

Page 1	Page 3
<p>1 Tuesday, 5 March 2013 2 (10.00 am) 3 THE CHAIRMAN: Yes, Mr Shieh. 4 MR SHIEH: Mr Chairman, before we proceed further, there are 5 a few directions that I would like to seek from the 6 Commission in relation to the recent discovery about the 7 wiring situation of the starboard light on Lamma IV. 8 THE CHAIRMAN: Yes. 9 MR SHIEH: Professor Ho has already produced a draft report, 10 but he is in the course of finalising it and checking 11 a thing or two. In order to form a more definitive 12 view, he would wish to conduct certain tests on certain 13 parts of the equipment on board the Lamma IV, in respect 14 of which perhaps a direction from the Commission would 15 be needed because it doesn't involve simply looking at 16 it; it may involve actually scraping or taking things 17 away. 18 THE CHAIRMAN: Yes. 19 MR SHIEH: First of all, Professor Ho is able to form the 20 view, as things now stand, that the wire that had been 21 cut off inside one of the boxes in the wheelhouse did 22 lead to the starboard navigation light and therefore had 23 this been the situation as at the night of the 24 collision, the starboard navigation light could not have 25 been on.</p>	<p>1 identifying that email and that photograph and it will 2 immediately be printed out. 3 THE CHAIRMAN: Very well, yes. 4 MR SHIEH: But subject to printing that out and for the 5 purposes of identifying which wire it is we're talking 6 about. 7 THE CHAIRMAN: Which panel are we talking about? 8 MR SHIEH: It's a panel at the top left-hand corner. If we 9 can actually look at, for example, page 4900 of marine 10 bundle 12. It is that box which is depicted. 11 In fact, Professor Ho opened up all three boxes at 12 the back of the wheelhouse, but the cut-off wire -- 13 THE CHAIRMAN: This is the one with the -- 14 MR SHIEH: The mute button. 15 THE CHAIRMAN: -- indicator lights that illuminate when the 16 navigation lights, the various ones are lit? 17 MR SHIEH: Yes. 18 THE CHAIRMAN: And it has the audio alarm. 19 MR SHIEH: And also the mute button. 20 THE CHAIRMAN: And the mute button, yes. The navigation 21 light distribution board. Port side of the wheelhouse, 22 aft, in the Lamma IV. 23 MR SHIEH: Yes. Mr Chairman, the problem might have been 24 solved because actually it's in the draft report that's 25 in my hand. Perhaps I can just dig out that particular</p>
Page 2	Page 4
<p>1 Now, to ascertain the possible time at which the 2 cutting-off had taken place, Professor Ho opines that he 3 would need to cut part of the copper wires in that 4 cut-off portion, and to conduct tests back at the 5 Polytechnic University to see whether there were any, 6 for example, salt deposits on the surface. So one 7 procedural direction that is needed is that permission 8 is given or leave is given for the Commission and its 9 expert to cut samples. 10 Obviously I'm still checking whether or not the 11 cutting would still leave enough sample left intact in 12 the wire in the wheelhouse to facilitate any further 13 testing. 14 THE CHAIRMAN: Do you have photographs that depict the scene 15 of where the wire is cut so that we can follow this? 16 MR SHIEH: Yes. We don't have that in scanned documentation 17 yet, but there have been emailed photographs floating 18 around. Perhaps if RSRB can kindly make available the 19 printed-out photo, we can immediately scan it and put it 20 on the screen so that for identification purposes -- 21 THE CHAIRMAN: Yes. 22 MR MCGOWAN: I was actually shown an email yesterday 23 afternoon, sir, during the proceedings, which had been 24 emailed to my instructing solicitors, I think -- 25 MR SHIEH: Lo &amp; Lo is now in the course of actually</p>	<p>1 page. 2 THE CHAIRMAN: Is there a colour photograph? 3 MR SHIEH: There is, but a rather small one. It's actually 4 the same photo. My learned junior -- 5 THE CHAIRMAN: This has been transmitted by an email, 6 has it? 7 MR SHIEH: This has been transmitted by an email within the 8 team. I'm not sure whether this same email has been 9 sent to the other parties. It will be in due course. 10 THE CHAIRMAN: All right. Can we scan that? 11 MR SHIEH: The original photograph is being scanned. But 12 this one is actually a version attached to the draft 13 report. 14 THE CHAIRMAN: Yes. 15 MR SHIEH: So, subject to that, an order would be needed for 16 the taking of a sample of the copper wire. 17 THE CHAIRMAN: And this is to facilitate forming an opinion 18 as to when it was that the wire was cut? 19 MR SHIEH: Yes. That may or may not be definitive, but it 20 would be for the purpose of testing the presence of 21 things such as salt, which may assist in determining the 22 time of cutting. Which may have a bearing as to whether 23 or not that was the situation prevailing as of the time 24 of the collision. 25 THE CHAIRMAN: Yes.</p>

Page 5	Page 7
<p>1 MR SHIEH: So that deals with that aspect. 2 The other aspect is that -- Mr Chairman, you may 3 recall certain testing and examination done by Dr Cheng, 4 the Government chemist, in respect of the various 5 powders appearing on the starboard light and the port 6 light. 7 THE CHAIRMAN: Yes. 8 MR SHIEH: The upshot is because of the presence of I think 9 magnesium hydroxide -- I stand corrected -- 10 THE CHAIRMAN: That's a substance that's formed by 11 electrolysis of seawater. 12 MR SHIEH: Electrolysis of seawater. Dr Cheng was able to 13 form the view that a live current was flowing on the 14 port side and also on the masthead light. The same does 15 not apply to the starboard. But for the starboard side 16 Dr Cheng looked at the presence of certain white 17 powder -- 18 THE CHAIRMAN: Tungsten oxide. 19 MR SHIEH: -- which he took to be tungsten oxide, but which 20 he actually did not perform any positive testing. 21 THE CHAIRMAN: I thought he had in the second test, because 22 that's what he was asked to do when he was giving 23 evidence on the first occasion, and the issue was 24 raised. As I understood it, he came back on the second 25 occasion and said that there was tungsten oxide and</p>	<p>1 that had been formed at the resistor. The removal of 2 the rust would have to be done by means of using 3 sandpaper. 4 THE CHAIRMAN: Yes. 5 MR SHIEH: Because it's really for the purpose of measuring 6 the resistance in the resistor. So again, for the 7 purpose of enabling Professor Ho -- 8 THE CHAIRMAN: Do we have a photograph of this? Presumably 9 it's the back of the navigation light distribution 10 board, the back of the dimmer switch. 11 MR SHIEH: There is a photograph. The one I have is black 12 and white. I can perhaps show Mr Beresford some copies 13 which are coloured. Can I show the Commission first? 14 THE CHAIRMAN: Yes. 15 MR SHIEH: There is an arrow pointing at a variable 16 resistor. So Professor Ho simply wishes to use some 17 kind of sandpaper to remove the rust to conduct the 18 testing for the resistance, so as to form a view as to 19 the light intensity of the indicator lamp. 20 THE CHAIRMAN: Yes. 21 MR SHIEH: So, subject to the logistics of scanning the 22 relevant photographs and putting them on the screen and 23 perhaps identifying the precise bit on which samples 24 have to be taken or rust has to be removed, those are 25 the orders that, perhaps as a matter of urgency, I would</p>
Page 6	Page 8
<p>1 there was also magnesium hydroxide, and the two have 2 different provenances. 3 MR SHIEH: I'll check that. Certainly in the first 4 instance -- 5 THE CHAIRMAN: That's why he was asked to do the test, after 6 Mr Sussex had raised the issue of whether or not it was 7 dried salt. 8 MR SHIEH: Yes. Professor Ho has obviously seen the 9 transcript of the evidence. He highlighted the bit 10 about the presence of tungsten oxide, and that may be 11 something that would have to be follow up -- I'll follow 12 up the transcript -- but that need not detain us for the 13 time being. 14 The third aspect is that Professor Ho raised 15 an issue as to how bright the indicator lights on that 16 panel at page 4900 could have been. Because apparently 17 it could be dimmed. 18 THE CHAIRMAN: Yes. 19 MR SHIEH: Professor Ho opined in his provisional views that 20 in order to form a definitive conclusion as to how dim 21 the indicator lights could be made in that panel, one 22 would have to conduct certain tests on a resistor at the 23 back. 24 THE CHAIRMAN: Presumably some kind of rear stat. 25 MR SHIEH: Yes, but he had to actually scrape off some rust</p>	<p>1 wish to ask the Commission to facilitate immediate 2 action. 3 THE CHAIRMAN: Yes, very well. 4 Do we have the photograph of the back of the 5 switchboard yet, the distribution board? 6 Mr Mok, in the meantime, let me come to you, if 7 I may. 8 MR MOK: Yes. 9 THE CHAIRMAN: Obviously this would impact on the police 10 investigation, namely preservation of the scene, as it 11 were. 12 MR MOK: Yes. 13 THE CHAIRMAN: I suppose -- correct me if I'm wrong -- that 14 the Forensic Science Division will have been involved in 15 examining the equipment in the wheelhouse? 16 MR MOK: I presume so, yes. 17 THE CHAIRMAN: So it would seem sensible that if these tests 18 are to go ahead, that the forensic scientists be 19 present -- 20 MR MOK: Be present. 21 THE CHAIRMAN: -- so that whatever done is monitored and the 22 status quo ante can be identified and then post the 23 intervention. 24 MR MOK: And a record be made of the proceeding. 25 THE CHAIRMAN: Yes. As a matter of practicality, can</p>

