

To: The Productivity Commission Harbour Towage Inquiry
From: Henk T. Merbis MBA
Date: 18th of April 2002
Ref: Concerns of liability / duty of care

Dear Sir / Madam,

As a pilot I feel the duty to pilot a ship as quick and as safe as possible whilst guarding the safety of our environment, infrastructure and port facilities, other shipping and ship and crew herself. One of my tools to do so is through the use of tugs.

The issue which could arise with the introduction of competition for the provision of harbour towage services is the emergence of an operator with very low cost drivers, i.e. using substandard tugs, - capacity or - crews.

If one considers the Trade Practice Act one could argue that liability in the provision of harbour towage extends to, not only tug operators, but also to the port authority who permits the tug operator to service its port. It would also extend to pilots who have a duty of care towards ship operators.

To support the argument I like to refer to the docks and locks of Gent and Terneuzen where I was working as a pilot before 2002. In the late 90's its harbour towage equilibrium was interrupted by new entrants using substandard tugs and crews. The resulting price war forced established quality operators to reduce crewing costs and operating costs.

Despite reduced towage fees the outcome was a reduced number of operational tugs, increased delays, congestion at the locks; a clear increase in cost for ship operators.

If such a scenario eventuates in Australia the worst scenario for a pilot would be, knowing that the tugs are not up to standard, to cause damage whilst handling the ship. Subsequently the pilot could be held negligent in his duty of care towards the vessel and found civilly liable. If any environmental damage concurred the pilot could also be found criminally liable.

To avoid such scenario a pilot could, alternatively, decide to use more tugs, wait for a better tug / crew or for the circumstances (tide / wind) to change.

Minimum towage service standards are therefore required. Firstly, to prevent sub-standard service at any stage of the contract. Secondly, to maintain cost-efficiency as lower towage fees might initially be more attractive but could lead to expensive delays, congestion and tug usage.

Kind Regards,

Henk Merbis,

17th April 2002