



Trade & Transport Alert

June 2005

Compulsory Pilotage In The Torres Strait – Will This Be An International First?

In what would be a world first Australia and Papua New Guinea have proposed that the Torres Strait, an international strait, be subject to compulsory pilotage. The proposal will be considered by the IMO (International Maritime Organisation) in July 2005.

Introducing compulsory pilotage in the Torres Strait is a very sensitive political issue. It is also a complex matter with legal opinion being equally divided on whether it is possible to introduce compulsory pilotage. This is despite IMO having previously approved compulsory pilotage regimes for the Inner Route and Hydrographers Passage in 1990. Some shipping nations fear that if granted, compulsory pilotage will set a precedent for other and probably more strategic international straits around the world.

In response to this opposition, Australia has put forward a compromise position. The latest proposal by Australia before the IMO is that flag states require their vessels to recognise Australia's system of compulsory pilotage in the Torres Strait. How effective that will be is not clear. However Australia remains confident that compulsory pilotage will be introduced in the Torres Strait.

Further debate is proposed in July 2005 when it is expected the United States and Russia will press compulsory pilotage only be introduced in international straits as a condition of entry to the

coastal state. So for vessels not proceeding through to Australia or Papua New Guinea, pilotage would not be compulsory.

The Torres Strait

The Torres Strait lies between Cape York and Papua New Guinea and adjoins the northern boundary of the Great Barrier Reef Marine Park. It is a major shipping route linking the Coral Sea in the east with the Arafura Sea in the west. The Torres Strait contains significant fishing grounds and is an important area for the indigenous people of Papua New Guinea and Northern Queensland. It shares many environmental and ecological features with the Great Barrier Reef.

Under the United Nations Convention on the Law of the Sea 1982 (UNCLOS), coastal States are able to regulate the safety of navigation and traffic in their Exclusive Economic Zone (EEZ). But in doing so, coastal states have to firstly define the special area for this regulation. These areas are known as Particularly Sensitive Sea Areas (PSSA).



Both Australia and Papua New Guinea argue that there is a compelling need to qualify the Torres Strait as a PSSA based on the “extremely high cultural, social and economic significance of marine resources” to the local community. In 2003, the IMO provisionally agreed to this proposal.

Australia and Papua New Guinea also submitted that there should be compulsory pilotage in the Torres Strait. This submission was referred for further consideration to the IMO.

The compulsory pilotage proposal

The mechanism by which Australia and Papua New Guinea have attempted to introduce compulsory pilotage in the Torres Strait is complex. The first step is to have IMO agree to an area being designated as a PSSA. When making an application to have an area designated as a PSSA, the coastal state must also submit to IMO the proposed regulations for this area, which have to be approved by IMO.

Although UNCLOS does not allow coastal states to impede the right of innocent passage, it also provides that the right of innocent passage can be subject to some regulation to prevent, reduce and control pollution from vessels. Coastal States may establish rules to prevent marine pollution from vessels.

In 1990 the IMO recognised the Great Barrier Reef as the worlds first PSSA and endorsed a scheme of compulsory pilotage through special hazardous areas. The Australian Government implemented the compulsory pilotage scheme under the *Great Barrier Reef Marine Park Act 1975* (Cth). Compulsory pilotage now exists in the Inner Route and Hydrographers Passage for all vessels over 70m, all vessels loaded with oil or chemicals, and liquefied gas carriers.

In Brief

- **Australia and Papua New Guinea have proposed to introduce compulsory pilotage to Torres Strait.**
- **As the Torres Strait is an international strait, the proposal has met considerable obstacles.**
- **While, for example, it seems that the United States does not object to compulsory pilotage being a condition of entry to Australia, it does not otherwise agree to compulsory pilotage in the Torres Strait.**
- **Further consideration will take place by the IMO in July 2005.**

At the same time, the IMO endorsed an Australian initiative recommending pilotage for vessels travelling through the Torres Strait. However, less than 45% of vessels to which the recommendation applies proceed through the Torres Strait with a pilot and the number is declining.

Obstacles to the proposal

The initial approach to making pilotage in the Torres Strait compulsory was to firstly extend the PSSA status of the Great Barrier Reef to include the Torres Strait. The next step was to have IMO endorse compulsory pilotage for that area. This was the way it was successfully done in 1990 when establishing compulsory pilotage in the Inner Route and Hydrographers Passage.





Whilst it is operationally feasible to have compulsory pilotage in the Torres Strait concerns have been raised about impeding the right of innocent passage through international straits. Some states have also queried whether there are any feasible alternatives to compulsory pilotage.

