



Special Commission of Inquiry into the Ruby Princess

EXHIBIT 114

Voluntary Statement of the Commonwealth of Australia dated 12 June 2020



Australian Government Solicitor

Voluntary Statement to the Special Commission of Inquiry into the Ruby Princess

**Commonwealth of Australia (represented by the
Department of Health, the Department of Home
Affairs and the Department of Agriculture,
Water and the Environment)**

12 June 2020

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Part I: Introduction

1. By letters patent issued on 15 April 2020, the Governor of New South Wales established the Special Commission of Inquiry into the Ruby Princess (Commission).
2. The terms of reference are set out in the letters patent, and require that the Special Commissioner inquire into and report, and make recommendations, to the NSW Government on certain matters. Those matters include the communications, decisions and actions of the Commonwealth, specifically (but not confined to) the Australian Border Force (ABF), which is part of the Department of Home Affairs (Home Affairs), and the Department of Agriculture, Water and the Environment (Agriculture).

BASIS FOR VOLUNTARY STATEMENT

3. The Commonwealth (represented by Home Affairs, Agriculture and the Department of Health (Commonwealth Health)) makes this statement to assist the Commission.
4. As stated in AGS's letter to the Commission of 15 May 2020, this statement (and the accompanying production of documents) is made voluntarily. It should not be taken as a concession that the Commonwealth or its officers and employees are bound by the *Special Commissions of Inquiry Act 1983* (NSW) or are subject to any of the Commission's coercive powers.¹ The Commission indicated by letter dated 15 May 2020 that it will not take this statement as being any such indication.²

SCOPE OF VOLUNTARY STATEMENT

5. This statement describes the legal and policy framework within which actions of officers of Commonwealth Health, Home Affairs (including officers of ABF) and Agriculture in relation to the Ruby Princess occurred. It provides a narrative chronology of key communications, decisions and actions of ABF, Agriculture and Commonwealth Health, having regard to the steps contemplated by that legal framework.
6. The statement is based upon the review and inquiries conducted to date by, and on behalf of, Commonwealth Health, Home Affairs and Agriculture. It has been prepared within a limited time frame and on the basis of materials identified as a result of those inquiries and available as at the date of this statement.
7. Where a document is referred to in the statement, that document is provided. A small number of the documents accompanying the statement contain sensitive information, which has been redacted. Where information has been redacted, the reason for that redaction is explained in the index at page 42.

¹ Letter from AGS to Commission, 15 May 2020 (AGS.0001.0001.0001).

² Letter from Commission to AGS, 15 May 2020 (AGS.0001.0001.0003).

PREPARATION OF STATEMENT

8. This statement has been prepared by the Australian Government Solicitor with the assistance of Ruth Higgins SC, Joanna Davidson and Matthew Sherman of counsel.

Part II: Overview of law, policy and procedure

COMMONWEALTH BIOSECURITY CLEARANCE PROCESSES

9. The *Biosecurity Act 2015* (Cth) (Biosecurity Act) provides for the assessment and management of risks to human health arising from the entry of conveyances into Australian territory, including cruise ships.³ These aspects of the Biosecurity Act are administered by Commonwealth Health.⁴ However, because Commonwealth Health does not have officials at Australia's First Points of Entry, Commonwealth Health has entered into administrative arrangements for those functions to be performed by Agriculture Biosecurity Officers,⁵ supported by State and Territory health departments who are responsible for providing day-to-day human biosecurity services at Australia's border and resourcing human biosecurity emergencies.⁶ Further details about these arrangements are outlined at [25]-[31].
10. In response to the COVID-19 emergency, NSW Health developed practical arrangements for the provision of human biosecurity services by which it would undertake a 'risk assessment' in relation to each incoming cruise ship, the outcome of which would determine whether or not NSW Health attended the cruise ship arrival. These practical arrangements are described in Part 3 at [97].
11. The Biosecurity Act replaced the *Quarantine Act 1908* (Cth) (Quarantine Act). Among other things, the Biosecurity Act was designed to create a clearer legislative framework for the management of biosecurity risks and provide for effective measures to manage the public health risk posed by serious communicable diseases.⁷
12. The Biosecurity Act provides for a range of powers relating to the prevention, assessment and management of risks to human health. Many of these powers are available in relation to a 'listed human disease' – ie, a human disease that the Director of Human Biosecurity determines is a listed human disease under s 42(1) of that Act. COVID-19 (Human coronavirus with pandemic potential) is such a disease.⁸ The human biosecurity powers under the Act are generally available to manage the risk of contagion by COVID-19, or COVID-19 entering, or emerging, establishing itself or spreading in, Australia.⁹

³ Biosecurity Act, s 16 and s 9 (definition of 'vessel') and Ch 4.

⁴ Commonwealth Administrative Arrangement Order, 5 December 2019, p 19.

⁵ Head Memorandum of Understanding for the collaborative working relationship between Agriculture and Health, 19 October 2017 (HEA.0001.0001.0253); Schedule 3 – Human Biosecurity Services, Schedule to MOU, 28 November 2018 (HEA.0001.0001.0263).

⁶ See Schedule: Agreement with the States and Territories for the provision of Human Quarantine Services, 13 December 2016 at Recital (d), the definition of 'Project' within 'Activity Details' and the definition of 'Services' (HEA.0001.0001.0009).

⁷ Explanatory Memorandum to the Biosecurity Bill 2014, pp 8 - 11.

⁸ Biosecurity Act, s 42; s 4(h) of the *Biosecurity (Listed Human Diseases) Determination 2016* (Cth). COVID-19 was declared a listed human disease under s 42 on 21 January 2020: see *Biosecurity (Listed Human Diseases) Amendment Determination 2020* (Cth).

⁹ Biosecurity Act, s 34(1)(a) and (b).

Authorisations under the Biosecurity Act

13. The powers in the Biosecurity Act that are relevant to biosecurity clearance of an arriving cruise ship are held by the Commonwealth Health Minister and various officers including:
- a. the 'Director of Biosecurity', who is 'the person who is, or is acting as, the Agriculture Secretary'¹⁰
 - b. the 'Director of Human Biosecurity', who is 'the person who occupies, or is acting in, the position of Commonwealth Chief Medical Officer'¹¹
 - c. 'chief human biosecurity officers' (CHBOs), who are persons authorised to be CHBOs by the Director of Human Biosecurity under s 562(1) of the Biosecurity Act
 - d. 'human biosecurity officers' (HBOs), who are persons authorised to be HBOs by the Director of Human Biosecurity under s 563(1) of the Biosecurity Act
 - e. 'biosecurity officers', who are persons authorised to be biosecurity officers by the Director of Biosecurity under s 545(1) of the Biosecurity Act.

Authorisation of biosecurity officers

14. The Director of Biosecurity (or a delegate)¹² may authorise an officer or employee of the Commonwealth or of a State or Territory body, or a member of the Australian Defence Force, to be a biosecurity officer (Biosecurity Act, s 545). A biosecurity officer has the functions and powers conferred on a biosecurity officer by the Biosecurity Act and subject to any restrictions specified in the biosecurity officer's instrument of authorisation (s 550).
15. There are currently 2,428 biosecurity officers authorised by name in the instrument made by the delegate of the Director of Biosecurity under s 545.¹³ Among these 2,428 people, officers or employees of various Commonwealth agencies have been so authorised as biosecurity officers, including officers or employees of Agriculture. Those 2,428 people include several ABF officers performing duties at remote ports or ports where no biosecurity officer is located nearby. This does not include any ABF officers working in Sydney or any of the ABF officers who attended the Overseas Passenger Terminal (OPT) on 19 March 2020.

Authorisation of HBOs and CHBOs

16. The Director of Human Biosecurity may authorise an officer or employee of Commonwealth Health, or an officer or employee of the State or Territory body responsible for the administration of health services in a State or Territory, to be a

¹⁰ Biosecurity Act, s 540(1) and s 9 (definition of 'Agriculture Secretary').

¹¹ Biosecurity Act, s 544(1).

¹² The Director of Biosecurity may delegate any of the Director's functions or powers under the Act, other than certain specified functions and powers: s 542.

¹³ Biosecurity Act – Instrument of appointment (authorisation of biosecurity officers), 1 February 2020 (HEA.0003.0001.0001).

HBO (s 563(1)(a)).¹⁴ The Director of Human Biosecurity must be satisfied that the relevant officer or employee has appropriate clinical experience before making such an authorisation (s 563(1)(b)).¹⁵ A HBO has the functions and powers conferred on a HBO under the Biosecurity Act, subject to restrictions imposed on their instrument of authorisation. In performing functions or exercising powers under the Biosecurity Act, a HBO must comply with any directions of the Director of Human Biosecurity (s 566).

17. The Director of Human Biosecurity may also authorise a person to be a CHBO for a State or Territory if the person is a medical practitioner employed by the State or Territory body responsible for the administration of health services in the State or Territory (s 562(1)).
18. Under an authorisation made on 2 March 2020, the Director of Human Biosecurity authorised 100 HBOs and 8 CHBOs under ss 562(1) and 563(1).¹⁶
19. As part of the training requirements outlined in the *Biosecurity (Training and Qualification Requirements for Human Biosecurity Officials) Determination 2016* (Cth), Commonwealth Health requires CHBOs and HBOs to complete a training module which covers, among other things, the role and appointment of CHBOs and HBOs, the management of listed human diseases, assessing travellers at the border, administration of the traveller illness checklist, human biosecurity control orders, pratique, human biosecurity emergencies and human health response zones.

The arrangements in place for the authorisation of NSW officials as a CHBO for NSW and as HBOs

20. In order for an employee of a State or Territory to be authorised by the Director of Human Biosecurity to be a CHBO or a HBO, there must be an 'arrangement in force under s 564 in relation to the practitioner' (Section 564 Arrangement).¹⁷
21. A Section 564 Arrangement is an arrangement between the Commonwealth Health Minister and a State or Territory body for officers or employees of the body to be authorised as CHBOs for that State or Territory or as HBOs.¹⁸ It is not a legislative instrument (s 564(2)).
22. The instrument that was in place under ss 562 and 563 at the relevant time for the exercise of powers in connection with the Ruby Princess, is the instrument made by the Director of Human Biosecurity on 2 March 2020.¹⁹

¹⁴ See also Commonwealth Health, Standard Operating Procedure – Appointing and Revoking of CHBOs and HBOs, August 2019 (HEA.0001.0001.0158).

¹⁵ As to which, see the materials referenced in footnote 14 above.

¹⁶ *Biosecurity (Human Biosecurity Officials) Authorisation (No. 6) 2020* (Cth) (HEA.0001.0001.0147) (Human Biosecurity Officials Authorisation).

¹⁷ Biosecurity Act, ss 562(2) and 563(2).

¹⁸ Biosecurity Act, s 564.

¹⁹ Human Biosecurity Officials Authorisation.

23. Relevantly, that instrument authorises:
- a. Dr Sean Tobin as the CHBO for New South Wales²⁰
 - b. 27 persons employed by the 'New South Wales health services administration body' as HBOs for New South Wales, including Professor Mark J Ferson.²¹
24. In respect of the authorisation of these NSW employees, a Section 564 Arrangement was in place when the instrument of authorisation was made.²² This Section 564 Arrangement is in the form of:
- a. an exchange of letters in May and June 2016 between the then Commonwealth Health Minister and the then Director, Communicable Diseases Health Protection NSW²³
 - b. an agreement dating from 2016 between the Commonwealth (represented by, and acting through, Commonwealth Health) and the State of New South Wales which includes a Schedule titled 'SCHEDULE: Agreement with the States and Territories for the provision of Human Quarantine Services' (the Agreement).²⁴
25. As the recitals to the Agreement between the Commonwealth and the State of New South Wales explained:
- (a) The Commonwealth has constitutional responsibility for quarantine (including biosecurity).
 - (b) 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.
 - (c) [Commonwealth Health] is responsible for administering the human health aspects of the *Biosecurity Act 2015* which is a key element of the Commonwealth's biosecurity programme.
 - (d) [Commonwealth Health] does not have officials at Australia's First Points of Entry to perform human biosecurity services. These activities are performed by [Agriculture biosecurity officers], supported by state and territory health departments and the Department.
 - (e) [Commonwealth Health] has therefore agreed to fund the State for the Project on the terms of this Agreement.

²⁰ Human Biosecurity Officials Authorisation, item 1 in the table in s 5.

²¹ Human Biosecurity Officials Authorisation, s 7.

²² Biosecurity Act, ss 562(2) and 563(2).

²³ Letter from the Hon Sussan Ley MP, Health Minister, to Dr Vicky Sheppard, Chief Human Quarantine Officer, NSW Health, 31 May 2016 (HEA.0001.0001.0006); Letter from Dr Vicky Sheppard, Chief Human Quarantine Officer, NSW Health to the Hon Susan Ley MP, Health Minister, 3 June 2016 (HEA.0001.0001.0008).

²⁴ Schedule: Agreement with the States and Territories for the provision of Human Quarantine Services, 13 December 2016 (HEA.0001.0001.0009).

26. Among other things, the Agreement outlined the human biosecurity services to be provided by the State of New South Wales as follows:
- (a) routine, day-to-day human biosecurity services at the Australian border, including by:
 - (i) screening travellers at Australia's international border for listed human diseases; and
 - (ii) managing the treatment of travellers at Australia's international border for listed human diseases; and
 - (b) resourcing for human biosecurity emergencies (if required, based on an assessment according to the individual circumstances of each incident).
27. The Agreement also provided for a number of activities to be performed as part of the services, including to: '(vi) provide advice to [Agriculture] 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 on board.'
28. It follows that:
- a. Dr Sean Tobin has the functions and powers conferred on a CHBO by the Biosecurity Act
 - b. the 27 NSW officers identified in the instrument (including Professor Mark J Ferson) have the functions and powers conferred on those roles under the Biosecurity Act:
 - The instrument of authorisation does not restrict the functions and powers of any of the persons authorised as HBOs (for s 566 of the Act).
 - In performing functions or exercising powers under the Biosecurity Act, the officers must also comply with any directions of the Director of Human Biosecurity.

Arrangements between Commonwealth Health and Agriculture

29. On 19 October 2017, Commonwealth Health and Agriculture entered into a memorandum (MOU), which was supplemented on 28 November 2018 by a schedule relating to human biosecurity services.²⁵
30. The Schedule to the MOU outlines that, in relation to information on the state of health on board incoming vessels, Agriculture records human biosecurity compliance measures through pre-arrival reporting, provides information to Commonwealth Health where needed and provides information to operators about pre-arrival reporting obligations. Commonwealth Health develops business policies for pre-arrival reporting of ill travellers, including the signs and symptoms of listed human diseases.

²⁵ Head Memorandum of Understanding for the collaborative working relationship between Agriculture and Health, 19 October 2017 (HEA.0001.0001.0253); Schedule 3 – Human Biosecurity Services, Schedule to MOU, 28 November 2018 (HEA.0001.0001.0263).

31. In relation to the granting of pratique to incoming conveyances subject to negative pratique, including vessels, biosecurity officers employed by Agriculture grant pratique, while Commonwealth Health maintains and reviews policies related to pratique. The work instructions that apply to biosecurity officers are designed to be consistent with Commonwealth Health's policies relating to pratique (including for the purpose of ensuring that pratique is granted once human biosecurity risk is addressed).

COMMONWEALTH HEALTH HUMAN BIOSECURITY POLICIES

32. Consistently with the MOU described above, Commonwealth Health has developed a range of policies, procedures, guidelines and protocols which relate to, or consider, epidemics or pandemics, control of infectious diseases, cruise ships and/or people arriving from overseas.

