

Cash grab: Unfair New South Wales double-dipping port charges are unprecedented

By MELWYN NORONHA



Port Kembla breakwater - ships must now leave the port limits to proceed to anchor

Most businesses provide incentives for returning customers. But not in New South Wales. Here, the relevant port authorities apparently much prefer to penalise their customers by double-charging them.

A Navigation Service Charge is a statutory charge levied by port authorities on ships that enter a port. It is a reasonable way to charge for access to a port. But it is not reasonable for shipping companies to be forced to pay it twice.

In this situation, the “relevant port authorities” doing the double-charging are the Port Authority of New South Wales and also NSW Ports.

NSW Ports, a private port operator for Port Kembla, is also classified as a “relevant port authority” in relation to this statutory charge; it is allowed to fix and collect the charge.

Forced to depart berths

Ships around the world are sometimes, for reasons beyond their control, required by port authorities to temporarily depart port. They may be required to go elsewhere to load cargo, or in the case of the tanker trades, to load and/or discharge different parcels of cargo. Ships in the bulk fuel trade may also be required to depart and return to the port with the high tide or because of congestion. Ships that have

been forced to leave port may temporarily go to an anchorage, or where anchorages are unavailable, they drift off the coast before re-entering the port.

Temporarily leaving and re-entering a port happens at Ports Jackson, Botany and Kembla, as suitable anchorages are not available within their boundaries. Port Kembla formerly had anchorages within the port boundary but regulatory amendments in 2008 put those anchorages outside the port.

So temporarily leaving and re-entering a port is a fairly typical operational procedure at ports worldwide.

Unfairly charged twice (or more)

But in New South Wales, when a ship returns to a port after being forced to temporarily depart, the shipping company is then unfairly slugged with a demand from the port authority to re-pay the Navigation Service Charge!

Shipping companies are forced to pay again even if the vessel is still on the same voyage and even if the ship does not travel to any other port.

Requiring shipping companies to pay the port Navigation Service Charge twice (or more) for what is effectively one port call is unconscionable, especially as vessels incur additional pilotage and towage charges when their ships are forced to move by the port authority.

And at a cost of up to \$60,000 a time, it's a pretty costly practice.

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An unfair double-charge

The inherent unfairness of this double-charging practice can be revealed by a simple example. Consider the luncheons hosted throughout the year by Shipping Australia. We charge a single ticket price for drinks, networking, lunch, speakers, and entertainment. We don't re-charge the ticket price every time a person nips out of, and then returns to, the luncheon hall to make a phone call.

Double-charging also unfairly penalises the shipping company for the port's limitations in not being able to provide a standby berth, anchorage, or other such necessary facilities.

Background: history

Ports were formerly Government entities that operated under the old Maritime Services Board. They were transformed into corporate entities in 1995.

Before, and even after corporatisation, only one payment of the Navigation Services Charge was ever required to be paid for a ship's entry into the port.

In 2002, to formalise this longstanding practice, the *Ports Corporatisation & Waterways Management Regulation 1997(NSW) (now the Ports and Maritime Administration Regulation 2012)* was amended to exempt movements between Port Jackson and Port Botany from payment of any additional Navigation Services Charge. The intent was to treat the two Sydney ports as one port for the purposes of the Navigation Services Charge. It acknowledged that the separation of Sydney's berths and services should not substantially disadvantage ships which call at both Port Jackson and Port Botany.

At the time, the regulation did not specifically provide an exemption for ships departing and re-entering the same port on the same voyage. As shipping traffic increased and new berth facilities were built, the Port Authority (and its predecessors) routinely exempted vessels that were required to temporarily depart and re-enter the port from being double-charged.

The single-charge practice continued after the 2013 privatisation of Port Botany and Port Kembla. Shipping companies and agents received a commitment from NSW Ports that the Navigation Service Charge would continue to only be applied once.

Cash-grab

Clearly, this new, unfair, and opportunistic cash-grab departs from long-established precedent and ignores the fact that ships are forced to move by the port authorities because of the limitations at their ports.

Shipping Australia has appealed to the various relevant authorities, including the portfolio Minister, and is seeking an amendment to the existing legislation so that the longstanding, sensible and fair practice – of charging just once – becomes law. ▲



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