

31 March 2004

The Secretary
Transport and Regional Services Committee
House of Representatives
Parliament House
Canberra ACT 2600

Dear Sir

RE: INQUIRY INTO MARITIME SALVAGE IN AUSTRALIAN WATERS

This submission is a written response to the advertisement, which appeared in Lloyd's List DCN on 5 February 2004 under the above heading.

The author of this submission is Dale Cole of Dale Cole & Associates Pty Ltd (DCAPL).

DCAPL responded in a similar vein when Maritime Safety Queensland (MSQ) requested submissions to support their (MSQ's) investigations into the dynamics of an appropriate maritime emergency response regime for Queensland coastal waters – both within and outside a port precinct.

1.0 EXECUTIVE SUMMARY

➤ In this submission DCAPL advocates:

- ❑ That emergency response/salvage vessels be stationed in suggested strategic ports around Australia;
- ❑ Management of the nominated emergency response/salvage vessel at each of the suggested ports be the responsibility of the port's towage operator or nominated emergency response/salvage provider;
- ❑ The cost of stationing emergency response/salvage vessels is the subject of a competitive process (where applicable) and independently verified. Approved costs would be either subsidised by the responsible maritime safety authority, or recovered through an award sharing arrangement/agreement;
- ❑ When a maritime emergency/salvage occurs within a port precinct and no additional costs or specialised personnel are required, the services rendered should be recovered at published port emergency tariff rates.
- ❑ When a maritime emergency/salvage occurs, whether inside or outside a port precinct, which requires additional costs and specialised personnel, encouragement should be given to appointing the closest designated emergency response/salvage vessel. However DCAPL recognises that it is an owner's and/or operator's right to seek a competitive response from emergency response providers and/or salvors who may not be Australian residents;
- ❑ The need to train emergency response and/or salvage crews is recognised and a funding regime to undertake this training identified;

- The need to retain appropriately qualified naval architects and maritime lawyers is recognised and a funding regime to retain their services identified; and
- With reference to the recent Productivity Commission Report on the Economic Regulation of Harbour Towage and Related Services, the relative merits of an exclusive/non-exclusive harbour towage licence, as it applies in the context of a maritime emergency/salvage, is debated. In terms of delivering the most economically efficient outcome, DCAPL suggests there are advantages in the exclusive licence option.

2.0 THE ISSUES

- The formulation of a “one size fits all” plan is difficult, but not impossible. To minimise any misunderstanding, this submission seeks to “quarantine” the different scenarios and offer solutions to:
 - An emergency response/salvage within a port precinct; and
 - An emergency response/salvage outside a port precinct.
- Identification of locations in Australia to base emergency response/salvage vessels and discuss the type of vessel, which should be employed to provide this response. This heading will also explore funding options designed to underwrite the suggested strategy.
- Meeting the shortfall in trained and experienced emergency response/salvage personnel and administrators.
- The effect (if any) on a port’s emergency response/salvage capability when exclusive harbour towage licences are issued to a recipient following a competitive towage tender process.

3.0 “ONE SIZE FITS ALL PLAN”

- Response to a maritime emergency/salvage exposes the responder to significant costs – from insurance through to a substantial range of liabilities (with the prospect of jail now being added to this list). To cover for this risk and effort, the responder will be seeking an acceptable commercial reward either through negotiation or arbitration.
- How can this be achieved given that there are likely to be a number of different towage entities operating in Australian ports over the next few years? DCAPL suggests that education and transparency are key components along with the observations made in the body of this submission.

4.0 EMERGENCY RESPONSE WITHIN A PORT PRECINCT

- When an emergency response is required within a port’s precinct, DCAPL advocates that the response is provided by the entity providing towage services at the port.
- Provided no outside expertise or costs are needed and/or incurred, DCAPL advocates payment for these services is covered by each port’s standard “Emergency Services” tariff. If an Emergency Services schedule is not included in a port’s harbour towage tariff, then DCAPL advocates that the relevant regulator (Port Authority or State Government) use their “reserve powers” to encourage the towage provider to remedy this oversight.
- When outside expertise and/or additional costs are required and/or incurred, then that message is conveyed to the relevant maritime safety authority and, once the relevant maritime safety authority agrees (with such agreement not being unreasonably withheld), the port towage provider is free to enter into negotiations with the ship owner and/or operator. Such an outcome will undoubtedly lead to commercial arrangements, which are underpinned by salvage contracts. In this situation emergency response and/or salvage

operators who reside outside the port should not be precluded from submitting competitive offers.