Page 9	Page 11
<p>1 contact be made with whoever at the forensic science 2 laboratory has been involved in this work so they could 3 be present if this was to go ahead? 4 MR MOK: I'll make enquiry as to who that person might be, 5 now. 6 THE CHAIRMAN: Very well. 7 Mr McGowan, would Hongkong Electric also like to be 8 present? 9 MR McGOWAN: We would, sir. That's why I'm rising to my 10 feet. It's obviously important for us and we'd like to 11 have a representative present. 12 THE CHAIRMAN: Present as an observer? 13 MR McGOWAN: Yes. And if samples are going to be taken, 14 perhaps there could be sufficient samples so we could 15 carry out our own tests if necessary. 16 THE CHAIRMAN: Thank you. 17 MR McGOWAN: That might take a little bit of time for us to 18 get people from their jobs to Stonecutters. So if we 19 could be notified of the time or intended time, we can 20 make those arrangements, please, sir. It would also 21 seem prudent to have the scene photographed at various 22 stages, whether that's done by the laboratory or the 23 police photographers. It doesn't really matter very 24 much. 25 THE CHAIRMAN: Yes. I think this can be left to the various</p>	<p>1 connected to that panel of switches. Yes, where the 2 cursor is pointing now. 3 THE CHAIRMAN: Yes. 4 MR SHIEH: In fact there are copper wires protruding out of 5 the red coating. And also the next one is the black 6 one. Because two of these wires would be connected to 7 the corresponding members sticking up from that -- 8 THE CHAIRMAN: Yes. So positive and negative have been cut? 9 MR SHIEH: Correct. With the plastic coating around it also 10 removed. So, leaving the copper wiring protruding out 11 of the wire, they are connected to number 3. And 12 number 3 has been tested by Professor Ho to be the 13 starboard navigation light. 14 THE CHAIRMAN: Well, one of them is connected to number 2, 15 is it not? The second number 2, the positive one? 16 MR SHIEH: It may be a matter of the angle at which we are 17 looking. But it was actually number 3. 18 THE CHAIRMAN: Yes, very well. How does that marry up with 19 the front of the navigation light distribution board? 20 We ought to go back to the photograph at page 4900. 21 Does that marry up with the starboard light as it's 22 described, beneath the indicator light and above the 23 switch? 24 MR SHIEH: Well, if it's number 3, then number 3 from the 25 left would be the starboard light.</p>
Page 10	Page 12
<p>1 scientists or technicians to ensure that they're able to 2 monitor what's done. Thank you. 3 MR McGOWAN: Thank you. 4 THE CHAIRMAN: Is anyone here on behalf of Hong Kong 5 &amp; Kowloon Ferry? 6 MS HUI: Yes, Mr Chairman. 7 THE CHAIRMAN: Do you have any application to make? Would 8 you like to be present as an observer as well? 9 MS HUI: Is it okay if we take instructions now and report 10 after the mid-morning break? 11 THE CHAIRMAN: Very well. But I would do that with 12 dispatch, because these tests are likely to go ahead 13 sooner rather than later. 14 MS HUI: I understand, Mr Chairman. 15 THE CHAIRMAN: Thank you. Does anybody else have any 16 interests? I see nobody moving. 17 Thank you. 18 If we could display the photograph that shows what 19 I take to be the back of the indicator lights. That's 20 the one. Thank you. 21 Perhaps you can just take us through so that the 22 public can follow this. It's perhaps obvious, but which 23 is the wire that is said to have been cut? 24 MR SHIEH: Well, we can actually see a red wire which is 25 perhaps dangling right in front of our eyes, not</p>	<p>1 THE CHAIRMAN: Yes. Very well. 2 MR SHIEH: But I would not wish to jump to any conclusions, 3 because I'm not sure exactly how these things match up 4 behind the scenes. 5 THE CHAIRMAN: No. But we understand the point. And the 6 second point is the -- 7 MR SHIEH: Resistor. 8 THE CHAIRMAN: -- dimmer, and rusting is evident in the 9 photograph that we have of that. 10 MR SHIEH: Yes. The relevant resistor is -- well, it's 11 readily apparent. The big circle on the left-hand side. 12 Yes, that would be the resistor on which rust was found 13 and on which Professor Ho wishes to scrape away some of 14 the rust to conduct experiments. 15 THE CHAIRMAN: With the acquiescence of the Hong Kong 16 Police, in whose custody this vessel is, we'd ask that 17 these tests be performed in circumstances in which the 18 integrity of the vessel itself is monitored so that 19 whatever change might take place is noted, so that the 20 information is obtained without destruction of the 21 existing state of affairs. So that will have to be done 22 by liaison between the Marine Police, the Forensic 23 Science Division, Professor Ho, and those that are 24 observing. 25 MR SHIEH: Yes. I suppose for the purpose of expediency,</p>

Page 13	Page 15
<p>1 for the time being I don't believe one needs the 2 formality of drawing up an order with wording, because 3 the request has been made by the Commission during the 4 hearing? 5 THE CHAIRMAN: I'm sure that can be implemented, because 6 Mr Mok will convey that to those instructing him so that 7 it is conveyed to his lay clients, that that's the basis 8 on which the tests should go ahead. 9 MR SHIEH: Yes, Mr Chairman. 10 In respect of the presence of tungsten oxide on the 11 filament on the starboard bulb, it is correct -- and, 12 Mr Chairman, you're absolutely correct -- that Dr Cheng 13 has returned after being requested to perform tests and 14 he had performed tests which indicated the presence of 15 tungsten and oxygen on the starboard side. In fact 16 Mr Beresford has been kind enough to refer me to 17 questions I put to him as to why there was no electric 18 current present, because there was no electrolysis and 19 yet there could be tungsten. 20 THE CHAIRMAN: Yes. 21 MR SHIEH: We will refer that to the attention of 22 Professor Ho and see how it impacts on his assessment 23 and whether there can be any alternative explanations, 24 and perhaps also relay this to Dr Cheng and see whether 25 or not any of them wish to make any comment.</p>	<p>1 MR McGOWAN: Well, I'm referring to a report we had done, 2 a survey report, and there's a comment in there about 3 having the lights replaced or work done on the lights 4 shortly before the collision. 5 THE CHAIRMAN: Could you refer me to that? 6 MR McGOWAN: It's not before the Commission. It's a report 7 we didn't actually put in in the event. 8 THE CHAIRMAN: Well, if it's not before us, it's not before 9 us. 10 MR McGOWAN: Sir, I'm well aware of that. What I am saying 11 is there's an indication, which we're following up on, 12 that some work had been done on the lights, and we're 13 just trying to find out who actually did that, if that's 14 correct. But certainly Cheoy Lee have been involved in 15 the maintenance of the vessel for a number of years, and 16 they might have an interest in this. 17 THE CHAIRMAN: Is anyone from Wilkinson &amp; Grist present? So 18 there's nobody representing Cheoy Lee in the hearing? 19 MR McGOWAN: I know that at this stage, sir. But of course 20 they probably didn't anticipate this would happen. It's 21 now a live issue, and perhaps at least as a matter of 22 courtesy they should be informed. 23 MR SHIEH: Mr Chairman, I've asked Lo &amp; Lo to immediately 24 call for somebody from W&amp;G to be present, then perhaps 25 you can brief them as to what has happened.</p>
Page 14	Page 16
<p>1 THE CHAIRMAN: By all means do that. But I think it's 2 probably more useful to wait until we have 3 Professor Ho's report. Certainly I don't read draft 4 reports. When the report is received by -- 5 MR SHIEH: Certainly. And that is why we would not wish the 6 trouble the Commission with the text of the report, save 7 the absolute minimum for the purpose of identification. 8 THE CHAIRMAN: So when the report is in a signed-off 9 condition, then of course by all means provide it to 10 Dr Cheng to see if it assists him in confirming his 11 opinion or revising it. 12 MR SHIEH: Yes. Very well. 13 MR McGOWAN: Sir, I rise to my feet again. You'll recollect 14 that Cheoy Lee have been responsible for the maintenance 15 of Lamma IV, at least the annual preparations for survey 16 for about five years or so. 17 THE CHAIRMAN: Yes. 18 MR McGOWAN: I don't know whether they would have any 19 interest in this and whether they've done any work on 20 it. We haven't been able to identify anything at the 21 moment, but there is an indication that some work had 22 been done on the navigation lights, not by Hongkong 23 Electric but at some stage shortly before the collision 24 happened. 25 THE CHAIRMAN: I'm sorry, what are you referring to?</p>	<p>1 THE CHAIRMAN: Certainly. What can be done is the 2 transcript that so far exists of this morning's 3 proceedings could be drawn to their attention. We could 4 perhaps have that -- 5 MR SHIEH: Well, the notebook computer could be shown to 6 them, perhaps with oral explanation by those from 7 Lo &amp; Lo. 8 THE CHAIRMAN: Very well. So we're now in a position to 9 receive some evidence. 10 Mr Beresford? 11 MR BERESFORD: Mr Chairman, the next witness is one of the 12 recalled witnesses, Mr Wong Kam-ching. 13 THE CHAIRMAN: Thank you. Mr Wong, I'm going to ask you to 14 take the affirmation again, if you would. 15 MR WONG KAM-CHING (affirmed in Puntì) 16 (All answers via interpreter unless otherwise indicated) 17 Examination by MR BERESFORD 18 MR BERESFORD: Good morning, Mr Wong. Thank you for 19 returning to assist this Commission with its Inquiry. 20 A. Good morning. 21 Q. You will recall previously giving evidence in relation 22 to your usual practice in carrying out final surveys of 23 ships, and in particular in relation to the inspection 24 of life jackets. 25 A. Correct.</p>

