

# SAMPNEWS

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## MEMBERSHIP

The following persons have been reinstated as members of the society. Please add them to your membership list.

### **ASSOCIATE MEMBERS-**

**Michael Andrew PRIESTLY**

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## USL CODE

The society has been preparing an electronic copy of the USL Code in pdf format. The electronic code incorporates all amendments.

Sections 1, 5A & 5B are available free to members with e-mail. A copy of each of these sections has been provided to all such members.

This electronic copy of the code is only available to members and only those members with e-mail. For purchase of the full USL Code or specific sections, see your Members Guide Reprint 2.

## FISHING INDUSTRY CODE OF STANDARD REQUIREMENTS

The Queensland Commercial Fisherman's Organisation (QCFO) has prepared a draft Fishing Industry Code of Standard Requirements (FICS). This draft document includes requirements for safety equipment to be carried on board commercial fishing ships.

You are reminded that under current legislation, the draft FICS is **not** acceptable for use in meeting safety equipment requirements. This legislative situation may change some time in the future. It would be a very courageous accredited person that attempted to anticipate possible legislative changes and use the FICS to meet safety equipment requirements.

Some officers of QDoT may inadvertently accept a CoC for Safety Equipment issued using the draft FICS. This does not absolve the accredited entity from failing to comply with legislative requirements. A CoC for Safety Equipment issued using FICS requirements, is considered a false CoC. This could lead to fines and/or jail under the TO(MS) Act or Reg. The accredited entity could also be sued for any loss or injury a person may sustain due to this false CoC.

Some members may have received advice from QDoT or even the QCFO that FICS safety equipment requirements are acceptable under current legislation. This advice is not correct. If you have this advice in writing, please forward a copy to the society and we will take the matter up with the appropriate authority.

### **ACCREDITATION**

Feedback from members has been received on the article covering accreditation in SAMPNEWS Dec. 99. Some of the more pertinent points raised were-

- Many members expressed concern about the professional standard and experience of current accredited entities. They believed that the QDoT chief executive is not currently ensuring that accredited entities are properly experienced in their respective categories. Having the society responsible for accreditation should greatly improve this situation.
- The cost of accreditation administration is currently heavily subsidised by QDoT (or should be if it was performed to the necessary high standard required). If the society took over this process there would be a substantial increase in costs to accredited entities. These costs could be some thousands of dollars per entity for initial accreditation and hundreds of dollars per year per entity for ongoing administration.
- Any increase in costs to accredited entities would need to be passed on to their clients. Those entities with little accreditation work would leave the system resulting in fewer accredited entities to service the industry.

- A system would need to be arranged such that a person had a right of appeal (to say the District Court) against a decision of the society. This would prevent a “closed shop” situation developing within our sector of the industry.
- The society could be held liable for its actions in administration over accredited entities. This liability could be limited under the correct legislation.
- QDoT would need to retain their auditing process on accredited entities. Any deficiencies found could be reported to the society for investigation and further action at the expense of the responsible accredited entity.
- As the administrating body of accredited entities, the society would have a much greater influence on legislation covering marine safety in Queensland.

If you have any thoughts on this matter, please let the secretary know. The suggestion will be discussed by the management committee over the next few months.

### **SHOPPING AROUND**

There still remains the problem of ship owners shopping around when trying to obtain a CoC for Survey. These owners are not necessarily looking for the cheapest surveyor, but rather the surveyor that will require the cheapest repairs to their ship.

There may be a question as to the competence of some accredited marine surveyors. This however is the responsibility of the chief executive in exercising his or her auditing procedure.

Prior to the changeover to the TO(MS) Act and Reg in 1996, surveys were performed by government appointed surveyors. Before performing a survey, these government surveyors had access to a ship's file. This file included a copy of all previous defect notices issued on the ship. If a ship changed port for a new survey, the ship's file was transferred to the new port before the new survey was undertaken.

The current system is that a surveyor performs his or her ship inspection “cold” (i.e. without any information on the ship's survey history) unless the surveyor had performed all previous surveys on a ship.

Irrespective of a surveyor's experience or background, it is most unlikely that two surveyors would find the same deficiencies on the inspection of the same ship. All the ship owner has to do is obtain two separate ship inspections from two different surveyors and then choose which deficiency list is the most economical to rectify. For the extra cost of a few hundred dollars for the second survey, the ship owner could save thousands. Once the CoC for Survey is issued, the responsibility for the ship's seaworthy construction rests with the surveyor who issued the certificate.

The society is looking into ways of modifying the current system to provide greater information to the surveyor on the ship's history and thus improve the standard of marine safety with Queensland ships. If you have any suggestions on this matter, please contact the secretary.

### **MISCELLANEOUS EQUIPMENT**

There is some confusion within our industry with regard to miscellaneous equipment. Miscellaneous equipment is considered to be equipment that should be carried so that the ship is safe. It does not include safety equipment specified by regulation.

Miscellaneous equipment would include anchors and cables, navigation lights and shapes, gangway, communication equipment, medical stores, etc. The question arises, should this miscellaneous equipment be included in a ship inspection for a CoC for Survey covering the whole of the ship?

Section 40 of the TO(MS) Reg. requires an accredited entity to ensure that the declaration on a CoC is correct in every particular. A CoC for Survey declaration (see TO(MS) Reg, sch. 1) include a part whereby the accredited surveyor declares that a ship (or part of a ship) is of seaworthy construction.