The IMO legal committee was asked to resolve the legal issues surrounding the proposal, but was unable to reach a consensus. Some IMO members argued that an absence of specific permission in UNCLOS prevents the introduction of compulsory pilotage in the area. Conversely, Australia has argued that there is nothing in UNCLOS that prevents compulsory pilotage. The issue of legality has not been resolved.

In relation to feasible practical alternatives, an independent risk assessment has confirmed that compulsory pilotage is currently the most appropriate protective measure for the Torres Strait. However, since 1991 when the IMO introduced a regime of *recommended* pilotage in the Torres Strait, the number of vessels using pilots had decreased.

Compromised position

In December 2004 the IMO accepted a revised proposal by Australia to isolate agreement for compulsory pilotage in the Torres Strait. The IMO has agreed to amend the resolution relating to the Great Barrier Reef PSSA and pilotage arrangements.

The draft resolution has the following recommendation:

“that Governments recognise the need for effective protection of the Great Barrier Reef and the Torres Strait region and inform vessels flying their flag that they should act in accordance with Australia’s system of pilotage”.

The wording of this resolution is thought sufficient to enable Australia to proceed with national legislation to introduce a compulsory pilotage regime which would be understood as an Australian system of pilotage for the region. In practice, vessels transiting through the Torres Strait would only be required to engage a pilot as a condition of entry to an Australian port.

Where to from here?

Further debate on the proposal is expected at the IMO in July 2005. The United States, Singapore and the United Kingdom may call for an IMO resolution that clearly restricts the international framework for compulsory pilotage in international straits. It seems that the United States does not object to compulsory pilotage being a condition of entry to Australia, but does not otherwise agree to compulsory pilotage in the Torres Strait.

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

Jacqueline Truong, Sydney
jacqueline.truong@bdw.com

Australia's One Thousand Nautical Mile Security System

The Australian Government has announced that Australia's maritime security is to be further strengthened because of increasing concern over terrorist related threats to maritime assets around the world. Australia will implement a number of initiatives including the establishment of a 1,000 nautical mile identification system around Australia, and a military command unit to regulate that system.

Australia's neighbours, Indonesia and New Zealand, have expressed their concerns over the proposed system and its legality under international law.

The Joint Offshore Protection Command

In March this year, the Australian Government established the Joint Offshore Protection Command (JOPC). The JOPC will link the Defence Forces and the Coastwatch division of the Australian Customs Service. The JOPC which is headed by the Director-General of Coastwatch has both a military and civilian role, including the establishment and management of a proposed 1,000 nautical mile Australian Maritime Identification System (AMIS).

What is proposed?

On entering the AMIS, all vessels, apart from recreational vessels, proposing to enter Australian ports will be asked to provide comprehensive information such as vessel identification, crew, cargo, location, course, speed and intended port of arrival. The Australian Government says this information will improve the effectiveness of civil and military maritime surveillance and help to clarify the picture of the "maritime space" around Australia.

In Brief

- **New Australian Government initiatives on maritime security include the establishment of a 1,000 mile nautical security zone.**

Criticisms of the AMIS

Upon the announcement of the establishment of AMIS, a number of criticisms were immediately made. Chief among them was that the United Nations Convention on the Law of the Sea did not allow vessels to be stopped in international waters, except in very limited circumstances. Although details of the scheme have not been released, it is understood that there will be power to stop vessels under AMIS.

Response by the Government

The Australian Government argues that the AMIS simply brings together all of the current reporting systems into "one coherent package". It is similar to the current Australian Ship Reporting and Reef Reporting Systems (AUSREP & REEFREP), except that more information will be required.

What next?

JOPC is currently performing a scoping study. As part of that study, the JOPC will consult with industry. Whilst the Australian Government plans to establish the AMIS by 30 September it will take some time before it is fully operational.

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

Jacqueline Truong, Sydney
jacqueline.truong@bdw.com

BDW Contact Details:

24 hour contact +61 2 9258 5987

Sydney	Peter McQueen	(02) 9258 5887
Melbourne	Chris Quennell	(03) 9679 3341
Brisbane	Ernest van Buuren	(07) 3259 7119
Perth	Anthony Willinge	(08) 9366 8165
Canberra	Matt Roser	(02) 6234 4094

London	Geoff Hone	+44 20 7600 3030
Jakarta	Philip Payne	+62 21 522 9765
Shanghai	Martin Kudnig	+8621 6279 8069
Port Moresby	Tim Glenn	+675 309 2000

This publication is authorised by Blake Dawson Waldron. The firm can be contacted by emailing 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.

© 2005 Blake Dawson Waldron

www.bdw.com