

# Trade & Transport Alert

April 2006

## The Maritime Legislation Amendment Act 2006

The *Maritime Legislation Amendment Act 2006* (MLA Act) was assented to on 6 April 2006. Some amendments are significant and probably long over due, such as substantial increases to penalties for damaging navigational aids. Other amendments clarify and reflect contemporary shipping practices, such as recognising the use of electronic rather than paper charts.

The MLA Act amends the following legislation:

- *Navigation Act* 1912
- *Lighthouses Act* 1911
- *Shipping Registration Act* 1981
- *Protection of the Sea (Prevention of Pollution From Ships) Act* 1983.

This Alert discusses changes to pilotage provisions in the *Navigation Act*, including an extension of the area over which the Commonwealth regulates pilotage to the Exclusive Economic Zone, a new provision limiting the liability of pilots and pilotage providers and changes to the *Lighthouses Act* for offences damaging or obstructing navigation aids.

The *MLA Act* was passed by Parliament on 29 March 2006 and received the assent of the Governor-General on 6 April 2006. Some of the amendments, such as new section 410B (3) relating to pilots' and pilotage providers' immunity, commenced on 7 April 2006. Other amendments, like the insertion of new Division 2 to Part IIIA dealing with compulsory pilotage, are scheduled to commence on 6 October 2006.

### Navigation Act

#### Compulsory pilotage requirements

One of the key amendments to the *Navigation Act* is the insertion of a new Division 2 to Part IIIA. Modelled on the *Great Barrier Reef Marine Park Act* (GBRMP Act) the amendments introduce compulsory pilotage requirements for regulated ships navigating through particular routes or "zones".

Currently, the Commonwealth only regulates compulsory pilotage in the Great Barrier Reef under the GBRMP Act. Under the existing provisions of the *Navigation Act*, the Commonwealth is only able to regulate pilots on ships within, or in transit to or from, the Australian coastal sea (12 nautical miles). However, the MLA Act enables regulations to be made defining compulsory pilotage zones for ships navigating anywhere within Australia's 200 nautical mile Exclusive Economic Zone.

The amendments also make it an offence to navigate a ship without a pilot in a prescribed compulsory pilotage area. These compulsory pilotage requirements will operate in addition to the compulsory pilotage requirements in the GBRMP Act and a person will not be liable to be prosecuted under both the *Navigation*

### In brief

The new amendments:

- clarify the exclusion of a pilot's liability in the case of negligence
- provide pilotage providers the benefit of excluding liability
- provide broader powers to the Commonwealth to regulate pilotage anywhere in the Exclusive Economic Zone
- significantly increase penalties for damaging or obstructing navigation aids, including imprisonment up to 10 years for intentional conduct and maximum fines of \$110,000 for negligent conduct
- provide that Australian ships can use electronic charts instead of paper charts

*Act* and the GBRMP Act for the same act or omission.

#### Clarifying pilot immunity from civil liability

There is also a completely new provision intended to clarify pilot immunity from civil liability. Under common law, a ship owner of a ship was liable for the negligence of the pilot, but only in the case of non-compulsory or voluntary pilotage. The *Navigation Act* sought to remove this distinction by section 410B(2) so that the ship owner or master were the only persons liable, even in the case of compulsory pilotage.

However, due to recent litigation in relation to that provision, the MLA Act

was introduced to clarify the exclusion of liability available to pilots (and pilotage providers) by inserting a new section 410B(3) which provides:

“Civil liability in relation to

If a pilot:

- a) does an act, issues an instruction, or provides information or advice in or in relation to the pilotage of a ship; and
- b) that act is done, that instruction is issued, or that information or advice is provided, in the course of the pilot’s duty and in good faith; and
- c) that act, instruction, information or advice affects the navigation of the ship so that loss or damage is caused to or by the ship;

neither the pilot nor any pilotage provider responsible for the provision of the pilot’s services is liable in civil proceedings for that loss or damage.”

