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AUSTRALIAN REEF PILOTS PTY LIMITED

SUBMISSION ON APPLICATION BY BRISBANE MARINE PILOTS FOR EXCLUSIVE PROVISION OF SERVICES IN THE PORT OF BRISBANE

Australian Reef Pilots Pty Limited (ARP) welcomes the opportunity to present its submission in response to the application submitted to the Australian Competition and Consumer Commission (ACCC) by Brisbane Marine Pilots (BMP) seeking authorization for an agreement that they established with the State of Queensland in December 2009 for the exclusive provision of pilotage services in the Port of Brisbane.

QUALIFICATION TO COMMENT

Australian Reef Pilots Pty Limited is a pilotage provider licensed by the Australian Maritime Safety Authority (AMSA) to supply and manage coastal pilotage services in all areas of compulsory pilotage under Commonwealth jurisdiction. ARP's parent, Torres Industries Pty Ltd, was established in 1950 to supply and conduct pilot transfer services as a quasi-autonomous body on behalf of the State of Queensland. This arrangement was altered when coastal pilotage was transferred to Commonwealth jurisdiction and opened to parallel competition in 1993.

ARP currently engages 38 licensed and trainee Coastal Marine Pilots. It is one of the three organizations referred to in Clause 8.3 of the Supporting Submission by BMP.

SUMMARY OF POSITION

ARP supports the submissions made by Ports Australia and Shipping Australia Limited, and has fundamental opposition to the submission of Brisbane Marine Pilates (BMP). Authorisation on the grounds specified in the BMP submission operates to limit the choice of managers of ports to select cost-effective future strategies and operational effectiveness; it disregards current anomalies in both operational costs and public interest, and would be expected to result directly in the continuation of unhelpful practices in port pilotage. These practices include overt and covert attempts to implement

restrictive work practices, as well as those which appear to be prioritized for personal gain above other essential operational and safety best practices.

The submission by The Australasian Marine Pilots Institute which is signed by Captain Peter Liley, a shareholder of BMP and serving Brisbane Port Pilot, is not supported by this Company. It is also considered to be an inappropriate submission due to that signatory's obvious and direct conflict of personal interest.

(a) Effective competition

We concur with Ports Australia's assessment of problems arising from the Commonwealth Coastal Pilotage competitive model introduced in 1993. ARP assesses these matters as driven by well-meaning but perhaps inept regulatory attempts at that time. As is often encountered, the impact of regulatory structures is better comprehended in relation to the dynamics of competition in hindsight. Clearly, industry practice and regulations require upgrading over time. They do not, however, constitute a valid argument for maintaining anti-competitive practices.

It is unacceptable that reference to these early problems is now made as justification for continuing monopoly supply in ports as the only workable market model. This contention, which is utilised in an uncritical fashion in the BMP application, and contrary to available evidence, is strongly disputed.

Providers of coastal pilotage currently compete in a mature and professional market. This provides substantial benefits to shippers as a result of superior productivity and cost effectiveness when compared with the existing port pilot business contractual model. The benefits to state and federal authorities and the consuming public through lower trading costs can be readily demonstrated.

(b) Safety

The BMP submission's focus on safety systems merely restates what has long been regarded as essential to pilotage operations. While BMP's assessment of this imperative is respected, it is to be noted that BMP is in fact a relatively late entrant into this field, and does not have the benefit of an extensively proven track record. For BMP to claim its safety record cannot be equaled by any other provider as a justification for monopoly status is unsubstantiated and inconsistent with the record.

Monopoly port pilot providers have less incentive to invest in this area than participants in a competitive market, and have been slow to voluntarily adopt best practice in the absence of external 'encouragement'. It is a matter of record that BMP only improved its safety record after a disturbing number of incidents occurred within the Port of Brisbane.

(c) Restrictive practices

BMP is currently seeking to establish monopoly supply of coastal pilots through a separate company. This company, named as Queensland Marine Holdings Pty Ltd (QMH), operates from the same registered office and business premises as BMP. This company, QMH, has established a third company, Torres Strait and Great Barrier Reef Pilots Limited. It seeks to sell shares and employment contracts to individual coastal pilots under a prospectus dated 14 January 2010. Under this structure, QMH seeks to retain control by a shareholding structure, irrespective of funds raised and shareholder pilots' interests

This situation flouts acceptable transparency, and is clearly directed to maximizing profitability for a privately owned organization without regard to public interest.

(d) Public interest imperative

It is accepted that Commonwealth legislation permits licensing for provision of coastal pilotage services on the basis of relevant compliance. It is requested that the ACCC encourage the establishment of the same parameters for operation within State jurisdictions, either as parallel or serial contracts. This would establish consistency with both current trade practices and best practice in public sector procurement.

