wilson did not give oral evidence at the Commission's hearings.

APPENDIX K

Submissions received relevant to the Commission's Terms of Reference

Table 1: Passengers of the Ruby Princess on the 8 to 19 March 2020 voyage

	Submitter	Submission date
1.	Confidential	23 April 2020
2.	John Macrae	1 May 2020
3.	Graeme Lake	8 May 2020
4.	John Fillery & Pat Caddy	12 May 2020
5.	Name Withheld	19 May 2020
6.	Lynda and John McGrath	19 May 2020
7.	Kim Walters	19 May 2020
8.	Name Withheld	19 May 2020
9.	Confidential	19 May 2020
10.	Paul Malliate	19 May 2020
11.	Jesse Walker	19 May 2020
12.	Name Withheld	19 May 2020
13.	Name Withheld	19 May 2020
14.	Timothy Squires	19 May 2020
15.	Keith Gibbs	19 May 2020
16.	Name Withheld	19 May 2020
17.	Peter Connolly	19 May 2020
18.	Name Withheld	19 May 2020
19.	Elisa McCafferty	19 May 2020
20.	Name Withheld	20 May 2020
21.	Michelle Kelly	20 May 2020
22.	John King	20 May 2020
23.	Confidential	20 May 2020
24.	Confidential	20 May 2020
25.	Pauline Bryant	20 May 2020
26.	Kamla Harricharan	20 May 2020
27.	Name Withheld	20 May 2020

	Submitter	Submission date
28.	Name Withheld	20 May 2020
29.	James Heinzer	20 May 2020
30.	Thelma Home	20 May 2020
31.	William Ford	20 May 2020
32.	Michael Bliss	20 May 2020
33.	Name Withheld	20 May 2020
34.	Frederick Jackson	20 May 2020
35.	Name Withheld	20 May 2020
36.	Confidential	20 May 2020
37.	Penelope Claxton	20 May 2020
38.	Rhonda Stevens	20 May 2020
39.	Name Withheld	20 May 2020
40.	Confidential	20 May 2020
41.	Confidential	20 May 2020
42.	Name Withheld	21 May 2020
43.	Lynda Cryer	21 May 2020
44.	Karen Jacobs	21 May 2020
45.	Terence Cryer	21 May 2020
46.	Name Withheld	21 May 2020
47.	Name Withheld	21 May 2020
48.	Timothy John Clarke	21 May 2020
49.	Confidential	21 May 2020
50.	Confidential	21 May 2020
51.	Rona Dobrin	21 May 2020
52.	Stephen Plescia	21 May 2020
53.	Nadine Aida Blair	21 May 2020
54.	Patricia Catt	21 May 2020
55.	Name Withheld	21 May 2020
56.	Name Withheld	21 May 2020
57.	Jennifer and Peter Smith	21 May 2020
58.	Name Withheld	21 May 2020
59.	Gail Goode	21 May 2020
60.	Helen Heidenreich	21 May 2020
61.	Colin and Pauline Atkinson	21 May 2020
62.	Keith Muller	21 May 2020
63.	Confidential	22 May 2020
64.	Name Withheld	22 May 2020

	Submitter	Submission date
65.	Debra Peters	22 May 2020
66.	Name Withheld	22 May 2020
67.	Confidential	22 May 2020
68.	Name Withheld	22 May 2020
69.	Name Withheld	22 May 2020
70.	John & Christine Wane	22 May 2020
71.	Trevor Potter	22 May 2020
72.	Name Withheld	22 May 2020
73.	Dick Wegener	23 May 2020
74.	Confidential	23 May 2020
75.	Janette Moore	23 May 2020
76.	Name Withheld	23 May 2020
77.	Lynne Carpenter	24 May 2020
78.	Malvina Miron	25 May 2020
79.	Name Withheld	25 May 2020
80.	Name Withheld	25 May 2020
81.	Name Withheld	25 May 2020
82.	Harry McDonald	25 May 2020
83.	Name Withheld	25 May 2020
84.	Name Withheld	26 May 2020
85.	Richard and Coral Peachey	26 May 2020
86.	Name Withheld	26 May 2020
87.	Haylee Spencer	26 May 2020
88.	Name Withheld	27 May 2020
89.	Deborah Hystek	27 May 2020
90.	Alwyn Johnson	27 May 2020
91.	Confidential	27 May 2020
92.	Name Withheld	28 May 2020
93.	Jane (aka Mia) Manson	28 May 2020
94.	Margrete Hamence	28 May 2020
95.	Confidential	28 May 2020
96.	Lutz Gobrecht	29 May 2020
97.	Gregory Mitchell and Dawn King	29 May 2020
98.	Name Withheld	29 May 2020
99.	Confidential	29 May 2020
100.	Name Withheld	30 May 2020
101.	Martyn Morris	30 May 2020