<p style="text-align: right;">Page 17</p> <p>1 Q. In fact you carried out the periodic inspection of 2 Lamma IV on 8 May 2012. 3 A. No. It should be a final survey. 4 Q. Yes, all right. But the date is right, 8 May 2012? 5 A. The date is right. 6 Q. It's come out in the course of evidence taken before the 7 Inquiry that in fact Mardep had a policy for -- 8 THE CHAIRMAN: I don't think it's fair to categorise it in 9 that way. 10 There appears to have been an instruction or 11 a policy that was circulated amongst certain officers as 12 to the way in which the law was to be enforced. 13 MR BERESFORD: Very well, Mr Chairman. Thank you. 14 THE CHAIRMAN: No-one from the top end of the Marine 15 Department has come along to tell the Commission that it 16 was a Marine Department policy. 17 MR BERESFORD: Very well, Mr Chairman. I'll put the 18 question in that way. 19 Mr Wong, there appears to have been an instruction 20 or a policy that was circulated amongst certain officers 21 that the law would not be enforced strictly in relation 22 to vessels existing before the 2007 regulations came 23 into effect? 24 A. I heard of that. 25 Q. So were you aware of this policy?</p>	<p style="text-align: right;">Page 19</p> <p>1 Q. So when you gave your evidence before, you described 2 your usual practice but you didn't mention anything 3 about this policy. 4 A. Because Lamma IV was by then already an existing vessel, 5 according to Cap -- 6 A. (In English) No. 7 A. Because Lamma IV by then was already implementing, 8 conforming with the new regime, the new law; that is, 9 Cap 548G. That's why I didn't mention it. 10 Q. It seems that it was in relation to the adult life 11 jackets, but the question is whether you might have 12 passed it even though it didn't have children's life 13 jackets on board. 14 MR MOK: I'm sorry, Mr Chairman, I don't think that was the 15 evidence of this witness before. His evidence was that 16 he did count, or so far as he could tell, there were 17 children's life jackets. 18 THE CHAIRMAN: Do you have a transcript reference for this? 19 MR MOK: Could I have a moment. 20 THE CHAIRMAN: Yes. Take your time. 21 COMMISSIONER TANG: Perhaps I can help. It's page 45 of 22 Day 34, line 25. I quote here. 23 "The Chairman: By that answer, do you stand by your 24 testimony that you did see life jackets for children on 25 the vessel on 8 May 2012?"</p>
<p style="text-align: right;">Page 18</p> <p>1 A. Yes, I was clear about it. 2 Q. Can you explain to us or tell us in your own words what 3 the policy was, as you understood it? 4 A. As I understand it, for those new vessels, the new law, 5 new regime would have to be strictly enforced, namely 6 Cap 548G, concerning the relevant parts on the life 7 jackets. But for those old vessels, if they were not 8 implementing it, then we would also issue a licence or 9 certificate to them. But they would be encouraged to 10 implement and conform with the new regime. For the old 11 vessels, they will be inspected according to the code of 12 practice. 13 A. (In English) Or definition. 14 A. According to the definition of the code of practice. 15 MR MOK: I think what the witness means is that the 16 reference to "old vessel" is according to the definition 17 in the code of practice. 18 THE CHAIRMAN: Very well. So if old vessels didn't comply, 19 you would still issue a licence; is that it? 20 A. Correct. 21 THE CHAIRMAN: But you'd encourage them to comply with the 22 law in future? 23 A. Correct. 24 MR BERESFORD: And Lamma IV was an old vessel, was it not? 25 A. Correct.</p>	<p style="text-align: right;">Page 20</p> <p>1 Answer: Correct." 2 MR MOK: Yes. I think that's a summary of what he said 3 before as well. 4 MR BERESFORD: I'm grateful, Mr Commissioner, because in the 5 statement that was filed, the witness said that he had 6 no -- he said he's unable to recall the particular 7 inspection of Lamma IV. He accounted his usual 8 practice, and then said: 9 "I have no reason to believe that I did not follow 10 my usual practice in conducting the annual final survey 11 of Lamma IV in May 2012." 12 THE CHAIRMAN: Yes, but it's his testimony that is the 13 evidence received on affirmation. 14 MR BERESFORD: Indeed, Mr Chairman. I'm just trying to 15 clarify whether there may nevertheless be a possibility 16 that his usual practice -- 17 THE CHAIRMAN: Let's refresh the witness's memory from what 18 was put to him. 19 Could you translate this for the witness. I'm going 20 to read out what I want you to translate. It's at 21 Day 34, page 45, line 25. 22 Do you have that? 23 THE INTERPRETER: Line 25, yes. 24 THE CHAIRMAN: It's a question that I asked the witness, 25 towards the end of his evidence.</p>

Page 21	Page 23
<p>1 THE INTERPRETER: I'm going to translate line 25 now. 2 THE CHAIRMAN: Just to put it into context, if we go up to 3 line 21, Mr Grossman was putting it this way: 4 "... would you like to perhaps reconsider and 5 perhaps recollect that you didn't see children's life 6 jackets? 7 Answer: There is no such need. 8 The Chairman: By that answer, do you stand by your 9 testimony that you did see life jackets for children on 10 the vessel on 8 May 2012? 11 Answer: Correct." 12 A. You want my answer now? 13 THE CHAIRMAN: Well, you're being reminded of your 14 testimony. The question that is being put to you is 15 this -- 16 MR MOK: I'm sorry, Mr Chairman. His answer has not been 17 translated on line 3, so perhaps that answer could be 18 translated. 19 THE CHAIRMAN: Yes, it should have been. 20 The question being asked of you today is, did you 21 pass the Lamma IV, even though it didn't have children's 22 life jackets on board? 23 A. It's not correct. 24 THE CHAIRMAN: Yes, Mr Beresford. 25 MR BERESFORD: Thank you, Mr Chairman. I have no further</p>	<p>1 MR MOK: Mr Chairman, I'm not sure that's a fair question 2 because he never said that even if there was no child 3 jacket on board, the vessel would still pass on the 4 basis that there was. That was not the policy or what 5 the witness said. 6 THE CHAIRMAN: Well, he's never been asked to explain what 7 it was about Cap 548G that was this informal policy 8 circulating amongst certain officers. So perhaps that 9 ought to be clarified first of all. 10 MR McGOWAN: Yes, certainly. 11 Mr Wong, I'll try to do it step by step. In 2007 12 there was a change to the legislation which then 13 required, from that date, 100 per cent of life jackets 14 for every person permitted to be on board, including the 15 crew, and 5 per cent of that total to be carried for 16 children, ie 5 per cent on top of that would have been 17 children's life jackets. 18 MR MOK: I'm sorry, Mr Chairman, it would be January 2008 19 when that came into force. 20 THE CHAIRMAN: Thank you very much. Do you have a date in 21 January? 22 MR MOK: 2 January, I think, 2008. We can double-check. 23 THE CHAIRMAN: Thank you. 24 Can we try again, Mr McGowan? 25 MR McGOWAN: Yes, and that law came into effect in January</p>
Page 22	Page 24
<p>1 questions. 2 THE CHAIRMAN: Mr McGowan? 3 MR McGOWAN: Yes, I have just one matter, really, arising 4 from previous questions. 5 THE CHAIRMAN: In respect of which issue? 6 MR McGOWAN: The number of life jackets or the children's 7 life jackets in particular. 8 THE CHAIRMAN: Very well, yes. 9 Examination by MR McGOWAN 10 MR McGOWAN: Mr Wong, if you had passed Lamma IV in this 11 inspection in May 2012 without seeing any children's 12 life jackets, that would have been consistent with the 13 Mardep arrangement for vessels built before 2007, 14 wouldn't it? 15 THE CHAIRMAN: I think "arrangement" is there an unnecessary 16 addition to the language we're using. "Instruction or 17 policy circulated amongst certain officers". 18 MR McGOWAN: Yes. Do you want me to rephrase the question? 19 THE CHAIRMAN: If you would. 20 MR McGOWAN: Mr Wong, if when you inspected the Lamma IV in 21 May 2012 you didn't see any children's life jackets on 22 board, the issue of a licence saying you had would have 23 been consistent with the policy that was being employed 24 on the instruction of certain Mardep officers at that 25 time?</p>	<p>1 2008. 2 MR MOK: Sorry, this provision came into effect about 3 12 months later. 4 THE CHAIRMAN: Do you understand that to be the case? 5 A. Because I was transferred from the Labour Department 6 back to the Marine Department only in 2011. That's why 7 I only became aware of this law only after 2011. 8 MR McGOWAN: Right. Did you also become aware when you 9 returned to the Marine Department that vessels which had 10 been built before 2007, before the change to the law, 11 would not be required to meet that commitment of 100 per 12 cent for each person on board plus 5 per cent for 13 children, if they were older vessels? 14 THE CHAIRMAN: As a policy circulated amongst certain 15 officers. 16 MR McGOWAN: Yes. 17 That was an informal policy which had been 18 circulated to inspectors and surveyors. 19 A. Okay. I only know that some vessels were conforming 20 with the old regime, but some vessels were conforming 21 with the new regime. 22 MR MOK: The witness said, "There's some old vessels 23 conforming to the old regime and some old vessels were 24 conforming to the new regime". 25 A. Yes, that's right. Some old vessels were already</p>

