

## **Enquiry into Maritime Salvage in Australian Waters**

### **Introduction**

Shipping Australia appreciates the opportunity of making a submission in relation to this important issue. Shipping Australia Limited (SAL) is one of the two peak shipowner bodies representing the industry in Australia; the other being the Australian Shipowners Association (ASA). SAL comprises 36 member shipping lines and shipping agents and covers all types of shipping. SAL also provides Secretariat services to those shipping lines parties to the agreements registered under Part X of the Australian Trade Practices Act. A membership list is attached to this submission.

The Minister for Transport and Regional Services, the Hon. John Anderson MP, has asked the Committee to review the impact of the Productivity Commission report on the economic regulation of harbour towage and related services, on maritime salvage capability and coverage for all Australian waters. This emphasises the connection between towage arrangements in Australian ports and the capacity for emergency assistance and/or salvage.

This Productivity Commission report recommended that “to remove any uncertainty about their powers, port authorities should be given explicit discretion to licence towage operators, subject to safeguards that protect and promote towage user interests, including a user consultation process, demonstration of net benefits of licences and transparent and at arms length tender processes and licence conditions.”

The Commission stated quite explicitly that competitive tenders for exclusive licences should neither be prescribed nor proscribed by relevant jurisdictions. But they are an option, along with non exclusive licences, which ports should have the discretion to implement (or threaten to implement) provided that appropriate procedures and guidelines are in place that ensure that they are implemented only when the benefits outweigh the costs.

In relation to the specific issue of salvage, the Commission concluded (findings 8.9, page 173 of the report) that “the provision of salvage services need not be adversely affected by the efficient pricing and provision of harbour towage services.”

In Appendix F of the report, the comment is made that “if the optimal level of emergency salvage capacity (and its location) is not privately profitable (under current alternative arrangements for towage), then intervention may be warranted. The Commission pointed out that this was an issue beyond the scope of the enquiry and one which warranted investigation regardless of arrangements in place for harbour towage.

SAL in its submissions to the Productivity Commission, recommended that exclusive licences clearly specify that a least one tug in each major port should be capable of an emergency response outside port limits and/or be salvage capable.

In addition, we would recommend to the Committee that they also briefly consider the necessity for “Places of Refuge” if required by vessels in distress.

The Australian Maritime Group which reports to the Australian Transport Council commissioned a report on salvage capacity around Australia which was prepared by Capt K Dwyer and his report is dated 6 April 2002.

The conclusions of that report were:

- The current arrangements of marine casualty response no longer has certainly. However, a number of the authorities advised that although the towage operation would require their consent to send one of their units to a marine casualty, the consent would not be withheld unreasonably.
- Australia is dependant on its local fleet of salvage suitable vessels and there is no international assistance (eg. Singapore) likely within 10+ days of a casualty occurring.
- The local fleet is largely made up of secondary support vessels, which can cope with near shore operations up to 50 nautical miles offshore and 18 strategically placed primary response vessels, from Fremantle around to Bowen capable of deep sea work (as at April 2002).
- It was recognised that the highest traffic areas eg. Torres Strait, north of Geraldton WA and the Great Barrier Reef were the leanest in specialist salvage response capability.
- Marine authorities advised that they had no legislative provisions enabling them to direct a port authority to allow a towage operator to send a tug to attend a marine casualty. Although all responders indicated that suitable intervention powers were available to the relevant Minister to impose obligations on owners of marine casualties to act in a particular way to ensure protection of the economic and environmental assets of the State or Territory.

The Australian Maritime Group (AMG) is preparing a paper on salvage and first response issues and the Queensland Government is also preparing a draft paper on marine emergency first response services and these two studies have been closely linked. The Queensland paper focuses on the ability of the States commercial marine towage sector to adequately respond to shipping casualties and marine environmental incidents in Queensland coastal waters and the adjacent waters of the Great Barrier Reef, Torres Strait and the Coral Sea. It is understood that a number of models are being considered in term of coastal waters and a separate model for in harbour emergency response capability.

### **Emergency Response Capability**

It remains the view of SAL that major and strategically located ports should provide for exclusive licences which includes at least one tug having ocean going capability and such licences could also include minimum standards in term of training, safety and operational capability offshore regarding the use of that tug in specified circumstances. Cooperation between ports could also ensure the provision of relief tugs if the ocean going tug is engaged in an emergency or salvage operation for an extended period of time. These arrangements could be backed by state legislation to enable a central body to require the use of such tugs in specific circumstances and to provide any necessary indemnities for commercial damages that may arise from operational delays.

In the K Dwyer and Associates report referred to above, mention is made (Page 21) that “following the Bunga Seratai Satu incident United Salvage reached an agreement with BHP Transport to be able to call on a tug at Hay Point. Under the arrangement, United Salvage will train BHP Transport personnel and re-equip its tugs with additional towage gear. If BHP tugs are fully occupied, United Salvage will arrange for a substitute tug on a short term basis at Hay Point so that a BHP tug can reach a casualty in or near Hydrographers Passage in the

shortest possible time. This is an example of what can be achieved with the required level of co-operation.