Commonwealth Health Emergency Response Plans

33. The current Australian Health Management Plan for Pandemic Influenza (AHMPPI) outlines the agreed arrangements between Commonwealth Health and State and Territory departments to guide the response to an influenza pandemic.²⁶ The AHMPPI is published on Commonwealth Health's website.²⁷
34. The AHMPPI was designed to be an evolving document. Commonwealth Health undertakes work periodically to add to the evidence base that is used to inform decisions about the content of the AHMPPI. The AHMPPI guides the national health sector response to a pandemic through a series of flexible strategies able to be tailored to varying State and Territory requirements and resources. State and Territory Governments also have pandemic or communicable disease plans in place, which are broadly consistent with the AHMPPI.
35. On 17 February 2020, the AHPPC endorsed the Australian Health Sector Emergency Response Plan for Novel Coronavirus (COVID-19) (Response Plan).²⁸ The Response Plan was based on the AHMPPI and it is intended that it will be periodically updated. The Response Plan was developed in consultation with States and Territories, Home Affairs (including Emergency Management Australia) and the Department of Prime Minister and Cabinet. It is designed to support and help coordinate government health agencies and is available on Commonwealth Health's website.²⁹

Commonwealth Health Factsheets

36. Commonwealth Health developed two factsheets for international travellers: 'Information for International Travellers' (Information Factsheet) and 'Isolation

²⁶ AHMPPI, Australian Health Management Plan for Pandemic Influenza, August 2019 (HEA.0005.0001.0029).

²⁷ <https://www1.health.gov.au/internet/main/publishing.nsf/Content/ohp-ahmpipi.htm>

²⁸ Commonwealth Health, Australian Health Sector Emergency Response Plan for Novel Coronavirus (COVID-19), 2020 (HEA.0005.0001.0261).

²⁹ <https://www.health.gov.au/resources/publications/australian-health-sector-emergency-response-plan-for-novel-coronavirus-covid-19>

Guidance Factsheet' (Isolation Factsheet).³⁰ These factsheets are available on Commonwealth Health's website (as amended from time to time to reflect current passenger requirements) and since on or around 26 January 2020 have been issued to incoming passengers (at airports and vessels) by Agriculture.

Ad hoc cruise ship protocol

37. In recognition of the unique COVID-19 risk posed by cruise ships, Commonwealth Health developed the 'National Protocol for managing novel coronavirus disease (COVID-19) risk from cruise ships' (National Protocol). The National Protocol was disseminated on 6 March 2020, following consultation with the Australian Health Protection Principal Committee (AHPPC), State and Territory chief human CHBOs, Agriculture, Home Affairs, the Department of Infrastructure, Transport, Cities and Regional Development (Infrastructure) and the Cruise Lines International Association (CLIA).³¹ Members of the Communicable Diseases Network Australia (CDNA)³² who are not also CHBOs were consulted in respect of the draft National Protocol. In preparing the National Protocol, regard was had to the National Guidelines for Public Health Units on COVID-19, which are published by the CDNA.³³

Distribution of Commonwealth Health human biosecurity policies

38. In general, Commonwealth Health disseminates border health related policies to the States and Territories through the CHBO forum. Each State and Territory health department is represented by its CHBO. The forum is generally chaired by the Director of Human Biosecurity and is held approximately three times a year with ad-hoc teleconferences taking place when required. Distribution also occurs via the committee structure under the AHPPC. Select guidelines and other information are made available on the Commonwealth Health website.
39. Distribution of border health related policies to other Commonwealth agencies (and other agencies if relevant) generally occurs through working groups or through direct distribution to agency counterparts.

COMMONWEALTH MIGRATION AND CUSTOMS CLEARANCE PROCESSES

40. The Commonwealth legislative basis for immigration clearance of cruise ship arrivals is set out in the *Migration Act 1958* (Cth) (Migration Act) and the *Migration Regulations 1994* (Cth) (Migration Regulations). Generally, the relevant procedures established thereunder and applicable to cruise ships arriving in Australian ports exist for the purposes of immigration clearing a cruise ship's passengers and crew,

³⁰ Commonwealth Health, Coronavirus disease (COVID-19), 6 March 2020 (HEA.0005.0001.0359); Commonwealth Health, Novel coronavirus (COVID-19), 15 March 2020 (HEA.0005.0001.0358).

³¹ Dated 6 March 2020 (HEA.0002.0001.1034).

³² The CDNA is a sub-committee of the AHPPC.

³³ See all version of the National Guidelines for Public Health Units on COVID-19, as between 23 January 2020 and 13 May 2020 (HEA.0002.0004.0001 - .0630).

and ensuring that no passengers or crew are attempting to enter Australia unlawfully.

41. The Commonwealth legislative basis for customs clearance of cruise ship arrivals is set out in the *Customs Act 1901* (Cth) (Customs Act) and the *Customs Regulation 2015* (Cth) (Customs Regulation). Generally, the purpose of the procedures established thereunder, insofar as they are applicable to cruise ships arriving in Australian ports, is ensuring customs control. Those provisions are directed at ensuring that prohibited goods are not brought into Australia, and that dutiable and excisable goods are not brought into Australia without the appropriate duty or excise being paid.
42. Neither the Migration Act nor the Customs Act is concerned with biosecurity, including human biosecurity.

PRE-ARRIVAL REPORTING OBLIGATIONS AND INFORMATION-GATHERING

Customs and migration reporting obligations

43. At least 96 hours before the Ruby Princess's estimated time of arrival in Australia, the Ruby Princess's operator was required to report the ship's impending arrival in Australia to Home Affairs (Customs Act s 64).
44. At least 96 hours before the Ruby Princess's estimated arrival in Australia, the Ruby Princess's operator was required to make a report to Home Affairs on each passenger and member of the crew who would be on board when the ship arrived in Australia (Migration Act s 245L).³⁴ Those reports were required to include immigration information about each passenger or crew member, such as their name, passport information, expected port of immigration clearance in Australia, and their transit information. The reports were not required to include any health information about passengers or crew.³⁵
45. Sections 64ACA and 64ACB of the Customs Act impose pre-arrival reporting obligations on the operator of a ship in respect of passengers and crew respectively. However, the information that the operator of the Ruby Princess was required to report under ss 64ACA and 64ACB included the same immigration information it was required to report pursuant to s 245L of the Migration Act (and, like s 245L, did not include any health information about passengers or crew).³⁶ As such, the Ruby Princess was not required to report that information under ss 64ACA and 64ACB (Customs Act s 64ACC).

³⁴ See also ss 245I of the Migration Act and reg 3.13A of the Migration Regulations. This requirement applied to the Ruby Princess as an 'international passenger cruise ship' (defined in Migration Regulations reg 3.13).

³⁵ The information required to be reported under s 245L is specified in the *Instrument of Approval of Primary Reporting Systems (International Passenger Cruise Ship – Passengers 2015* (Cth), Sch 1; and see also s 245J of the Migration Act.

³⁶ The forms approved for ss 64ACA and 64ACB indicate what information needs to be reported under the provision. Currently, the approved form for s 64ACA is Form 2B (approved in July 2015), and the approved form for s 64ACB is Form 3 (approved July 2015).

Biosecurity reporting obligations and information-gathering

46. The operator of the Ruby Princess was required to provide a pre-arrival report between 96 and 12 hours prior to arrival at its first port in Australian territory (Biosecurity Act s 193, *Biosecurity Regulation 2016* (Cth) (Biosecurity Regulation), ss 48 and 49). The report was required to include, among other things, details of any person on board the vessel who has, or had, during the voyage signs or symptoms of a listed human disease, or signs or symptoms of any other disease (other than where the signs or symptoms are or were due to certain listed factors including an injury, inebriation, or a pre-existing medical condition).
47. The report was required to be given to a 'biosecurity official' (which includes a biosecurity officer, a biosecurity enforcement officer or the Director of Biosecurity) or a 'customs officer' (ie, an officer of Customs within the meaning of the Customs Act). Alternatively, the report was able to be given using an electronic system and, in that case, is taken to be given to a biosecurity official or a customs officer.
48. In practice, Carnival and other cruise ship operators routinely lodge pre-arrival reports (PAR) electronically, in the Maritime Arrivals Reporting System (MARS) maintained by Agriculture.³⁷ ABF officers do not have access to that system. Once a vessel inputs or updates certain data into MARS, the system generates a Biosecurity Status Document (BSD) in response to certain biosecurity risks identified by the information provided by the vessel. That BSD is generally supplied by automatic email to an email address nominated in the vessel's PAR. The BSD uses a traffic light system as a visual cue to alert the user regarding the vessel's status and any associated directions or advice issued by Agriculture.³⁸ Information that is input into MARS is processed by the Maritime National Coordination Centre (MNCC). Human health information input into MARS is directed to the MNCC for assessment if the vessel reports: a death on board; an illness on board and an affirmative answer to one or more of the subsequent questions regarding symptoms in the PAR; or an illness on board and no answer to one or more of those subsequent questions.³⁹
49. In relation to human health, the BSD that is generated via MARS will include a red traffic light in the section 'Vessel Pratique and Ship Sanitation' if the vessel has not yet submitted a PAR. The traffic light in this section will be orange if the vessel has declared human health issues or has requested a Ship Sanitation Certificate. The traffic light will be green if the vessel has been granted pratique.⁴⁰ Issues concerning human health risks on board a vessel are the subject of questions in the PAR, but

³⁷ The MARS system is accessible to the public at this link: <https://www.agriculture.gov.au/biosecurity/avm/vessels/mars#mars-offline-forms-and-communication-and-training-materials>. Agriculture promulgates: Agriculture, MARS - Vessel Agent User Guide, March 2017 (AWE.0003.0008.0401); and MARS - Vessel Master User Guide, March 2017 (AWE.0003.0008.0527)

³⁸ See Pre-Arrival Form (AWE.0003.0003.0009) and Human Health Update (AWE.0003.0003.0007).

³⁹ Biosecurity Management of Commercial Vessels – Policy Framework (version 1.0, November 2017), p 26 (AWE.0003.0008.0887).

⁴⁰ Biosecurity Management of Commercial Vessels – Policy Framework (version 1.0, November 2017), p 18 (AWE.0003.0008.0887).

MARS also includes a Human Health update form enabling changes in human health risks to be reported (generating a Human Health Report of the type referred to in Part III).

50. The steps that were taken with respect to information supplied by the Ruby Princess via MARS are addressed in further detail in Part III.
51. If an operator of a vessel becomes aware that information included in a report given under s 193 is incomplete or incorrect, they are required to give a biosecurity officer the additional or corrected information as soon as practicable (Biosecurity Act s 194(1)).
52. The Director of Biosecurity (or delegate) may require certain persons to provide information (including by answering questions) in order to assess the level of biosecurity risk associated with the person and any goods that the person has with him or her (s 196). ('Biosecurity risk' is defined in s 9 and means, relevantly, the likelihood of a disease entering, or establishing itself or spreading in, Australian territory or part thereof, and the potential for the disease to cause harm to human health.) A person may be required to provide information if, relevantly, they:
 - a. intend to enter, or enter, Australian territory on an incoming vessel, and
 - b. were, are, or will be a passenger, member of the crew of, or person in charge of, an incoming vessel (s 196(1) of the Act and s 53 of the Biosecurity Regulation).

PRE-ARRIVAL CLEARANCE PROCEDURES

Screening under the Biosecurity (Entry Requirements) Determination 2016

53. The *Biosecurity (Entry Requirements) Determination 2016* (Cth) (made in reliance on s 44 of the Act) relevantly provides that a biosecurity officer or a HBO may require certain individuals to be screened for the purpose of establishing whether the individual may be, or may have been, infected with a listed human disease (s 6 of the Determination). 'Screening' an individual in this context includes screening by equipment, or by requiring the person to answer questions or provide information in writing.
54. This requirement may be imposed by a biosecurity officer or a HBO in respect of any of the following classes of individuals:
 - a. an individual identified in the pre-arrival report given by the operator of a vessel (or in information given to a biosecurity officer under s 194(1)) as having signs of an illness or infection;
 - b. an individual identified by a biosecurity officer or a HBO as having signs or symptoms of an illness or infection;
 - c. an individual for whom there has been a notification under the International Health Regulations that the individual has, or has been exposed to, a listed human disease; or

- d. an individual who, before travelling to Australian territory, had been in a country where individuals are known to be, or to have been, infected with a listed human disease.

Permission required to enter non-proclaimed port

- 55. Under s 58(1) of the Customs Act, it is an offence for the master of a ship entering Australia from overseas to enter Australia at any place other than a 'port'. There is a similar provision in s 247(1) of the Migration Act, directed to the objects of the Migration Act. A vessel operator may apply for an exemption from these provisions. For the purposes of s 58 of the Customs Act, a Collector is any officer of Customs whose duties include performing the functions of a Collector under that provision.
- 56. A 'port' is, relevantly, a port that has been appointed by the Comptroller-General of Customs under s 15 of the Customs Act (Migration Act s 5 and Customs Act s 4). By Gazette notice on 15 March 2020, a delegate of the Comptroller-General of Customs revoked the appointment of the Port of Sydney as a port under s 15, and appointed it as a port only for purposes in relation to ships that are not 'international passenger cruise ships' within the meaning of s 169 of the Migration Act.⁴¹ As a result, after 15 March 2020, it became an offence under the Customs and Migration Acts for the master of an international passenger cruise ship, such as the Ruby Princess, to bring the ship to the Port of Sydney without permission.

Cruise ship determination

- 57. On 18 March 2020, the Governor-General declared (under s 475 of the Biosecurity Act) that a human biosecurity emergency exists: *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) Declaration 2020* (Cth).
- 58. On the same day, the Commonwealth Health Minister determined a requirement under s 477 of the Act: *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements) Determination 2020* (Cth). The effect of that determination was that an international cruise ship must not enter a port in Australian territory before 15 April 2020 unless:
 - a. a permission given by the Comptroller-General of Customs was in force for the ship to enter the port on the basis that the ship is in distress or that emergency circumstances exist, or
 - b. the ship had departed a port outside Australian territory before the end of 15 March 2020 and was bound directly for a port in Australian territory.
- 59. The Ruby Princess (an international cruise ship within the meaning of the determination) fell into this second category because it had departed Napier, New Zealand prior to the end of 15 March 2020. Accordingly the determination did not prevent the Ruby Princess from entering a port in Australian territory (at Sydney) on 19 March 2020. It remained subject to the requirement to obtain permission to enter

⁴¹ Gazette – Notice under Paragraph 15(1)(a) – Port Revocation and Appointment (No. 20/07) – Port of Sydney, 15 March 2020.

Australia at a place other than a 'port' under s 58 of the Customs Act and s 247 of the Migration Act.