This new provision clarifies that a pilot and now pilotage providers are not civilly liable for acts or omissions of the pilot that causes loss or damage by the ship.

However, the provision only relates to acts or omissions “in the course of the pilot’s duty”. What happens if the pilot acts outside the compulsory pilotage area? Apparently, this is not uncommon for coastal pilots. Is the pilot in that case still acting “in the course of his or her duty”? If not, then arguably the pilot could be held liable for his or her actions.

For both harbour pilots and coastal pilots, the answer appears to lie in the common law and for coastal pilots there is an additional clarification in Marine Orders Part 54. There are also provisions in State legislation that either exclude or limit a pilot’s liability.

As discussed above, under common law for both harbour and coastal pilots, the owner of the ship is responsible for the negligence of the pilot engaged in a non-compulsory pilotage area. Additionally for coastal pilots, clause 7.3 of Marine Orders Part 54 provides, in similar terms to section 410B(3) of the *Navigation Act* above, that a pilot is not to be personally liable when acting in good faith and in the course of his or her duty.

Furthermore, the *Explanatory Memorandum* to the MLA Act provides the following rationale for new section 410B(3):

“to make it clear that neither the pilot nor the pilot’s pilotage provider is liable for civil damage that may result in connection with a ship while a ship is under pilotage. Pilot immunity from civil liability claims is a longstanding convention and is necessary because of the inability of pilots to insure themselves against potential liabilities.”

This explanation suggests that the new section 410B(3) will be interpreted to protect pilots from civil liability in most circumstances, regardless of whether that pilot is engaged compulsorily or voluntarily.

However, as Marine Order 54 notes this section will not prevent the General Manager of Maritime Operations of the Australian Maritime

Safety Authority (AMSA) from taking action against the pilot’s licence. Furthermore, if the incident occurred in the Great Barrier Reef and the pilot is found to have contravened the GBRMP Act, the pilot may be liable to reimburse the Commonwealth for its expenses arising out of the incident, such as clean up costs. A pilot’s immunity from civil liability is not complete!

## Lighthouses Act

Penalties for damaging or obstructing navigation aids controlled by AMSA have been substantially increased. Also a 3 tiered layer of culpability has been introduced.

The offences are in respect of conduct in connection with navigation aids:

- resulting in damage;
- obstructing view;
- causing interference with the operation; or
- causing removal, alteration, riding by or making fast.

The 3 tier offence and penalty provisions operate so that:

- intentional conduct attracts a maximum 10 years imprisonment;
- reckless conduct attracts a maximum 7 years imprisonment; and
- negligent conduct attracts a maximum fine of \$22,000 for individuals and \$110,000 for companies.

Ernest van Buuren, Brisbane  
ernest.van.buuren@bdw.com

Vaishi Rajanayagam, Brisbane  
vaishi.rajanayagam@bdw.com

### BDW Contacts

BDW 24 hour Contact: + 612 9258 5987

Sydney	Peter McQueen	+612 9258 5887	Brisbane	Ernest van Buuren	+617 3259 7119
	Alex Baykitch	+612 9258 6752	Perth	Anthony Willinge	+618 9366 8165
Melbourne	Jacinta Ellis	+613 9679 3608	Canberra	Matthew Roser	+612 6234 4094

This publication is authorised by Blake Dawson Waldron. The firm can be contacted by emailing [marketing@bdw.com](mailto:marketing@bdw.com)  
Subscription Maintenance – If you would like to unsubscribe or modify your electronic subscription please go to <http://www.bdw.com/subscriptions>  
Privacy Policy – You can find our Privacy Policy on our website at <http://www.bdw.com>

*This publication is intended only to provide a summary of the subject matter covered. It does not purport to be comprehensive or to render legal advice. No reader should act on the basis of any matter contained in this publication without first obtaining specific professional advice.*  
© 2006 Blake Dawson Waldron

[www.bdw.com](http://www.bdw.com)