

House of Representatives Transport and Regional Services Committee
INQUIRY INTO MARITIME SALVAGE IN AUSTRALIAN WATERS
Submission from the Sea Freight Council of Western Australia

Executive Summary

There are two categories of ports in Western Australia, namely, ports managed and operated by statutory port authorities and Department for Planning and Infrastructure (DPI) ports, where port operations are usually conducted by single private sector companies, which own and operate the port facilities at those ports.

Port authorities normally arrange for the provision of harbour towage in their ports by private sector towage service providers. At DPI ports, the private sector companies arrange for the provision of harbour towage to assist vessels using their berths. The State Government and the DPI exercise negligible influence over the provision of towage services at Western Australian ports, as this responsibility rests with the particular port authority or the private sector port facility operator.

The Sea Freight Council of Western Australia (the Council)¹ believes that salvage has two distinctly different elements, namely, emergency response capacity and operational salvage capacity. Further, that these two elements need separate consideration.

The Council believes harbour towage should have a role in providing an emergency response capacity in coastal waters. However, in order to be able to meet that role harbour tugs would need to:

- have the capability for off shore operations; and
- be able to be released to respond to an incident in coastal waters.

In relation to off shore operational capability, harbour tugs would need to comply with minimum standards in respect of specific features. Those standards could be included in the specifications adopted in selecting harbour towage services. There may be a potential to use vessels other than harbour tugs for emergency response in certain regions, where the use of those vessels is a medium to long-term proposition.

The Council acknowledges that there are some commercial concerns with harbour tugs and other vessels also providing emergency response capacity in addition to their normal activities. Accordingly, consideration may need to be given to identifying mechanisms that deal with those concerns. However, the Council is focused on the potential operational and financial impacts on harbour towage and would support a

¹ The Council, which comprises representatives of industry, government and union, was established to provide advice to government on the range of matters related to the movement and handling of imports and exports by maritime transport.

minimalist approach to changing existing harbour towage arrangements at Western Australian ports to provide emergency response.

The Council believes that operational salvage is essentially a commercial matter, not requiring direct involvement of government. There are substantial and attractive commercial rewards for a salvage operator in achieving a successful salvage.

However, the Council sees an overseeing role for government in encouraging the commercial provision of adequate operational salvage capacity to respond to incidents in Australian waters. Further, there may also be a similar government role in ensuring that salvage operations are conducted in a manner consistent with minimising the adverse impacts of any incident. The Council believes that the Commonwealth could respond in respect of both roles through the Australian Maritime Safety Authority.

However, the governments of the States and Northern Territory bear the greatest political accountability for a pollution event. With that in mind, the Council endorses the right of those governments to be involved in judgments relating to salvage. That right could be established through a formal process that guarantees involvement in the decision-making process. The Council notes that this issue has implications relating to the identification and use of places of refuge by stricken vessels.

The Council does not believe harbour towage should be required to provide resources for operational salvage. In the Western Australian context, experience suggests that off-shore industry supply vessels have the capabilities to be used for operational salvage.

The Council is aware of the special equipment needs created by most operational salvage events, which is a matter for salvage companies and the Commonwealth to arrange. In that regard, consideration could be given to the Commonwealth introducing a formal approval process for salvage operators.

In respect of some regions of Australia, the opportunity for operational salvage capacity to be provided from overseas could also be examined as a part of the Inquiry into Maritime Salvage in Australian Waters.

1. *Western Australian Harbour Towing Arrangements*

There are two categories of ports in Western Australia, namely, ports managed and operated by commercialised statutory port authorities and ports for which the Department for Planning and Infrastructure (DPI) is responsible. In the former case, the ports are common user and handle a range of different commodities for various shippers. In the latter case, port operations are usually conducted by single private sector companies, normally as part of a mining activity, which own and operate the port facilities at those ports.

Port authorities normally arrange for the provision of harbour towing in their ports by private sector towing service providers. In most cases, the size of the towing market at these ports is only sufficient to support one towing operator. The towing service provider is usually selected by means of a periodic competitive tendering process (serial competition) administered by the port authority in consultation with port users.

In the case of the port authority ports of Dampier and Port Hedland, mining companies, which own and operate dedicated port facilities at those ports, individually arrange harbour towing services to assist vessels using their berths. The port authorities at those ports exercise minimal influence over the provision of towing services in respect of those dedicated port facilities.

There are no harbour towing services operating in the port authority port of Broome at this time.

The State Government, through the Minister for Planning and Infrastructure, currently exercises minimal influence over the provision of harbour towing services at port authority ports.

At DPI ports, the private sector companies operate in accordance with individual State Agreement Acts that define the role and responsibilities of the companies. Those companies arrange for the provision of harbour towing to assist vessels using their berths. The DPI and the State Government exercise negligible influence over the provision of towing services by the private sector port facility operators at those ports.

In the cases of the DPI ports of Wyndham and Derby, which are low cargo volume common user ports operated by other organisations under contracts with DPI, no harbour towing services are provided.