Page 25	Page 27
<p>1 conforming with the new regime. 2 MR McGOWAN: But older vessels that did not conform to the 3 new regime would still be issued with licences? 4 A. Yes, it is the departmental policy. 5 Q. And in the case of Lamma IV, which was an older vessel, 6 she conformed with the adult life jacket requirements, 7 didn't she? 8 A. Correct. 9 Q. And I'm suggesting to you that she did not have any 10 children's life jackets on board. 11 A. As I told you, I counted the number of the child's life 12 jackets with my mobile phone. 13 MR MOK: I think it's not "counted" but "calculated", he 14 said. 15 THE CHAIRMAN: By that you mean you calculated what 16 5 per cent was of 232? 17 A. It's the carrying capacity, passenger capacity of the 18 whole boat, times 5 per cent, coming up with the result 19 of the number of children's life jackets. 20 THE CHAIRMAN: And the result was? 21 A. 12. 22 MR McGOWAN: That's what you expected Lamma IV to have on 23 board; correct? 24 A. The first time I did the calculation with my mobile 25 phone on the children's life jacket, and therefore</p>	<p>1 A. It was there during my inspection on 8 May. 2 Q. And I'm suggesting to you, Mr Wong, that your passing of 3 the survey or the inspection and the issue of the 4 licence with no children's life jackets on board was 5 consistent with this informal Mardep policy at the time 6 for older vessels? 7 MR MOK: I'm sorry. The putting of this question is not 8 based on the correct evidence as -- 9 THE CHAIRMAN: I follow that. In any event, Mr McGowan, 10 it's a comment that you can make to the Commission in 11 due course rather than for the witness to deal with, 12 because he's dealt with the evidence on an entirely 13 different basis. 14 MR McGOWAN: Yes. Well, sir, I wouldn't like to make the 15 comment without at least giving him the chance to answer 16 it. 17 THE CHAIRMAN: I think you've given him every chance. He's 18 been recalled and is being given every chance. I don't 19 think he's being denied the chance to tell us what his 20 evidence is, and he's told us it's perfectly clear. 21 MR McGOWAN: Right. Well, I won't ask any more questions. 22 Thank you very much. 23 THE CHAIRMAN: Are there any applications to ask questions 24 of the witness on behalf of Hong Kong &amp; Kowloon Ferry? 25 MS HUI: No questions, Mr Chairman.</p>
Page 26	Page 28
<p>1 I remember this, I have this impression. 2 MR MOK: I think he said, "This was the first time I did my 3 calculation". 4 THE CHAIRMAN: Thank you. 5 MR McGOWAN: That's what you expected to be shown, correct, 6 Mr Wong? 12 children's life jackets? 7 A. This is not what I expected. This is part of my job. 8 This is what I did during my inspection. 9 THE CHAIRMAN: Did you find that there were 12 children's 10 life jackets on the vessel on 8 May 2012? 11 A. It should be more than 12. 12 THE CHAIRMAN: How many? 13 A. I don't remember. 14 THE CHAIRMAN: How is it that you remember that there were 15 more than 12? 16 A. Because the usual practice is they would have put more 17 there. 18 THE CHAIRMAN: By that do you mean the usual practice of 19 Hongkong Electric? 20 A. That would be for all of the boats. Usually when there 21 is a large number of life jackets there, usually they 22 would put some of them out there. 23 MR McGOWAN: Well, it's been put to you on several occasions 24 that there were no children's life jackets on board 25 Lamma IV in May 2012.</p>	<p>1 MR MOK: We have no questions. 2 THE CHAIRMAN: Thank you. 3 Mr Beresford? 4 Thank you, Mr Wong, for returning to assist us with 5 your testimony. Your testimony is now complete, and 6 you're free to leave. Of course you may stay and listen 7 to other evidence if you wish. But thank you for coming 8 back. 9 (The witness withdrew) 10 MR BERESFORD: Mr Chairman, the next witness, in a similar 11 category, is Mr Lau Wing-tat. 12 THE CHAIRMAN: Yes. 13 Mr Lau, I'm going to ask you to take the affirmation 14 again, if you would. 15 MR LAU WING-TAT (affirmed in Puntì) 16 (All answers via interpreter unless otherwise indicated) 17 Examination by MR BERESFORD 18 MR BERESFORD: Good morning, Mr Lau. Thank you for 19 returning to assist this Commission with its Inquiry. 20 A. Good morning. 21 Q. Mr Lau, you came before to give evidence, on 18 February 22 2013, when you told us about the final survey that you 23 carried out on 8 July 2011. Do you recall? 24 A. Yes. 25 Q. In that evidence, you told us that you no longer had</p>

Page 29	1 a clear recollection of these events or of the 2 inspection, given that they took place almost two years 3 ago, and given the large number of inspections that you 4 carried out on a monthly basis, but you explained your 5 general practice in relation in particular to the 6 checking of life jackets. 7 A. Yes. 8 Q. And you explained that practice by reference to the 9 regulation in force at the time, which is the Merchant 10 Shipping (Local Vessels)(Safety and Survey) Regulation, 11 Cap 548G, in force on 2 January 2007. 12 A. Yes. 13 Q. You told us that you were aware that a vessel like 14 Lamma IV was required to have one adult life jacket for 15 each passenger on board, 100 per cent; plus 5 per cent 16 children's life jackets. 17 A. Yes. 18 Q. It appears from other evidence that's been led before 19 the Commission that there has been an instruction or 20 policy that was circulated amongst certain officers that 21 the law would not be enforced strictly in relation to 22 vessels existing before the 2007 regulations came into 23 effect. 24 A. Correct. 25 THE CHAIRMAN: Were you aware of the circulation of such	Page 31	1 He said that there had been instructions from the top, 2 that they had replies from those small vessel operators 3 and as a result of that, when we are doing our survey on 4 the life-saving appliances of these vessels and found 5 out that they did not comply with the requirements 6 stipulated in Cap 548G of the new law, then we should 7 still go ahead and we should still follow what is stated 8 on their certificate of surveys and do the counting and 9 inspection. But such a practice would not include 10 ferries and also newly built vessels. 11 THE CHAIRMAN: Who was this chief inspector? 12 A. Mr Wong Hon-chung. 13 THE CHAIRMAN: When was this conversation? 14 THE INTERPRETER: The witness has just spelt out the name: 15 Wong Hon-chung. That is the spelling of the name of the 16 chief inspector. 17 THE CHAIRMAN: Thank you. When was the conversation? 18 A. It should be before 2010, counting -- because I had 19 received four months' training before I formally started 20 working for the ship surveying section. So it should be 21 before 2010. 22 THE CHAIRMAN: When did you receive your four months of 23 training? 24 A. September 2009 to January 2010. 25 THE CHAIRMAN: It was during that period you received this
Page 30	1 an instruction or policy amongst certain officers? 2 A. I was aware of it, and I would like to elaborate if I am 3 allowed, Mr Chairman. 4 THE CHAIRMAN: Yes. 5 A. Before I formally started working for the ship surveying 6 section, I had received internal training for four 7 months. During this period I had made enquiries with my 8 chief inspector. I don't really recall when I made this 9 enquiry with my chief inspector, but then my formal -- 10 but I asked him about whether, apart from the COP, that 11 is code of practice, and also the Cap 548G, that is 12 particulars about this rule, apart from these two areas, 13 are there any other places or areas that I should pay 14 particular attention to during my survey of the 15 launches. 16 He explained, told me directly, that there was a new 17 law coming into effect in January 2007 but then there 18 was this one-year probation for this law. But by 2008, 19 this probation had ended and therefore when we were 20 doing our inspection and survey of ships, the relevant 21 chapter -- that is, the 548G -- of the new law would be 22 applied to all vessels. 23 But then he qualified and made a qualifying remark. 24 This seemed to be important to me, this remark, and 25 that's why I still remember it very clearly, even now.	Page 32	1 instruction? 2 A. That's right. 3 THE CHAIRMAN: Thank you. 4 MR BERESFORD: So was that prior to your promotion to the 5 rank of ship inspector in 2011? 6 A. By that you refer to the instruction? 7 Q. Yes. Well, the training that you did. I think you said 8 it was during training, didn't you? 9 A. Yes, during my training. 10 Q. So was that training for your rank of ship inspector? 11 A. That's right. 12 Q. Because you had been working as an assistant ship 13 inspector in the Local Vessels Safety Section since 14 September 2009, hadn't you? 15 A. I joined the Marine Department in 2002, and then in 16 September 2009, I was transferred to the Local Vessels 17 Safety Section. My job title then was assistant ship 18 inspector. 19 THE CHAIRMAN: Did you ever see this instruction or policy 20 that this chief inspector of ships, Wong Hon-chung, had 21 told you about, in writing? 22 A. No, I have never seen it before, because shortly before 23 I was going to start my formal ship surveying job work, 24 so I asked him orally about my work and he did not show 25 me anything in black and white. But he replied to me