BOARDING THE VESSEL

60. When the Ruby Princess arrived in the Port of Sydney, the master of the ship was required by s 60 of the Customs Act to bring the ship to a boarding station, to be boarded. Officers of Customs were then authorised to board the Ruby Princess under s 187 of the Customs Act, and to search any part of the ship, including opening any package, locker or place, and examining goods (s 189). Among other persons, an officer under the Customs Act includes APS employees in Home Affairs, as well as persons who are authorised under the Customs Act to exercise the powers and perform the functions of an officer (s 4). The master of the Ruby Princess was required by s 61 of the Customs Act to facilitate, by all reasonable means, the boarding of the ship by these officers.
61. The Ruby Princess was also subject to the parallel process for the boarding of vessels established by the Migration Act. Under s 247(2) of the Migration Act, the Secretary of the Department of Home Affairs and the ABF Commissioner, or a delegate of the Secretary, had the power to require the Ruby Princess to come to a boarding station.⁴²
62. While the Ruby Princess was at the boarding station, s 247(6) of the Migration Act authorised 'officers' to go and remain on board the ship, for the purposes of the Migration Act. Under s 5 of the Migration Act, an 'officer' includes, among other persons, any officer of Home Affairs (s 5). As is the case under the Customs Act, the master of the Ruby Princess was required to do all things reasonably required by these officers to facilitate the boarding of the ship, and the performance by the officers of duties for the purposes of the Migration Act (s 247(7)).

CLEARING THE VESSEL FOLLOWING BOARDING

Immigration and customs clearance

63. Once arrived in the Port of Sydney and at the boarding station, the Ruby Princess and the passengers and crew on board were required to be customs cleared. Only those passengers who joined the voyage in New Zealand were required to be immigration cleared as a result of the application of the *Migration (VES 20/002: Class of Persons Taken Not to Enter Australia) Determination 2020* (Cth), para (a)(xiii) and Sch 13, item 3 to this voyage (discussed further at [69]).

Immigration and customs clearing the Ruby Princess

64. At the time of the Ruby Princess's arrival in Australia, the master of the Ruby Princess was required, on request from an authorised officer, to give the officer a list of all persons on the ship, and immigration information for each of them, including their full name, date of birth, passport, citizenship and intended address or destination in Australia (Migration Act s 504(1)(c), Migration Regulations

⁴² The Secretary's power under s 247(2) has been delegated within the Australian Border Force (ABF) to all officers from the APS1-SES Band 3 level.

reg 3.14(2)). The provisions of Part 3 of the Migration Regulations are concerned with immigration control over Australia's borders. The requirement to provide information was imposed for the purpose of allowing proper control over those borders,⁴³ rather than for a biosecurity purpose. Since the introduction of that power, an equivalent power had also existed in the relevant biosecurity law (ie, the now repealed Quarantine Act and then the Biosecurity Act).

65. If a passenger list is given under reg 3.14(2), then reg 3.15(1) of the Migration Regulations requires the medical officer or master of the vessel to give an officer a signed certificate certifying that, in his or her opinion, no passenger on board the vessel, or no passenger other than a passenger named in the certificate, was suffering from certain diseases or conditions, including a disease or condition that is or may result in the passenger being a threat to public health in Australia. Further information was required if a passenger was named as suffering from such a disease or condition (reg 3.15(2)).
66. No request under reg 3.14(2) was made in respect of the Ruby Princess prior to its arrival on 19 March 2020, because a report had already been provided pursuant to s 245L of the Migration Act (as described at [44]-[45]). As a matter of practice, requests have not been made under reg 3.14 to obtain information for many years. Instead, information has been obtained by means of the reporting requirements in s 245L of the Migration Act, under a reporting system approved pursuant to s 245J of that Act. As no passenger list was requested or given under reg 3.14, no reg 3.15 certificate was required from the Ruby Princess.
67. Under the Customs Act, the operator of the Ruby Princess was required to report the particulars of the arrival of the ship in Australia to Home Affairs, and the time of arrival (Customs Act s 64AA). The report had to be provided either before the end of 24 hours after the ship's arrival or before the issue of a Certificate of Clearance⁴⁴ in respect of the ship and the port, whichever happens first (s 64AA(3)(a)). Officers of customs were also able to exercise various search, seizure, detention and examination powers under the Customs Act, including the powers in Div 1B of Part XII and ss 186(1) and 195. However, none of these powers is of relevance to biosecurity.

Immigration clearing the Ruby Princess's passengers and crew

68. Generally, each individual passenger and crew member on board a cruise ship who enters Australia at the Port of Sydney must be immigration cleared under s 166 of the Migration Act. As part of this process, each passenger and crew member must present to a clearance authority,⁴⁵ with evidence of their identity and citizenship and, if they are not a citizen of Australia, their visa (s 166(1)(a)).

⁴³ Explanatory Statement to the Migration Regulations 1994 (Cth).

⁴⁴ Regarding Certificates of Clearance, see ss 118 and 118A of the Customs Act. Certificates of Clearance relate to the departure of ships and as such are not relevant to the Ruby Princess's arrival in Australia (see s 118(1)).

⁴⁵ A clearance authority is, relevantly, any officer or other person authorised by the Minister for Home Affairs to perform duties under s 166 (s 165). All ABF officers from APS 1 level to SES Band 3 level are authorised to perform the relevant duties.

69. In certain circumstances, passengers and crew on cruise ships do not need to be immigration cleared under s 166 of the Migration Act. A person on an international passenger cruise ship, such as the Ruby Princess, who has taken a 'round trip' between two Australian ports and is taken not to have left Australia by virtue of s 80 of the Migration Act, does not have to comply with s 166, if exempted by the Minister for Home Affairs or the Secretary from doing so (s 169). The Ruby Princess was subject to such an exemption for this cruise as a result of the *Migration (VES 20/002: Class of Persons Taken Not to Enter Australia) Determination 2020* (Cth), which applied to 17 vessels in respect of a number of voyages for each vessel.⁴⁶
70. Separately from the requirement under s 166(1)(a), and despite an exemption having been granted under s 80, passengers of the Ruby Princess were required to complete incoming passenger cards with information including their name, other personal details, their passport, visa, and citizenship information, and information about their travel to Australia (reg 3.01(4), s 166(1)(b)).⁴⁷ Passengers were also required to answer a question about whether they currently suffer from tuberculosis (Migration Regulations reg 3.02), but were not otherwise asked for any health information. Crew members were not required to fill out an incoming passenger card (reg 3.03AA(2)), but may have been required to provide similar information in accordance with reg 3.03AA, on request from a clearance officer.

Biosecurity clearance

Pratique and entry screening

71. The operator of the Ruby Princess, on arriving at port, was not permitted to allow:
- a. any thing to be unloaded from or loaded onto the ship, or
 - b. any person to disembark from or embark onto the ship
- unless pratique was granted under the Biosecurity Act (s 48(1)).
72. Under that Act, pratique can be granted by force of the Act (positive pratique) or by a biosecurity officer (negative pratique) (Biosecurity Act s 48).
73. Section 49 of the Act provides that:
- a. the Director of Human Biosecurity may specify classes of incoming aircraft or vessels in relation to which pratique is to be granted by a biosecurity officer, and the requirements with which an aircraft or vessel in that class must comply for pratique to be granted by a biosecurity officer (s 49(1))
 - b. a biosecurity officer may grant pratique if an aircraft or vessel in a relevant class complies with the requirements specified for that class of aircraft or vessel (s 49(2)): pratique granted in this manner is 'negative pratique'.

⁴⁶ See *Migration (VES 20/002: Class of Persons Taken Not to Enter Australia) Determination 2020* (Cth) (DHA.0001.0003.1731), (a)(xiii) and Sch 13, item 3.

⁴⁷ See also Migration Regulations regs 3.01(2), 3.02 and 3.03(1)).

74. For any other aircraft or vessels – ie, aircraft or vessels that do not come within the classes of aircraft and vessels determined by the Director of Human Biosecurity for s 49(1) – pratique is granted by operation of s 48(2) of the Act. This is ‘positive pratique’.
75. Negative pratique was required to be granted for the Ruby Princess. The ship fell within one of the classes of vessels subject to negative pratique, as set out within the *Biosecurity (Negative Pratique) Instrument 2016* (Cth) (the Negative Pratique Instrument), made by the Director of Human Biosecurity. Specifically, the Ruby Princess fell in the class of vessels specified at item 2 of the table at s 5(2) of the Negative Pratique instrument, because the PAR given by the vessel included details about individuals on board who had a high temperature, and a high temperature is a sign or symptom of COVID-19 (a listed human disease):

Item	Column 1 Classes of incoming vessels	Column 2 Requirements that must be complied with
2	<p>Vessels in relation to which:</p> <p>(a) a pre-arrival report was given that included details about an individual on board who:</p> <p style="padding-left: 40px;">(i) has, or had during the voyage, signs or symptoms of a listed human disease ; or</p> <p style="padding-left: 40px;">(ii) died during the voyage; or</p> <p>(b) the Director of Human Biosecurity, a human biosecurity officer or a biosecurity official becomes aware have, or had, an individual on board who has entered, or will enter, a landing place or port, and who:</p> <p style="padding-left: 40px;">(i) has, or had during the voyage, signs or symptoms of a listed human disease; or</p> <p style="padding-left: 40px;">(ii) has been exposed to a listed human disease; or</p> <p style="padding-left: 40px;">(iii) died during the voyage</p>	<p>The operator of the vessel must ensure that individuals do not disembark unless permission to do so has been given by:</p> <p>(a) a chief human biosecurity officer; or</p> <p>(b) a human biosecurity officer; or</p> <p>(c) a biosecurity officer</p>

76. For pratique to be granted by a biosecurity officer for a vessel in a class mentioned in column 1 of this table, the requirements specified in column 2 must be satisfied (see s 5(2) of the Negative Pratique Instrument, and s 49(4) of the Biosecurity Act).
77. The effect of Div 4 of Pt 2 of Ch 2 of the Biosecurity Act is that, where a vessel is specified by the Director of Human Biosecurity in an instrument made under s 49, it is for a biosecurity officer to grant pratique.
78. Agriculture has issued work instructions which detail the process to be followed by a biosecurity officer in carrying out an inspection of a vessel, including in relation to human health, prior to the granting of pratique.⁴⁸ Agriculture also has an internal

⁴⁸ See Agriculture, Work Instruction – Undertake a Routine Vessel Inspection, 12 May 2017 (AWE.0002.0001.0282), pp 17-25. See also Agriculture, Work Instruction – Undertake a

operational guideline that outlines the process that occurs to manage human biosecurity risks when a traveller on board an international vessel has died, is ill or has been ill.⁴⁹ The directions provided for Agriculture biosecurity officers to administer a 'Traveller with Illness Checklist' (TIC).⁵⁰ In managing a traveller with a suspected listed human disease, the direction provided that the Agriculture biosecurity officer must ultimately follow the advice provided by a HBO in their State or Territory and, once the biosecurity officer is satisfied that there are no other human biosecurity issues, grant pratique.⁵¹ Likewise, the TIC directed the biosecurity officer to contact a HBO.

79. Consistently with the above guideline, the approach outlined in the TIC and the terms of the negative pratique instrument, Agriculture biosecurity officers rely on assessments performed by New South Wales HBOs in respect of human biosecurity matters before granting pratique.

Powers in relation to entry points for incoming vessels

80. Part 4 of Ch 4 the Biosecurity Act deals with entry points for incoming aircraft and vessels. Part 4, Div 3 confers certain powers on HBOs with respect to vessels to be moored at a port in Australian territory. In particular, s 250 provides that, if satisfied that it is necessary to do so to manage human health risks associated with such a vessel, or with any person or thing on board it, a CHBO or HBO may give the person in charge or the operator of the vessel:
 - a. a direction requiring the vessel to be moored at a specified port in Australian territory
 - b. a direction requiring the vessel not to be moored at a specified port(s) in Australian territory.
81. This power was not exercised with respect to the Ruby Princess.
82. Further, with the written approval of the Director of Biosecurity (or delegate), which may only be given if the Director is satisfied of certain specified matters, a biosecurity officer may give the person in charge or the operator of the vessel a direction requiring the vessel not to be moored at any port in Australian territory.

Human Health Inspection on board international vessels, 12 May 2017 (AWE.0002.0001.0258).

⁴⁹ Agriculture, Guideline – Death or illness of a traveller on board an international vessel, 26 August 2019 (HEA.0002.0001.1011). See also Commonwealth Health, Assessing Ill Travellers at Australia's International Border, May 2019 (HEA.0001.0001.0198).

⁵⁰ Commonwealth Health, Traveller with Illness Checklist – Air and Sea Travellers, 3 March 2020 (HEA.0002.0001.1058). The TIC is a long standing border screening tool, created by Commonwealth Health prior to the introduction of the Biosecurity Act. It is reviewed and updated in consultation with DAWE and State and Territory CHBOs.

⁵¹ Agriculture, Guideline – Death or illness of a traveller on board an international vessel, 26 August 2019 (HEA.0002.0001.1011), pp 14-15; Agriculture, Work Instruction – Undertake a Routine Vessel Inspection, 12 May 2017 (AWE.0002.0001.0282), p 20; Agriculture, Work Instruction – Undertake a Human Health Inspection on board international vessels, 12 May 2017 (AWE.0002.0001.0258), p 14. See similarly Commonwealth Health, Assessing Ill Travellers at Australia's International Border, May 2019 (HEA.0001.0001.0198), (6.3).

However, such a direction must not be given for the purpose of managing human health risks associated with the vessel or any person or thing on board it (s 249(4)). This power could not be exercised to address the COVID-19 risk posed by a cruise ship.

Part III: Chronology of events

83. This Part sets out a chronological factual narrative of the key communications, decisions and actions of ABF, Agriculture and Commonwealth Health, having regard to the steps and decisions contemplated by the various statutory schemes and procedures summarised above.
84. Where relevant differences in recollection arise between relevant Commonwealth officers and witnesses already called in the Commission, those are identified. Where contemporaneous documents cast light upon those differences, those too are identified. The existence of differences in recollection as to relevant matters arising as between Commonwealth officers is also noted.

DEVELOPMENT OF THE NATIONAL PROTOCOL

85. In early February 2020, following the COVID-19 outbreak on the Diamond Princess in Japan on 4 February 2020, Commonwealth Health, other Commonwealth agencies and representatives of the cruise ship industry identified the need for a nationally consistent, agreed protocol based on a proportionate response to the COVID-19 risk. The protocol was also designed to address maritime industry misinformation with regard to cruise ships and provide industry participants with an indication of potential responses upon arrival in Australia.
86. Work on the National Protocol began in the Health Emergency Management Branch of Commonwealth Health on 10 February 2020. The 'National Protocol for Pandemic (H1N1) 2009 on Cruise Ships' (H1N1 protocol) was used as a starting point, further informed by consultation with public health experts in Commonwealth Health's National Incident Room's (NIR) COVID-19 response team.⁵²
87. Consultation on the National Protocol took place from 10 February 2020. It involved representatives of the cruise ship industry, the National Cruise Ship Policy Working Group,⁵³ the Cruise Ship Working Group,⁵⁴ the AHPPC and the CHBOs forum.
88. As part of the consultation process, the National Protocol was discussed at meetings with the CHBOs on 11, 17 and 24 February 2020 and 2 March 2020.
89. On 27 February 2020, the AHPPC endorsed the National Protocol, pending the CHBOs' final endorsement. Following provision of various earlier versions to the CHBOs for comment, a final version was provided to the CHBOs for endorsement by email on 3 March 2020. The CHBOs were advised that, provided they had no major concerns, the document would be accepted as endorsed after any comments

⁵² Commonwealth Health, National Protocol for Pandemic (H1N1) 2009 on Cruise Ships, July 2009 (HEA.0002.0001.1321).

⁵³ The National Cruise Ship Policy Working Group was established around 22 August 2018, to facilitate a national policy for managing serious infectious diseases on cruise ships. Its membership is drawn from: (a) the communicable disease, public health or environmental health areas of each State and Territory (except the ACT, as it is land locked) as nominated by the relevant CHBO; (b) representatives from Agriculture's traveller and conveyances and ports areas, and (c) Commonwealth Health's emergency management, surveillance and medical advisory areas.

