

**HOUSE OF REPRESENTATIVES TRANSPORT
AND REGIONAL SERVICES COMMITTEE**

INQUIRY INTO MARITIME SALVAGE IN AUSTRALIAN WATERS

Submission from the South Australian Government

SA PORT MANAGEMENT

All South Australian commercial ports catering for international and national voyage vessels are privately owned and operated. The SA Government's role in port management is limited to regulating equitable access, safe navigation of vessels in State and port waters and ensuring that the State's waters are protected from pollution from ships transiting our waters. Provision of harbour towage is not a regulated activity.

The commercial ports of Port Adelaide, Wallaroo, Port Giles, Port Pirie, Port Lincoln, Klein Point and Thevenard are operated by Flinders Port Limited. The port at Ardrossan is regulated by Ausbulk Limited. These eight ports are operated under Port Operating Agreements with the SA Minister for Transport for the safe operation of the ports and navigation of vessels within the boundaries of the port. Towage is a critical component for the safe navigation of vessels in confined waters. These Agreements only require the Port Operator to provide guidelines for the towage of vessels in port waters. Towage is provided by contract between the ship and the towage operator.

The remaining commercial shipping ports in the State are at Port Bonython (SANTOS), Whyalla (One Steel Manufacturing Limited). Operations at Port Stanvac (Mobil) have been suspended since 2002. These ports operate under Indenture Agreements and do not make any provision relating to towage. However, each port contracts towage as necessary to mitigate the likelihood of damage to infrastructure as a result of ship berthing operations.

SA TOWAGE/SALVAGE CAPACITY

Towage services are provided in most SA ports by Adsteam Marine and Port Lincoln Tugs (50% owned by Adsteam) under contract conditions with the ship owner/agent

ADSTEAM SA TOWAGE FLEET INFORMATION

Port Coverage	Bollard Pull	Fire Fighting Capability	Salvage Tug
Adelaide	50 tonnes	Yes	Yes
Whyalla/Wallaroo	50 tonnes	Yes	Yes
Adelaide/Port Giles/Ardrossan	60 tonnes	No	Potentially
Wallaroo 3 tugs	2 at 43 tonnes 1 at 30 tonnes	No	No
Wallaroo	30 tonnes	No	No
Pt Pirie & Wallaroo	33 tonnes	No	No
Ardrossan	6 tonnes	No	No

PORT LINCOLN TUGS PTY LTD TOWAGE FLEET INFORMATION

Port Coverage	Bollard Pull	Fire Fighting Capability	Salvage Tug
Port Lincoln	40 tonnes	No	Limited capability
Thevenard	20 tonnes	No	
Wallaroo	28 tonnes	No	
Port Pirie	12 tonnes	No	

The SA Police Water Operations Unit has a towage capability, dependant on weather conditions, for vessels up to 30 metres in length and 30 tonne displacement. This is not suitable for commercial shipping salvage or emergency towage operations.

WORK BEING DONE BY THE AMG ON MARITIME SALVAGE

Last year, a subcommittee of the Standing Committee for Transport - the Australian Maritime Group (AMG) - commissioned a Report on National Salvage Capacity. This Report provided a stocktake on salvage capacity around Australia.

Following consideration of this Report the AMG formed a Working Group to investigate the issues raised and develop a national approach for the future. The Terms of Reference of the Working Group are attached for the Inquiry's information.

The AMG does not intend to interfere with salvage arrangements established under the Salvage Convention and embodied in international law, but to examine additional measures to help prevent potential pollution incidents by providing emergency towage capacity to assist in stabilising ships in difficulty in circumstances when salvage criteria do not apply or when a salvage vessel would reach the scene too late to prevent a pollution incident. This emergency service is currently provided under contract arrangements between the ship and the towage operator. Towage providers are lobbying Governments to subsidise them to maintain/provide this capacity.

The AMG has recognised that salvage is a commercially driven enterprise with internationally accepted principles for reward for assistance based on cargo/vessel values. However, the continuing ability to access and mobilise vessels to aid (rather than salvage) a vessel is of concern for all governments. This is seen as essential to prevent the likelihood of pollution and consequent environmental and economic harm. Such capability is essential in environmentally sensitive areas such as the Great Barrier Reef or the Gulf waters of South Australia.

The work of AMG is invaluable in exploring the options available to States on the matter of salvage and emergency towage capability and will complement the work of the Committee. Unfortunately it is out-of-step with the Committee's time lines. It is suggested that the Committee consider delaying the completion of its investigations so that it can consider the AMG Working Group's report and thereby produce a comprehensive consideration of the interconnected issues of salvage and emergency response capability.

