

Analysis of pilotage and pilots' limitation of liability



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1. Provisional title of the thesis:

A comparative analysis of pilotage and pilots' limitation of liability in Australia.

2. Area of investigation and/or the questions to be investigated

Consider the following scenario. A vessel under the control of a compulsory pilot is maneuvering within a port limit. Master of the vessel follows the on-shore directions by the pilot and due to negligence of the pilot the vessel crashes into a wharf. Some basic questions that could arise from the above scenario are: Who is responsible for any damages? If the master, following an on-shore direction, enters a compulsory pilotage area without a pilot on board, is he guilty of an offence for proceeding without a pilot? Is the pilot liable for acting outside of pilotage? When does pilotage actually commence? Should the statutory rules regarding limitation of liability for pilots be changed to hold negligent compulsory pilots individually responsible for actions outside of pilotage? If a master follows a radioed direction provided by an on-shore pilot, should he be liable for proceeding without a pilot in a compulsory pilotage area? What is the liability for negligence of compulsory unlicensed pilots?[1] Finally, what is the appropriate description of a master-pilot relationship? This research will investigate these questions.

3. Theoretical significance of the project

A pilot is someone who is very familiar with the port; endowed with a requisite professionalism and necessary local knowledge to maneuver a vessel in a port safely.[2] In addition, he is responsible for the protection of the environment and the promotion of the efficiency in the harbor.[3] In

Australia, under section 6 of the Navigation Act 1912, pilot means “ *a person who does not belong to, but has the conduct of, a ship* . “ In terms of limitation of liability, section 410B(1) of the Navigation Act stipulates that “ *a pilot who has the conduct of a ship is subject to the authority of the master of the ship and the master is not relieved from responsibility for the conduct and navigation of the ship by reason only of the ship being under pilotage* .”

Although there are consistencies in the meaning of pilotage among jurisdictions in Australia, the pilotage legislations are slightly different in some states. For example, while the New South Wales Marine Safety Act 1998[4] considers the pilotage as conduct of a vessel, the Port Authorities Act 1999 (WA)[5] describes pilotage as being in command of a vessel.

The first issue is the definition of ‘ conduct’ of a ship. In *Braverus Maritime Inc v Port Kembla Coal Terminal Ltd* [6] the Federal Court of Australia concluded that the statute considered the pilot as the servant of a ship owner and simply listed the definition of pilot as it stands in the Navigation Act. In *Fowles v Eastern & Australian Steamship Co* [7] Chief Justice Barton , with reference to the Queensland Navigation Act (1876), explained that” *the master shall deliver and give in charge the vessel to the duly qualified pilot who shall first board or go alongside of such vessel in order to conduct the same into port, and such pilot shall if required by such master produce his authority to act as such pilot, and no master of any such vessel shall proceed to sea from any of the said ports or quit his station or anchorage in any port, without receiving on board the harbor master or some pilot appointed as aforesaid to move or conduct the said vessel to sea* .” Further, the comment of Christopher Hill stating ‘ *what a pilot is not, purely and*

simply, is an adviser' [8] is inconsistent with the practical concept [9] and the statutory definition of a pilot.

The second issue is pilots' limitation of liability. Under Navigation Act 1912 (Cth) section 410B (2) the exclusion of pilot from liability is absolute. Porter LJ in *Tower Field v Workington Harbour and Dock Board* [10] clarified that under Section 410B of Navigation Act "a ship owner who through a compulsory pilot is responsible for faulty navigation is responsible for damage to his own ship as well as for injury to the property of another". As far as the limitation of liability is concerned, the state legislations in Australia are comparatively aligned with the Navigation Act. In New South Wales, all pilots and pilotage service providers are excluded from liability for negligence. [11] Though, the pilot who willfully endangers the vessel or her crew is guilty of an offence. [12] In South Australia a pilot is excluded from liability for negligence. [13] In Victoria, under the Marine Act 1988 (Vic) a pilot's liability is limited to \$200 plus the amount of pilotage. [14] In Queensland, Pilots are excluded absolutely from liability for negligence or damage. [15] Finally, in Western Australia, the pilot's liability is limited to \$200. [16] Moreover, a pilot is excluded from liability for negligence causing damage to the vessel. [17] In *Oceanic Crest Shipping* [18], where a vessel under the control of a negligent compulsory pilot damaged to a wharf in Western Australia, the pilot and harbor authority were completely excluded from liability for negligence.

As can be seen, the traditional approach to pilotage has introduced difficulties and the concerned parties including, harbor authorities, ship owners and pilot service providers are faced difficulties to answers the

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questions mentioned in the section i. This research will help to solve the problems in dealing with pilotage by focusing on three main areas. First, the Australia's pilotage regime should be re-assessed to provide clarified definitions. Second, the inconsistencies between the states should be eliminated through a uniform pilotage regime which is agreed by the states. Third, the pilotage regime should also determine a fair limitation of liability of pilots. Indeed, since the application of above mentioned changes will result in changing the settlements of claims and the expenses incurred by the relevant parties, this research will focus on how these changes would be addressed in future pilotage regime. Therefore, this research is aiming to reduce the inconsistencies either in the liability of pilots or in the limitation of liabilities in Australia's pilotage regime.

4. Proposed research methods

I would provide a theoretical understanding of the research, that the legal regulations concerning pilotage and the limitation of liability in the light of the analysis of different states legislations in Australia and various legal acts in different countries. Therefore, the method which will widely be used is comparative method. The Function of pilots, their liabilities and the limitation of their liabilities will be studied and compared in the following acts, legislations and case law.

Australia:

- Under Commonwealth Legislation: Navigation Act 1912 (Cth).
- The state legislations in New South Wales, South Australia, Tasmania, Victoria, Queensland and Western Australia.