⁵⁴ The Cruise Ship Working Group was led by Infrastructure and had members from ABF, Carnival Australia, Royal Caribbean, CLIA, Agriculture and Commonwealth Health.

were incorporated. Commonwealth Health did not receive any comments, and accepted the document as endorsed. On 6 March 2020, the final version was disseminated to the CHBOs and the Cruise Ship Working Group by Commonwealth Health.

CHANGES IN PROCESS FOR ASSESSMENT OF CRUISE SHIPS: FEBRUARY-MARCH 2020

90. As at 16 March 2020, vessel operators were required to answer certain standard questions in the human health section of the PAR (and the Human Health update), which included:
 - a. '[h]ave any persons become ill or shown signs of illness in the past 14 days' (Illness Question);
 - b. '[t]emperature over 38° (if no thermometer is available, any person suspected of having a temperature should be reported)' (Temperature Question);
 - c. '[m]uscle aches, diarrhoea, severe headaches or vomiting (but not vomiting caused by inebriation or motion sickness)' (Aches, Diarrhoea & Vomiting Question); and
 - d. '[c]ases of diarrhoea and/or gastro intestinal illness have been recorded in the vessel's medical log during the current voyage and/or the last 21 days' (Gastro Question).
91. As further described at [106], a positive answer to any of the above questions triggered an automatic notification to the MNCC through MARS.
92. Prior to this, on 6 February 2020, additional questions referable to COVID-19 were first added to the PAR in MARS (COVID-19 Questions).
93. On 21 February and 6 March 2020, changes were made to the wording of the COVID-19 Questions. The version of the COVID-19 Questions current during the period 16-19 March 2020 was:⁵⁵

Has the vessel left mainland China and/or Iran and/or Republic of Korea and/or Italy in the last 14 days?

Has any person on the vessel left mainland China and/or Iran and/or Republic of Korea and/or Italy in the last 14 days?

Has any person on the vessel been in contact with a proven case of COVID-19 in the last 14 days?⁵⁶
94. An affirmative answer to any of the COVID-19 Questions in the PAR or Human Health update triggered a notification to the MNCC.

⁵⁵ A further version of the questions was introduced on 20 March 2020.

⁵⁶ Timeline for implementation of COVID-19 questions (AWE.0003.0011.0028).

95. The operator of the Ruby Princess did not provide an affirmative answer to any of the COVID-19 Questions in any of the documents it submitted via MARS between 16 and 19 March 2020.
96. On 21 February 2020, Mr Craig Hall (Assistant Director, Inspections Group, Biosecurity Operations Division, Agriculture) reported to Mr Guy Bursle (Director, Conveyances and Ports, Agriculture) on the heightened presence of NSW Health at international cruise vessel arrivals in Sydney.⁵⁷
97. The same day, Ms Kelly-Anne Ressler (Epidemiologist, Public Health Unit, South Eastern Sydney Local Health District) and HBO Professor Mark Ferson (Director and Public Health Officer, Public Health Unit, South Eastern Sydney Local Health District) advised Mr Franz Odermatt (Team Leader, Seaports Sydney and Regional Vessel Coordinator, Inspection Group, Biosecurity Operations Division, Agriculture) that:
 - a. a risk assessment would be undertaken by NSW Health for each cruise ship coming into Sydney
 - b. a NSW Health panel would review each risk assessment and decide whether or not to attend by about 1 pm on the day prior to arrival
 - c. following this, NSW Health would notify the ship, its agent and Mr Odermatt.⁵⁸
98. In the five weeks leading up to 18 March 2020, NSW Health regularly notified Mr Odermatt's team whether or not it would attend cruise ship arrivals in Sydney. Those notifications ceased in the days leading up to 18 March 2020. Mr Odermatt's team comprised Agriculture biosecurity officers including Ms Traci Joseph, Ms Jane Wallace and Mr Alan George, each of whom attended the arrival of the Ruby Princess at the OPT on 19 March 2020.
99. On 6 March 2020, Mr Odermatt asked Mr Robert Rybanic (Senior Manager, Cruise and Terminal Operations, NSW Port Authority) to play an audio message relating to COVID-19 inside the OPT during disembarkation of passengers and crew, effective immediately.⁵⁹
100. On 16 March 2020, Mr Odermatt sent an email to [REDACTED]@carnivalaustralia.com' among other recipients, attaching a document headed 'On-Arrival Announcement Version' and a document headed 'Novel coronavirus (COVID-19): Information for international travellers'.⁶⁰ His email

⁵⁷ Email, Craig Hall to Guy Bursle, Subject: NSW Health and Cruise Vessels (21 February 2020, 8.04 am) (AWE.0001.0002.0010).

⁵⁸ Email, Mark Ferson to Franz Odermatt, Subject: Schedule of ships for health assessment (21 February 2020, 9.25 am) (AWE.0001.0002.0012); (AWE.0001.0002.0008).

⁵⁹ Email, Franz Odermatt to Robert Rybanic, Subject: Cruise vessel terminal coronaviruses Announcements (6 March 2020, 12.42 pm) (AWE.0003.0004.0069; AWE.0003.0004.0070; AWE.0003.0004.0071; AWE.0003.0004.0072).

⁶⁰ Email, Franz Odermatt to various recipients including [REDACTED]@carnivalaustralia.com', Subject: FW Traveller fact sheets (16 March 2020, 1.13 pm) (AWE.0003.0004.0052; AWE.0003.0004.0055).

indicated that the on-arrival announcement was to be made before passengers disembarked.

101. On 18 March 2020, Mr Odermatt received, and in the early afternoon sent on to various officers within his team including Ms Joseph,⁶¹ an email from Mr Hall, addressing changes to the TIC. The email advised that the list of countries with increased risk of coronavirus now included only Mainland China, Iran, Italy and the Republic of Korea (and did not apply to travellers who had only transited within the last 24 hours). If a traveller had not been in one of these countries, the email stated that they should be reminded to refer to the COVID-19 factsheet received from their airline and provided with a surgical mask if they did not already have one. The email advised that the TIC should then be administered according to normal processes, subject to the traveller being advised to seek medical advice in accordance with the fact sheet if the TIC prompted the traveller to 'seek own medical advice'.

Early stages of Ruby Princess voyage RU2007: 8 – 15 March 2020

102. On the evening of 8 March 2020, the Ruby Princess departed Sydney for New Zealand. Based upon information supplied by the Ruby Princess, the ship departed Napier for Sydney on 15 March 2020. As senior counsel assisting the Commission observed in his opening address, this resulted in it being exempt from the prohibition on a cruise ship entering a port in Australian territory before 15 April 2020 imposed by the *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements) Determination 2020* (Cth), discussed in Part II.⁶²
103. As discussed at [56], following the revocation of the Port of Sydney as a port under s 15 of the Customs Act, after 15 March 2020 Sydney was no longer a 'port' for the purposes of s 58 of the Customs Act and s 247(1) of the Migration Act. Permission for the Ruby Princess to arrive at a place other than a 'port' was granted by a Collector under s 58 of the Customs Act⁶³ via the Maritime Travellers Processing Committee (MTPC) application process: see [126]. No exemption was sought from or granted by the Minister under s 248 of the Migration Act. Such an exemption operates only in respect of the obligation to comply with a provision of s 247 of that Act.

Pre-arrival reporting by the Ruby Princess: 16 – 17 March 2020

104. On 16 March 2020 at around 1.46 pm, a PAR was submitted via MARS in respect of the Ruby Princess.⁶⁴ That disclosed (among other items) the following information in response to health-related questions:

⁶¹ Email, Franz Odermatt to various recipients, Subject: FW: FOR NOTING AND ACTION: COVID-19 Update – TIC country list (18 March 2020, 2.09 pm) (AWE.0003.0004.0073; AWE.0003.0004.0075).

⁶² Transcript, Special Commission of Inquiry into the Ruby Princess (5 May 2020) at T10.5-7 (Oral Opening).

⁶³ MTPC, Maritime Travellers Processing Permission for Vessel – Ruby Princess (18 March 2020) (DHA.0001.0002.0915).

⁶⁴ Pre-Arrival Report: Ruby Princess (16 March 2020, 1.46 pm) (AWE.0001.0001.0006).

- a. 53 against the Illness Question
 - b. 10 against the Temperature Question
 - c. 4 against Aches, Diarrhoea & Vomiting Question
 - d. 4 against the Gastro Question
 - e. negative answers to the COVID-19 Questions
 - f. a negative answer to the question '[w]as there any situation on board, which may lead to infection or the spread of disease?'.
105. In response to the submission of the PAR, MARS was configured automatically to email the address provided for the vessel, attaching a document from Commonwealth Health entitled 'Novel coronavirus (COVID-19)', described in the body of the email as a 'factsheet for novel coronavirus'.⁶⁵ The email requested that this factsheet be distributed to all passengers and crew on board. The email further stated that the vessel should report any symptoms or sickness of crew or passengers in the MARS pre-arrival report and advise its agent or alert the MNCC in the event of any changes in the health status of any crew or passengers.
106. At around the time the PAR was submitted, a 'Verify Human Health (VHH) (1) task' was created in MARS.⁶⁶ Such a task is automatically generated by MARS as a result of a positive answer to questions relating to signs or symptoms of a listed human disease being present.
107. At 2.09 pm on 16 March 2020, a 'VHH (1) task' was confirmed by a biosecurity officer from the MNCC.⁶⁷ This task involved confirming the system-generated recommendation⁶⁸ that a Human Health Inspection be queued for the vessel upon arrival. Following that confirmation, a BSD (No 1) was issued in respect of the Ruby Princess,⁶⁹ which contained (among other items):
- a. a green traffic Light for 'Berthing Conditions in Australian First Point of Entry Ports'
 - b. an amber traffic light for 'Vessel Pratique and Ship Sanitation'.
108. This is the first point at which a biosecurity officer could have become aware that there were people on board the Ruby Princess who were ill and/or had a high temperature. A high temperature is a sign or symptom of COVID-19, a listed human disease. The PAR that was supplied by the operator of the Ruby Princess included

⁶⁵ The original email is no longer available, but see Agriculture, Factsheet Email Template (as at 16 March 2020) (AWE.0003.0008.1467) and Agriculture, Logs of emails sent to addresses associated with Ruby Princess (16 to 24 March 2020) (AWE.0003.0008.1453).

⁶⁶ Excel spreadsheet entitled 'MARS task information' (compiled 25 May 2020) (AWE.0003.0011.0036).

⁶⁷ Excel spreadsheet entitled 'MARS task information' (compiled 25 May 2020) (AWE.0003.0011.0036).

⁶⁸ Agriculture, Maritime Arrivals Reporting System (MARS) – Biosecurity Officer (Internal) User Guide, version 2 (February 2020) (AWE.0003.0008.0025) at p 219, 245.

⁶⁹ Biosecurity Status Document (No 1): Ruby Princess (16 March 2020, 2.09 pm) (AWE.0001.0001.0106).

details about individuals on board who had that sign or symptom, as a result of the answer given to the Temperature Question. The effect of the Negative Pratique Instrument is that the Ruby Princess thus fell within the class of incoming vessels in relation to which pratique was to be granted by a biosecurity officer (negative pratique). Once the Ruby Princess fell within this class, the pratique status of the vessel could only change once pratique was either granted or refused. The amber traffic light for pratique in the BSD indicated that the vessel required negative pratique.

109. The BSD (No 1) was automatically sent by MARS to the email inboxes [REDACTED]@carnivalaustralia.com' and [REDACTED]@princesscruises.com'.⁷⁰
110. At 3.01 pm on 16 March 2020, a Human Health Report (No 1) was submitted in respect of the Ruby Princess,⁷¹ which disclosed (among other items) the following information in response to health-related questions:
 - a. 53 against the Illness Question
 - b. 10 against the Temperature Question
 - c. 4 against the Aches, Diarrhoea & Vomiting Question
 - d. 4 against the Gastro Question
 - e. negative answers to the COVID-19 Questions.
111. At 3.54 pm, a 'VHH task (2)' was confirmed by a biosecurity officer from the MNCC.⁷² This involved the same confirmation as the first Verify Human Health task referred to at [107]. Following that confirmation, a BSD (No 2) was issued in respect of the Ruby Princess,⁷³ which did not change the green traffic light for 'Berthing Conditions in Australian First Point of Entry Ports' or the amber traffic light for 'Vessel Pratique and Ship Sanitation' appearing in the first BSD.
112. The BSD (No 2) was automatically sent by MARS to the email inboxes [REDACTED]@carnivalaustralia.com' and [REDACTED]@princesscruises.com'.⁷⁴
113. At 6.13 pm on 16 March 2020, a BSD (No 3) and a BSD (No 4) were generated in respect of the Ruby Princess and automatically sent to [REDACTED]@carnivalaustralia.com' and [REDACTED]@princesscruises.com'.⁷⁵ The amber traffic light for the vessel's pratique status did not change. The creation

⁷⁰ Agriculture, BSD Issuance Timeline for Ruby Princess (AWE.0003.0011.0027).

⁷¹ Human Health Report (No 1): Ruby Princess (16 March 2020, 3.01 pm) (AWE.0001.0001.0012); Excel spreadsheet entitled 'MARS task information' (compiled 25 May 2020) (AWE.0003.0011.0036).

⁷² Excel spreadsheet entitled 'MARS task information' (compiled 25 May 2020) (AWE.0003.0011.0036).

⁷³ Biosecurity Status Document (No 2): Ruby Princess (16 March 2020, 3.09 pm) (AWE.0001.0001.0110).

⁷⁴ Agriculture, BSD Issuance Timeline for Ruby Princess (AWE.0003.0011.0027).

⁷⁵ Biosecurity Status Document (No 3): Ruby Princess (16 March 2020, 6.13 pm) (AWE.0001.0001.0114); Biosecurity Status Document (No 4): Ruby Princess (16 March 2020, 6.13 pm) (AWE.0001.0001.0118); Excel spreadsheet entitled 'MARS task information' (compiled 25 May 2020) (AWE.0003.0011.0036).

of these two BSDs was initiated by the verification of a task in the MARS system relating to seasonal pests.

Events leading to the arrival of Ruby Princess: 18 March 2020

Morning of 18 March 2020

114. On 18 March 2020 at 8.54 am, a Human Health Report (No 2) was submitted in respect of the Ruby Princess,⁷⁶ which disclosed (among other items) the following information in response to health-related questions:
- a. 110 against the Illness Question, up from 53 (compare [110.a]);
 - b. 17 against the Temperature Question, up from 10 (compare [110.b])
 - c. 6 against the Aches, Diarrhoea & Vomiting Question, up from 4 (compare [110.c])
 - d. 6 against the Gastro Question, up from 4 (compare [110.d])
 - e. negative answers to the COVID-19 Questions (compare [110.e]).
115. At 8.56am, a 'VHH task (3)' was confirmed in MARS by a biosecurity officer from the MNCC.⁷⁷ This involved the same process as described above in relation to earlier Verify Human Health tasks. A new BSD was not generated as a result, because this occurs only when the listed conditions on the BSD change.⁷⁸

Afternoon of 18 March 2020

116. Evidence before the Commission indicates that, in the course of the afternoon of 18 March 2020, a NSW Health panel agreed with Professor Ferson's risk assessment of the Ruby Princess as 'probably low'.⁷⁹ No Commonwealth officer formed part of that NSW Health risk assessment process.
117. On 18 March 2020, Ms Joseph left work for the day around 1.30pm. Ms Joseph recalls being told by Mr Odermatt that there were roughly 128 passengers reported sick on the Ruby Princess. She recalls that Mr Odermatt expressed uncertainty as to the cause of the illness and asked her to find out the status of the passengers. Mr Odermatt does not recall this discussion taking place and did not look at either the PAR or Human Health Report before Ms Joseph boarded the ship the following day.

