



Pacific Maritime

LAWYERS & CONSULTANTS

29 March 2019

Committee Secretary
Senate Standing Committees on Rural and Regional Affairs and Transport
PO Box 6100
Parliament House

By email: rrat.sen@aph.gov.au

Dear Committee Secretary,

AMSA Senate Inquiry Submission

We represent Pacific Tug (Aust) Pty Ltd and write with regard to the issues and challenges that our client has encountered with the Australian Maritime Safety Authority (AMSA). Primarily these issues relate to AMSA:

1. Delaying response to requests of the maritime community,
2. Misunderstanding the legislation that they are supposed to be enforcing, and
3. Failing to consult with the industry and achieve commercial resolutions.

Such issues are explained in the context of several examples.

AMSA's Purpose

According to AMSA's establishing legislation, AMSA has the purpose of;

- a) promoting maritime safety,
- b) protecting the marine environment,
- c) providing a national search and rescue service, and
- d) promoting the **efficient provision of services** by the Authority.

AMSA owes a further duty to the persons and entities they regulate to provide services efficiently, effectively, economically, and ethically. AMSA acknowledges this duty and itself expresses the goal of having effective and efficient processes and systems.

However, these duties and goals simply do not translate into reality. The following fact scenarios experienced by Pacific Tug are each separate, however share the same shortcomings;

1. Delay in provision of services;
2. Lack of knowledge of relevant legislation;
3. Lack of commercial consideration.

These weaknesses have been compounded upon by the transfer of DCV services occurring on 1 July 2018. The transfer of services and responsibility to AMSA can be described at best as clumsy. Databases, documentation, ship profiles, and certificates were either transferred with outdated or missing information or simply not transferred at all. Additionally, the education required to prepare staff to provide services in relation to DCVs was seemingly non-existent.

Survey Certificate Issues

Pacific Tug have operated for many years and dealt with AMSA, Maritime Safety Queensland, Roads and Maritime New South Wales, and other State counterparts as required. These communications are a necessary and important part of ensuring that Pacific Tug understand and comply with safety and other requirements for their vessels. However, since AMSA assumed responsibility for DCVs in July of last year, these communications have become increasingly laborious, frustrating and time-consuming.

The primary issues are that;

1. AMSA representatives do not know the legislation, regulations, or standards that they are to be enforcing;
2. That vessel details previously recorded on MSQ, RMS or other vessel databases have not been transferred, or have been transferred with outdated or missing information; and
3. That AMSA correspondence is consistently delayed without regard for the commercial implications.

Example 1a: In mid-August 2018, Pacific Tug were contacted by AMSA stating that two of their vessels were due for renewal surveys. Pacific Tug queried the need for survey, as both vessels had been surveyed only five months earlier. Three months then passed before AMSA returned this correspondence and stated that the documents held by Pacific Tug were in fact correct and that the renewal requests were incorrectly sent. The vessels' data had not been provided when DCV responsibility had transferred from the States to AMSA. On 27 November 2018, the situation with regard to one of the vessels was finally rectified, and for the second vessel on 7 January 2019, nearly 6 months after it arose, by virtue of AMSA's confusion.

Example 2: The Pacific Tug vessel, King Bay, is presently on bareboat charter. During the charter period, a survey had been conducted and it arose that an IOPP Certificate of Compliance was not in place for the King Bay. The charterer approached Pacific Tug to rectify the situation.

In 2015, the King Bay's oily water separator was decommissioned, the entire system was removed from the vessel and all pipe removed and blanked off. As such, an IOPP Certificate of Compliance is no longer required. The vessel is instead installed with an oil/water tank that is adequate to manage and control oily waste in accordance with the shipboard register and SOPEP requirements. As such, the oily

water separator no longer exists and an IOPP Certificate of Compliance is not required.

This issue has been in dispute since 2015 with correspondence continuing throughout 2016 and 2017. Questions asked of AMSA have not been responded to, nor have changes to the Certificate of Survey (removing record of the oil water separator) been made.

These examples of delay and misunderstanding were bothersome, and time-consuming for Pacific Tug. However, they did not cause significant financial loss. The following recount of the *Robbie Cook* describes the frustration of dealing with AMSA.