As an example please refer below for illustration of State Governments' cost-effective management in similar circumstances which demand high professional expertise and equipment standards. The model suggested elucidates a successful approach to serial competition that ensures the highest standards in safety, technology, systems and culture.

ISSUES FOR CONSIDERATION

1. Cost differentials resulting from competition

A competitive industry model has resulted in cost-effectiveness for pilotage clients.

Prior to transfer of jurisdiction for coastal pilotage from State to Commonwealth, the average remuneration of a coastal pilot was approximately \$350,000 per annum adjusted to current rates. Following the introduction of competition in 1993, fierce price competition occurred as the pilot body split to two providers who fought to gain market share in what was regarded as a commoditised service. Shippers, viewing compulsory pilotage as essentially a toll, engaged the provider that offered the cheapest price.

As a result of 'price-warring' remuneration offered to skilled marine pilots fell dramatically. In the mid 1990s, pilot remuneration fell as low as \$85,000 per annum. Clearly, master mariners were discouraged from pursuing a career in costal pilotage for rational financial reasons, with supply ramifications.

Market forces have now aligned equity in a mature market, delivering advantages to all stakeholders, including direct service providers.

Currently a fully engaged coastal pilot earns around \$200,000 per annum, an average which generally applies across employers.

At this level of remuneration, ARP has been able to attract sufficient qualified master mariners to meet increased demand and replace retiring pilots. This is verifiable by ARP company documentation and contradicts Clause 9.28 of the Supporting Submission by BMP.

Costs in port pilotage under the current situation reflect the pre-competition higher fixed costs of service, which are inequitably transferred as a public cost. While skill-sets are generally considered equivalent, individual remuneration in port pilotage currently ranges from \$250,000 to \$350,000. Monopolistic contractual arrangements preserve such anomalies.

It should be noted that all ARP's pilots are Australian citizens or permanent residents. This contradicts Clause 9.27 of the Supporting Submission of BMP.

Competition has clearly resulted in lower costs to shippers. For example, a cost increase of 18.8% during 2010 for pilotage rates at Port of Brisbane (POB) has been promulgated. Coastal pilotage increases will average 7.8%. Lower cost is most apparent when duration of service is examined.

The following example illustrates the impact that competition has delivered to the shipping industry and other stakeholders. It compares the time related cost for a one way pilotage of a small to medium sized bulk carrier of 175 meters length (Handymax size) at POB with a transiting of the Inner Route (between Cairns and Thursday Island) of the Great Barrier Reef. Pilots are recognized as having varying but equivalent skill sets.

	Cost excl. GST	Approx. Time	Cost per Hour
	\$	(Hours)	\$
Port of Brisbane - Apr 1	3,863	4	967
From Oct 1	4,249	4	1,062
Inner Route Jul 1	7,900	30	263

2. Hostility to Competition

We confirm Ports Australia's comment on page 4 in paragraph 2(d) of their submission that "substantial criticism.....has often come from parties inherently hostile to the idea of introducing competition in pilotage".

It is further disturbing to coastal pilots that inquiries into pilot operations almost inevitably involve representations from anti-competitive or protective industry segments but exclude representations from coastal pilots or pilotage companies. Fully representative inquiries are obviously a public interest imperative, and valued as is the opportunity for this submission.

3. Safety Record

The assertion in Clause 9.30 of the Supporting Submission is purely self-serving, cannot be objectively verified, and should be disregarded.

While BMP's strong emphasis in this area is respected, it is not unique. Such systems are fundamental to all pilotage providers in Australia. Coastal pilotage regulations routinely submit operations to more rigorous scrutiny than ports pilotage, and there is no evidence on public record or provided that BMP's safety systems are superior. Moreover, it is a matter of record that BMP has been a relatively late adapter to best practice safety systems.

In the 5 years between 1997 and 2002 BMP had 8 incidents sufficiently serious for referral to the Australian Transport Safety Bureau. It is suggested that these incidents were the key drivers for BMP's adequate attention to safety standards and systems.

In contrast, ARP achieved Quality Accreditation ISO 9002:1994 for its safety systems in September 1996, reputedly the first pilotage organization in the world to be Quality Assured according to the certifying body. ARP subsequently achieved ISO 9001:2000 upgrading to ISO 9001:2008 in November 2009. This ensured the highest degree of efficiency and safety in a competitive environment providing customers with choice and discrimination between standards of service delivery.

In addition to ISO 9001:2008, ARP is audited by AMSA against the Queensland Coastal Pilotage Safety Management Code (QCPSMC). The QCPSMC is based on the International Safety Management (ISM) Code and AMSA audits participant providers annually. AMSA's requirements enforce the ISM Code which sets protocols for the safe operation of ships, pollution prevention and other requirements as adopted by the Assembly of the International Maritime Organization (IMO) – the peak governing body for international maritime law.

