



## In This Issue

Current maritime qualification topics and the associated consultative process

[www.nisea.org](http://www.nisea.org)

People

Dates for your calendar

## Cranes leave Darling Harbour

Tug Koranui and barge Seatow 81 moored at Darling Harbour berth 5. The two cranes, recently repainted in AAT colours, were due to be loaded for transport to the AAT terminal in Port Kembla. Darling Harbour berths 3 to 5 will close on 12<sup>th</sup> October.

---

## Current maritime qualification topics and the associated consultative processes

Iain Kerr was the speaker at our August meeting with the Sydney Branch of the Company of Master Mariners of Australia. Iain is a Principal Advisor at the Australian Maritime Safety Authority. Before joining AMSA he had been a Principal Examiner in New Zealand, and a master on Antarctic support ships in the 2001 and 2002 seasons.

Iain commenced by emphasising that he was speaking in a strictly personal capacity and that any examples, other than what was obviously in the public domain, would be drawn from overseas – where he had worked for three previous transport safety authorities.

He said much of his work had been involved with

research, consultation, and regulation; and he enjoyed the variety, and the huge range of people he was able to work with. His job had taken him from Bali and Easter Island, to Washington and Paris – and opened up the opportunity to fulfil an ambition to cross the Southern Ocean to Antarctica. As an aside he said he'd grown up in a Scottish North Sea fishing village where the local fishermen went whaling in Antarctica during the Scottish winter, but he'd declined an apprenticeship as a whaler with Salvesen in favour of the then exotic Orient.

On the practical side, regulatory research had allowed him to fly several hundred hours both as a commercial pilot, and as an airline observer. More recently he had been at sea on square-rigged sailing ships, and on the Customs patrol vessel Botany Bay.

His presentation was then based on the following notes:  
**To Page 2**

Regulations are secondary legislation, empowered, and supported, by the primary legislation of Acts which are written by parliamentary lawyers, with advice from the lawyers in the relevant agencies

Secondary legislation is more detailed, and relatively more accessible to change. It is drafted by teams of lawyers and technical people in the agencies. In some, the lawyers do the work and are advised by technical staff. In others, technical people drive the process and employ lawyers to ensure the legality. Both professionals are always involved - but the emphasis of the final product does reflect the culture of who is driving the process.

I often quote (from overseas) the lawyers who insisted, when I was drafting the prerequisites for a qualification, that there had to be a criminal offence, and a penalty, for anyone who did not comply with those requirements. This was not about any fraud or misrepresentation, simply that someone had not yet done the required training or experience. This was not a criminal offence – it simply meant they did not yet qualify for the licence – yet those particular lawyers had a mind set that everything had to carry a penalty.

I also had to argue against a drafted regulation prohibiting anyone parachuting out of an aircraft without being a current member of the national parachuting association – although hopefully the need to escape a crashing aeroplane would have offered a reasonable excuse for breaking that law. But having said all this, my overall experience has been that lawyers have a logic and intellect that makes them good to work with, and I am grateful to them for notching up my own thought processes over the years.

Complementing this debate with lawyers, the technical regulators have to consult with industry - and commence by identifying the main stakeholders and representative bodies. I make this important point because, although there is nothing stopping individuals from making their case to the regulator, it is far better to work with representative organisation, or even groupings of those organisations. The organisations provide a means, at least in theory, to get the information out to individual members, which would be very hard for the regulators to do, and to funnel their responses back to the regulator. They can sift out the more extreme responses, and can balance the normal range of opinions. Organisations are also better able to monitor the huge mass and range of consultative material that is circulated. Some organisations, which look after their members' interests well (ever wonder why airline pilots get paid more than mariners) have a staff of lawyers – but this is reflected in their membership fees.

The moral here, of course, is that if mariners want to start addressing the now well-recognised problems of industry – which we can all list as fatigue; paperwork, or regulatory burden; strict and absolute liability (ie it happened therefore you are automatically guilty with the maximum penalty); criminalisation of the mariner;

restricted shore leave; and a lack of young people choosing seagoing as a career; then mariners' organisations must participate in regulatory consultation. And if this is too much of a burden for individual organisations, then the answer could be to co-operate, share the workload, and present a unified professional position.

Another advantage in organisations participating in consultation, is that it gives them the big picture; and an awareness of the conflicting demands that the regulator has to co-ordinate. It gives better regulations. And being part of the process, it gives an industry ownership and the best environment for those regulations to work as intended.

As an aside, the regulators themselves are also participants in other authorities' consultation – such as with education authorities, or with the National Marine Safety Committee (NMSC). Similarly, the national regulators are participants in international consultation, such as with ICAO, IMO, ILO, IALA, etc. – and this keeps us aware of what it is like on the other side of the process.