DISCUSSION

As indicated there are two aspects to the discussion of salvage:

- Provision of operational salvage services
- Emergency response (preventative)

Australia has had a historical reliance on market forces to provide both these capabilities (often using the same vessel, depending on the circumstances). However, the environment has changed as a result of privatisation of State marine and associated assets, increased globalisation of the salvage market (leading to repositioning of salvage assets overseas to gain a higher return), and increased awareness of the need to protect our marine environment from pollution, and the potential risk from terrorism on shipping and ports.

Salvage Services

Operational salvage is a commercial matter between the ship owner and the salvor and SA agrees with the AMG view that Government should not become directly involved for fear of inadvertently affecting the well-established principles in the Salvage Convention and international law. However, Government does need to ensure that a suitable salvage capability remains available for shipping operating in Australian waters.

The Inquiry needs to determine the level of salvage capability required to service the needs of shipping in our waters. It is imperative that an integrated risk management assessment be undertaken that takes into account different characteristics of waters and coastline and the consequences of an incident and its impact on people's lives, the environment and the economy. For example, a cargo ship that loses power through an on-board fire while on the high seas (eg 150 nautical miles south of the Great Australian Bight) requires an emergency response to save the lives of the crew and to ensure it is not a threat to other shipping. If the decision is taken to sink the vessel, while there would be pollution from the ships bunker and other materials, it is unlikely to result in a major environmental impact on our coastline.

However, that same vessel in the marine rich gulf waters of South Australia could have a major impact on our coastline, fisheries and sensitive marine environment and would require an emergency response to not only save the lives of the crew but to contain the fire and tow the vessel to a place of refuge. In this circumstance the timely access to a salvage capable vessel, or at least an emergency response vessel, is critical.

Additional Prevention Measures

It is SA's view that the Commonwealth should also seek to influence the international maritime industry, through its associations with the International Maritime Organization, to ensure that international voyage vessels are suitably equipped with charts, navigation equipment to avoid incidents such as grounding. South Australia has in recent years experienced several such groundings as a direct result of a ship carrying inaccurate or inappropriate charts.

International and coastal shipping should also be encouraged to investigate any available or emerging technologies to reduce drift should a vessel experience mechanical failure in areas where anchors are impractical. The use of sea anchors has proved useful in smaller vessels, giving much needed time for emergency assistance to be provided. Whilst currently of little use for large vessels, future developments in this area may be of value to increase time available to render assistance.

In addition, a national approach is critical to ensure that appropriate standards are developed for salvage and emergency towage vessels and the training of their crews.

Risk Assessment

A number of risk assessments that have been done (or are being done) ideally should be interlinked or utilised for determining not only the needs for readily accessible salvage capable vessels but also vessels that can be accessed for emergency assistance and towage of a vessel to avoid the more serious circumstances that warrant a vessel salvage.

For example, the risk assessments associated with marine pests identify areas that need to be protected from pollution such as aquaculture and fish breeding grounds. Maritime security measures should also include contingency assessments for the removal of vessels under direction of security agencies. In addition, search and rescue authorities need to consider the nature of shipping now visiting our waters and the associated capabilities for assistance should this be necessary.

The Commonwealth is ideally positioned to undertake this integrated assessment, with input from the States/NT.

Emergency response capability

The Commonwealth and the States need to ensure adequate emergency, preventative capability to assist stabilising ships in difficulty in circumstances when salvage criteria do not apply or where the need to prevent pollution demands a more rapid response than a salvage vessel or other contractual arrangements can provide.

Any absence of adequate emergency towing capacity means that, in the event of a shipping incident and depending on the region in which the incident takes place, the relevant authorities may have to await a tug from an interstate/overseas port. Such a delay in responding to a shipping incident could cause long-term environmental damage to the ecologically sensitive waters around the Australian coastline.

Given the length of our coastline, and the cost of towage vessels, as previously stated, it is essential that an appropriate risk assessment be undertaken.

It is SA's view that the provision of an emergency towage and fire fighting response capability in port waters should be the responsibility of port operators. For the safe operation of the majority of this State's ports there are Port Operating Agreements (POA) established under the *Harbors and Navigation Act 1993*. The POAs require the Port Operators to provide for the safety of vessels in the ports and to have appropriate emergency response plans and trained personnel. However, this is limited to port waters and may restrict the availability of appropriate emergency response vessels for use outside port limits.

National Integration and consistency

To be most effective and efficient, the response needs to be a nationally integrated Commonwealth initiative, covering both coastal and off shore waters, with jurisdictions contributing knowledge of local waters. The Commonwealth should take responsibility in this area for the same reasons it has responsibility for the prevention of pollution in territorial waters (ie greater than 3 nautical miles for the shore) and national security/defence. To effectively implement national security measures, an emergency response capability is imperative. Without salvage and/or emergency towage capacity it would be difficult to move a suspect vessel (under direction from the security agencies) to a more appropriate area for investigation and to avoid personal or property damage.