⁷⁶ Human Health Report (No 2): Ruby Princess (18 March 2020, 8.54 am) (AWE.0001.0001.0016).

⁷⁷ Excel spreadsheet entitled 'MARS task information' (compiled 25 May 2020) (AWE.0003.0011.0036).

⁷⁸ Biosecurity Management of Commercial Vessels – Policy Framework (version 1.0, November 2017), p 16 (AWE.0003.0008.0887).

⁷⁹ Statement of Kelly-Anne Ressler dated 1 May 2020 (Special Commission of Inquiry into the Ruby Princess Exhibit 16) at [78], [81] and Annexures KAR-15 and KAR-16.

118. On 18 March 2020 at 2.31 pm, Ms Leeanne Whitney (Port Agency Coordinator, Carnival Australia) sent an email to the MTPC mailbox ('mtpc@abf.gov.au') attaching a MTPC Application Form and 'Debark Report'.⁸⁰
119. At around 3.52 pm, Ms Dionne Keating (MTPC Coordination, ABF) forwarded the email and attachments referred to at [118] to three departmental mailboxes – 'Sydney Boarding Supervisors' (with an @abf.gov.au domain), 'Depart of Health' (with an @health.gov.au domain) and 'Dept of Agriculture' (with an @awe.gov.au domain) – and Mr Andrew Johnson (who possessed an @infrastructure.gov.au domain).⁸¹ Ms Keating advised that the Ruby Princess was seeking approval to arrive and depart at ports other than appointed ports and asked for the application to be reviewed.
120. At around 4.07 pm, Mr Andrew Snook (ABF Supervisor, Shipping Operations) sent an email to the MTPC mailbox in response to Ms Keating's, which contained the word 'approved'.⁸² The Shipping Operations officers were not officers or members of the MTPC. They were sent emails to notify them that a ship was coming to port on a particular date and to determine whether they could support the arrival of the ship by attending to the customs functions for the arrival.
121. At around 4.09 pm, Ms Bibi Tokovic (Port Agent, Carnival Cruises) sent an email (carrying Ms Whitney's signature block) to recipients including 'nsw.seaports@abf.gov.au', 'sbo@abf.gov.au', 'sbs@abf.gov.au', [REDACTED]@abf.gov.au', 'cruisevesselpassengers@agriculture.gov.au', 'seaportssydney@agriculture.gov.au', and Mr Snook, which contained a program for the Ruby Princess's arrival at the OPT.⁸³ The program stated the vessel's arrival time as 2.30 am, the time for the port agent and officials to board for clearance as 6.00 am, and the time for commencement of passenger disembarkation as 7.00 am. The email also referred to '2 ambulance at time of email'. ABF Shipping Operations staff routinely receive communications of this kind with respect to incoming cruise ship arrivals.

⁸⁰ Email, Leeanne Whitney to Maritime Travellers Processing Committee ('mtpc@abf.gov.au'), Subject: MTPC FORM (NEW) RUBY PRINCESS 19 MAR OPT (18 March 2020, 2.31 pm) (DHA.0001.0002.0874), MTPC Application Form (18 March 2020) (DHA.0001.0002.0877), Debarkation Report (18 March 2020) (DHA.0001.0002.0876).

⁸¹ Email, Dionne Keating ('Maritime Travellers Processing Committee') to 'Sydney Boarding Supervisors', 'Depart of Health', 'Dept of Agriculture' and Andrew Johnson, Subject: FW MTPC FORM (NEW) RUBY PRINCESS 19 MAR OPT (18 March 2020, 3.52 pm) (DHA.0001.0002.0874; DHA.0001.0002.0876; DHA.0001.0002.0877). The Department of Health and Department of Infrastructure, Transport, Regional Development and Communication are 'Tier 2' recipients (though the Department of Infrastructure became a 'Tier 1' recipient at an unspecified date in March 2020), from whom a response is not required unless there are grounds for denying or objecting to the application or the recipient wishes to raise concerns.

⁸² Email, Andrew Snook to 'Maritime Travellers Processing Committee', Subject: Approved MTPC Applications (18 March 2020, 4.07 pm) (DHA.0001.0002.1133).

⁸³ Email, Bibi Tokovic to various recipients, Subject: Fwd **updated arrival time** RUBY PRINCESS 19 MAR 20 – Programme – OPT (18 March 2020, 4.09 pm) (DHA.0001.0003.4079).

122. At some time on 18 March 2020, Mr Shane Murray (Border Force Supervisor, Shipping Operations) rang Ms Valerie Burrows (Sydney Port Agent Manager, Carnival Australia) to ask if NSW Health would be attending the Ruby Princess. Mr Murray recalls that Ms Burrows replied that NSW Health had deemed the ship a 'low rating' and advised that it could debark at the requested time.
123. Ms Tokovic's evidence before the Commission was to the effect that she sought permission from Mr Murray at some time on the afternoon of 18 March 2020 for medical disembarkations.⁸⁴ Mr Murray denies that Ms Tokovic notified him of the planned medical disembarkations at any point.
124. At around 4.36 pm, Ms Keating forwarded the email and attachments referred to at [118], together with a draft instrument of approval (in substantially the same terms as that referred to at [126]) to Mr David Carter (Inspector, National Border Event Coordination, ABF). Ms Keating advised Mr Carter that verbal approval had been received from Agriculture and sought his approval.⁸⁵ Mr Carter responded within around a minute with an email indicating his approval.⁸⁶
125. At around 4.47 pm, Ms Fiona Pattison (Senior Policy Officer, First Points of Entry, Agriculture) replied to Ms Keating's email (at [118]) and indicated Agriculture's approval for the Ruby Princess to arrive at the Port of Sydney on 19 March 2020.⁸⁷
126. At around 4.50 pm, following the events described in [119], [120], [125] and [126] above, Ms Keating wrote to [REDACTED]@carnivalaustralia.com' and advised that the MTPC had approved the application from Carnival Australia, on behalf of the Ruby Princess, to arrive and depart at Australian ports.⁸⁸ Ms Keating attached (among other things) a document titled 'Maritime Travellers Processing Permission for Vessel' in respect of the Ruby Princess.⁸⁹ The document was addressed to the Master and Operator of the Ruby Princess and stated that '[p]ermission is granted in accordance with s58 of the Customs Act 1901 and s247 of the Biosecurity Act 2015'.

⁸⁴ Transcript, Special Commission of Inquiry into the Ruby Princess (6 May 2020) at T489.43-T490.5 (B Tokovic).

⁸⁵ Email, Dionne Keating ('Maritime Travellers Processing Committee') to David Carter, Subject: FW: MTPC FORM (NEW) RUBY PRINCESS 19 MAR OPT – approval required (18 March 2020, 4.36 pm) (DHA.0001.0002.0890; DHA.0001.0002.0892; DHA.0001.0002.0893; DHA.0001.0002.0895).

⁸⁶ Email, David Carter to Dionne Keating ('Maritime Travellers Processing Committee'), Subject: RE: MTPC FORM (NEW) RUBY PRINCESS 19 MAR OPT – approval required (18 March 2020, 4.37 pm) (DHA.0001.0003.4089). This version of the email chain lists the sent time on Ms Keating's email as '4.37 pm' and the sent time on Mr Carter's email as '4.37.48 +1100', representing AEDT at the time of the events in question.

⁸⁷ Email, Fiona Pattison ('Arrivals') to 'Maritime Travellers Processing Committee', Subject FW MTPC FORM (NEW) RUBY PRINCESS 19 MAR OPT (18 March 2020, 4.47 pm) (DHA.0001.0002.0904).

⁸⁸ Email, Dionne Keating ('Maritime Travellers Processing Committee') to [REDACTED]@carnivalaustralia.com, Subject: FW: MTPC FORM (NEW) RUBY PRINCESS 19 MAR OPT – approval (18 March 2020, 4.50 pm) (DHA.0001.0002.0910; DHA.0001.0002.0912; DHA.0001.0002.0913; DHA.0001.0002.0915).

⁸⁹ MTPC, Maritime Travellers Processing Permission for Vessel (18 March 2020) (DHA.0001.0002.0915).

127. At around 5.07 pm, Ms Keating forwarded her email of approval referred to at [126] to those who had received her initial request for approval of the application, together with the original application documents and the instrument of approval.⁹⁰

Evening of 18 March 2020

128. At around 6.33 pm, Ms Bibi Tokovic sent an email to various recipients, including the ABF and Agriculture mailboxes and personnel referred to at [121], which contained an amended program for the Ruby Princess' arrival at the OPT. This contained, among other minor amendments, a clarification that the two ambulances referred to in the email at [121] were required at 3.00 am.⁹¹
129. At around 6.45 pm, Mr Savio Dsouza (Administration Officer, Ruby Princess) sent an email to the 'Sydney Boarding Officers' mailbox and the address 'SEOC@abf.gov.au', in respect of the ship's arrival on 19 March 2020.⁹² The email noted that there would be two medical disembarkations at 3.00 am, with 3 guests accompanying the medical disembarkations.
130. On 18 March 2020 at 7.21 pm, a Human Health Report (No 3) was submitted in respect of the Ruby Princess,⁹³ which disclosed (among other items) the following information in response to health-related questions:
- a. 128 against the Illness Question, up from 110 (compare [114.a])
 - b. 24 against the Temperature Question, up from 17 (compare [114.b])
 - c. 6 against the Aches, Diarrhoea & Vomiting Question (compare [114.c])
 - d. 6 against the Gastro Question (compare [114.d])
 - e. negative answers to the COVID-19 Questions (compare [114.e]).
131. At around the time the Human Health Report referred to at [130] was submitted, a 'VHH task (4)' was created. As a result of the time it was submitted, this VHH task was not confirmed until the following morning.⁹⁴ The fact that the VHH task was not confirmed until the morning of 19 March 2020 did not alter the pre-existing appointment in MARS for a Human Health Inspection of the vessel.

⁹⁰ Email, Dionne Keating ('Maritime Travellers Processing Committee') to 'Sydney Boarding Supervisors', 'Depart of Health', 'Dept of Agriculture' and Andrew Johnson, Subject: FW MTPC FORM (NEW) RUBY PRINCESS 19 MAR OPT - approval (18 March 2020, 5.07 pm) (DHA.0001.0002.0929; DHA.0001.0002.0931; DHA.0001.0002.0932; DHA.0001.0002.0934).

⁹¹ Email, Bibi Tokovic to various recipients, Subject: Fwd **updated arrival time** RUBY PRINCESS 19 MAR 20 – Programme – OPT (18 March 2020, 6.33 pm) (DHA.0001.0003.1468).

⁹² Email, Savio Dsouza to 'Sydney Boarding Officers', 'SEOC' and [REDACTED]@carnivalaustralia.com', Subject: RUBY PRINCESS- SYDNEY ARRIVAL 2B GUEST MANIFEST (18 March 2020, 6.45 pm) (DHA.0001.0003.1471; DHA.0001.0003.1474).

⁹³ Human Health Report (No 3): Ruby Princess (18 March 2020, 7.21 pm) (AWE.0001.0001.0020).

⁹⁴ MNCC staff work between 7.00 am and 7.00 pm.

Arrival at Port of Sydney and disembarkation of passengers: 19 March 2020

ABF communications: 12.01 am to 3.00 am, 19 March 2020

132. At around 12.19 am on 19 March 2020, Sergeant Gerard Hollands of the Sydney Water Police sent an email to the 'LEL [Law Enforcement Liaison] NSW Agencies' mailbox maintained by Home Affairs.⁹⁵ The email (which was addressed 'Hi Carl') was intended for Mr Karel Jenicek (Intelligence Liaison Officer, Home Affairs), the on-call intelligence officer, with whom Sergeant Holland had spoken at around 12.06 am.⁹⁶ Mr Jenicek had access to the 'LEL NSW Agencies' mailbox as the on call intelligence officer that evening. The email referred to an earlier discussion of a '3rd hand' report of two possible confirmed cases of COVID-19 on board the Ruby Princess. It noted that, since speaking to Mr Jenicek, Cameron from Sydney Ports had been informed that the two ambulances were booked for non-COVID-19 related illnesses and that it appeared there had been a miscommunication between the ship, the port agent and Sydney Ports. The email requested that Mr Jenicek call Mr Butchart to 'alleviate' any further miscommunications and confirm all the information.
133. At around 12.30 am, Mr Jenicek spoke to Mr Cameron Butchart (Manager, Port Services, Port Authority of New South Wales), although Mr Butchart does not appear to recall speaking to Mr Jenicek.⁹⁷ By 12.31 am, however, Mr Jenicek had sent an email referring to having spoken to Mr Butchart, described in more detail below (at [134]).
134. At around 12.31 am, Mr Jenicek sent an email to the 'RCUNSW' mailbox in which he forwarded the communication from Sergeant Hollands described at [132].⁹⁸ In his email, Mr Jenicek advised that he had 'spoken to Cameron form [sic] Sydney ports

⁹⁵ Email, Gerard Hollands to LEL NSW Agencies, Subject: Ruby Princess (19 March 2020, 12.19 am) (DHA.0001.0002.1135).

⁹⁶ Call logs, Mr Karel Jenicek (Work Mobile) (18-19 March 2020) (DHA.0002.0007.0018) show that Mr Jenicek received a call from an anonymous number that lasted 3:27 minutes at 11.06 pm on 18 March. It is possible that this call in fact occurred at 12.06 am, taking into account that daylight saving was in effect. A limitation of such ABF call logs is that they do not capture incoming calls to a work mobile made from numbers that are not internal DHA landlines.

⁹⁷ Cf Statement of Cameron Butchart dated 28 April 2020 (Annexure A to the Statement of Cameron Butchart dated 5 May 2020) at [44] (Special Commission of Inquiry Exhibit 24). Mr Jenicek's subsequent email correspondence at 12.31 am (discussed below) refers to a conversation with Mr Butchart around the time Mr Butchart recalls a conversation with a female from the Department of Home Affairs. A review of the call logs for the on-call line for the Intelligence Liaison Office, Karel Jenicek's mobile number and Karel Jenicek's direct line do not show any calls to Cameron Butchart's mobile number, or any incoming or outgoing calls shortly after midnight: Call logs, Mr Karel Jenicek (Work mobile) (18-19 March 2020) (DHA.0002.0007.0018); Call logs, Mr Karel Jenicek (Landline) (18-19 March 2020) (DHA.0002.0007.0015); Call logs, On-call Intelligence Liaison Officer Line (18-19 March 2020) (DHA.0002.0007.0016). As noted above, a limitation of such ABF call logs is that they do not capture incoming calls to a work mobile made from numbers that are not internal DHA landlines.

⁹⁸ Email, Karel Jenicek ('LEL NSW Agencies' to 'RCUNSW', Subject: LELNSW – Dissemination – NSWPOL - Ruby Princess (19 March 2020, 12.31 am) (DHA.0001.0002.1135).

and apparently that is NOT the case – however this was the advice provided by NSW Ambulance Service’.

