



MLAANZ CONFERENCE

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Changes to Pilotage Rules

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What is a Pilot?

“In relation to any ship, means any person not being the Master or a member of the crew of the ship who has the conduct of the ship”.

Section 2 Maritime Transport Act 1994

Conduct is related to navigation of the vessel.



Master / Pilot Relationship

- Pilot has exclusive control and conduct of the vessel but the vessel Master retains overall command.
- A Master is entitled to interfere with the Pilot's actions so long as he acts reasonably and with good motive.
- The Pilot is not simply an advisor to the Master.



Divided Command – A Recurring Theme?

- “Divided authority has traditionally been the cause of disaster. Conflict would seem to be inevitable. We know how dangerous a car becomes when driven at the same time by husband *and* wife (sitting beside him)”.

Maritime Law, Christopher Hill, 5th Edition

- Divided command of the vessel?
- Divided command of regulation?
- Divided loyalties?



Pilot Liability

- Who is liable to whom when the Pilot's negligence causes damage while the vessel is under compulsory pilotage.
- Any number of issues can arise from the unusual nature of the relationship. For example;
 - 1) Given that the Master retains command of the vessel was there contributory negligence?
 - 2) Because Pilots are performing a statutory function they are not agents of the owners.
 - 3) No genuine contractual relationship between the provider of the pilot services and the owners because of the statutory function.
- See *Marine Pilotage in Australia; Sydney Ports case study* – C S Yuen *MLAANZ's Journal* volume 17.
- At Common Law there was defence of compulsory pilotage. This is almost universally reversed by statute in most jurisdictions.
- *Port Kembla Coal Terminal Limited v Braverus Maritime Inc. [2004] FCA1211*



- In New Zealand Section 60B of the Maritime Transport Act provides;
 - 1) A Port Company, or other body corporate or person, who provides a Pilot is not liable for any neglect or want of skill of the Pilot.
 - 2) The owner or Master of a ship navigating under circumstances under which pilotage is required is answerable for any loss or damage caused by the ship or by any fault of the navigation of the ship in the same manner and to the same extent as that person would be if pilotage were not required.
 - 3) A Pilot is not liable for neglect or want of skill while on board a ship and acting as a Pilot.
- *Twin Bright Shipping Co. SA and Another v Tauwhareparae Farms Limited and Others HC G CIV 2003-416-1.*



Statutory Framework for Regulating Pilot Regulation

Historically dealt with under the Harbours Act 1950

- Minister of Transport set pilotage districts.
- Harbour Boards provided Pilots to act within pilotage district.
- Harbour Boards licensed Pilots.
- Harbour Board through Harbourmaster controlled the pilotage exemptions.



Transition to Port Companies

- Harbour Boards have morphed into Port Companies with, *inter alia*, local and regional authorities as shareholders.
- Harbour's Act was repealed in 1999.
- Port Companies Commercial Bodies. Generally Port Companies contract with Pilots to provide services to Port users.
- Some regulatory powers invested in regional authorities.



Local Government Act 1974

- Part 39A deals with navigation in general.
- Subsection 650C(3) gives the Harbourmaster the power to give directions regulating;
 - a) The time and manner in which any ship may enter into or depart from, lie, or navigate in those waters;
 - b) The position of mooring, unmooring, placing, removing, security, or unsecuring of the ship within those waters.
- Section 650E gives the Harbourmaster powers to;

“Regulate and control the traffic and navigation, and provide specially for the direct and personnel control of that traffic, on any day or occasion of unusual or extraordinary traffic”.



- Many of the powers and functions under this part of the Act can be delegated by the regional authority to the Port Company.
- Sections 684B to 684F empowers regional authority to issue bylaws dealing with navigation.
- Restrictions on bylaw making power are;
 - a) It must not limit or effect the ability of the Port Company to manage its operation except to the extent which the Council considers necessary in the interests of navigation safety.
 - b) No bylaws concerning ship traffic separation schemes or ship traffic management schemes can be made without the approval of MNZ.
 - c) Before making a navigation bylaw concerning a matter covered by Maritime rule the Council must consult with MNZ.
- There is no express reference in the local authority statutes to Pilots, instead all references are to navigational safety.



Example of Navigation Bylaws

Marlborough District Council Navigation Bylaws 2002 and proposed amendments

A number of bylaws apply to Pilots, including those dealing with;

- Setting compulsory and voluntary pilotage limits.
- Setting tonnage limits for pilotage requirements.
- Communication requirements when transiting various areas.
- Requirements to lodge Pilot passage plans and information exchange cards.
- Other technical details such as whether tug in tow tonnages are to be combined.

The proposed changes also deal with vessel identification and tracking systems with the suggestion that the Harbourmaster's Office will have enhanced power and ability to give directions to vessels, including those under Pilot's directions.

A three way division of command?



Maritime Transport Act

Subsection 36(1)(i) empowers MNZ to make rules;

“Defining operating limits and pilotage limits; and specifying requirements concerning pilotage (including when and where pilotage is required or is not required, and the classes of ships that must carry a Pilot in circumstances described in the Rules)”.

Pursuant to Section 60A the Master must ensure rules relating to pilotage are complied with. In addition to the requirements set out in the Rules the

Director has the power to give directions on pilotage in particular circumstances.



Current Part 90

Part 90 of the Maritime Rules deals with Pilotage. This came into force in 2003 and expressed to be an interim measure pending completion of a wide ranging first principles review of port risks, including piloting. Rules deal with;

- Requirements to hold Pilot's license.
- Compulsory pilotage.
- Pilot's licenses, including prerequisite qualifications (foreign going Master) and training requirements.
- Pilotage exemptions for Masters.
- Currency and exercise-of-privileges.
- Training course approvals.

Provisions are expressed in general terms i.e. refers to Pilot training course approved by MNZ.



A Divided Command of the Pilots?

In theory there is no tension between the roles of regional authorities and MNZ as one sets nationally applicable standards while the other deals with any pilotage issues specific to their particular region.

However not always smooth sailing; for example the “special investigation” published in the Dominion newspaper headed *“standards ‘bent’ for a cheating ship’s Pilot”*.

The Marlborough Harbourmaster accused MNZ of breaking its own rules when it convened an examination board and passed a candidate Pilot who had failed previous tests run by the Harbourmaster.



Impact of Jody F Millennium Grounding

- This vessel was directed to leave Port urgently due to surging conditions, the Pilot left the vessel at the breakwater and the vessel was knocked off course and grounded shortly thereafter.
- The subsequent MNZ inquiry revealed a lack of a systematic approach to assessing risk in ports and developing appropriate safety measures.
- New Zealand Port and Harbour Marine Safety Code 2004 was subsequently developed.
- Individual regional authorities carried out harbour navigation risk assessments.
- A range of possible tools to be used to implement findings and recommendations from risk assessments, including bylaws, Maritime rule changes and also less prescriptive measures.



The Best Way Forward

- More prescriptive regulation?

“So many Maritime rules were created that in the end no rules were clear. This lead to confusion in operation and policy but complete clarity in hindsight and prosecution”.

US Coast Guard Investigator: Captain Dominique Calicchio.