Page 33	Page 35
<p>1 orally about this.</p> <p>2 MR BERESFORD: So did you apply this instruction in the</p> <p>3 course of your practice as an inspector?</p> <p>4 A. That's correct.</p> <p>5 Q. So when you set out your general practice in relation to</p> <p>6 the checking of life jackets in the final survey of the</p> <p>7 periodic inspection, you didn't include this in your</p> <p>8 previous evidence?</p> <p>9 A. Because at that time, all we were focused on was that</p> <p>10 the Lamma IV -- the relationship between the Lamma IV</p> <p>11 and the implementation of the new regime. So it didn't</p> <p>12 occur to me whether this old policy and then old ship --</p> <p>13 because there was the practice, the policy that in</p> <p>14 inspecting the old vessels, we will do it according to</p> <p>15 our certificate of survey. We will do the inspection on</p> <p>16 the old vessel according to their certificate of survey.</p> <p>17 Because this fact was not brought up during the previous</p> <p>18 evidence, and that's why I didn't bring it up.</p> <p>19 Q. So is it possible, Mr Lau, that you would have passed</p> <p>20 Lamma IV even though there were no children's life</p> <p>21 jackets on board?</p> <p>22 MR MOK: I'm sorry, I think it should be translated again.</p> <p>23 I think the question is, "Is it possible that you would</p> <p>24 have passed Lamma IV even though there were no</p> <p>25 children's life jackets on board"?</p>	<p>1 However, I would also base my passing in reference to</p> <p>2 the number stated on the certificate of survey in 2010.</p> <p>3 I would not have made my passing in reference to the two</p> <p>4 asterisks as stated on the certificate of survey.</p> <p>5 THE CHAIRMAN: Let's have a look at what the actual</p> <p>6 certificate says.</p> <p>7 What's the reference for that?</p> <p>8 MR BERESFORD: This was put to the witness in his previous</p> <p>9 testimony. Day 34, page 56, line 17. It's marine</p> <p>10 bundle 4, page 798.</p> <p>11 THE CHAIRMAN: Thank you.</p> <p>12 THE INTERPRETER: Which page are you referring to, counsel?</p> <p>13 MR BERESFORD: Marine bundle 4, page 798 is the certificate.</p> <p>14 The transcript reference is page 56 of Day 34.</p> <p>15 THE CHAIRMAN: Is page 798 the right reference? Are we not</p> <p>16 looking for July 2011?</p> <p>17 MR BERESFORD: No, 2010. We were talking about the previous</p> <p>18 certificate.</p> <p>19 THE CHAIRMAN: No, please give me the reference for the</p> <p>20 certificate that he issued.</p> <p>21 MR BERESFORD: The certificate that he issued is marine</p> <p>22 bundle 4, page 805.</p> <p>23 THE CHAIRMAN: Thank you.</p> <p>24 MR BERESFORD: It was dated 8 July 2011. The one with the</p> <p>25 asterisks.</p>
Page 34	Page 36
<p>1 THE CHAIRMAN: Thank you, Mr Mok.</p> <p>2 MR MOK: I'm sorry, because this question is capable of</p> <p>3 ambiguity.</p> <p>4 THE CHAIRMAN: Yes, it is.</p> <p>5 MR MOK: The ambiguity is, "even if there was no life jacket</p> <p>6 on board, would you still have passed Lamma IV"? So the</p> <p>7 answer is capable of an answer "yes".</p> <p>8 THE CHAIRMAN: Yes.</p> <p>9 MR MOK: Perhaps the question can be rephrased so that there</p> <p>10 is no ambiguity as to Mr Beresford's intention.</p> <p>11 THE CHAIRMAN: Do you want to try that, Mr Beresford?</p> <p>12 MR BERESFORD: I'm not quite sure what my learned friend is</p> <p>13 getting at, because that is the question I'm asking:</p> <p>14 even if there were no life jackets on board, is it</p> <p>15 possible that the witness would have passed the vessel?</p> <p>16 THE CHAIRMAN: Very well. Let's try that.</p> <p>17 MR BERESFORD: Perhaps it could be put in those terms, if</p> <p>18 that satisfies my learned friend.</p> <p>19 THE CHAIRMAN: Even if there were no children's life jackets</p> <p>20 on board Lamma IV when you inspected it, is it possible</p> <p>21 that you nevertheless passed it?</p> <p>22 MR MOK: Is my learned friend putting this on a hypothetical</p> <p>23 basis or on the basis that he witnessed it?</p> <p>24 THE CHAIRMAN: I'm putting it on that basis, Mr Mok.</p> <p>25 A. Yes. My answer would be, first of all, yes, I would.</p>	<p>1 THE CHAIRMAN: Yes. So if you would have passed this vessel</p> <p>2 even though it didn't have children's life jackets on,</p> <p>3 would you nevertheless have put an asterisk there saying</p> <p>4 that there were life jackets, as provided for in this</p> <p>5 form, for children -- if there had been none?</p> <p>6 A. No, I wouldn't have done that.</p> <p>7 THE CHAIRMAN: So what does the asterisk signify, as far as</p> <p>8 you are concerned, about the presence or otherwise of</p> <p>9 children's life jackets on Lamma IV when you surveyed it</p> <p>10 on 8 July 2011?</p> <p>11 A. It represents that I had seen them.</p> <p>12 THE CHAIRMAN: So during the survey, you'd seen children's</p> <p>13 life jackets up to 5 per cent of 232?</p> <p>14 A. Yes.</p> <p>15 MR BERESFORD: I have no further questions of this witness,</p> <p>16 Mr Chairman.</p> <p>17 THE CHAIRMAN: Thank you.</p> <p>18 Mr McGowan, do you have any application?</p> <p>19 MR MCGOWAN: Yes, sir, on the same subject.</p> <p>20 THE CHAIRMAN: Yes.</p> <p>21 Examination by MR MCGOWAN</p> <p>22 MR MCGOWAN: You've told us that there was this policy</p> <p>23 applicable to old vessels when --</p> <p>24 THE CHAIRMAN: Well, he's told us that he was told there was</p> <p>25 such a policy.</p>

Page 37	Page 39
<p>1 MR McGOWAN: Yes. 2 As part of your training to become an inspector of 3 ships. 4 A. Yes. 5 Q. And that policy or relaxation was applicable to old 6 vessels but not applicable to ferries and new vessels? 7 A. Correct. 8 Q. And Lamma IV was a launch, not a ferry? Do you want me 9 to repeat the question? Lamma IV was a launch, not 10 a ferry; correct? 11 A. Correct. 12 Q. And it was also an old vessel; it pre-dated the change 13 in the legislation? 14 A. Correct. 15 Q. So Lamma IV would have been the sort of vessel which 16 would have had that relaxation or non-application of the 17 rules applied to it, wouldn't it? 18 A. Correct. 19 Q. So if you'd inspected Lamma IV and found no children's 20 life jackets on board, it would have been consistent 21 with that relaxation for you to have issued the 22 certificate of survey nonetheless; correct? 23 A. Correct. 24 Q. And I'm suggesting to you that's what happened in July 25 2011 when you issued that certificate?</p>	<p>1 boat under inspection was conforming to the new regime. 2 And on the line of child life jackets, I would leave it 3 blank. 4 MR MOK: I think what he means if he did not see life 5 jackets, he would have left it blank. 6 THE CHAIRMAN: Thank you. 7 Can you just confirm that. If you hadn't seen 8 children's life jackets, you'd have left the part of the 9 form that addresses child life jackets blank; not 10 putting an asterisk there but leaving it blank? 11 A. Correct. That's right. If the old vessel was not 12 conforming to the new regime, then I would not put 13 an asterisk on it. Also, I would make reference to -- 14 please refer to page 798. I would make reference to 15 certificate of survey which is on page 798, to ascertain 16 that all the entries and data on this certificate of 17 survey are correct and also retain all the figures on 18 it, with the exception of "with buoyant lifeline", 19 because I have seen that there were buoyant lifelines 20 there. 21 THE CHAIRMAN: So are you saying if there were children's 22 life jackets on board, not only would you not have put 23 an asterisk next to the "child life jackets" part of the 24 form, but by reference to page 798 you would have put in 25 "92 adult life jackets"?</p>
Page 38	Page 40
<p>1 A. I disagree with you. Because if I had not seen any 2 children's life jackets on board, I would not have put 3 the asterisk on the certificate of survey. I counted -- 4 I don't remember really precisely -- my practice is like 5 this: I would have counted and calculated all of the 6 life jackets on board. I don't remember clearly how. 7 But if I had not seen that there were children's life 8 jackets on board the vessel, I would not have put the 9 asterisk on the certificate of survey there. 10 MR MOK: I thought the witness said what he did not remember 11 what the precise number of the life jackets. 12 THE INTERPRETER: Yes. 13 THE CHAIRMAN: Yes. 14 MR McGOWAN: So if you'd seen no children's life jackets, 15 how would you have marked the certificate? 16 THE CHAIRMAN: His evidence is that he wouldn't have put the 17 asterisk there unless he had seen children's life 18 jackets. 19 MR McGOWAN: Yes. 20 THE CHAIRMAN: That's why it's there. 21 MR McGOWAN: Sir, I appreciate that's what he just said. 22 I'm just asking him, if there had been no children's 23 life jackets on board, how he would have marked the 24 certificate. 25 A. If I had marked an asterisk on it, that means that the</p>	<p>1 A. That's correct. 2 MR McGOWAN: Even though you'd counted over 200 life 3 jackets? 4 A. Because my instructions are that I should follow the new 5 regime and also the CoS. 6 COMMISSIONER TANG: Is it "either/or"? 7 A. That's right. According to the instructions from my 8 CSI, chief ship inspector, the new regime applies to all 9 vessels. But then for the old one, if they cannot 10 conform with the new regime, then we will count it 11 according to CoS. 12 THE CHAIRMAN: CoS being code of survey? 13 A. Certificate of survey, and wherein, not conforming with 14 the new regime, then we will put down the number "92" 15 there. We will not make corrections to it. 16 MR McGOWAN: So you wouldn't update -- 17 MR MOK: Not "correction", but "changes" to it. 18 THE CHAIRMAN: Thank you. 19 MR McGOWAN: So you wouldn't update this certificate of 20 survey to reflect the true position of what was being 21 carried on board? 22 A. Correct. 23 Q. All right. Do you have any better recollection of what 24 you actually did on 8 July 2011, today, than when you 25 gave evidence last month?</p>