135. Shortly after sending this email, Mr Jenicek spoke to a female officer in the ABF Regional Coordination Unit in Sydney.⁹⁹ Ms Sharon Khan was the only person on duty in the ABF Regional Coordination Unit in Sydney at the time.
136. At 12.33 am, Mr Jenicek sent an email to Sergeant Hollands, stating that he had spoken to Cameron Butchart and setting out the steps he had taken.¹⁰⁰
137. Call logs indicate that Sharon Khan of the NSW Regional Coordination Unit called Mr Cameron Butchart of Sydney Ports twice on the morning of 19 March 2020, at 12.40am and 1.01am.¹⁰¹ In the first call, Ms Khan recalls that Mr Butchart raised concerns regarding suspected COVID-19 cases on board the Ruby Princess and requested information about the ambulance requests. He advised that some people had been tested in New Zealand (which, as described at [160], ABF was subsequently advised had not in fact occurred) and said that he had tried to call NSW Health but was unable to reach anybody.
138. Ms Khan also recalls Mr Butchart telling her that he could stop the ship if need be. She does not recall him saying words to the effect: ‘[t]he Ruby Princess is still in safe water to be sent back to sea ... you have about 20 minutes to make a pretty quick decision before I can’t turn the vessel around.’ Instead, she recalls him saying that, if there was anything that confirmed that this vessel had suspected COVID-19 cases on board, then he had a pilot on board and it could stop at Bradleys Head. Ms Khan does not recall any timing for stopping the ship being mentioned at this point. Ms Khan recalls telling Mr Butchart that she needed to find out what information ABF’s Maritime officers had on the ambulance cases and relay that information back to Mr Butchart.
139. At 12.54 am, Ms Khan called her supervisor, Mr Shane Murray (the on-call Border Force Supervisor for Shipping Operations) and spoke to him for six minutes.¹⁰² Ms Khan asked about ambulance cases and whether the vessel had clearance to berth. Mr Murray recalls advising Ms Khan that NSW Health was not attending and the disembarkation would proceed. Ms Khan recalls Mr Murray telling her that the ambulances were for cardiac and nerve issues and were for non-COVID-19 cases.

⁹⁹ Call logs, Mr Karel Jenicek (Work mobile) (18-19 March 2020), row 6 (DHA.0002.0007.0018) indicate that he placed a call at 11:35pm to Ms Khan’s direct line (he was ultimately connected to the general RCU NSW line) and that the call lasted 2:48 minutes. Accounting for daylight savings, this call may have occurred after midnight.

¹⁰⁰ Email, LEL NSW Agencies to Gerard Hollands, Subject: RE: Ruby Princess (19 March 2020, 12:33am) (DHA.0002.0004.0020).

¹⁰¹ Call logs, NSW RCU (Ms Sharon Khan) (19 March 2020), row 2 (DHA.0002.0007.0001) (9.24 minutes); Call logs, NSW RCU (Ms Sharon Khan) (19 March 2020), row 6 (DHA.0002.0007.0001) (4 minutes). Ms Khan’s recollection of the timing and content of these telephone calls differs from that of Mr Butchart in his witness statements tendered at the Special Commission of Inquiry.

¹⁰² Call logs, NSW RCU (Ms Sharon Khan) (19 March 2020), row 5 (DHA.0002.0007.0001); Call logs, Mr Shane Murray (Work mobile) (19 March 2020), row 2 (DHA.0002.0007.0009).

140. Ms Khan then placed a call back to Mr Butchart, which call records indicate took place at 1.01 am and lasted four minutes.¹⁰³ Ms Khan's recollection is that she explained that ABF's records showed that the ambulances were called out for non-COVID-19 cases and that NSW Health had given clearance for the passengers to disembark. Ms Khan does not recall making any reference to speaking to her supervisor. Ms Khan denies saying words to the effect of 'bring it in', but agrees that she would have said that the vessel had been given clearance to dock.
141. At around 1.51 am, Mr Butchart forwarded an email chain involving the communications between the Ruby Princess and the Port Authority of New South Wales, together with Human Health Report (No 3) (described at [130]), to ABF's 'RCUNSW' mailbox.¹⁰⁴ It appears that this was the first occasion that the Human Health Report came into the possession of Home Affairs.

ABF communications: 3.00 am to 6.00 am, 19 March 2020

142. At around 3.59 am, Ms Khan sent an email to 'ICC-One' in which she forwarded the documents received from Mr Butchart (at [141]) and, in her covering email, described the information about the Ruby Princess she had obtained to that point, including that the Port Authority had advised that COVID-19 tests had been conducted on six passengers in New Zealand.¹⁰⁵ She asked for urgent follow-up with New Zealand in relation to those tests.
143. Ms Khan's email was received by Mr Grant Nissen (Coordinator, Incident Command Centre, ABF), who was working alongside Mr Mick Lund, among others, in the ABF Incident Command Centre (ICC). Mr Nissen asked Mr Lund to follow up on the information about COVID-19 tests with New Zealand authorities, which he did at around 4.15 am.¹⁰⁶ At around 4.48 am, Mr Grant Nissen sent an email to the 'RCUNSW' mailbox in response to the email described at [142].¹⁰⁷
144. At around 5.26 am, a crew change request was submitted by the Ruby Princess via MARS for 97 crew.¹⁰⁸
145. At around 5.47 am, Mr Ian Hillhouse (Supervisor, Regional Coordination Unit, who took over from Ms Khan at the conclusion of her shift) forwarded the email chain

¹⁰³ Call logs, NSW RCU (Ms Sharon Khan) (19 March 2020), row 6 (DHA.0002.0007.0001).

¹⁰⁴ Email, Sharon Khan ('RCUNSW') to 'ICC-One', Subject: FW: Bio Security Declaration (19 March 2020, 3.59 am) (DHA.0001.0002.0424; DHA.0001.0002.0426; DHA.0001.0002.0430; DHA.0001.0002.0431); Email, Cameron Butchart to 'RCUNSW', Subject: FW: BIO SECURITY DECLARATION (19 March 2020, 1.50 am) (DHA.0001.0002.1137; DHA.0001.0002.1139; DHA.0001.0002.1143; DHA.0001.0002.1147).

¹⁰⁵ Email, Sharon Khan ('RCUNSW') to 'ICC-One', Subject: FW: Bio Security Declaration (19 March 2020, 3.59 am) (DHA.0001.0002.0424).

¹⁰⁶ Email, Mick Lund ('ICC-One') to 'ITOC Operations Centre', Subject: Ruby Princess Bio Security (19 March 2020, 4.15 am) (DHA.0001.0002.0434; DHA.0001.0002.0436; DHA.0001.0002.0450).

¹⁰⁷ Email, Grant Nissen ('ICC-One') to 'RCUNSW', Subject: Cruise vessel – Ruby Princess – Sydney arrival – 19MAR20 (19 March 2020, 4.48 am) (DHA.0001.0002.0445).

¹⁰⁸ Excel spreadsheet entitled 'MARS task information' (compiled 25 May 2020) (AWE.0003.0011.0036).

referred to at [143] to the 'Sydney Boarding Supervisors' mailbox and Mr Jeffrey Vandam together with the Human Health Report (3) submitted by the Ruby Princess at 7.21 pm on 18 March.¹⁰⁹ Mr Hillhouse asked ABF's Maritime staff to provide an overview of the situation as soon as possible when known. The email was received by Mr Snook, who read it.

ABF and Agriculture staff attendance at the OPT: 19 March 2020

146. At around 4.40 am or 4.45 am, Ms Traci Joseph arrived at the OPT ahead of the start of her shift at 5.00 am. For the first hour of her shift, Ms Joseph inspected containers that were being unloaded from the vessel.
147. At around 5.30 am, Mr Omer Ozger (Senior Border Force Officer, Maritime Operations) commenced his shift at Customs House, Sydney International Airport.¹¹⁰ Mr Ozger led a team comprised of two officers, Ms Julia Milosevic (Leading Border Force Officer, Maritime Operations) and Mr Dejan Ristovski (Border Force Officer, Maritime Operations).¹¹¹ The team was assisted by officers from a Mobile Deployment Force, which was sent to the OPT to assist with passenger-related activities after the passengers disembarked the ship and entered the OPT.
148. Mr Snook, who was Mr Ozger's supervisor, placed a call to Mr Ozger at 5.59 am, which Mr Ozger received prior to his arrival at the OPT. He asked Mr Ozger to investigate information about ill passengers on the Ruby Princess and to provide a report.
149. At around 5.45 am or 6.00 am, Mr Odermatt arrived at the Ruby Princess with Ms Wallace. They were subsequently joined by Mr George.
150. At around 6.00 am, Ms Joseph went to the gangway of the Ruby Princess where she met Ms Tokovic. Ms Joseph recalls that she asked Ms Tokovic about human health on the ship, and was told that some passengers had been tested for influenza and influenza A, that NSW Health would not be attending and that either the passengers were, or the vessel was, low risk. Ms Joseph further recalls Ms Tokovic saying that 11 passengers were in isolation and would disembark after the other passengers had done so.
151. At around 6.10 am or 6.15 am, Mr Ozger and his team arrived at the OPT.
152. While standing on the wharf, Mr Ozger recalls asking Mr Odermatt whether NSW Health representatives were coming because of the COVID-19 risk, and being told that the Department had deemed the vessel low risk and that they were not attending. Mr Odermatt recalls having a discussion with Mr Ozger in the OPT prior to Mr Ozger boarding the ship concerning sick passengers on board, but does not recall the specific content of the conversation.

¹⁰⁹ Email, Ian Hillhouse ('RCUNSW') to 'Sydney Boarding Supervisors' and Jeffrey Vandam, Subject: FW: Cruise vessel – Ruby Princess – Sydney arrival – 19MAR20 (19 March 2020, 5.47 am) (DHA.0001.0002.0968; DHA.0001.0002.0972).

¹¹⁰ Officer's Notebook: Omer Ozger at p 18.

¹¹¹ Officer's Notebook: Omer Ozger at p 18.

153. Mr Ozger and Ms Milosevic recall that they met Ms Tokovic and Ms Joseph (Ms Joseph does not recall being involved in this conversation).¹¹² Ms Tokovic informed Mr Ozger and Ms Milosevic that there were some people in isolation and that NSW Health were not attending.¹¹³ Ms Milosevic recalls reference being made during this initial conversation to two passengers having been taken away by ambulance before the officers arrived. Ms Milosevic also recalls Ms Tokovic informing the officers that 11 passengers were in isolation and that COVID-19 related testing had been done on board.
154. Mr Ozger boarded the Ruby Princess with Ms Milosevic and Mr Ristovski shortly after arriving at the OPT.¹¹⁴ Ms Tokovic also boarded. Once on board, the ABF officers and Ms Joseph were taken to a function room.
155. From 6.00 am to around 7.00 am, MARS data records there was an appointment for a Routine Vessel Inspection (RVI) of the Ruby Princess. In the function room, Ms Joseph was handed the landing orders for the vessel, which she went through and signed. She observed that there were landing orders for swabs. She recalls that ABF and the Port Agent had discussions, but she could not hear those discussions. After completing paperwork, Ms Joseph left the function room to undertake an environmental inspection on board the vessel. After completing the environmental inspection, she left the vessel. While on board, Ms Joseph did not administer a TIC.
156. While on board the ship, Mr Ozger recalls being told by a purser that two passengers had been taken away by ambulance prior to the ABF's arrival. He was told that they were among 13 passengers in isolation and that they were taken away in an ambulance for issues unrelated to COVID-19.¹¹⁵ Mr Ozger recalls asking the purser about 118 people sick on board and being told that there were not 118 people sick; rather this was the number of people who had been sick throughout the duration of the cruise. The purser advised Mr Ozger that there were only 11 people in isolation who were currently sick. Mr Ozger told the purser that those people needed to remain in isolation until all processing of other passengers had been completed. The purser asked whether Mr Ozger needed to see the passengers and do a face to passport check. Mr Ozger said there was no need for ABF officers to see the passengers. He asked the purser to collect their incoming passenger cards and present those cards to ABF officers.
157. Routine paperwork was provided to the ABF officers on board the ship, including the passenger and crew manifests, a list of way port joining passengers and cargo documentation. Mr Ozger did a face to passport check for way port joining

¹¹² Transcript, Special Commission of Inquiry into the Ruby Princess (6 May 2020) at T536.27-T538.2 (B Tokovic).

¹¹³ Mr Ozger's notebook at pp. 18-19 (DHA.0002.0001.0001) records that it was 'vessel staff' who advised that 13 passengers were isolated due to flu-like symptoms, and suggests (from the sequence in which events are recorded) that this took place after boarding.

¹¹⁴ Transcript, Special Commission of Inquiry into the Ruby Princess (5 May 2020) at T12.41-.43 (Oral Opening).

¹¹⁵ Officer's Notebook: Omer Ozger (DHA.0002.0001.0001) at pp 18-19.

passengers and crew; Ms Milosevic and Mr Ristovski conducted other functions. Ms Milosevic also recalls attending to crew related work.

158. At the conclusion of ABF's customs and immigration checks, someone from the Ruby Princess crew asked whether the vessel had clearance to disembark and Mr Ozger responded 'yes'.¹¹⁶ Ms Joseph does not recall being asked for clearance to disembark passengers or baggage or ABF being asked for clearance to disembark. Ms Tokovic's evidence to the Commission was that she obtained clearance for passengers to disembark from ABF and Agriculture.¹¹⁷
159. At around 6.30 am, Mr Kieran Tabor (Watchkeeper, Integrated Targeting & Operations Centre, New Zealand Customs) passed on an email to Mr Lund at the 'ICC One' mailbox in response to the email at [143].¹¹⁸ The email advised that 'having checked with the agent it would appear they are most likely talking about the Golden Princess, not the Ruby. Golden was in Akaroa over the weekend and testing was conducted with negative results.'¹¹⁹
160. At around 6.56 am, Mr Ross Keeling (Coordinator, Incident Command Centre) sent an email to the 'RCUNSW' mailbox forwarding the communication from New Zealand Customs described at [159] and attaching the Human Health Report (No 3) described at [130].¹²⁰ Mr Keeling advised, based on the advice from New Zealand, that passengers on the Ruby Princess did not undergo testing in New Zealand and asked that officers be informed accordingly.
161. At around 7.00 am, Mr Andrew Snook forwarded the email chain, including Mr Hillhouse's request for a situational overview (referred to at [145]) and the Human Health Report (No 3) (referred to at [130]), to Mr Ozger.¹²¹
162. At some time between around 6.30 am and 7.00 am, passengers commenced disembarking the Ruby Princess.¹²²

¹¹⁶ Officer's Notebook: Omer Ozger (DHA.0002.0001.0001) at p 19.

¹¹⁷ Transcript, Special Commission of Inquiry into the Ruby Princess (6 May 2020) at T519.18-38.

¹¹⁸ Email, Kieran Tabor 'ITOC Operations Centre' to 'ICC-One', Subject: Re Ruby Princess Bio Security (19 March 2020, 6.30 am) (DHA.0001.0002.0450).

¹¹⁹ We note that during the course of the Special Commission of Inquiry into the Ruby Princess, there has been evidence to the effect that 5 swabs were taken from the Ruby Princess in Wellington, for testing and that those results returned negative results: Transcript, Special Commission of Inquiry into the Ruby Princess (22 April 2020) at T53.15-.23; T64.36-65.41; (5 May 2020) at T10.11-.13. Based on Home Affairs records (see (DHA.0001.0002.0445) above at [143]), it would appear that the Ruby Princess last called in Wellington on 13 to 14 March 2020.