Robbie Cook

In March 2018, Pacific Tug purchased the *Robbie Cook* (the “Vessel”) and began the process of transferring ownership and changing the class of the Vessel so that it could be put to use. Despite the best efforts and constant attention of Pacific Tug almost nine months passed before the certificate of operation was received and the *Robbie Cook* could be used for the purpose for which it was purchased.

It is acknowledged that the responsibility for the *Robbie Cook* transferred from RMS NSW to AMSA approximately half way through the process. However, once responsibility transferred to AMSA, more than a month passed before any correspondence was received.

Disappointingly, the first correspondence received from AMSA was not news of progress or acknowledgment of the RMS process, but rather a request for survey of the vessel for the purposes of classifying it as an entirely new vessel. Not only was this request delayed, contributing to Pacific Tug's economic loss, but additionally, the response did not effectively address the services sought (i.e., a change of ownership and class vs registering a new vessel). Further numerous requests for information and documentation were made through August and October. Pacific Tug responded as quickly as possible to each request.

It appears that AMSA representatives did not understand what was required when dealing with an existing commercial vessel. They were learning as they went along which delayed the process for Pacific Tug.

Had the correct full list of documents been requested on 2 August 2018, Pacific Tug would have attended to all requirements expeditiously, in line with their commercial objectives. Thereby creating the possibility for the Certificate of Survey and Certificate of Operation to be issued up to three months earlier.

Pacific Tug suffered economic loss for each day the *Robbie Cook* was not in action. Safety is an utmost priority for Pacific Tug, and there is considerable understanding for the purpose and necessity of safety regulation and compliance. However, a nine

month processing period for an existing commercial vessel seems to us to be completely unacceptable by any measure.

MLC Application to tugs

On 31 October 2018 AMSA conducted an external audit and Pacific Tug were advised that they were in contravention of Marine Order 11.¹ Marine Order 11 applies to regulated Australian Vessels (RAVs), and requires that Maritime labour certificates (MLC) are required for vessels of 500 GT or greater.²

The relevant vessel, PT Fortitude, has gross tonnage of 399T as per Tonnage Certificate. As a vessel with gross tonnage under 500T, an MLC is not required.

Marine Order 11 also provides for AMSA to issue a declaration of maritime labour compliance (DMLC) and that a person may apply for a DMLC whether or not the vessel is required to have an MLC. As such, there is **no** requirement that the vessel must have a DMLC, or an MLC.

By requiring that Pacific Tug provide an MLC and DMLC for their vessel, the PT Fortitude, AMSA are;

1. Acting *ultra vires* by seeking to enforce a requirement that does not exist in the law;
2. Setting a double standard, by requiring that Pacific Tug comply with a requirement that is not set by law, nor applies to other vessels under 500GT; and
3. Showing an ignorance of the laws they are seeking to enforce.

Certificate of Equivalence for Tug Medical Kits

In early May 2018, Pacific Tug began the process of seeking an exemption from carrying the full required medical supplies on several of their tugs. Given that the tugs do not undertake open ocean voyages and are rarely away from land for an extended period of time, it is unnecessary for extensive medical provisions to be retained on board. In the case that crew members require more than basic medical assistance, they will be brought ashore.

AMSA suggested that certificates of equivalence would be a suitable solution. Pacific Tug applied for the certificates of equivalence with supporting documentation on 22 June 2018. It was then not until two months later, on 23 August 2018, that the first response was heard from AMSA. Various requests for additional documentation were made throughout September and November. The final certificates of equivalence for the first aid kits on board the tugs were issued on 15 November 2018.

¹ Marine Order 11 relates to living and working conditions on vessels.

² Marine Order 11, s 48(2).

The requirements for issuing a certificate of equivalence are provided by Marine Order 11. Despite this, AMSA had been unable to identify and request the full complement of information that would be needed, from the beginning of the process. It was not until each step was taken that AMSA considered what was required to progress further, similar to the *Robbie Cook* situation.

Had AMSA requested all necessary information at the beginning of the process, Pacific Tug could have provided it as early as June 2018 and the process need not have dragged on for seven months. AMSA once again acted contrary to their purpose for the efficient provisions of services.³

Legislative amendment

While the primary legislation applying to commercial vessel in Australia is Commonwealth legislation,⁴ the standards and requirements are described and provided for by Marine Orders. The Marine Orders are effectively regulations that are drafted and amended by AMSA. As such, any amendment can be actioned by AMSA when issues are detected.