Page 41	Page 43
<p>1 A. Let me repeat it again. I spent about one hour or more 2 doing my inspections of Lamma IV in July 2011. So 3 I really don't have a very good recollection of it. 4 Q. Yes. In fact your evidence on the last occasion in 5 relation to Lamma IV was: 6 "... I'm sorry to tell you that I have absolutely no 7 recollection about the procedures and what happened." 8 THE CHAIRMAN: Can you give me the reference? 9 MR McGOWAN: Yes, it's page 62, sir, of Day 34. It's at 10 line 15. 11 THE CHAIRMAN: Thank you. 12 MR McGOWAN: That was your evidence on the last occasion. 13 Do you have any better recollection now? 14 A. If you are talking about what had happened on the 15 Lamma IV, I really have no recollection. 16 Q. Right. And I suggest that the stars or the asterisks 17 you put on the survey report at page 805 are just done 18 to indicate that you passed the vessel, whether there 19 were that number of life jackets on board or not. And 20 by doing that, you -- 21 THE CHAIRMAN: That's a question. Let him deal with it. 22 MR MOK: I think it should be "whether or not there was that 23 number of life jackets on board or not". 24 THE CHAIRMAN: Yes, that is the question. 25 You put the asterisk there to indicate that you</p>	<p>1 MR McGOWAN: Right. Thank you very much, Mr Chairman. 2 THE CHAIRMAN: Are there any other applications? 3 MR CHAN: No, Mr Chairman. 4 THE CHAIRMAN: Mr Mok? 5 MR MOK: No, Mr Chairman. 6 THE CHAIRMAN: Mr Beresford? 7 MR BERESFORD: Just one question, if I may, on the 8 asterisks, Mr Chairman. 9 THE CHAIRMAN: Yes. 10 Further examination by MR BERESFORD 11 MR BERESFORD: Mr Lau, could it be that the asterisks were 12 in fact a means of giving effect to the instruction that 13 existing vessels may be passed with less than the strict 14 requirements but encouraged to comply with them? 15 A. No. No, that's not what was intended. 16 MR BERESFORD: Very well. Thank you, Mr Lau. 17 THE CHAIRMAN: Thank you, Mr Lau, for returning to give us 18 further evidence. That evidence is now concluded, and 19 you're free to leave. You may, of course, stay and 20 listen, if you wish, to the other evidence. 21 A. Thank you, Mr Chairman. 22 (The witness withdrew) 23 THE CHAIRMAN: Mr Shieh? 24 MR SHIEH: Mr Chairman, the next witness is going to be 25 Captain Pryke, who is now in the hearing room, but I can</p>
Page 42	Page 44
<p>1 passed the vessel, whether or not there was that number 2 of life jackets on board? 3 A. I understand the question. By putting an asterisk 4 there, it means that it conformed with the new regime, 5 105 per cent; that is, 100 per cent for the adults and 6 5 per cent for the children. If they put more life 7 jackets out there, more than 100 per cent, that would be 8 disregarded. All I would do would be just put down the 9 asterisk on there. 10 THE CHAIRMAN: Yes. Thank you. 11 MR McGOWAN: In passing Lamma IV with no children's life 12 jackets on board, you were carrying out the instructions 13 of your superiors in Mardep? 14 MR MOK: This is on a wrong basis of the evidence. 15 MR McGOWAN: Well, the evidence from Lamma IV -- 16 THE CHAIRMAN: You're suggesting to him that Lamma IV had no 17 life jackets on board? 18 MR McGOWAN: No, children's life jackets. I said 19 "children's", I believe. 20 In passing Lamma IV with no children's life jackets 21 on board, you were carrying out the instructions of your 22 superiors at Mardep. 23 MR MOK: That's not the evidence of the witness. 24 THE CHAIRMAN: Perhaps that, again, Mr McGowan, can be 25 of comment in due course.</p>	<p>1 see that it's the usual time for -- 2 THE CHAIRMAN: Yes. I see Captain Pryke sitting in the 3 hearing room. 4 Thank you for your patience, Captain. We're going 5 to take our mid-morning break now so that we don't 6 interrupt your evidence. As you know, we take 7 a 20-minute break. 8 We'll adjourn now for 20 minutes. 9 (11.35 am) 10 (A short break) 11 (11.55 am) 12 MR CHAN: Mr Chairman, if I may, in relation to the question 13 asked this morning as to whether our clients would like 14 someone present during the testing, with the 15 Commission's permission, our clients would like to send 16 a representative. 17 THE CHAIRMAN: Yes. Liaise with counsel so that that can be 18 achieved. 19 MR CHAN: Thank you, Mr Chairman. 20 THE CHAIRMAN: Captain Pryke, would you be kind enough to 21 take the oath again. 22 CAPTAIN NIGEL ROBERT PRYKE (sworn) 23 Examination by MR SHIEH 24 MR SHIEH: Good morning, Captain Pryke. Welcome back. 25 A. Thank you.</p>

Page 45	Page 47
<p>1 Q. Since you last testified in this Commission, you have 2 prepared a report on what we call part 2, and that we 3 can find in expert bundle 3 at page 1101. Do you have 4 that in front of you? 5 A. Correct. 6 Q. In this report of yours, you set out your observations 7 on what I may call systemic matters rather than matters 8 pertaining to the navigational aspects of the incident 9 on 1 October; correct? 10 A. I regard all of them as relative to the incident, yes. 11 Q. Yes. But the focus of this latest report is on systemic 12 matters pertaining to, let's say, the management of 13 ferry operators, safety measures on board generally, and 14 also the role of Mardep? 15 A. Yes, indeed. 16 Q. Rather than on the specificities of the precise events 17 that evening, such as who breached what rule in COLREGs? 18 That would be your earlier evidence; yes? 19 A. Yes. I think I say in the beginning that the only parts 20 of marine law that I dwell on are those that I feel are 21 relevant to what we have seen in this incident. 22 Q. Thank you. Before I take you to the details of your 23 latest report and ask you to develop any particular 24 points contained in the report, I would like to ask you 25 to revisit and perhaps review or elaborate on parts of</p>	<p>1 transcripts of live testimony of the coxswains; correct? 2 A. Yes. 3 Q. But in the current context, I would like to ask -- I'm 4 not going to take you through the detailed questions and 5 answers, because obviously the transcripts of evidence 6 have to be looked at in their totality, and I take it 7 that you have done so -- yes? 8 A. Yes, I have. 9 Q. In particular, could I just broadly summarise the 10 purport and effect of what we understand to be the 11 evidence of the coxswains respectively, and see whether 12 or not any of those parts of their live evidence cause 13 you to perhaps confirm or elaborate on or perhaps modify 14 any of the views of the navigational aspects that you 15 expressed earlier. Yes? 16 A. Yes, okay. 17 Q. Put very broadly, you would recall from what you have 18 read Coxswain Chow of Lamma IV gave evidence as to his 19 first sighting of the Sea Smooth, the approaching 20 vessel. He described the timing of that visual sighting 21 by reference to a number of parameters, for example 22 whether or not it was a minute before the collision, 23 whether it was 3 cables and by reference to the speed 24 with which -- well, the short timeframe after he turned 25 starboard, and then the collision took place. So by</p>
Page 46	Page 48
<p>1 your first report concerning the navigational aspects of 2 the incident. 3 Could I ask you to look at the expert report which 4 you did the first time around. Expert bundle, page 11. 5 A. Yes. 6 Q. You discussed at paragraph 26 onwards -- in fact, if you 7 want to look at the earlier part to put it in context, 8 you should start at paragraph 24, which is the previous 9 page, page 10. 10 You discussed the track of Lamma IV and then you 11 move on to discuss the Collision Regulations, all the 12 way leading up to paragraph 29 when you set out certain 13 comments as to the Collision Regulations and the 14 question of possible breaches of various provisions in 15 COLREGs, both by Sea Smooth and also by Lamma IV? 16 A. Yes. 17 Q. Since you gave evidence on that first report of yours, 18 both the coxswains of Lamma IV and Sea Smooth, Coxswain 19 Chow of Lamma IV and Coxswain Lai of Sea Smooth, have 20 given evidence before this Commission. 21 A. Yes. 22 Q. You are aware of that? 23 A. Yes. 24 Q. In fact in your latest report, what we call the part 2 25 report, from time to time you've actually referred to</p>	<p>1 various parameters, he tried to describe the time at 2 which he first sighted the Sea Smooth. But also in his 3 live evidence, although not in any of the written 4 evidence, he also mentioned that he actually saw the 5 approach of the Sea Smooth on the radar when it was 6 about 1 nautical mile away. There could well be 7 a credibility issue arising from that, as to whether or 8 not he did in fact he the Sea Smooth on the radar, but 9 I'm not going to trouble you with that. 10 That is the purport of the evidence given by 11 Coxswain Chow. 12 Mr Sussex, representing Hong Kong &amp; Kowloon Ferry, 13 cross-examined Coxswain Chow on questions about 14 Lamma IV's movement to starboard. You may recall that. 15 The gist and the purport of the examination was to the 16 effect that the movement of Lamma IV that one could see 17 from the various plots and tracks was not part of 18 a collision-avoidance action, but simply a general 19 navigation move gradually towards starboard, and not, as 20 Coxswain Chow says, a very abrupt turn of the helm to 21 starboard upon seeing Sea Smooth. 22 You may recall that bit of the evidence. 23 A. (Witness nods). 24 Q. If you want to refresh your memory, I can give you the 25 reference.</p>

