



SEMAPHORE

Newsletter of the Maritime Law

Association of Australia and New Zealand



What Now for Cruise Shipping?

Amidst widespread onboard COVID-19 infections, regulator investigations over unrestricted disembarking of infected or potentially-infected passengers, passenger law suits and the current global cessation of business, what is the future for the cruise industry?

Australasian Scene

Offering a regional perspective, New Zealand Cruise Association chief executive Kevin O’Sullivan says while it is hard to predict what shape future “business as normal” might take, there is optimism.

“Life in general will be different and so will cruise,” he says.

“But we do believe that cruise will build up again, once the virus is under control, although not to the same levels at first.

“For some time now a large proportion of cruise guests, in our region, have come from Australia and New Zealand and, after a period of isolation, they will want to begin to enjoy life again and go on holiday.

“Cruise passengers from further afield, such as Europe and North America, will come again, once long-haul flights are back to reasonable levels.”

The Australasian cruise shipping status according to the [South Pacific Tourism Organisation](#) (last updated April 2) entails:

- Australia – international cruise ships are banned until June 15, except for those headed to Tasmania, which has banned cruise ship calls until June 30
- New Zealand – all New Zealand ports are closed to cruise ships through June 30 and entry now prohibited for all foreign travellers

However, Mr O’Sullivan notes that New Zealand has subsequently placed a ban on all international travel for an unspecified time. He speculates the length of this cessation could be until the end of the year or possibly even next March, a full year from the commencement of lockdown.

“There are negotiations underway for travel between Australia and New Zealand – it is not clear if it will include cruise ships, in addition to air travel. If we were able to have ships based in New Zealand then we could have passengers flying in from Australia (which has usually been our source market), as well as guests from New Zealand.

“Basing ships in New Zealand and operating around our coast could see an immediate lift in tourism dollars in our regions. There will need to be consultation and co-operation from all various parties of course – cruise lines, government agencies and the private sector – for this to happen.

“But cruise is an important feature of the New Zealand economy – worth NZ\$570 million last season – and should be encouraged.”

Statement from CLIA

In a statement published on its [Website](#) on April 21, which has not subsequently been updated, the Washington (DC)-headquartered Cruise Lines International Association (CLIA) advised it had been working collaboratively to address COVID-19 challenges.

“CLIA has been working with local and national governments around the world, as well as leading health authorities and our partners across the wider cruise community to co-ordinate our efforts during the ongoing suspension of worldwide cruise operations,” it states.

“The top priority for our entire community – including cruise lines, travel agents, ports, destinations, suppliers and beyond – continues to be the health and safety of passengers, crew and the communities in the places we visit.

“The fact remains that the vast majority of more than 270 cruise ships within the CLIA member fleet were not affected by this virus. This is due, in large part, to the aggressive measures adopted by CLIA oceangoing cruise lines in response to COVID-19 based on prevailing guidance from global health authorities, including the United States Centers for Disease Control and Prevention (CDC) and the



Cruise ships parked up in Manila Bay (the Philippines) via Facebook, Samuel Andre Macdonald, Aussie Ship Spotters

World Health Organization (WHO). Those measures include rigorous screening protocols, enhanced sanitation measures and the availability of onboard medical care and treatment 24/7.”

However, in recognition the virus could “affect any setting where people come together to socialise and enjoy shared experiences”, the CLIA confirmed it had voluntarily suspended worldwide operations following WHO’s declaration of a pandemic in mid-March.

“Unfortunately, the suspension of cruise operations will have a pronounced detrimental effect on the global economy. The cruise industry generates more than US\$150 billion per year in global economic activity and supports over 1.17 million jobs worldwide.

“Cruising touches almost every sector – from transportation and agriculture, to hospitality and tourism, manufacturing and beyond. When the time is right for cruise ships to once again set sail, our community will be an important part of the global economic and societal recovery.

“CLIA, on behalf of the wider cruise community, appreciates the constructive working relationships we share with global authorities around the world, including in North America, Europe, Australasia and South America. We will use this time during the suspension of global operations to continue to work with them to achieve our shared objective of going further still in our efforts to protect the health and safety of passengers, crew and public and to support recovery goals for tourism and business sector partners.”

Ruby Princess

Australian Police and New Zealand Customs Service have advanced separate investigations into actions surrounding the 289-metre and 113,561-GT cruise ship *Ruby Princess*. The vessel is linked to 21 deaths and almost 700 cases of COVID-19 – the vast majority in Australia.

Currently anchored in Manila Bay (Philippines), the Carnival Corporation-owned and Princess Cruises-operated vessel reportedly cut short its transit around New Zealand due to passengers showing signs of respiratory illness. It departed Napier on March 15 bound for Sydney, where its over 2600 passengers were then allowed to freely disembark on March 19.