¹²⁰ Email, Ross Keeling 'ICC-One' to 'RCUNSW', Subject: TASKING BA135 – Ruby Princess Bio Security (19 March 2020, 6.56 am) (DHA.0001.0002.0469; DHA.0001.0002.0473).

¹²¹ Email, Andrew Snook to Omer Ozger, Subject: FW: Cruise vessel – Ruby Princess – Sydney arrival – 19MAR20 (19 March 2020, 6.59 am / 7.00 am) (DHA.0001.0002.1154; DHA.0001.0002.1158; DHA.0001.0002.0975).

¹²² Ms Tokovic's recollection is that the disembarkation commenced at some time after 7.30 am: Transcript, Special Commission of Inquiry into the Ruby Princess (6 May 2020) at T522.15 (B Tokovic). However, as noted above, in an email to Jeffrey Vandam on 20 March 2020, Omer Ozger stated that debark commenced at approximately 6:30am: Email,

163. At around the same time, Mr Ozger and his team disembarked the vessel. Mr Ozger believes that he may have phoned Mr Snook to provide a verbal report and tell him that he would send him an email report shortly.
164. At around 6.45 to 7.00 am, Ms Joseph disembarked the ship. Shortly after disembarking the ship, Ms Joseph spoke to Mr Odermatt about the swabs that had been taken off the vessel (see [155]).
165. From around 7.31 am, Mr Odermatt exchanged text messages with Ms Ressler. Mr Odermatt had not spoken with Ms Ressler or anyone else from NSW Health prior to starting his shift and did not speak to Ms Ressler on the phone that morning, although Ms Joseph recalls him telephoning NSW Health at around this time. The only time recorded on the text messages concerns the first communication from Mr Odermatt to Ms Ressler. The text message chain is as follows:¹²³

Mr Odermatt:	Hi Kelly 18 samples for testing came off the Ruby Princess this morning Do you know about this and should we, Agriculture & Borderforce be concerned Franz
Ms Ressler:	Hi Franz yes they are sending samples, no concern. The ship was assessed as low risk but we're going to test them anyway, they did have elevated numbers of flu. All are ok to debark but all to go into home isolation due to the new rules. Do you know if ABF are enforcing this?
Mr Odermatt:	Yes, we are handing out the notice for isolation to all disembarking pax and crew here at seaports, I'm not sure how this is monitored once they get home
Ms Ressler:	Thanks Franz

166. Biosecurity officers did not take any further action in relation to the swabs taken for testing.
167. At around 7.37 am, MARS inspection records with respect to the Ruby Princess RVI were last modified.¹²⁴ The RVI e-form is submitted online. Ms Joseph had been unable to obtain an online connection to MARS while on the ship but was able to connect in the OPT.
168. Following the completion and submission of the RVI, around 7.39 am, a BSD (No 5) was issued in respect of the Ruby Princess,¹²⁵ which contained (among other items):
- a. a green traffic Light for 'Berthing Conditions in Australian First Point of Entry Ports'

Omer Ozger to Jeffrey Vandam, Subject: Ruby Princess (20 March 2020, 2.50 pm) (DHA.0001.0002.1318; DHA.0001.0002.1320).

¹²³ SMS Screenshots from Franz Odermatt's iPhone (19 March 2020) (AWE.0001.0001.0032).

¹²⁴ RVI Inspection (AWE.0003.0003.0068).

¹²⁵ Biosecurity Status Document (No 5): Ruby Princess (19 March 2020, 7.39 am) (AWE.0001.0001.0122).

b. a green traffic light for 'Vessel Pratique and Ship Sanitation', from amber.

169. The BSD (No 5) was automatically sent by MARS at this time to the [REDACTED]@carnivalaustralia.com' and [REDACTED]@princesscruises.com'.¹²⁶ As pratique does not appear to have been granted orally by a biosecurity officer prior to this time, this is the time at which pratique was first communicated to the vessel operator.

Movement of passengers through the OPT: 19 March 2020

170. As passengers came off the vessel, ABF officers collected incoming passenger cards (other than the cards from the isolated passengers referred to at [156]). Passengers were handed a document titled 'Information for International Travellers' by Agriculture staff, with assistance from ABF officers.¹²⁷ Both ABF and Agriculture staff were present in the OPT at this time. ABF and Agriculture officers were not involved in the organisation of how disembarkation from the ship occurred.
171. At around 8.34 am, Mr Ozger replied to Mr Snook's email at [161] and provided a report, together with a copy of the Human Health Report for the ship and a document with the personal details of a number of passengers.¹²⁸ Mr Ozger also received a call from an internal Home Affairs telephone number at 8.34 am, lasting three minutes and 53 seconds.¹²⁹
172. At some time between 8.34 am and 8.38 am, the Port Agent said to Mr Ozger that the test results had come back negative.¹³⁰ Mr Ozger asked the Port Agent to send this information to him in writing in an email. (Two days later, on 20 March, Mr Ozger recalls telephoning Ms Tokovic with Mr Snook, during which conversation Ms Tokovic denied saying that tests had come back negative. Mr Murray recalls a conversation with Ms Tokovic to similar effect.)
173. At 8.38 am, Ms Tokovic sent an email to Mr Ozger saying 'Please see below patient list'.¹³¹ The email attached a file entitled 'Lab form for coronavirus testing from a cruise ship', which was a document headed 'Ruby Princess', 'Specimens: Viral swabs', with a cross next to 'CoVID-19 PCR' in the 'Tests required' field.¹³² The final column on the form was headed 'Rapid flu test result (if done)' and the values for each passenger row within that column recorded 'A+B Negative'. Mr Ozger was anticipating this email, and quickly reviewed it before preparing the email described at [174]. It is apparent from the conversation referred to at [172] above and the

¹²⁶ Agriculture, BSD Issuance Timeline for Ruby Princess (AWE.0003.0011.0027).

¹²⁷ Information for International Travellers (15 March 2020, Version 2) (AWE.0003.0004.0055).

¹²⁸ Email, Omer Ozger to Andrew Snook, Subject: FW: Cruise vessel – Ruby Princess – Sydney arrival – 19MAR20 (19 March 2020, 8.34 am) (DHA.0001.0002.1161; DHA.0001.0002.1166; DHA.0001.0002.1167; DHA.0001.0002.0975).

¹²⁹ Call logs, Mr Omer Ozger ('Mobile 1') (19 March 2020) (DHA.0002.0007.0008) row 3.

¹³⁰ Officer's Notebook: Omer Ozger at p 19.

¹³¹ Email, Bibi Tokovic to Sydney Boarding Officers, Subject: FW: Lab form for coronavirus testing from a cruise ship (19 March 2020, 8.38 am) (DHA.0001.0002.1311).

¹³² Lab form for coronavirus testing from a cruise ship (19 March 2020) (DHA.0001.0002.0985).

events described below (including at [174]-[176]), that Mr Ozger misinterpreted this document. The functions and powers which Mr Ozger exercised on the morning of 19 March 2020 arose under the Migration Act and Customs Act, rather than the Biosecurity Act.

174. At around 9.07 am, Mr Ozger provided a further report to Mr Snook, copying Mr Vandam, and attaching three documents.¹³³ Mr Vandam is Mr Snook's Inspector and sits next to him at the ABF offices in Mascot. Mr Ozger reported: '[a]dvice received (see attached doctors report) from Port Agent re swab tests from isolated pax on Ruby Princess. All tests returned back NEGATIVE.' The documents attached to Mr Ozger's email comprised the two documents referred to at [171] and the document headed 'Ruby Princess', 'Specimens: Viral swabs' referred to at [173].¹³⁴
175. At around the time Mr Snook received the email, he also placed a phone call to Mr Ozger.¹³⁵ Mr Ozger said words to the effect: 'I've just sent you through an email that I got from the agent. She said everything came back negative'.
176. Between around 9.07 am and 9.54 am, Mr Ozger obtained a piece of paper from the Port Agent containing the names of passengers who had been tested.¹³⁶ Mr Ozger made markings on the paper to indicate the remaining isolated passengers. The document is annotated 'Isolated + Tested passengers x 12 + 1 x crew – All Negative'. Mr Ozger used this document to generate the table in the email he sent to Mr Snook at 9.54 am, discussed immediately below.
177. At around 9.54 am, Mr Ozger provided a further report to Mr Snook, copying Mr Vandam.¹³⁷ In the email, Mr Ozger set out a table containing personal details including name, passenger/crew, status, 'Swabs Taken' and 'Results'. Mr Ozger used the hard copy document provided by the Port Agent to compile the table.
178. At around 10.05 am, Mr Ozger sent an email to a 'Seaports Sydney' email address maintained by Agriculture.¹³⁸ Mr Ozger sent the email following a conversation with Mr Odermatt. Mr Odermatt does not recall this conversation but recalls receiving the email.

¹³³ Email, Omer Ozger to Andrew Snook, Subject: FW: Cruise vessel – Ruby Princess – Sydney arrival – 19MAR20 (19 March 2020, 9.07 am) (DHA.0001.0002.0975; DHA.0001.0002.0981; DHA.0001.0002.0982; DHA.0001.0002.0985).

¹³⁴ Lab form for coronavirus testing from a cruise ship (DHA.0001.0002.0985).

¹³⁵ Call logs, Mr Omer Ozger ('Mobile 1') (19 March 2020) (DHA.0002.0007.0008) row 4 indicate that Mr Ozger received a call from Phil Berry's telephone number at 9.04 am, lasting around two minutes. It seems likely, given the proximity of Mr Berry and Mr Snook's respective desks, that Mr Snook called Mr Ozger from Mr Berry's telephone, given that both Mr Ozger and Mr Snook recalled speaking to each other around the time of Mr Ozger's 9.07 am email to Mr Snook.

¹³⁶ List of isolated passengers (annotated) (DHA.0002.0001.0011).

¹³⁷ Email, Omer Ozger to Andrew Snook, Subject: Ruby Princess into OPT 19MAR2020 (19 March 2020, 9.54 am) (DHA.0001.0002.1187).

¹³⁸ Email, Omer Ozger to Seaports Sydney, Subject: Ruby Princess into OPT 19MAR2020 (19 March 2020, 10.05 am) (DHA.0001.0002.1194; DHA.0001.0002.1196; DHA.0001.0002.1197; DHA.0001.0002.1199).

179. Mr Ozger does not recall if all of the passengers had disembarked by around 10.00 am, but he thinks they may not have. He recalls that he received a message that the 11 isolated passengers were about to come off.¹³⁹ He recalls mentioning to someone that ABF did not need to interact with them and they could just go straight out. He believes, but cannot be sure, that this occurred after he received information about all of the tests coming back negative.
180. Between around 10.00am and 11.00am, Mr Ozger said to Ms Milosevic that the isolated passengers would be disembarking. Ms Milosevic and Ms Tokovic then had a conversation, after all of the non-isolated passengers had disembarked, in which Ms Milosevic recalls Ms Tokovic stating, in response to a question about the remaining passengers disembarking, words to the effect that 'they are all negative'.
181. The Agriculture officers packed up the arrivals hall after the last passengers had disembarked. Mr George concluded his shift at the OPT at around 10.30am.¹⁴⁰ Mr Odermatt left to go back to the Agriculture offices at some time between around 10.30 am and 11.30 am.

ABF and Agriculture communications: 12.00 pm to 11.59 pm, 19 March 2020

182. At around 12.03 pm, HBO Professor Ferson forwarded an email chain concerning the Ruby Princess to Mr Odermatt and others.¹⁴¹ The email chain contained references to uncertainty about what was happening with the Ruby Princess and references to the 'low' risk assessments for the ship.
183. At around 12.43 pm, Mr Odermatt sent an email to Mr Craig Hall and Ms Teresa Ferrer in which he provided information obtained from the email sent by Mr Ozger at 10.05 am regarding the circumstances of the arrival of the Ruby Princess.¹⁴² While Mr Odermatt referred in his email to having spoken to Kelly 'yesterday', this was a mistake. He had instead communicated with her by text message on the morning of 19 March 2020.

Commonwealth Health's involvement in the events of 19 March 2020

184. By virtue of its administrative arrangements with NSW Health and Agriculture, Commonwealth Health was not directly involved in the processing or disembarkation of the Ruby Princess, nor did it provide specific advice as to the health risk posed by the Ruby Princess prior to disembarkation.
185. Commonwealth Health generally received a daily report from NSW Health titled, 'NSW Health Public Health Emergency Operations Centre COVID-19 Situation Report' which addressed a range of matters (including cases of COVID-19, testing,

¹³⁹ Officer's Notebook: Omer Ozger (DHA.0002.0001.0001) at p 19.

¹⁴⁰ Cruise Vessel Overtime Sign on Sheet and Stamp Log' (19 March 2020) (AWE.0003.0002.0019).

¹⁴¹ Email, Mark Ferson to various recipients including Mr Odermatt, Subject: 'Ruby Princess – tomorrow' (19 March 2020, 12.03 pm) (AWE.0003.0004.0057).

¹⁴² Email, Franz Odermatt to Craig Hall and Teresa Ferrer, Subject: 'RE: Ruby Princess' (19 March 2020, 12.43 pm) (AWE.0003.0004.0063).

public communications etc).¹⁴³ The report dated 18 March 2020 (received on the evening of 18 March 2020 at 10.36 pm) referred to four cruise ships arriving in Sydney on 19 March 2020, indicating that they 'were assessed as being at low risk and so will not have a Health team assessment dockside'. There was no information included in this report regarding the basis for the 'low risk' assessment.

186. Commonwealth Health was first provided with specific human biosecurity information about the vessel at 9.36 am on 19 March 2020, when Ms Keating, MTPC, ABF, forwarded an email chain to various persons, including Commonwealth Health's 'Humanbiosecurity' mailbox, which read: 'for your situational awareness'.¹⁴⁴
187. Commonwealth Health became aware of positive tests in respect of Ruby Princess passengers in the evening of 19 March 2020. When notified, Commonwealth Health offered assistance to NSW Health in relation to contact tracing, if required. Commonwealth Health was involved in alerting other jurisdictions to the positive cases from the Ruby Princess and providing information, where needed. Commonwealth Health did not have direct contact with passengers as part of the contact tracing process. Rather, it provided information to relevant jurisdictional public health units to enable them to undertake contact tracing activities.

¹⁴³ Email, Robin Gilmour (NSW Health), Subject: NSW Health PHEOC Novel Coronavirus Sitrep 57 – 18 Mar 2020 (18 March 2020, 10.36 pm) (HEA.0002.0002.0085) attaching Sitrep 57 18 Mar 2020 COVID-19 (18 March 2020) (HEA.0002.0002.0087).

¹⁴⁴ Email, Dionne Keating ('Maritime Travellers Processing Committee') to Kerri Bradford (Infrastructure), 'Depart of Health', 'Dept of Agriculture' and Andrew Johnson (Infrastructure), Subject: FW: FOR INFO: UPDATE 3: TASKING BA176 - RUBY PRINCESS (NSW) (19 March 2020, 9.36 am) (DHA.0001.0002.1180).