Cost have also been a issue and it is understood in the past that when a ship required towage assistance of an emergency nature whilst within port limits, the tug or tugs were provided at advertised emergency service rates for an initial attempt, but all subsequent attempts at refloating would attract a 100% surcharge. If additional services were required, for example, to discharge cargo, remove fuel etc. then owners or ship operators would be free to negotiate a commercial outcome with the contractor of their choice.

It should also be noted that for emergency response purposes offshore supply vessels can also be used as well as other vessels in the vicinity that may be able to stabilise an emergency situation pending the arrival of a salvage tug or tugs. P&O offshore vessels, for example, went to the aid of the tanker “Kirki” when she was in serious trouble in 1991.

There could be value within port limits to have a clearer definition of what constitutes an emergency. For example, towing a vessel without engine power, stabilizing a vessel that has grounded but which could perhaps free itself at high tide would be considered subject to special rates in a towage tariff but well short of normal salvage remuneration. The Queensland Government discussion paper referred to earlier on marine emergency first response services makes the point that the proposed licence would also need to provide that the initial emergency response will be provided on an agreed fee for service basis. SAL would agree with this proposal.

### **Salvage Capability**

As a general proposition, SAL members support Australia having an adequate salvage capability but members are also conscious of the fact that it is a highly remunerative business when a major incident occurs. Depending on the location, there could be salvage tugs available from other areas of the world such as Singapore which could be available within a period of 7 to 10 days. In the remote areas of Australia such as off the north west of Western Australia and northern Australia, access to salvage capable tugs in Singapore, for example, may be a more viable option.

SAL submitted to the Productivity Commission in its enquiry into harbour towage that for cost recovery purposes, the capital cost of the ocean going vessels should be calculated at the level for a harbour only tug given that was the function that they are specifically performing. The additional capital costs should be recovered through the remuneration arising from Lloyds Open Form or some other agreed arrangement between the vessel and the salvor. It is considered unlikely that there will not continue to be incidents around the Australian coast requiring salvage.

At Attachment B is a list of vessels grounding and other incidents that have occurred over the last fourteen years. Not all these vessels required salvage or an emergency response but had that potential. It should also be noted that tugs other than those provided by United Salvage were used in a number of these cases.

Certainly relief arrangements are emphasised if tugs are engaged in salvage tasks because it could be some time before those tugs are available for normal commercial duties. However, over many years such tugs have been available when required in addition to the tugs available to undertake an emergency towing service up to three nautical miles from the port. Crews can

be rostered so that they are available to man the tugs for offshore work if required at relatively short notice.

The Discussion paper prepared for this enquiry poses the question whether the Government should consider having a publicly provided emergency and salvage system as in the United Kingdom. SAL believes that given the length of Australia's coastline, it is not practical on a national basis to have dedicated vessels on stand-by for what is a relatively rare event. The costs would be prohibitive, the preparedness would diminish without regular experience and the location may not prove to be the most efficient in terms of distance from a particular incident.

If vessels could be deployed on complementary activities that ensured availability for rapid deployment in cases of emergency, then the risks and costs would be ameliorated.

However, it may not be a practical proposition for the same reasons that require relief arrangements for tugs on emergency and/or salvage tasks, ie. to continue with normal commercial duties.

### **Places of Refuge**

It is SAL's view that thought should be given by port corporations to possible areas that could be used as Places of Refuge but the actual selection would need to be assessed on the basis of the circumstances arising at the time. It is SAL's view that this issue goes hand in hand with the salvage issue.

SAL would like to draw to the Committee's attention the National Maritime Place of Refuge Risk Assessment Guidelines which were endorsed by the Australian Transport Council on 23 May 2003. It is pointed out in those guidelines that in Australian waters, Places of Refuge are determined on a case by case basis and they are not pre-designated. A Place of Refuge that is deemed unsafe for a particular vessel in a particular instance may well be held to be safe for the vessel in different circumstances. Whilst SAL fully agrees with that assessment, members still feel that port corporations should undertake some initial contingency planning to avoid any unwarranted delay in an emergency situation.

### **Conclusion**

The need for adequate emergency response and salvage capability are very important issues as far as the member lines of Shipping Australia are concerned.

In summary, SAL continues to concur with the conclusion reached by the Productivity Commission; namely "that the provision of salvage services need not be adversely affected by the efficient pricing and provision of harbour towage services." Exclusive towage licences could provide for at least one salvage capable tug in the tender process.

Both State/Territory and Federal Governments need to consider the need for legislation to ensure that adequate emergency response services in selected priority areas remain. In SAL's view there is no need for subsidised services.

Salvage, is an issue separate from but related to emergency response. It is SAL's view that salvage is more of a commercial issue but such tugs can be also employed as harbour tugs.

SAL does not support the UK type model to provide emergency response or salvage capability as it is not considered practical in the Australian situation.

Minimum standards of salvage tug safety, training and operational capacity should be set out in whatever is considered the best formal mechanism. However, legislative backing as mentioned above is required and should include an appropriate indemnity to prevent claims for commercial damages arising from any undue delay in resuming normal towage services in a port.

It is recommended that potential “Places of Refuge” be considered by major ports should such assistance be required at relatively short notice.

SAL would be glad of the opportunity to elaborate upon this submission and/or answer any other questions raised by Committee members.