5.0 EMERGENCY RESPONSE OUTSIDE A PORT PRECINCT

- When a maritime emergency/salvage occurs outside a port precinct, the responsible maritime safety authority has a more important role to play. It may have to use its intervention powers and, at the same time, acknowledge that stakeholders who are party to the formulation of this policy have a vested interest in supporting it.
- When one or more of the designated emergency response/salvage vessels respond to an emergency/salvage outside a port precinct the commercial parameters of this response should be the responsibility of the responder with the nominated maritime safety authority being kept in the loop. Instances where the threat of environmental damage is significant, promptness and expertise are critical issues.
- When there is no threat to the environment the ship owner and/or operator may seek competitive offers from salvors who may not reside in Australia. When a significant maritime emergency/salvage occurs in Australian waters salvors and/or emergency response operators are faced with an expenditure outflow in excess of \$A300,000 per day. Governments, vessel owners and/or operators, their insurers and the public have a legitimate interest in the emergency response/salvage outcome, however the commercial interests of the salvor should not be understated.
- This submission acknowledges that most of the harbour towage companies and offshore supply operators currently represented in Australia are capable of effectively managing an emergency response/salvage within Australian waters.
- In this modern age of communication distressed vessels are capable of communicating with their technical advisors from the most remote areas of Australia.

6.0 IDENTIFYING PORTS TO LOCATE EMERGENCY RESPONSE VESSELS

- DCAPL advocates that the responsible maritime safety authority looks critically at the following ports as the most likely ports to locate emergency response/salvage vessels:

1. Queensland:

- Weipa: To cover the Gulf of Carpentaria, North East Channel, Torres Strait and Australian Waters from Cape York to Cape Flattery;
- Townsville: To cover Australian Waters from Cape Flattery to Mackay;
- Gladstone: To cover Australian Waters from Mackay to Sandy Cape; and
- Brisbane: To cover Australian Waters from Sandy Cape to Point Danger.

2. New South Wales:

- Brisbane: To cover Australian Waters from Point Danger to Coffs Harbour; and
- Port Botany/Port Jackson: To cover Australian Waters from Coffs Harbour to Cape Howe.

3. Victoria and Tasmania:

- Melbourne: To cover Australian Waters from Cape Howe inclusive of Bass Strait, the waters off Tasmania and west to Portland.

4. South Australia:

- Adelaide: Australian Waters from Portland to the projection of the South Australian/Western Australian border south and including the waters of the Spencer Gulf and the Gulf of St. Vincent.

5. Western Australia:

- Fremantle: Australian Waters from the South Australian border to Geraldton; and
- Dampier/Port Hedland: Australian Waters from Geraldton to the Western Australian/Northern Territory Border extending into the Timor Sea.

6. Northern Territory:

- Darwin: Australian Waters from the Western Australian/Northern Territory Border extending into the Timor Sea and east to Gove.

- Having identified the most desirable ports to locate an emergency response/salvage vessel, how would this suggestion work in practice? DCAPL makes the following comments:

- Firstly the type of emergency response/salvage vessel has to be identified. Ideally it would be a tug (either conventional twin screw or ASD of approximately 60 TBP) or an offshore supply vessel. When the selected vessel is a tug, the design should not preclude the vessel being used as a back-up harbour tug under "normal" circumstances;
- Any designated emergency response/salvage vessel must be available for immediate release once the operator receives a request from the responsible maritime safety authority;
- DCAPL suggests that the cost of acquisition and maintenance of the emergency response/salvage vessel would be met by one of the following options:
 1. As ship owners and/or ship operators are the main beneficiaries of an emergency response/salvage regime, levying all vessels calling at Australian ports is a practical suggestion. Such a levy could be part of each individual marine safety authority's cost recovery regime or as a separate component of the Commonwealth's Light Dues regime. A tenet implied in this suggestion is that revenue collected would be revenue neutral and the quantum determined by a financial modelling exercise.
 2. Alternatively, each designated maritime safety authority would fund the cost of stationing emergency response/salvage vessels in the port or ports under their jurisdiction on the premise that the community is the major beneficiary in an emergency response/salvage task. The amount of funding would be determined by independent modelling similar to (1) above. The designated maritime safety authority would be compensated for this support by having an agreement with each of the emergency response/salvage providers to recover the cost of this support by sharing the salvage award on a 50:50 basis when the provider successfully secures a salvage contract.
- The arrangements described above would not preclude an outside contractor from securing an emergency response and/or salvage contract, but obviously the emergency would not be time critical.