Having cited a March 15 health declaration from the ship, New Zealand media organisation *Stuff* recently reported that a passenger who two days earlier presented with an undiagnosed “influenza-like illness” – and was not isolated – had then “recovered”.

“The declaration stated that 18 people on board had come down with various illnesses,” states *Stuff*.

“A further six people were in isolation with Influenza A. All six had reported ill on March 13-14. It does not state whether they were crew or passengers.

“A further 11 people had fallen ill since March 8, but had recovered. Five of these had Influenza A, four had acute gastro-enteritis and two had ‘upper respiratory illness’.”

Covering the Australian Special Commission of Inquiry, *The Guardian* reported on May 6 that Sydney harbourmaster Cameron Butchart stated he had “a concern for the occupational health and safety of sending a marine pilot onboard”.

Having been called to the vessel by the Australian Border Force – it being noted one particular officer “certainly had concerns with the situation” – the harbourmaster reportedly offered to “turn it around”.

“The inquiry heard on Tuesday that the *Ruby Princess* was allowed to dock after a second call from the same Border Force officer,” reports *The Guardian*.

“[Mr] Butchart rejected the idea that Home Affairs and Border Force were ‘not decision makers’ and said they ‘would have been working very closely with biosecurity in making this decision’ to let the ship dock.

“On Tuesday the Border Force commissioner, Michael Outram, told a separate Senate inquiry the officer ‘didn’t tell the harbourmaster what he or she should or shouldn’t do. They’ve got no legislated authority to do that’.”

Among other findings reported by *The Guardian*:

- the Ruby Princess “hurried” back to Sydney because it had COVID-19 swabs that needed urgent testing
- the vessel arrived three hours earlier than scheduled at 3am on March 19, causing timing issues with adequate presentation of Border Force officers
- two passengers needed immediate ambulance transfers to hospital, one on oxygen support
- test results from the swabs were delayed 16 hours because the laboratory did not prioritise – the results ultimately being delivered at 8am on March 20
- a senior manager of Carnival Australia told a senior colleague the Ruby Princess was “not a COVID ship” and “it was basically business as usual”

Legal Action

Reports have emerged around the world of lawsuits being filed by affected passengers – or the family of passengers in the case of tragic death – against various cruise line operators and owners.

USA Today reported that a class-action brought against Costa Cruises alleged “the company neglected to inform Costa Luminosa passengers about potential coronavirus exposure and failed to take necessary precautions to protect those aboard”.

The New Zealand Herald reported that relatives of Chung Chen – who died from the virus after returning home to Los Angeles – have sued Princess Cruises for about NZ\$1.6 million over allegations the operator “recklessly” put the lives of Ruby Princess passengers at risk.

A media release issued by the Philadelphia-based maritime law firm, Saltz Mongeluzzi & Bendesky PC (SM&B), alleged Carnival had performed an “horrific job protecting the health and safety of their guests and their employees” in regard to the Ruby Princess.

“When worldwide warnings sounded about the deadly coronavirus, they ignored those alerts and – instead of ordering all ships back to port – they still set sail, failing to protect passengers and their crews,” states the release.

“In terms of liability, we believe that Carnival faces legal exposure from not only passengers and crew, but also from anyone, anywhere who might have been, or will be, infected as a result of contact with someone from COVID-infested Carnival ships.”

However, an article published by *Claims Journal*, has pontificated that legal action against cruise lines could prove an “uphill battle”.

“The tickets that cruise passengers buy resemble legal contracts, and they generally contain language barring customers from filing class-action suits – lawsuits that allow one or more plaintiffs to act on behalf of a larger group,” states the [article](#).

“That’s just one of several built-in legal protections in cruise tickets meant to safeguard companies against a rash of litigation that’s already arising from the [COVID-19] pandemic.”

NBC News also reports that passengers seeking damages from cruise lines may have a “difficult time” proving those companies failed to meet “reasonable care” standards, in this [article](#).

Grady S Hurley, a partner with New Orleans-headquartered law firm Jones Walker, has authored the following two guides on vessel owner obligations via *The National Law Review*:

- <https://www.natlawreview.com/article/covid-19-vessel-owner-obligations-part-i>
- <https://www.natlawreview.com/article/covid-19-vessel-owner-obligations-part-ii>

Dr Christopher Ward SC – a barrister in 6 St James Hall International Chambers, Adjunct Professor, ANU and president of the International Law Association – has authored this insightful [article](#) in the *Law Society of NSW Journal* entitled “Cruising through the Coronavirus: a journey through international law”.

Aside from the legal action, reports are also emerging of numerous cruise lines experiencing severe financial hardship and potentially going out of business as the full downstream impacts of the pandemic are realised.

May 2020

Cruise Ship Locations

An update on the current locations of cruise ships all around can be found in this [Word document](#) compiled by and kindly shared with Semaphore, by former Wellington harbourmaster Mike Pryce.