2. *Setting the Scene*

Over recent years, some maritime interests have expressed concern that, because of changes taking place in respect of arrangements for harbour towage, Australia will shortly suffer a lack of national salvage capacity. Port operators are increasingly selecting towage operators that are employing tugs that do not have the capability to engage in off shore towing, in order to reduce the cost of harbour towage. Those tugs are essentially restricted to providing harbour towage services only. That trend has the potential to increasingly occur at Western Australian ports. The Council is concerned that an adequate and responsive capability is available to react to incidents within Western Australian waters in a timely manner into the future, with the ability to ensure that any damage is minimised.

In that regard, the recent announcement by the Deputy Prime Minister, Hon John Anderson MP, that the House of Representatives Transport and Regional Services Committee will conduct an Inquiry into Maritime Salvage in Australian Waters is welcome.

In presenting its views on salvage, the Council is mindful of the jurisdictional implications of the Seas and Submerged Lands Act 1973 and the Commonwealth Acts² that implement certain marine aspects of the offshore constitutional settlement of 1980.

The Council believes that salvage has two distinctly different elements, namely, emergency response capacity and operational salvage capacity. Further, that these two elements need separate consideration.

The former element involves maintaining a disabled vessel in a position where its exposure to danger and damage is eliminated or greatly reduced. That provides time to fully assess the situation and determine whether operational salvage or commercial ocean towage services are required or alternatively, whether onboard repairs can be effected. The latter element involves restoring a stricken vessel to a condition where it no longer represents a danger to life, the environment and property.

The Council recognises that emergency response should be readily available to react directly to an incident within Australian waters. Whereas, operational salvage will normally need to be planned, which may require time to identify, arrange and coordinate the necessary salvage resources.

The Council acknowledges the role of risk in placing requirements on port operators and others with resources able to assist in responding to any marine incident. The recent study conducted by Kerry Dwyer for the Australian Maritime Group³ suggests that, while

² Coastal Waters (State Powers) Act 1980, Coastal Waters (State Title) Act 1980, Coastal Waters (Northern Territory Powers) Act 1980 and Coastal Waters (Northern Territory Title) Act 1980.

³ Australian Maritime Group (AMG) is a committee that advises the Standing Committee on Transport (SCOT) and hence the Australian Transport Council of Ministers on maritime matters.

many vessels ply Australian waters, relatively few incidents requiring either emergency response or operational salvage capacity occur. This is reflected in the Western Australian experience, where no major incident has occurred since the Kirki event of 1991.

However, the Council accepts that certain coastal and off shore marine environments are exceptionally sensitive to damage that could result from an incident and a pollution event. There are several areas of that nature in Western Australia, in particular, Ningaloo Reef, other formally declared marine parks and reserves and lobster feeding grounds. Notwithstanding the relatively low level of risk, the Council accepts that the potential for substantial adverse environmental impact is persuasive in ensuring adequate resources are readily available to respond to marine incidents in Australian waters.

The Council recognises that all three tiers of government have a concern to protect life and property and the coastal environment from damage and pollution. However, in that regard, it should be acknowledged that the governments of the States and Northern Territory bear the greatest accountability should any incident escalate into a pollution event.

Mindful of both the level of risk and the potential repercussions following a pollution event, the Council's submission explores options for responding to a future lack of salvage capacity in Australian waters. However, the Council is focussed on the potential operational and financial impacts on harbour towage and would support a minimalist approach to changing existing harbour towage arrangements at Western Australian ports to provide emergency response.

3. *Emergency Response Capacity*

Against that background, the Council believes harbour towage should have a role in providing an emergency response capacity in coastal waters. However, in order to be able to meet that role harbour tugs would need to:

- have the capability for off shore operations; and
- be able to be released to respond to an incident in coastal waters.

In relation to off shore operational capability, harbour tugs would need to comply with minimum standards in respect of specific features. Those features could relate to:

- sea keeping;
- qualification and training of crews;
- crew accommodation;
- sea going endurance;
- emergency equipment;
- insurance cover; and
- bollard pull.

While the Council recognises the need to clearly articulate the detail of those standards, prescription in the context of this submission is inappropriate.

The Council believes that further research would be needed to specify the minimum standards of the range of features required for harbour tugs to have off-shore emergency response capability. Once established, those standards could be included in the specifications adopted in selecting harbour towage services.

In conducting the research, consideration could be given to the appropriateness of specifying a single set of standards for all ports. The sizes and types of vessels calling at a port and plying coastal waters neighbouring a port may provide the criteria for setting a different set of standards for each port or port category.

The research could consider the appropriateness of selecting a range of ports able to provide a national emergency response capability within an agreed period, as opposed to requiring all ports to have an emergency response capability. However, the selection of certain ports has the potential to increase harbour towage costs at those ports only. That may need to be addressed by means of agreed Federal Government funding arrangements to reimburse those ports for the incremental towage costs.

The research could also examine the potential to use vessels, other than harbour tugs, for emergency response in certain regions, where the use of those vessels is a medium to long-term proposition.

