

## LETTER TO THE EDITOR: COMMENT ON 'THE PLOT OF THE PILOT': PILOTAGE AND LIMITATION OF LIABILITY IN MARITIME LAW

Captain Allan Gray\*

I read with interest the above paper written by Ms Woonings and commend her on a well-researched paper. This topic will always incite active debate. In response, I question whether the law needs to change or whether it is instead necessary to update our thinking after 200 years. There is no doubt the maritime industry despite its seniority has been slow to change unlike the aviation industry but perhaps that is due to different imperatives. I would like to address the paper from two directions: one is whether there is a right to protection from liability and the other is how that should be operationally applied.

Let us start with whether the Pilot, or for that matter the Port Authority, should have protection from, or limitation to, liability. The manoeuvring of vessels within ports and onto and off berths is a high risk operation. What we are talking about here are controlled collisions. Mariners in the normal course of their duties are trained to avoid collisions at all costs. Under State legislation, Port Authorities are required to protect State assets being infrastructure such as channels and berths. Accepting this to be the case, and given the variances in shipboard skill sets, Port Authorities must adopt a number of risk mitigation strategies to limit the likelihood of an incident. Pilots and the VTS are two of these risk mitigations. Therefore, if we must mitigate a high risk event, is there not a reasonable argument for protection.

Let me equate this to a surgeon. A surgeon before he operates on a patient will advise the patient of the associated risks of such an operation. You can imagine that something in the field of brain surgery would come with very high risks, even the potential for death. On explaining the risks it is then up to the patient to determine whether they wish to proceed with the operation with the given surgeon and will usually be asked to sign some sort of waiver or indemnity noting that they are aware of the risks and accept responsibility for the decision to proceed.

I would argue that s 410B of the *Navigation Act 1912* (Cth), or any of the State legislation, applies this same principle. The inherent risks are made known to the shipowner and Master, and they choose to proceed despite the said risks and indemnify the Pilot and Port Authority accordingly.

Given the above is it then reasonable that we adopt a posture onboard vessels whereby the Master is expected to challenge the Pilot's actions? Based on Bridge Resource Management learning, which takes into account human factors on the bridge, we need to consider the power differential between the Pilot and bridge team. In many situations, the Pilot has previously been a Master and has undertaken additional training in ship handling and local knowledge to attain his pilot licence. As such, he may be seen as the more senior or superior personality on the bridge. This would make his decisions difficult to challenge. If the Pilot takes control of the navigation of the vessel as is historically the case, it is acceptable that shipowners and Masters question why they have to accept responsibility for the Pilot's actions (ignoring my argument above).

However, if we were to adopt a true Bridge Resource Management approach and establish the power differential as would be expected, it would be logical that the Master and bridge team conduct the manoeuvre into port while the Pilot oversees the Master and bridge team, thereby protecting the interests of the Port Authority. The Pilot would review the intended passage plan, provide input and challenge any departure from the agreed plan or unsafe act. In this respect, the Master would retain control of the vessel and liability for its actions whilst the Pilot would be providing oversight and risk mitigation strategy. This argument equally holds for VTS and shore-based navigation.

My view is that we do not need to review the law or remove the protection from liability as this will cause increased costs and perhaps a fear of taking calculated risks. Instead, we need to consider effectively adopting modern and effective changes as to how we conduct pilotage.

\* General Manager Port Operations/Harbourmaster, Fremantle Ports; Federal Master, Company of Master Mariners Australia.