Because emergency response capability is integral to national security measures, it should be incorporated under the National Security Framework and linked to the emergency response on search and rescue, pollution, control of marine pests in ballast water and other activities of the Australian Maritime Safety Authority.

Where the market can naturally sustain the provision of salvage capable vessels, those assets should be able to be used for emergency towage of vessels. Where there is market failure, the Commonwealth needs to meet the shortfall either through the provision of assets, or by subsidising third parties to provide their assets.

There is a strong need to ensure that in the provision of an emergency response capability, ports are not discriminated against in a manner that impacts on their ability to compete with other ports. If a large port can sustain an emergency response capability through market forces compared to a smaller port which cannot, then the cost of retaining capability in the smaller port needs to be met by the Commonwealth rather than passed onto the port.

In conducting a risk assessment it is important to examine how the use of emergency response capable assets can be maximised, and other costs defrayed by having the assets serve more than one purpose. For example, perhaps certain Naval vessels could be suitably equipped for emergency response work and continue to carry out normal coastal work and training.

In the past we have relied on port salvage capable tugs to provide both salvage and emergency response services, but these assets are starting to move off shore where they can gain a higher commercial return. This situation is likely to be exacerbated further as Australia improves its safety record and salvage or emergence rescue opportunities are reduced even further. Therefore, where port tugs are the default means of providing salvage and emergency response capability, there needs to be a scheme to offset the higher standing costs to the towage operator of providing such capability. However, it is important to note that in SA, where the commercial ports are privately operated, that the provision of emergency towage vessels outside port waters is not the responsibility of the port authority. In fact, the provision of towage in ports is provided under contract between the ship and the towage operator, and for the towage operator to divert, or the Government to require a towage vessel to divert, to assist in a emergency raises issues of liability and compensation to the port, the ship operator and the towage operator.

Legislative position

It is important to note that SA legislation does not give the Government the power to direct salvors to provide their services. However, the State Disaster Act, 1980¹, potentially allows for the commandeering of a tug, provided it is in the designated emergency area and that the incident has been declared a major emergency.

The Commonwealth, under the Protection of the Sea (Powers of Intervention) Act 1981 (s8(1)) requires where there is a "grave and imminent danger to the coastline of Australia, from pollution or threat of pollution of the sea by oil.....to take such measures on the high seas as it considers necessary to prevent, mitigate or eliminate the danger". Whilst there are limitations on class of vessel, a direction (to the owner) may include salvage of the vessel.

SA has similar powers (and limitations), although not as explicit, under s28 of the *Protection of Marine Waters (Prevention of Pollution from Ships) Act 1987* and under s67 of the *Harbours and Navigation Act 1993*. However, it is stressed that these are powers to direct the master/owner of the vessel not third parties such as the salvor, port towage operator or Port Operator.

Fundamentally, in the event that an emergency response is required, all these legislative powers rely on the presence of appropriate salvage or equivalent capability. This may prove more difficult in the future if for commercial reasons this resource is no longer readily available.

Conclusion

A national approach to this issue will ensure that in the provision of an emergency response capability, ports are not discriminated against in a manner that impacts on their ability to compete with other ports. If a large port can sustain through market forces an emergency response capability compared to a smaller port which cannot, then the cost of retaining capability needs to be met by the Commonwealth rather than passed onto the port.

To be most effective and efficient, the response needs to be a nationally integrated Commonwealth initiative, covering both coastal and off shore waters. It is a Commonwealth responsibility for the same reasons that prevention of pollution in territorial waters and national security/defence are Commonwealth responsibilities. The link to national security is particularly important. Without an emergency response capability, it is not possible to implement effective national security and counter-terrorist measures for ports and the Australian coastline.

¹ This legislation is currently under revision

AMG WORKING GROUP ON SALVAGE CAPACITY

TERMS OF REFERENCE

1. The objective of the Working Group is to:
 - review the Stage 1 report;
 - investigate the legal, administrative, commercial, legislative, financial and practical issues involved;
 - develop an approach for going forward; and
 - report back to AMG.
2. In conducting its work the Working Group will be guided by the overall objective of protecting the Australian marine environment through **prevention** by determining the capacity required to provide an emergency towage capability around the Australian coast

Report

3. The key output of the Working Group will be a report to AMG for consideration with a view to raising the issue to the Standing Committee of Transport and the Australian Transport Council.

Consultation

4. The Working Group will consult with relevant bodies external to AMG in the development of the Report, in particular the Australian Association of Port and Marine Authorities, the Australian Shipowners Association, Shipping Australia, key Port Authorities and the major towage providers.

Meetings

5. Meetings will be arranged by the Convenor as frequently as Members agree is necessary.

Administration

6. The Australian Maritime Safety Authority will supply the secretariat.
7. Telephone conference meetings will be the preferred meeting option.
8. Meeting attendance costs will be borne by attendees.