Does this term "seaworthy construction" include miscellaneous equipment? This question has been discussed by our ProfDev committee at some length. The consensus was that the term "seaworthy construction" relates only to a ship's structure, machinery and associated equipment. It does not include miscellaneous equipment.

It is all very well for the ProfDev committee to come to this consensus, but how does this affect the chief executive's acceptance of CoC's for Survey. The society has asked QDoT to ratify their interpretation of "seaworthy construction". You will be kept informed when QDoT eventually reply to our request.

## “SEAWORTHY”

(With extracts from “Shipping Law” by Davies & Dickey, The Law Book Company)

What is this term “seaworthy” as it relates to a ship or part of a ship?

The term “seaworthy” (or a derivation of this word) is used at least 4 times in the TO(MS) Act and no less than 21 times in the TO(MS) Reg. Unfortunately there is no elaboration on this term within the Act or regulation. The term is left to be defined under common law. No further light is shed on the meaning of this term by either the Admiralty Act 1988 [C’w’lth] or the Navigation Act 1912 [C’w’lth] This is a most important term that needs to be fully understood. Being such an important term in our industry, “seaworthy” and “seaworthiness” have been raised many times in court.

Seaworthiness is a very broad concept, embracing fitness of the ship’s hull, machinery, stores, equipment and crew. The ship’s seaworthiness is considered relative to the cargo carried and the voyage to be undertaken. If a ship is not fit, in all respects, to encounter the ordinary perils of the voyage and to carry the cargo safely on that voyage, then it is unseaworthy<sup>1</sup>. There are many ways in which a ship may be found as unseaworthy, including, for example, physical unfitness of the ship itself<sup>2</sup>, bad stowage of the cargo endangering the safety of the ship<sup>3</sup>, absence of the necessary documents to establish seaworthiness<sup>4</sup>, and incompetence<sup>5</sup>, or short-handedness<sup>6</sup> of the crew.

The word “seaworthiness” under the Hague Rules means that the ship – with her master and crew- is herself fit to encounter the perils of the voyage and also that she is fit to carry the cargo safely on that voyage<sup>1</sup>.

In general, seaworthiness is primarily a question of the physical state of the ship. One of the more common quoted cases is *Hong Kong Fir Shipping Co. Ltd v. Kawasaki Kisen Kaisha Ltd* in which the concept of seaworthiness embraces obligations with respect to every part of the hull and machinery, stores and equipment.

As a general rule, an undertaking of seaworthiness requires that the ship itself be in all respects sound and able to encounter and withstand the ordinary perils of the sea, and also that the ship be fit to carry its cargo<sup>1</sup>. However, seaworthiness is not confined to the physical condition of the ship. It includes the provision of a sufficient and competent crew<sup>5</sup>. It also requires the ship to carry certain kinds of documents which bear upon its seaworthiness or fitness to perform its intended service<sup>4</sup>.

1. *Actis Co. Ltd v. Sanko Steamship Co. Ltd* 1982

2. *C'w'lth v. Burns Philp & Co.* 1946
3. *Elder, Dempster & Co. v. Paterson, Zochonis & Co.* 1924
4. *Cheikh Boutros Selim El-Khoury v. Celon Shipping Lines Ltd.* 1967
5. *Hong Kong Fir Shipping Co. Ltd v. Kawasaki Kisen Kaisha Ltd* 1962
6. *Horn v. Cia de Navegacion Freuco S.A.* 1970

### **BUILDING NOTICES**

We are still waiting for a response from QDoT on their need for building notices.

### **SOUNDING THE BILGES**

It's not always easy being an accredited person. Some of the stories we have heard are-

⇒ A surveyor attended a fishing ship for a finance valuation. Properly performing his duty, the first thing to be inspected was the ship's operating records only to find that that no entries had been made covering any modifications or maintenance to the ship. This is often reported as a common problem within the industry.

During the course of the inspection, the surveyor noticed that the ship had been fitted with a large live fish tank on the after deck. Acting professionally, the surveyor recommended that the ship's stability be reassessed and the deck structure be checked to ensure it was safe to support the load of the tank.

When told that the assessment and check could cost hundreds of dollars, the owner laughed and said, "You've got to be kidding, I'm not going to waste that sort of money."

⇒ A new aluminium commercial ship was constructed by a non-accredited owner/builder. The attending surveyor was not satisfied with the quality of some of the structural welding and issued instructions for its rectification.

The owner decided to ignore the attending survey, finished off the construction (which included lining over the offending weld). The ship was then driven (illegally?) to another port. A new surveyor was engaged to perform an inspection of the ship and issue a CoC for Survey covering the whole of the ship. Needless to say, the defective welding was not observed and the CoC issued.

⇒ If you have any soundings, let us know.

## **UPDATES**

Members with e-mail receive from the society a free copy of amendments to relevant Queensland legislation.

Members with e-mail who have purchased a SAMPQ guide or full USL Code from the society within the past 12 months receive a free copy of relevant amendments from the society.

Since the last issue of SAMPNEWS, the following Marine Orders have become effective-

### **SAMPQ GUIDES**

**None**

### **USL CODE**

#### **Section 1 – Introduction, Definitions & General Requirements**

Reprint 1A issued, incorporating all amendments up to and including Amendment List 4 and corrections reported to 31 December 1999.

### **QUEENSLAND LEGISLATION**

#### **Transport Operations (Marine Safety) Regulation 1995**

Reprint 2B issued, incorporating all amendments up to and including SL 332 of 1999.

### **MARINE ORDERS**

**NONE**

### **COMMONWEALTH LEGISLATION**

**NONE**