ARP was first certified under this program on August 1, 2001. The Code is under progressive review and improvement via Marine Orders Part 54 and, as a system unique to coastal pilotage, ARP can lay claim to being only one of three pilotage companies in Australia certified by the Australian Government under such a directly relevant Safety Management System.

This evidence suggests that ARP is in fact the leader in safety systems in Australia. These systems are readily transferrable to port pilotage.

4. Pilotage service access

Clause 6.2 of BMP's Supporting Submission states that there are no other organizations or individuals capable of providing "the Services", i.e. port pilotage, apart from BMP and its employees. Except for current contractual arrangements this statement is patently inaccurate.

Restriction on competition has been maintained by manipulative practices as well as current contracts. Pilot familiarisation and training by competitors has met with the threat of withdrawal of pilotage services by contracted incumbents. An example has been an unusually chronic "sickness" epidemic - as in Cairns in 2001, which immobilized transfer of contractors. Port management can be expected to avoid severe commercial disruption in the immediacy of these situations, and in the face of commercial contractual exclusivity, has no medium term incentive to confront the issue.

Accountability will be increasingly demanded in Australia's changing commercial environment. For example the Port of Sydney issued a competitive tender for Port Pilotage services in 2001. ARP demonstrated that it would provide sufficient qualified pilots to operate in the Port of Sydney on contract commencement date without recourse to existing employee/shareholders of the incumbent. The price tendered for services represented approximately 60% of the prevailing tariff. At the conclusion, ARP was advised that it was the most competitive tenderer.

It is apparent that competence and cost effectiveness did not determine award of contract. This situation would no longer meet acceptable governance standards. It is suggested that transparency and competition imperatives will determine closer scrutiny of contracts in future.

The public interest would be well served if the same techniques employed for the provision of specialised services such as helicopter rescue, hospital transfer and rotary wing law enforcement services were applied to port pilotage. Possible explanations have been suggested for reluctance to adopt competitive and therefore cost effective approaches which operate in the public interest. We contend that Port and Pilotage Regulators should be given every opportunity to plan for and adopt competitive tendering. Deterrents should be applied to practices which impede those opportunities.

A possible model is supplied in Item 6 below.

5. Anti-competitive Coastal Pilotage strategy – Torres Strait and Great Barrier Reef Pilots Limited

On January 14, 2010, a prospectus was issued by Torres Strait and Great Barrier Reef Pilots Limited, a company controlled by the same parties who control BMP. This prospectus invited licensed coastal pilots to invest with the purpose of creating a monopoly pool of coastal pilots. This would establish the anti-competitive practice of a sole source of pilot employment, with correlative restricted employment conditions. Legalities and public interest were clearly secondary to opportunism.

ARP, the other Coastal Pilotage providers as well as individual pilots vigorously resisted these anti-competitive and restrictive employment proposals.

Respect for the wishes of professional pilots currently well-satisfied with competitive industry and personal contractual conditions was shown to be absent, resulting in unnecessary and unfortunate loss of productivity. As a result of the intimidatory practices and aggression of two individuals promoting the prospectus's monopolistic position the individuals' suspension on safety grounds became essential.

Industry disruption such as this incident, arising from the intention of monopolistic control and restriction of personal employment, is intolerable in Australia's current industrial environment. Monopolistic strategies are inherently destructive and adverse to both public and private individual interests. Rather than entrenchment they warrant active dissolution.

Now that industry maturity is apparent in most professional pilotage, it is strongly recommended that all vestiges of anti-competitive contractual arrangements be disbanded.

6. A Proposed Model for Port Pilotage

Over the past decade, there has been a significant shift in governance thinking on contracted services. In industries that require long lead times to supply the capital equipment and provide trained crews, serial competitive tendering has delivered proven advantages. Examples are ambulance services, law enforcement, emergency rescue and helicopter services etc.

Enhanced public benefit has emerged from the recognition and management of:

- i. provision and maintenance of choice for contracting Authorities in order to optimize cost effective service delivery. The need for specialized equipment and training so that sufficient transition time is allowed for handover on change of contract is now well

recognised and equitably managed. Serial contractual processes have delivered proven benefits for all stakeholders.

- ii. penalties for failure to maintain services and other transgressions which have been clarified, defined and accounted in the serial contract process, as a proper service delivery management process.
- iii. continuous service improvements and enhanced delivery standards to be met and maintained over time. Terms of contract which recognize the need for reasonable amortization periods to encourage the supply of new and/or specialized equipment – typically 5 to 7 years with annual extensions of 2 to 3 years, are well accommodated in serial and parallel contractual processes.
- iv. tenders called before expiry of the existing contract to provide timely and cost effective changeover without the need for compensation, while at the same time ensuring increase in value of contract deliverables.

ARP would welcome the opportunity for further discussions with ACCC on this important matter and is also happy to provide any further details and information on request.

D E McLay
Chairman
14 September, 2010