The Council acknowledges that there are some commercial concerns with harbour tugs and other vessels also providing emergency response capacity in addition to their normal activities. Those concerns mainly relate to increased cost of harbour towage, operational delays and impacts on overseas berthing schedules of vessels affected by the temporary lack of harbour towage services.

Furthermore, the Council accepts that the commercial imperatives to control the level of towage charges and to readily service the towage demands of ships using ports may encourage port operators to adopt an unresponsive attitude to harbour towage incorporating an off shore emergency response capacity. The Council is mindful of the various arrangements, which in Western Australia involve port authorities and private sector dedicated port facility operators, under which harbour towage services are provided and operated at ports.

Those arrangements could affect the capacity to influence decisions relating to the capability and availability of harbour tugs for emergency response. There may also be operational or commercial restrictions on the use of tugs for emergency response at certain ports.

The Council acknowledges that, where vessels other than harbour tugs have been identified to provide emergency response capacity, owners of those vessels may be reluctant to respond to emergency response requests. Mindful of possible opposition to becoming involved in emergency response activity, consideration may need to be given to identifying mechanisms that:

- ensure the appropriate level of emergency response capacity is available through either harbour towage arrangements or other sources;
- ensure the emergency response resources are released when needed subject to there being no significant adverse operational or commercial restrictions and impacts;
- protect tug or other vessel operators from legal action for recovery of costs associated with the release of vessels in emergency response situations; and
- protect the commercial interests of ship operators and agents.

4. *Operational Salvage Capacity.*

The Council believes that operational salvage is essentially a commercial matter, not requiring direct involvement of government. There are substantial and attractive commercial rewards for a salvage operator in achieving a successful salvage.

The Council recognises the range of circumstances that could prevail in any incident. The vessel in need of salvage may be off the coast or have grounded on the coast. While emergency response will deal with urgent needs for the protection of life, the environment and property, further damage or the threat of damage to the environment and saving the vessel and cargo will be the principal concerns for operational salvage.

Against that background, the Council sees an overseeing role for government in encouraging the commercial provision of adequate operational salvage capacity to respond to incidents in Australian waters. Further, there may be a similar government role in ensuring that salvage operations are conducted in a manner consistent with minimising the adverse impacts of any incident.

The Council believes that the Commonwealth could respond in respect of both roles through the Australian Maritime Safety Authority. That position appears consistent with the sovereignty established by the Seas and Submerged Lands Act 1973 in respect of the territorial sea, internal waters and the exclusive economic zone.

Furthermore, the Council sees benefit in salvage operators conducting their activities within a consistent framework of rules rather than expect them to respond to different requirements depending on the location of the salvage operation.

However, as previously noted, the governments of the States and Northern Territory bear the greatest accountability for a pollution event. With that in mind, the Council endorses the right of those governments to be involved in judgments relating to salvage.

That right could be established through a formal process that guarantees involvement in the decision-making process. The Council notes that this issue has implications relating to the identification and use of places of refuge by stricken vessels. The Kirki incident in Western Australia clearly demonstrated the importance of that issue to the State Government.

The Council does not believe harbour towage should be required to provide resources for operational salvage. However, that position does not preclude harbour tugs being used for operational salvage where the owner and the port operator come to an agreement. That arrangement would work best where the provision of relief tugs could be agreed with a closely neighbouring port.

In the Western Australian context, experience suggests that off shore industry supply vessels have the capabilities to be used for operational salvage. Those vessels have substantial deck areas and provide good working platforms. Many of them possess large towing capacity and some have over 100 tonnes bollard pull.

The Council is aware of the special equipment needs created by most operational salvage events. Those needs could be addressed variably by providing the salvage resources on board vessels, making them salvage capable, and/or by holding resources at strategically located stores for delivery when and where required. Those are matters for salvage companies and the Commonwealth to arrange. In that regard, consideration could be given to the Commonwealth introducing a formal approval process for salvage operators.

5. Implementation and Funding of Arrangements

The Council recognises that the cost impact of harbour tugs being required to have emergency response capacity will be subject to a determination made in respect of the research conducted to establish the minimum standards of the range of features required for harbour tugs to provide an appropriate level of national emergency response capability. Where the incremental cost increases are significant, special funding arrangements may need to be agreed with the Federal Government.

Substantial off shore oil and gas exploration and exploitation activity occurs in Australian waters. A significant fleet of industry supply vessels operates from local ports. Many of these vessels have impressive off shore towing capacity and could respond to related requests in respect of both emergency response and operational salvage.

However, in most cases, those vessels operate under commercial arrangements with oil and gas exploration and production companies. For commercial reasons, owners may be unable or unwilling to release vessels for either emergency response or operational salvage. Against that background, formal instruments may be needed to guarantee the required outcomes for both emergency response and operational salvage.

In the case of operational salvage, the salvage companies, in consultation with the Commonwealth, could be held responsible for arranging the necessary special equipment needs. Where appropriate, the companies could also be held responsible for negotiating any special funding arrangements with the Commonwealth.

In respect of some regions of Australia, the opportunity for operational salvage capacity to be provided from overseas could also be examined as a part of the Inquiry into Maritime Salvage in Australian Waters.

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