INDEX TO DOCUMENTS ACCOMPANYING STATEMENT

	Document name	Document date	Document ID
1.	Letter from AGS to Commission	15 May 2020	AGS.0001.0001.0001
2.	Letter from Commission to AGS	15 May 2020	AGS.0001.0001.0003
3.	Instrument of appointment (authorisation of biosecurity officers) [signature redacted]	1 February 2020	HEA.0003.0001.0001
4.	Standard Operating Procedure – Appointing and Revoking of CHBOs and HBOs	August 2019	HEA.0001.0001.0158
5.	<i>Biosecurity (Human Biosecurity Officials) Authorisation (No. 6) 2020</i> (Cth) [names of officers other than New South Wales officers redacted]	2 March 2020	HEA.0001.0001.0147
6.	Letter from the Hon Sussan Ley MP, Health Minister, to Dr Vicky Sheppard, Chief Human Quarantine Officer, NSW Health	31 May 2016	HEA.0001.0001.0006
7.	Letter from Dr Vicky Sheppard, Chief Human Quarantine Officer, NSW Health to the Hon Susan Ley MP, Health Minister	3 June 2016	HEA.0001.0001.0008
8.	Schedule: Agreement with the States and Territories for the provision of Human Quarantine Services [sensitive financial information and signatures redacted]	13 December 2016	HEA.0001.0001.0009
9.	Head Memorandum of Understanding for the	19 October 2017	HEA.0001.0001.0253

	collaborative working relationship between Agriculture and Health		
10.	Schedule 3 – Human Biosecurity Services, Schedule to MOU	28 November 2018	HEA.0001.0001.0263
11.	Australian Health Management Plan for Pandemic Influenza	August 2019	HEA.0005.0001.0029
12.	Australian Health Sector Emergency Response Plan for Novel Coronavirus	2020	HEA.0005.0001.0261
13.	Coronavirus disease (COVID-19)	6 March 2020	HEA.0005.0001.0359
14.	Novel coronavirus (COVID-19)	15 March 2020	HEA.0005.0001.0358
15.	National Protocol for managing novel coronavirus disease (COVID-19) risk from cruise ships	6 March 2020	HEA.0002.0001.1034
16.	Various versions of the National Guidelines for Public Health Units on COVID-19	23 January 2020 - 13 May 2020	HEA.0002.0004.0001 - HEA.0002.0004.0630
17.	MARS - Vessel Agent User Guide	March 2017	AWE.0003.0008.0401
18.	MARS - Vessel Master User Guide	March 2017	AWE.0003.0008.0527
19.	Pre-Arrival Form (version Int 106)	undated	AWE.0003.0003.0009
20.	Human Health Update (version Int 17)	undated	AWE.0003.0003.0007
21.	Biosecurity Management of Commercial Vessels – Policy Framework (version 1.0) [sensitive information re: methodology for assessing	November 2017	AWE.0003.0008.0887

	non-human biosecurity risk redacted]		
22.	<i>Migration (VES 20/002: Class of Persons Taken Not to Enter Australia) Determination 2020 (Cth)</i>	20 February 2020	DHA.0001.0003.1731
23.	Work Instruction – Undertake a Routine Vessel Inspection	12 May 2017	AWE.0002.0001.0282
24.	Work Instruction – Undertake a Human Health Inspection on board international vessels	12 May 2017	AWE.0002.0001.0258
25.	Guideline – Death or illness of a traveller on board an international vessel	26 August 2019	HEA.0002.0001.1011
26.	Assessing Ill Travellers at Australia's International Border	May 2019	HEA.0001.0001.0198
27.	Traveller with Illness Checklist – Air and Sea Travellers	3 March 2020	HEA.0002.0001.1058
28.	National Protocol for Pandemic (H1N1) 2009 on Cruise Ships,	July 2009	HEA.0002.0001.1321
29.	Timeline for implementation of COVID-19 questions	undated	AWE.0003.0011.0028
30.	Email, Craig Hall to Guy Bursle, Subject: NSW Health and Cruise Vessels	21 February 2020	AWE.0001.0002.0010
31.	Email, Mark Ferson to Franz Odermatt, Subject: Schedule of ships for health assessment	21 February 2020	AWE.0001.0002.0012 AWE.0001.0002.0008
32.	Email, Franz Odermatt to Robert Rybanic, Subject: Cruise vessel terminal coronaviruses Announcements	6 March 2020	AWE.0003.0004.0069 AWE.0003.0004.0070 AWE.0003.0004.0071 AWE.0003.0004.0072

33.	Email, Franz Odermatt to various recipients including [REDACTED]@carnivalaustralia.com', Subject: FW Traveller fact sheets	16 March 2020	AWE.0003.0004.0052 AWE.0003.0004.0055
34.	Email, Franz Odermatt to various recipients, Subject: FW: FOR NOTING AND ACTION: COVID-19 Update – TIC country list	18 March 2020	AWE.0003.0004.0073 AWE.0003.0004.0075
35.	Maritime Travellers Processing Permission for Vessel – Ruby Princess	18 March 2020	DHA.0001.0002.0915
36.	Pre-Arrival Report: Ruby Princess	16 March 2020	AWE.0001.0001.0006
37.	Factsheet Email Template	As at 16 March 2020	AWE.0003.0008.1467
38.	Logs of emails sent to addresses associated with Ruby Princess	16 March 2020 - 24 March 2020	AWE.0003.0008.1453
39.	Excel spreadsheet entitled 'MARS task information'	25 May 2020	AWE.0003.0011.0036
40.	MARS Biosecurity Officer User Guide (version 2) [sensitive information re: methodology for assessing non-human biosecurity risk redacted]	February 2020	AWE.0003.0008.0025
41.	Biosecurity Status Document (No 1): Ruby Princess	16 March 2020	AWE.0001.0001.0106
42.	BSD Issuance Timeline for Ruby Princess	undated	AWE.0003.0011.0027
43.	Human Health Report (No 1): Ruby Princess	16 March 2020	AWE.0001.0001.0012

44.	Biosecurity Status Document (No 2): Ruby Princess	16 March 2020	AWE.0001.0001.0110
45.	Biosecurity Status Document (No 3): Ruby Princess	16 March 2020	AWE.0001.0001.0114
46.	Biosecurity Status Document (No 4): Ruby Princess	16 March 2020	AWE.0001.0001.0118
47.	Human Health Report (No 2): Ruby Princess	18 March 2020	AWE.0001.0001.0016
48.	Email, Leeanne Whitney to Maritime Travellers Processing Committee ('mtpc@abf.gov.au'), Subject: MTPC FORM (NEW) RUBY PRINCESS 19 MAR OPT (2.31 pm) Email, Dionne Keating ('Maritime Travellers Processing Committee') to 'Sydney Boarding Supervisors', 'Depart of Health', 'Dept of Agriculture' and Andrew Johnson, Subject: FW MTPC FORM (NEW) RUBY PRINCESS 19 MAR OPT	18 March 2020	DHA.0001.0002.0874
49.	Debarcation Report	18 March 2020	DHA.0001.0002.0876
50.	MTPC Application Form	18 March 2020	DHA.0001.0002.0877
51.	Email, Andrew Snook to 'Maritime Travellers Processing Committee', Subject: Approved MTPC Applications	18 March 2020	DHA.0001.0002.1133
52.	Email, Bibi Tokovic to various recipients, Subject: Fwd **updated arrival time** RUBY PRINCESS 19 MAR 20 – Programme – OPT	18 March 2020	DHA.0001.0003.4079

53.	Email, Dionne Keating ('Maritime Travellers Processing Committee') to David Carter, Subject: FW: MTPC FORM (NEW) RUBY PRINCESS 19 MAR OPT – approval required	18 March 2020	DHA.0001.0002.0890 DHA.0001.0002.0892 DHA.0001.0002.0893 DHA.0001.0002.0895
54.	Email, David Carter to Dionne Keating ('Maritime Travellers Processing Committee'), Subject: RE: MTPC FORM (NEW) RUBY PRINCESS 19 MAR OPT – approval required	18 March 2020	DHA.0001.0003.4089
55.	Email, Fiona Pattison ('Arrivals') to 'Maritime Travellers Processing Committee', Subject FW MTPC FORM (NEW) RUBY PRINCESS 19 MAR OPT	18 March 2020	DHA.0001.0002.0904
56.	Email, Dionne Keating ('Maritime Travellers Processing Committee') to [REDACTED]@carnivalaus tralia.com, Subject: FW: MTPC FORM (NEW) RUBY PRINCESS 19 MAR OPT – approval	18 March 2020	DHA.0001.0002.0910 DHA.0001.0002.0912 DHA.0001.0002.0913 DHA.0001.0002.0915
57.	Email, Dionne Keating ('Maritime Travellers Processing Committee') to 'Sydney Boarding Supervisors', 'Depart of Health', 'Dept of Agriculture' and Andrew Johnson, Subject: FW MTPC FORM (NEW) RUBY PRINCESS 19 MAR OPT - approval	18 March 2020	DHA.0001.0002.0929 DHA.0001.0002.0931 DHA.0001.0002.0932 DHA.0001.0002.0934.
58.	Email, Bibi Tokovic to various recipients, Subject: Fwd **updated arrival time** RUBY	18 March 2020	DHA.0001.0003.1468

	PRINCESS 19 MAR 20 – Programme – OPT		
59.	Email, Savio Dsouza to 'Sydney Boarding Officers', 'SEOC' and [REDACTED]@carnivalaustralia.com', Subject: RUBY PRINCESS- SYDNEY ARRIVAL 2B GUEST MANIFEST	18 March 2020	DHA.0001.0003.1471 DHA.0001.0003.1474
60.	Human Health Report (No 3): Ruby Princess	18 March 2020	AWE.0001.0001.0020
61.	Email, Gerard Hollands to LEL NSW Agencies, Subject: Ruby Princess Email, Karel Jenicek ('LEL NSW Agencies' to 'RCUNSW', Subject: LELNSW – Dissemination – NSWPOL - Ruby Princess	19 March 2020	DHA.0001.0002.1135
62.	Call logs, Mr Karel Jenicek (Work Mobile)	18 March 2020 - 19 March 2020	DHA.0002.0007.0018
63.	Call logs, Mr Karel Jenicek (Landline)	18 March 2020 - 19 March 2020	DHA.0002.0007.0015
64.	Call logs, On-call Intelligence Liaison Officer Line	18 March 2020 - 19 March 2020	DHA.0002.0007.0016
65.	Email, LEL NSW Agencies to Gerard Hollands, Subject: RE: Ruby Princess	19 March 2020	DHA.0002.0004.0020
66.	Call logs, NSW RCU (Ms Sharon Khan)	19 March 2020	DHA.0002.0007.0001
67.	Call logs, Mr Shane Murray (Work mobile)	19 March 2020	DHA.0002.0007.0009
68.	Email, Sharon Khan ('RCUNSW') to 'ICC-One',	19 March 2020	DHA.0001.0002.0424 DHA.0001.0002.0426

	Subject: FW: Bio Security Declaration		DHA.0001.0002.0430 DHA.0001.0002.0431
69.	Email, Cameron Butchart to 'RCUNSW', Subject: FW: BIO SECURITY DECLARATION	19 March 2020	DHA.0001.0002.1137 DHA.0001.0002.1139 DHA.0001.0002.1143 DHA.0001.0002.1147
70.	Email, Mick Lund ('ICC-One') to 'ITOC Operations Centre', Subject: Ruby Princess Bio Security	19 March 2020	DHA.0001.0002.0434 DHA.0001.0002.0436 DHA.0001.0002.0450
71.	Email, Grant Nissen ('ICC-One') to 'RCUNSW', Subject: Cruise vessel – Ruby Princess – Sydney arrival – 19MAR20	19 March 2020	DHA.0001.0002.0445
72.	Email, Ian Hillhouse ('RCUNSW') to 'Sydney Boarding Supervisors' and Jeffrey Vandam, Subject: FW: Cruise vessel – Ruby Princess – Sydney arrival – 19MAR20	19 March 2020	DHA.0001.0002.0968 DHA.0001.0002.0972
73.	Officer's Notebook: Omer Ozger	6 March 2020 - 7 April 2020	DHA.0002.0001.0001
74.	Email, Kieran Tabor 'ITOC Operations Centre' to 'ICC-One', Subject: Re Ruby Princess Bio Security	19 March 2020	DHA.0001.0002.0450
75.	Email, Ross Keeling 'ICC-One' to 'RCUNSW', Subject: TASKING BA135 – Ruby Princess Bio Security	19 March 2020	DHA.0001.0002.0469 DHA.0001.0002.0473
76.	Email, Andrew Snook to Omer Ozger, Subject: FW: Cruise vessel – Ruby Princess – Sydney arrival – 19MAR20	19 March 2020	DHA.0001.0002.1154 DHA.0001.0002.1158 DHA.0001.0002.0975

77.	Email, Omer Ozger to Jeffrey Vandam, Subject: Ruby Princess	20 March 2020	DHA.0001.0002.1318 DHA.0001.0002.1320
78.	SMS Screenshots from Franz Odermatt's iPhone	19 March 2020	AWE.0001.0001.0032
79.	RVI Inspection	19 March 2020	AWE.0003.0003.0068
80.	Biosecurity Status Document (No 5): Ruby Princess	19 March 2020	AWE.0001.0001.0122
81.	Information for International Travellers (Version 2)	15 March 2020	AWE.0003.0004.0055
82.	Email, Omer Ozger to Andrew Snook, Subject: FW: Cruise vessel – Ruby Princess – Sydney arrival – 19MAR20	19 March 2020	DHA.0001.0002.1161 DHA.0001.0002.1166 DHA.0001.0002.1167 DHA.0001.0002.0975
83.	Call logs, Mr Omer Ozger ('Mobile 1')	19 March 2020	DHA.0002.0007.0008
84.	Email, Bibi Tokovic to Sydney Boarding Officers, Subject: FW: Lab form for coronavirus testing from a cruise ship	19 March 2020	DHA.0001.0002.1311
85.	Email, Omer Ozger to Andrew Snook, Subject: FW: Cruise vessel – Ruby Princess – Sydney arrival – 19MAR20	19 March 2020	DHA.0001.0002.0975 DHA.0001.0002.0981 DHA.0001.0002.0982 DHA.0001.0002.0985
86.	Lab form for coronavirus testing from a cruise ship	19 March 2020	DHA.0001.0002.0985
87.	List of isolated passengers (annotated)	undated	DHA.0002.0001.0011
88.	Email, Omer Ozger to Andrew Snook, Subject: Ruby Princess into OPT 19MAR2020	19 March 2020	DHA.0001.0002.1187

89.	Email, Omer Ozger to Seaports Sydney, Subject: Ruby Princess into OPT 19MAR2020	19 March 2020	DHA.0001.0002.1194 DHA.0001.0002.1196 DHA.0001.0002.1197 DHA.0001.0002.1199
90.	Cruise Vessel Overtime Sign on Sheet and Stamp Log'	19 March 2020	AWE.0003.0002.0019
91.	Email, Mark Ferson to various recipients including Mr Odermatt, Subject: 'Ruby Princess – tomorrow'	19 March 2020	AWE.0003.0004.0057
92.	Email, Franz Odermatt to Craig Hall and Teresa Ferrer, Subject: 'RE: Ruby Princess'	19 March 2020	AWE.0003.0004.0063
93.	Email, Robin Gilmour (NSW Health), Subject: NSW Health PHEOC Novel Coronavirus Sitrep 57 – 18 Mar 2020	18 March 2020	HEA.0002.0002.0085
94.	Sitrep 57 18 Mar 2020 COVID-19	18 March 2020	HEA.0002.0002.0087
95.	Email, Dionne Keating ('Maritime Travellers Processing Committee') to Kerri Bradford (Infrastructure), 'Depart of Health', 'Dept of Agriculture' and Andrew Johnson (Infrastructure), Subject: FW: FOR INFO: UPDATE 3: TASKING BA176 - RUBY PRINCESS (NSW)	19 March 2020	DHA.0001.0002.1180