Table 2: Passengers of the Ruby Princess on the 24 February to 8 March 2020 voyage

	Submitter	Submission date
1.	Confidential	29 Apr 2020
2.	Janet Simpson	6 May 2020
3.	Confidential	20 Apr 2020
4.	Julia Sutherland	29 Apr 2020
5.	Name Withheld	1 May 2020
6.	Name Withheld	3 May 2020
7.	Rhonda Sales	4 May 2020
8.	Anna Moore	4 May 2020
9.	Trena Langran	4 May 2020
10.	Peter Langran	4 May 2020
11.	Rosalie Cunningham	5 May 2020
12.	Name Withheld	5 May 2020
13.	Name Withheld	6 May 2020
14.	Name Withheld	7 May 2020
15.	Name Withheld	7 May 2020
16.	Dianne Chenoweth	13 May 2020
17.	Janis Grover	14 May 2020

Table 3: Passengers of other cruises

	Submitter	Submission date
1.	Judithe Hall *Sun Princess voyage of 10 to 19 March 2020*	29 April 2020
2.	Richard Smith and Jill Tempest Smith *Ruby Princess voyage of 11 to 24 February 2020*	9 April 2020
3.	Sheila and Jim Ritter *Ruby Princess voyage of 30 December 2019 to 13 January 2020*	30 Apr 2020
4.	David Hall-Johnston *Ruby Princess voyage of 27 January to 8 February 2020*	1 May 2020
5.	Diana Singer *Celebrity Solstice voyage of 10 March to 19 April 2020*	3 May 2020
6.	Michael Richardson *Ruby Princess voyage of 13 to 27 January 2020*	8 May 2020
7.	John Sadler *Ruby Princess voyage of 27 January to 8 February 2020*	9 May 2020
8.	Name Withheld *Ruby Princess voyage of 8 to 11 February 2020*	20 May 2020
9.	Confidential *Majestic Princess voyage of 1 to 13 November 2019*	24 May 2020
10.	Confidential *Carnival Splendor voyage of 19 to 28 December 2019*	27 May 2020

Table 4: Public submissions

	Submitter	Submission date
1.	Confidential	29 April 2020
2.	Name withheld	1 May 2020
3.	George Rupesinghe	5 May 2020
4.	Andrew Lanham	5 May 2020
5.	Confidential	6 May 2020
6.	Phillip Harrip	6 May 2020
7.	Name withheld	6 May 2020
8.	Name withheld	6 May 2020
9.	Name withheld	7 May 2020
10.	David Lindsay	12 May 2020
11.	Name withheld	12 May 2020
12.	Name withheld	18 May 2020
13.	Name withheld	21 May 2020
14.	Paul Evans	21 May 2020
15.	Frances McMahon	25 May 2020
16.	Bruce Lawrence	26 May 2020
17.	Teresa Lloyd for Maritime Industry Australia Limited	29 May 2020
18.	Richard Davey	29 May 2020
19.	Lou Nesci for Flight Attendants' Association of Australia	29 May 2020
20.	Name withheld	30 May 2020

APPENDIX L

Legislation and Subordinate Legislation

Australian Border Force Act 2015 (Cth)

Biosecurity Act 2015 (Cth)

Biosecurity (Entry Requirements) Determination 2016 (Cth)

Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) Declaration 2020 (Cth)

Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements for Cruise Ships) Determination 2020 (Cth)

Biosecurity (Listed Human Diseases) Determination 2020 (Cth)

Biosecurity (Listed Human Diseases) Amendment Determination 2020 (Cth)

Biosecurity (Negative Pratique) Instrument 2016 (Cth)

Biosecurity Regulation 2016 (Cth)

Customs Act 1901 (Cth)

International Health Regulations 2005 (World Health Organisation)

Migration Act 1958 (Cth)

Migration (VES 20/002: Class of Persons Taken Not to Enter Australia) Determination 2020 (Cth)

Marine Order 64 (Vessel Traffic Services) 2013 (Cth)

Maritime Powers Act 2013 (Cth)

Marine Safety Act 1988 (NSW)

Navigation Act 2012 (Cth)

Ports and Maritime Administration Act 1995 (NSW)

Public Health Act 2010 (NSW)

Public Health (COVID-19 Mass Gatherings) Order 2020 (NSW)

Public Health (COVID-19 Public Events) Order 2020 (NSW)

Public Health (COVID-19 Maritime Quarantine) Order 2020 (NSW)

Public Health (COVID-19 Quarantine) Order 2020 (NSW)

Public Health Amendment (Scheduled Medical Conditions and Notifiable Diseases) Order 2020 (NSW)

Quarantine Act 1908 (Cth)

New South Wales
Australia