

## **APPENDIX E - LEGAL ISSUES AND SUMMARY**

### **1.1 Navigation Act 1912 (Cth)**

#### **1.1.1 Regulation of Pilotage**

Division 1 of Part IIIA of the Navigation Act 1912 (Cth) ("the Act") contains general provisions applicable to pilotage and provides for the regulation of ships that are in, or in transit to or from, any waters of the Australian Coastal Sea that are specified in the Regulations. For the purposes of this Part, section 186D authorizes the making of Regulations in relation to:

- (a) the operations of a pilotage provider, including, but without limiting the foregoing:
  - (i) the duties of a pilotage provider and the manner of discharging those duties; and
  - (ii) the professional relationship between a pilotage provider and a licensed pilot; and
  - (iii) the making by the Authority of safety management codes for pilotage providers; and
  - (iv) the observation of such codes by a pilotage provider and by a licensed pilot under the control of a pilotage provider; and
  - (v) matters relating to pilotage safety management systems including the content and implementation of such systems; and
  - (vi) the keeping of records by a pilotage provider; and
  - (vii) training of pilots, and monitoring of their performance, by a pilotage provider; and
  - (viii) the professional liability of a pilotage provider and the limitation of that liability; and
- (b) the duties of a licensed pilot and the manner in which a licensed pilot is to discharge his or her duties; and
- (c) the professional relationship between a licensed pilot and the master or other officers of a ship, including provisions in relation to the professional liability of a licensed pilot and limitation of that liability; and
- (d) the keeping and maintaining by a licensed pilot of records relating to pilotage carried out by the pilot.

In Division II of Part IIIA of the Act, section 186H authorizes the regulations to make provision in respect of compulsory pilotage including provision specifying the waters that are compulsory pilotage areas.

#### **1.1.2 Coastal Pilotage Regulations**

Marine Orders Part 54 - Coastal Pilotage - (Issue 4) ("MO 54") came into operation on 6th October 2006. The purpose of MO 54 is set out in Provision 1.1 as follows:

- (a) makes provision for the licensing of pilots and the manner in which they carry out their duties;
- (b) makes provision for the operation of pilotage providers;
- (c) designates Torres Strait as a compulsory pilotage area; and
- (d) prescribes the information to be provided with an application for exemption from the requirement to navigate with a pilot.

In terms of geographical area, MO 54 applies to Hydrographers Passage pilotage area, the inner route pilotage area, the Great North East Channel pilotage area and the Whitsunday pilotage area.<sup>1</sup>

It is a prerequisite that pilotage service providers must hold a document of compliance.<sup>2</sup> If AMSA's Manager Ship Operations and Qualifications ("the Manager") is satisfied the service provider has in place systems and procedures that conform to the Queensland Coastal Pilotage Safety Management Code ("the Code"), then the Manager will issue a document of compliance.<sup>3</sup> Whilst this document remains valid for five years it is subject to annual verification audit and any other audits that the Manager determines to be warranted in the interests of safety or protection of the marine environment.<sup>4</sup> As would be expected, it is also a duty of pilots to carry out his or her duties in accordance with the Code.<sup>5</sup>

The responsibilities of pilotage providers to only operate as providers if they hold a valid DOC and to ensure that operations are conducted in accordance with the Code are backed up by penal provisions in Provisions 8.1.1 and 8.2.

### **1.1.3 Queensland Coastal Pilotage Safety Management Code**

The Code is set out in Appendix 1 of MO 54. In the preamble the Code is stated to be designed to facilitate the effective, efficient and safe management of pilotage services on the Queensland coast. Adherence to the Code is mandatory and will be monitored by AMSA. The objective of the Code is to promote safety at sea; prevention of injury or loss of life and avoidance of damage to the marine environment and to property, by ensuring that all persons, procedures and operations involved in coastal pilotage are covered by an approved SMS.<sup>6</sup>

The objective of each SMS includes the observance of safe work practices; the identification of risks and provision of suitable safeguards; and the provision of continuous improvement.<sup>7</sup>

The functional requirements of the Code are set out in section 1.4. This requires every pilotage provider to develop, implement and maintain a SMS which must include:

- 1.4.1 - a safety and environmental protection policy describing how the objectives set out in 1.2.2 are to be achieved;
- 1.4.2 - instructions and procedures for pilots to promote the safe pilotage of ships and protection of the environment in compliance with relevant legislation;
- 1.4.6 - procedures for internal audits and management reviews.

Section 3 of the Code contains the responsibilities of pilotage providers including:

- the need to ensure that only pilots fully conversant with the provider's SMS are allocated to pilotage work; establishing and maintaining procedures for ensuring that any training which may be required in support of SMS, has been undertaken by all personnel concerned;
- meeting requirements of sections 8 (Equipment), 9 (Documentation), 10 (Pilotage Provider's Verification, Review and Evaluation) and 11 (Certification, Verification and Control) of the Code.

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<sup>1</sup> MO 54 Provision 4

<sup>2</sup> Provision 8.1

<sup>3</sup> Provision 8.1.2

<sup>4</sup> Provision 8.1.4

<sup>5</sup> Provision 7.1

<sup>6</sup> Appendix 1 Section 1.2.1

<sup>7</sup> Section 1.2.2

The certification, verification and control provisions provide for the issue of a DOC for five years, following a satisfactory audit by AMSA. An annual verification audit is also provided by AMSA together with a renewal audit which is conducted within three months of the anniversary date of the DOC.