The Barge Coochie

In August and September of 2018, Pacific Tug were obtaining a survey certificate for the Barge Coochie. As the name suggests, the Barge Coochie, is a non-propelled and un-manned barge that is not issued with safety equipment or safety radio and is not certificated to carry any people at sea. The requirements for a survey certificate are set out in Marine Order 31 (Vessel Surveys and Certification) 2015.

Marine Order 31 requires that the Barge Coochie have a certificate that states, alongside various other important survey, construction, and safety requirements that the Pacific Tug provide a written declaration that there is a safety management system in place for the vessel that complies with Part A of the International Safety Management Code.⁵

Pacific Tug operate a combination of DCVs and RAVs, however none of these assets are passengers ships or in excess of 500 GRT. This means that the ISM Code does not apply to any of the Pacific Tug assets.⁶ Regardless of the application of the ISM Code, Pacific Tug have significant regard for the safe management and operation of their ships. As such, Pacific Tug operate a safety management system consistent with ISM Code standards that covers the operations of their vessels, and interactions with non-propelled barges.

³ *Australian Maritime Safety Act (Cth)* (1990) s 2A.

⁴ *Marine Safety (Domestic Commercial Vessel) National Law (Cth)* 2012; *Navigation Act (Cth)* 2012.

⁵ S 23(1)(a); Schedule 2.

⁶ Marine Order 58, s 6.

Pacific Tug could therefore comfortably state that a complying safety management system was in place.

However, the question very clearly arises as to why, when a barge is not manned, nor self-propelled, not covered by the ISM code, and always used in association with a support vessel, it must comply with the same requirements as all other vessels. Here we refer to working container vessels, dredgers, or bulk carriers.

Here it is submitted that AMSA reconsider Marine Order 31, section 38 of Marine Order 31 requiring that non-propelled vessels comply with the same survey requirements as vessels propelled by mechanical means.

Certification for barges

Closely associated with the certification for the Barge Coochie is the disparity between the requirements for vessels and un-manned barges.

The Marine Safety (unpowered barges) Exemption 2017 (No. 2) (Exemption 41) applies to DCV barges and provides an exemption from an array of National Standard for Commercial Vessels (NSCV) requirements. Exemption 41 recognises that it is unnecessary for barges to comply with the same standards as motorised, manned vessels.

We are instructed that there has previously been an exemption that applied to RAV barges similar to Exemption 41. Since its repeal, there has been a steep increase in the regulatory requirements for barges, disproportionate to their risk.

Pacific Tug are not the only parties affected. AMSA must consider the impact of their decisions, and collaborate with the community that they regulate, in order to create a consistent and efficient regulatory framework.

Safe Manning Requirements

Pacific Tug has a variety of DCV and RAV vessels, and 80 crew who are allocated across the vessels according to their experience, location, preference, and skills. These crew have either STCW (CoST) Certificates or General Purpose Hand (GPH) Certificates.

STCW (CoST) Certificates are suitable for crew working on RAVS,⁷ and GPH Certificates for crew on DCVs.⁸ However, these certificates do not apply interchangeably. The policy for having different requirements for working vessels is not clear and results in duplicitous requirements for crew.

⁷ Marine Order 71.

⁸ Marine Order 504.

The fact that there are two different certificates required for RAVs or DCVs means that crew are not able to work on either vessel type interchangeably. For crew to obtain both STCW (CoST) and GPH would mean undertaking and paying training that overlaps considerably in its contents. A waste of resources and time.

It is submitted that the either, the qualification required to work on an RAV and a DCV ought to be the same. Or, the qualification to work on an RAV ought to encompass the contents of a GPH certificates such that RAV qualifications allow the crew to also work on DCVs as required. We urge AMSA to consider the consistency of standards and requirements across RAVs and DCVs.

Conclusion

It should be noted that in the above situations, had any of the vessels been inspected while Pacific Tug were waiting for AMSA to process an application, or provide guidance, AMSA could have penalised Pacific Tug for not being in compliance.

All commercial operators are required to comply, and not be a day late. However, it appears that it is more than ok for AMSA to wait for one or two months before replying to applications, requests or emails. This demonstrates yet another double standard.

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