The United Kingdom:

- Pilotage Act 1987 (UK) and Merchant Shipping Act 1995 (UK).

Canada:

- The Pilotage Act, RSC 1985, c P-14.

The United States:

- The national system of pilotage regulation both by the states and by the federal government.

The reason these countries were selected is because their legal systems are mainly based on English common law. The analytical method will be implored to analyze legal concepts and rules concerning pilotage and limitation of liability in different legal systems. This is important because through this method, appropriate conclusions would be drawn, and possible suggestions would be proposed in the bid to improving Australian Legislation of Limitation Liability of Pilots and Pilotage.

5. Proposed thesis structure including where possible, provisional chapter sketches

Preliminary table of contents:

1. Introduction
2. Fundamental concepts of pilotage and pilots' limitation of liability.
3. National approaches to the pilotage and limitation of liability.

1. Australia

2. The United Kingdom

3. Canada

4. USA.

4. Analysis of findings focusing on pilotage and limitation of liability in Australia.

5. Conclusion including suggestions and mechanisms of addressing problematic issues.

Timescale for the research:

Year Research

Research activities

To draft a research plan.

Collation of data, reading of relevant materials

1

and writing of the

Introductory

chapter.

chapter.

2 Reading
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of
limitation
of liability
legislation
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United
Kingdom
and
Australia.

3 A reading
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evaluation
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limitation
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Publicatio
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necessary
for now).

Analysis
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findings,
arrangem

4 ent of
thesis and
final
submissio
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Bibliography

Table of Cases

Braverus Maritime Inc v Port Kembla Coal Terminal Ltd [2005] FCAFC 256
Federal Court of Australia, 12 December 2005.

Fowles v Eastern & Australian Steamship Company Limited [1913] 17 CLR
149.

Oceanic Crest Shipping Company v Pilbara Harbour Services Pty Ltd [1986]
160 CLR 626.

Tower Field (Owners) v Workington Harbour and Dock Board [1950] 84 Ll. L.
Rep. 233, 255.

Textbooks

Christopher Hill, Maritime Law (Lloyd's of London, 3rd ed, 1989) 376.

Table of Legislation

Harbors and Navigation Act 1993 (SA).

Marine Act 1988 (Vic)

.

Marine Safety Act 1998 (NSW).

Pilots' Limitation of Liability Act 1962 (WA).

Port Authorities Act 1999 (WA).

Port Authorities Act 1999 (WA).

Transport Operations (Marine Safety) Act 1994 (Qld).

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Online Sources

Shilavadra Bhattacharjee, 'What Are The Duties Of Officer On Watch When Pilot Is On Board Ship?' (Marine Insight, 2016) accessed 6 December 2016.

Henrik Nicander and Isak Isak, 'What Skills Do Port Pilots Need?' (2014) accessed 6 December 2016.

[1] *Braverus Maritime Inc v Port Kembla Coal Terminal Ltd* [2005] FCAFC 256 (12 December 2005)

[2] Shilavadra Bhattacharjee, 'What Are The Duties Of Officer On Watch When Pilot Is On Board Ship?' (Marine Insight, 2016) accessed 6 December 2016.

[3] Henrik Nicander and Isak Isak, 'What Skills Do Port Pilots Need?' (2014) accessed 6 December 2016.

[4] Marine Safety Act 1998 (NSW) s 71(1).

[5] Port Authorities Act 1999 (WA) s 3(1).

[6] Opt. cit. n. 1.

[7] *Fowles v Eastern & Australian Steamship Company Limited* [1913] 17 CLR 149.

[8] Christopher Hill, *Maritime Law* (Lloyd's of London, 3rd ed, 1989) 376.

[9] *Ibid.*

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[10] *Tower Field (Owners) v Workington Harbour and Dock Board* [1950] 84 Ll. L. Rep. 233, 255 (Porter LJ).

[11] Marine Safety Act 1998 (NSW) s 80(1): “ *Neither the State, nor the Minister, nor a pilotage service provider is liable for any loss or damage that is attributable to the negligence of any person made available as a marine pilot by the pilotage service provider while the person is acting as a marine pilot.* ”

[12] Marine Safety Act 1998 (NSW) s 81: “ A marine pilot of a vessel who, by any wilful act or omission, endangers the vessel or its crew is guilty of an offence.”

[13] Harbors and Navigation Act 1993 (SA) s 36(3): “ The liability of the owner or master of a ship for damage resulting from a fault in the navigation of the ship is unaffected by the fact that the vessel is under pilotage or that the pilotage is compulsory.”

[14] Marine Act 1988 (Vic) s 104: “ A pilot is not liable in negligence in respect of the voyage on which the pilot is engaged for more than \$200 plus the amount of pilotage in respect of voyage.”

[15] Transport Operations (Marine Safety) Act 1994 (Qld) s 101(1): “ A conducting pilot is not civilly liable for damage or loss caused by an act or omission of the conducting pilot.”

[16] Pilots' Limitation of Liability Act 1962 (WA) s 3: “ Notwithstanding the provisions of any other Act or law, but subject to the Navigation Act 1912 of the Parliament of the Commonwealth, a pilot is not liable for neglect or want
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of skill in piloting a ship beyond the amount of \$200 together with the amount payable to him on account of pilotage in respect of the voyage in which he was engaged when he became so liable.”

[17]Port Authorities Act 1999 (WA) s 99: “ The owner or master of a vessel moving under compulsory pilotage in a port is liable for any loss or damage caused by the vessel, or by a fault in the conduct or navigation of the vessel, in the same manner as the owner or master would be liable if pilotage were not compulsory.”

[18] *Oceanic Crest Shipping Company v Pilbara Harbour Services Pty Ltd*

[1986] 160 CLR 626.