So what are the challenges of regulation?

Firstly, how much consultation to do. Be too thorough, and consultation becomes the task in itself, and it is difficult to complete the job. On the other hand, inadequate consultation, and inadequate supporting documentation, can leave regulations wide open to challenge. Each project has to be assessed, and a good example is the current drafting of the MO3 amendment to issue Ship Security Officer (SSO) qualifications. Given that the standards are in compliance with an IMO Convention that Australia is party to, and given that the amendments do not in themselves require anything of anybody - but simply offer the opportunity to gain the qualification, then the proper consultation process can be expected to be relatively simple.

The next challenge is reconciling the range of comments that come in – and this can often be facilitated by focussing on the desired end – rather than on the detail of how to achieve that end. Drawing on an example that remains relevant today: some people only want our professional qualifications to meet the minimum international convention standards. Others want to add value and have transport professionals all university qualified. The usual answer to this is for the regulator to tend towards the international standard, and for the education industry to offer the complementary extra qualification to those that want it – much as was done with the old Extra certificates. For example, the Nautical Institute starting offering its own well-regarded certificates, at the time that Safety Authorities trimmed back on their traditional requirements. And currently, there is a flyer in this month's NI Seaways advertising a Masters degree for 16 months distance education on top of a Class 1 Deck or Engine Certificate.

Sometimes the differences of opinion in consultation stem from outside agendas that are difficult to reconcile. However I prefer to remember drafting very successful new licensing standards for air traffic controllers, with regulator, union, and employer all co-operating amicably round a small table, while outside of us a very bitter air traffic control strike was in progress.

**To Page 3**

## From Page 2

A big-picture view is necessary. Sometimes regulatory changes are requested for what seems logical in itself, but which is not logical in the bigger picture. For example, several years ago in the South Island of NZ, a newly qualified pilot loaded five friends and their skateboards into a high performance aircraft, and climbed out steeply, stalling in the turn, and killing all on board. The accident report recommended all pilots have mountain flying training, which had been removed from the training syllabus by previous regulators because the training was killing more pilots than the underlying risk. A similar tunnel vision in maritime just now, is the call by Italy to amend the Col Regs to always give commercial vessels the right of way over private vessels. Obviously there is some local problem in an Italian port, but the current Col Regs, including the use of local byelaws, already address any problem, without an extra layer of complexity. This also illustrates the principal of never regulate if there are other means of addressing the problem.

Change management is a challenge, as ships' masters, engineers, aviators, and even the trainers, tend to be a very conservative lot. On the other hand, academics and politicians tend to support change.

A serious problem is when regulations are amended to offer flexibility, based on retaining some aspect as the quality control. This aspect can be a vital part of the whole package and yet, seen in isolation by those who do not have the professional background, can seem unnecessary - and as the last anachronism to remove to complete the change. The safety net, upon which other risks can be rationalised, is very vulnerable when the regulatory process moves away from the technical regulators.

How soon to regulate? Do it too soon, at the first concerns, and the regulator is considered bureaucratic, even Draconian. Do it too late, and the regulator has failed and is fodder for the media. This is one reason for reporting incidents – knowing that an average of about 600 incidents precede every serious accident. The incidents can provide the justification for acting - before the accident itself occurs.

Usually! I spoke on this very same topic of the Regulator a few years ago at a safety conference in Santiago de Chile. On the flight out, reading the in-flight magazine, I saw a photo of a seaplane flying low with a water skier in tow. Fascinating as it was, as a regulator I had to cringe. Especially as the flight magazine was a follow up to a TV programme, which in turn was about this tourist attraction, which was obviously well known locally. I incorporated the example in my presentation and said the incident was already being followed up. Sadly, before I had even returned to my office, the aircraft had crashed, killing the pilot and all his passengers.

Many of these individual points are illustrated in a single example I often use, that I'll just refer to by its

flight number of MI 185. The co-pilot was the product of regulation changes where examinations had been devolved to industry; and the traditional airline pilot exams had immediately been reduced from essay type (the meteorology paper alone was 6 hours of hard writing when I did it), to multi-choice; the practical flight-testing had been devolved; and much of the quality assurance had become in-house. The only safety net left was the normal industry practice of building experience from the statutory 200 hours to between two and three thousand hours in general aviation before selection to progress to the airlines. It was the equivalent of seetime after the College phase – before taking the watch - but it was foregone. In maritime terms this became like going straight from pre-sea college to first mate of a fast ferry. However when the expected catastrophe struck, with one of these co-pilots at the controls, there was an immediate campaign to accuse the captain of disabling the other pilot, and then killing himself and the rest of the 104 souls on board.

None of the official reports could substantiate the allegations, but the dead captain was never exonerated, and the disaster remains a mystery and is now the subject of a National Geographic documentary.