Page 49	Page 51
<p>1 A. I have it, yes.</p> <p>2 Q. Yes. In terms of Coxswain Lai's testimony -- well,</p> <p>3 I should say that in respect of both coxswains, there</p> <p>4 was some discussion as to what went on in the wheelhouse</p> <p>5 and as to the atmosphere of look-out, the system or the</p> <p>6 lack of system in the wheelhouse as to look-out.</p> <p>7 A. (Witness nods).</p> <p>8 Q. You may also have looked at the evidence.</p> <p>9 A. Yes.</p> <p>10 Q. As far as Coxswain Lai is concerned, his evidence was</p> <p>11 that there was no visual sighting of the approaching</p> <p>12 vessel until it was 2-3 ship-lengths away. A dark</p> <p>13 shadow emerged. He could not see any navigation lights.</p> <p>14 He turned the engine full astern, turned hard to</p> <p>15 starboard, but seconds later, the first sighting, there</p> <p>16 was a collision. Likewise, he described the system or</p> <p>17 lack of system in the wheelhouse and as to what I may</p> <p>18 call the ethos or the culture or the atmosphere in the</p> <p>19 wheelhouse on the evening in question.</p> <p>20 I hope this refreshes your memory as to the purport</p> <p>21 or the thrust of the evidence given by the two</p> <p>22 coxswains.</p> <p>23 With this in mind, would you like to perhaps comment</p> <p>24 on or develop or elaborate or maybe modify what you have</p> <p>25 said in your first report concerning the navigational</p>	<p>1 she hit the Lamma IV.</p> <p>2 So I think the crash-stop came literally a split</p> <p>3 second before that.</p> <p>4 But I've written down from the evidence given as</p> <p>5 close as I can get to what I think happened. Coxswain</p> <p>6 Chow sees Sea Smooth at a distance of 3 cables at</p> <p>7 20:19:50.</p> <p>8 Q. You may wish to note that a number of alternative</p> <p>9 possible times of sightings have been --</p> <p>10 A. Yes, I agree. But I'm working it out from, if you</p> <p>11 like -- purely from a timing point of view that fits the</p> <p>12 evidence.</p> <p>13 Q. Yes.</p> <p>14 A. So if Coxswain Chow sees Sea Smooth distant 3 cables at</p> <p>15 20:19:50, then after assessing the situation and picking</p> <p>16 out the navigation lights, et cetera, Chow alters course</p> <p>17 to starboard on the joystick at around 20:20:10, which</p> <p>18 would be 20 seconds later. Now he would be 1 cable</p> <p>19 distant.</p> <p>20 Now, at about that time, PS Leung, the engineer of</p> <p>21 Lamma IV, enters the wheelhouse. At 20:20:12 -- my</p> <p>22 figure -- he sees Sea Smooth through the port side</p> <p>23 window, and this could have only happened had the</p> <p>24 Lamma IV made a considerable alteration of course.</p> <p>25 Because a few seconds earlier, the coxswain is seeing it</p>
Page 50	Page 52
<p>1 aspects of this incident?</p> <p>2 A. I don't think so. Paragraph 27 of my first report,</p> <p>3 page 11, I said:</p> <p>4 "Turning to the Steering and Sailing Rules, part B</p> <p>5 of the Collision Regulations, from the evidence</p> <p>6 available [at that time] Sea Smooth.</p> <p>7 (a) did not keep a proper look-out.</p> <p>8 (b) did not proceed at a safe speed.</p> <p>9 (c) apparently did not make proper use of her radar.</p> <p>10 (d) did not take course to avoid collision.</p> <p>11 (e) did not alter course to starboard.</p> <p>12 (f) did not make any warning signals."</p> <p>13 Apparently, she did reduce speed dramatically, but</p> <p>14 it was so close to the collision point that I think it</p> <p>15 made no difference.</p> <p>16 During one of my visits to the VTS --</p> <p>17 Q. You say "she did"; this was Sea Smooth?</p> <p>18 A. Sea Smooth, yes. I think it is likely that she did what</p> <p>19 you might call a crash-stop, but it was so close that it</p> <p>20 made no difference, because, as I say, during one of my</p> <p>21 visits to the VTS, the two or three experts there with</p> <p>22 Raymond Chung, they all analysed the radar plots and</p> <p>23 they came up jointly with a view that the collision</p> <p>24 occurred at 24.5 knots.</p> <p>25 Or rather, the Sea Smooth was doing 24.5 knots when</p>	<p>1 through the forward window, and now we have the engineer</p> <p>2 seeing it through the port window.</p> <p>3 So at 20:20:12, Sea Smooth is seen through the port</p> <p>4 side window by the engineer. Two seconds later,</p> <p>5 Coxswain Lai sees Lamma IV distant 80 metres or 0.4 of</p> <p>6 a cable, that is, at 20:20:14. He does a very fast</p> <p>7 slowdown or crash-stop, and the vessels collide, as</p> <p>8 I say, at a speed of Sea Smooth of 24.5 knots.</p> <p>9 As assessed, that collision happens at 20:20:17.</p> <p>10 That's the best I can do to put all those things</p> <p>11 into a timeframe.</p> <p>12 Q. Earlier you mentioned that on Coxswain Chow's evidence,</p> <p>13 he saw the approach of the Sea Smooth roughly 3 cables</p> <p>14 away, and then after assessing the situation, he applied</p> <p>15 the joystick to turn hard starboard, and that could be</p> <p>16 about 20:20:10.</p> <p>17 A. Yes.</p> <p>18 Q. That is assuming that he has taken about 20 seconds to</p> <p>19 assess the situation and to do various things.</p> <p>20 A. Yes.</p> <p>21 Q. But another possibility that is open is that he only</p> <p>22 sighted Sea Smooth for the first time at around about</p> <p>23 the time he applied hard to starboard at 20:20:10, and</p> <p>24 therefore it wasn't a case where he took 20 seconds to</p> <p>25 review or consider the situation.</p>