7.0 LACK OF TRAINED AND EXPERIENCED SALVAGE PERSONNEL AND ADMINISTRATORS

- This is a significant issue. If it is not addressed maritime safety authorities will be facing a potential situation where, in ten (10) years time, all maritime emergency and/or salvage response expertise will reside overseas. To prevent this situation becoming a reality DCAPL advocates:
 - ❑ The responsible maritime safety authority recruits a suitably qualified person, with marine salvage experience. This person would be made available to the nominated emergency response/salvage providers in Australian ports and would provide emergency response advice on request. The cost of this advice would be recovered by invoicing the beneficiary at commercial rates;
 - ❑ Alternatively, each of the operators in the designated ports (ten) would identify at least one person who has the potential to become a salvage master once the required level of additional training (law and naval architecture) has been completed. This additional training would be subsidised by the responsible maritime safety authority with the quantum of the subsidy being agreed in advance;
 - ❑ A tender/recruitment process is undertaken to retain at least two firms of naval architects (preferably one based on the east coast and the other on the west coast) who would be available to consult to either the responsible maritime safety authority or the participating emergency response/salvage operator;
 - ❑ A tender/recruitment process is undertaken to retain at least two firms of maritime lawyers (preferably one based on the east coast and the other on the west coast) who would be available to consult to either the responsible maritime safety authority or the participating emergency response/salvage operator;
 - ❑ Retention fees would be paid by the responsible maritime authority to the appointed naval architect and law firm consultants and these fees would be recovered either through the emergency service/salvage fee component of the Light Dues amendment or through the award sharing arrangement;
 - ❑ Actual live practices should be carried out bi-annually; and
 - ❑ The responsible maritime safety authority makes it conditional on issuing an emergency response/salvage contract to each of the ten participating operators that, when there is a requirement for an emergency/salvage response, the contractor engaged in the emergency/salvage service will make available, for training purposes, at least two positions, which will be filled on a rotational basis by the other nine designated emergency response/salvage operators.

8.0 THE ISSUANCE OF EXCLUSIVE TOWAGE LICENCES BY PORT AUTHORITIES

- Towage operators who reside in Australian ports, which are either unlicensed or host a contestable regime, have developed their own emergency response/salvage procedures. When handling a maritime emergency response/salvage, this outcome has given rise to significant procedural differences between the ports.
- Because the focus of a port authority's interest is in harbour towage, port authorities are reluctant to give approval for the release one of "their" tugs unless the emergency has either life or national interest implications. Under the current arrangements towage operators are likely to have a significant commercial interest in having their tug or tugs released to attend the "emergency". Such interest often leads to robust discussions between the towage operator and port authority.
- The great advantage of an exclusive licence is that it allows the port authority (or responsible maritime safety authority) to set the ground rules for how a responder to an

exclusive licence tender will handle a maritime emergency either within or outside a port precinct.

- Should any of the ten nominated emergency response/salvage ports proceed with an exclusive licence regime for harbour towage, at the Request for Proposals (RFP) stage the port authority (or responsible maritime safety authority) can specify (where applicable) the type and bollard pull of the emergency response/salvage tug. The RFP would ask respondents to separately model the costs involved in providing the emergency response/salvage tug. Contract reviewers can then rate the RFP responses on a competitive basis.
- In the other 60 odd Australian ports, which are not part of the designated emergency response/salvage network an exclusive licence regime would allow the port authority (or the responsible maritime safety authority) to set the ground rules in their RFP for handling an emergency response/salvage within a port precinct. Again the reviewers can rate the responses on a competitive basis.
- The cost of training personnel (and a salvage master?) would also be included in the RFP and respondent's responses would attract a competitive rating.

DCAPL would be happy to answer any queries you may have arising from your review of this submission.

To provide a competency check for the comments made in this submission, a copy of Dale Cole's curriculum vitae is attached.

Yours faithfully
for Dale Cole & Associates Pty Ltd

A handwritten signature in black ink, appearing to read 'Dale Cole'.

Dale Cole
Director