In summary, regulation and consultation are important, interesting, and challenging; they are tools to improving safety at sea; and mariners' organisations should seize any opportunity that is offered to participate.

Iain then took questions, with the focus being from members employed by port authorities who wanted to know why they were excluded from the recent updating of the revalidation requirements.

Iain explained the complexity of revalidation mentioning:

The differences with aviation where pilots were far better trained than mariners, but in motor skills and standard operating procedures where proficiency could decay quickly; whereas mariners were educated to deal with a wider range of tasks, and it was difficult to compare maritime with aviation revalidations.

The difficulty of trying to pin down exactly what was required at revalidation, with its different options, apart from the over-riding requirement that the person had to have remained competent to fulfil the full privileges of the certificate of competency they had been issued with. AMSA had in fact made a submission to IMO earlier this year regarding STCW, in order to clarify some aspects of the revalidation requirements

He summarised that, although harbour masters and VTS officers had not been included in the areas covered by the revised requirements, they still retained their option of making a case to the AMSA manager in this area, and that what they needed to do was show how their service equated to the STCW Regulation I/11 and MO3 requirements, and to the specified options for revalidation, in being able to assure AMSA that they had remained competent to safely fulfil the full privileges of their certificate.

**Iain Kerr.**

Don't forget to check out our website, where you can find details of future meetings, contact details for the committee, "What if?" reports and an archive section with all our past newsletters.

There is also a links page with links to various web sites including some member's sites.

If you have a web site, or have associations with a site, and would like to have it included on our links page please contact me.

If all goes well, I hope to update the site monthly.

*Richard Lorraine*

Welcome to Ms D.C. Shields, Lt. H.A. Simpson, Mr.M. Soprano and Mr.P Bennett who recently joined the branch.

Marcus Barrett, who transferred from the Queensland Branch in June, paid a quick visit to Richard in Harbour Control recently. Marcus was attending the Advanced Marine Pilots Course.

---

## Dates for your calendar

<b>2nd Wednesday of the month</b> 1830 hrs	<b>Sydney Branch of the Company of Master Mariners Of Australia</b> <b>Standing invitation to members</b> NSW Sports Club, Hunter Street, Sydney <b>Contact Richard Lorraine (02 47301999 / 0403 166512)</b>
<b>4<sup>th</sup> Wednesday of the month</b> 1830 hrs	<b>Melbourne Branch of the Company of Master Mariners of Australia</b> <b>Standing invitation to members</b> RACV City Club, 501 Bourke Street, Melbourne <b>Contact John Turnbull (melbsec@mastermariners.org.au) or phone 03 5281 5068)</b>
<b>Last Wednesday of the month</b> 1230 hrs	<b>South Australia Branch of the Company Of Master Mariners of Australia</b> <b>Standing invitation to members</b> Port Dock Hotel, Port Adelaide <b>Contact: Howard Pronk (08 84475924 / 0417 714649)</b>
<b>Friday 19<sup>th</sup> October</b> 1900 hrs	<b>Annual Dinner and Awards Night – South Australia</b> "A year in the life of a research scientist in Antarctica" Dr Paula Mills <b>Glenelg Golf Club, James Melrose Road, Novar Gardens</b> <b>Contact Howard Pronk (08 84475924 / 0417 714649)</b>
<b>Sunday 21<sup>st</sup> October</b> 1100 hrs	<b>National Merchant Navy Memorial</b> Kings Park, Canberra <b>Contact Richard Lorraine (02 47301999 / 0403 166512)</b>
<b>Wednesday 14<sup>th</sup> November</b> 1830 hrs	<b>Sydney Meeting with CMMA</b> <b>"RAN Operations – an update"</b> Rear Admiral Nigel Coates AM RAN, Commander Australian Fleet NSW Sports Club, Hunter Street, Sydney <b>Contact Richard Lorraine (02 47301999 / 0403 166512)</b>
<b>Wednesday 21<sup>st</sup> November</b> 1800 hrs	<b>Special combined meeting with CMMA, IMAREST and RINA</b> <b>The Salvage of the Pasha Bulker</b> Capt Drew Shannon Regional Manager Salvage, Svitzer Australasia Chatswood RSL Club, 446 Victoria Road, Chatswood <b>Contact Richard Lorraine (02 47301999 / 0403 166512)</b>

Please note that the NSW Sports Club not only wishes to have earlier advance notice of numbers attending meetings but will also charge for any "no shows". They are very strict about this and the branch has paid for a number of members who did not turn up on the night. If you would like to attend a meeting please advise Richard Lorraine by the 1200 on the Friday before the meeting. Should you find that that you cannot attend please advise Richard by 0930 on the Monday before the meeting and the "no show" charge should be avoided.