Page 53	Page 55
<p>1 A. I think you have to take the view that there was a gap 2 between the engineer walking into the wheelhouse -- and 3 I forget exactly what he said, but he -- "No sooner had 4 I stood there I noticed through the port side window 5 a fast-moving vessel sailing towards us at a speed at 6 least above 20 knots. I yelled to the coxswain, 'A ship 7 is coming at us.'" 8 So all of that takes time. So I think it's 9 reasonable to assume that there is a gap between when 10 the coxswain sees it and those events I've just 11 described. 12 Q. Yes, but as to the amount of time as to the precise 13 goings-on in the wheelhouse, that obviously would be 14 a matter of comparing the oral testimony of various 15 witnesses, whereas in terms of hard data or -- 16 A. Well, exactly. But what I've used is this figure that 17 we've all used at various times, that at a closing speed 18 of 36 knots, you cover 1 cable in 10 seconds. 19 Q. Yes. 20 A. So I've sort of measured up all those cables and seconds 21 and come to something that works. 22 Q. Yes. In fact the "10 seconds, 1 cable" figure was the 23 basis upon which I put various scenarios to Coxswain 24 Chow. 25 A. Yes.</p>	<p>1 Armstrong on that point, the 20 degrees, and we couldn't 2 agree. I was so impressed with his work that I decided 3 that he was right. So there was a 20-degree 4 discrepancy, and the only way I can see that works is if 5 Lamma IV did actually manage to alter quite considerably 6 before the collision. 7 Q. Can I just have a minute. When you talked about your 8 agreement with Dr Armstrong. You had mentioned that. 9 Could you look at expert bundle 1, page 361-56, 10 paragraph 17. The point you made just now about your 11 consideration of Dr Armstrong's view and calculation, is 12 that the point that you made earlier, already, in 13 paragraph 17 of your note? 14 A. Was this in my cross-examination? Yes, that's right. 15 That's correct, yes. Yes, it is. Yes. What I was 16 really thinking of -- I had an email correspondence with 17 Dr Armstrong and I drew out a scenario and he drew out 18 a scenario, and anyway we agreed in the end the 19 42-degree angle of approach, and that could have only 20 happened if Lamma IV had altered to starboard. 21 Q. Thank you. So do you have anything else to say about 22 those paragraphs in your first report concerning the 23 navigational aspects, now that your memory has been 24 refreshed about the evidence given by the coxswains 25 respectively? You've commented on paragraph 27.</p>
<p>Page 54</p> <p>1 Q. So, coming back to the question, I believe you actually 2 said no, you wouldn't; you mean you would not actually 3 change any of the views you have adopted? 4 A. Well, I was tempted to say that I would change 5 paragraph 27(d), but I think the action taken was just 6 so late that it wasn't an action. It wasn't a practical 7 collision-avoidance option; it was just a last-minute 8 panic. 9 Q. How about paragraph 27(e)? 10 A. I haven't personally seen any -- and we're talking about 11 Sea Smooth here. 12 Q. Yes. 13 A. I haven't seen anything that I find is very clear in 14 that respect. 15 Q. And your view is even if an attempt was made to turn 16 hard to starboard, it was too late to be capable of 17 being detected or discerned? 18 A. Yes, indeed. I believe that Lamma IV did alter course, 19 and I'm not prepared to say by how much, I haven't 20 a clue, but a considerable alteration of course. There 21 came a discrepancy of 20 degrees between my plotting and 22 Dr Armstrong's calculations. I believe most of that 23 20 degrees was as a result of Lamma IV altering course 24 to starboard. 25 Because I did actually correspond with Tony</p>	<p>Page 56</p> <p>1 Paragraph 28? 2 A. I thought about paragraph 28 several times. The only 3 thing I didn't put in paragraph 28 was failure to keep 4 a proper look-out. The reason I didn't at the time was 5 that he did apparently see Sea Smooth at about 3 cables, 6 and he did have a problem with all the anchored ships in 7 the Lamma Anchorage. 8 Q. But 3 cables was still quite a way off from the 9 1 nautical mile range of the radar, and the point still 10 remains, had he used the radar, he would have seen it 11 more than 3 cables apart, at an earlier juncture? 12 A. Absolutely, yes. I suppose with hindsight, looking 13 back, I might put that point in into paragraph 28, yes. 14 Q. So, failure to keep -- 15 A. I think his look-out was clearly better than Coxswain 16 Lai, but nevertheless it did, of course, leave something 17 to be desired. 18 THE CHAIRMAN: That is to say that his look-out left 19 something to be desired as far as monitoring radar was 20 concerned? 21 A. Yes, indeed. Yes. And the other thing, of course, is 22 he did, although only rather briefly, have a man on the 23 bridge who was designated to be a look-out, whereas 24 Coxswain Lai didn't. 25 MR SHIEH: But, of course, depending on the Commission's</p>

Page 57	Page 59
<p>1 factual finding as to at which point it was that he 2 first visually sighted the Sea Smooth, questions as to 3 adequacy of look-out could well have to be modified; 4 would you agree with that? Because, I mean, from my 5 perspective it's really a commonsense question, because 6 the later you are found to have first sighted the other 7 vessel, the more problematic your look-out must have 8 been. Because otherwise you might have been able to see 9 it earlier.</p> <p>10 A. Oh, absolutely.</p> <p>11 Q. Therefore, if it had been 3 cables, then fine, it may be 12 slightly better. But if the finding is, no, it's 13 actually about 10 seconds prior to the collision, then 14 it perhaps casts more doubt on the adequacy of look-out.</p> <p>15 A. Yes. I mean, I couldn't agree with that. I think it's 16 got to be a lot more than 10 seconds --</p> <p>17 Q. I know, I know.</p> <p>18 A. -- for all sorts of reasons.</p> <p>19 Q. It's just an example.</p> <p>20 A. Yes, yes. Okay. I mean, if the Commission finds --</p> <p>21 Q. If it's a few seconds beforehand, then obviously serious 22 problems ...</p> <p>23 A. I mean, you're asking me a rather difficult question. 24 You're asking me as an expert witness what I think, and 25 I've told you what I think. If you are saying now, "The</p>	<p>1 like 700 metres, I think, was his first comment. Now, 2 700 metres is somewhat more than 3 cables, but it's in 3 the same sort of area. I think he's been fairly 4 consistent.</p> <p>5 MR SHIEH: But you say you would actually have put in 6 failure to keep a proper look-out in paragraph 28 as 7 well, for Lamma IV?</p> <p>8 A. Yes. What I was sort of halfway through saying was 9 I think -- when I wrote this, I had only seen I think 10 the police statements, and it looked better then than it 11 does now. But I still would maintain that there was 12 a bridge organisation, albeit not brilliant, on 13 Lamma IV. There was a bridge organisation. Whereas the 14 evidence of Coxswain Lai underlines even more that there 15 was no bridge organisation on the Sea Smooth, and the 16 matter of the look-out was, well, appalling.</p> <p>17 So the difference between the two is still quite 18 sharp, I believe.</p> <p>19 Q. Coxswain Chow gave evidence, live evidence before the 20 Commission, for the first time orally -- I believe I can 21 say so confidently that it was not foreshadowed in any 22 of the written materials before, but he actually did 23 look at the radar and actually he did see the approach 24 of the Sea Smooth when it was 1 nautical mile away, but 25 he did not take any action; he then continued to look</p>
Page 58	Page 60
<p>1 Commission might choose to believe something different. 2 What do you say to that?", well, I mean, that's up to 3 the Commission. It's not up to me.</p> <p>4 Q. It's not me. Let's say Mr Sussex for Hong Kong 5 &amp; Kowloon Ferry actually put the proposition to Coxswain 6 Chow, whether or not that proposition is accepted is of 7 course a matter for the Commission, but the proposition 8 has been put that all these different cable numbers were 9 incorrect and in fact Coxswain Chow actually first 10 sighted the Sea Smooth at a much later point in time --</p> <p>11 A. Yes. I suppose what I'm --</p> <p>12 Q. -- specifically later than 3 cables.</p> <p>13 A. What I'm saying to you is I will not alter my report on 14 the basis of what the Commission might choose to think 15 afterwards.</p> <p>16 THE CHAIRMAN: Your point about look-out from Coxswain 17 Chow's point of view perhaps is this, that his testimony 18 that he sighted Sea Smooth at about 3 cables is 19 consistent with the lights that Sea Smooth would be 20 displaying, in particular a flashing yellow light at her 21 masthead?</p> <p>22 A. Yes.</p> <p>23 THE CHAIRMAN: Is that how you'd put it?</p> <p>24 A. Yes, that as well. And there's the other one -- I think 25 in the police statement, he originally said something</p>	<p>1 and do various things until the next time he sighted it 2 at about 3 cables away.</p> <p>3 Obviously whether he was believed in his testimony 4 that he actually did see it on the radar is a matter for 5 the Commission. But let's say if he did look at the 6 radar and he took the approach he did, what would you 7 say about that? Do you want to take a look at what he 8 actually said?</p> <p>9 A. No, I have read it.</p> <p>10 Q. Yes. What do you have to say about that mentality, he 11 did see it and then he looked elsewhere, and then the 12 next time he took a look, "Gosh, it's 3 cables away".</p> <p>13 A. Yes --</p> <p>14 Q. Having regard to your evidence about the need to use 15 radar, he'd seen it and then proceeded to --</p> <p>16 A. Ignore it.</p> <p>17 Q. -- not take heed of it.</p> <p>18 A. Well, obviously it's not good. But there is also the 19 case, in fairness to him, that if he saw it a mile off, 20 that was before Sea Smooth altered course to port. Sea 21 Smooth altered course to port around about half a mile 22 off, as I recall. That was the point of no return, 23 frankly. Whereas if you look at an echo at a mile and 24 you see which way the track is running, which you can 25 see from the afterglow on the screen, had he seen it at</p>

Page 61	Page 63
<p>1 a mile, with an afterglow that was running down past the 2 centre of his radar screen, in other words looking not 3 to be on a collision course, he may have put that in the 4 back of his mind for later reference. Whereas the 5 alteration of course at half a mile off to port really 6 was the fatal manoeuvre in this whole thing. 7 Q. But pursuing the point further about the -- I think the 8 evidence of Coxswain Chow is that he could, put 9 broadly -- I'll stand corrected, but from my reading of 10 his evidence, that he could actually wait because, even 11 if the vessels were a bit closer, he thought there would 12 still be enough time to take collision-avoidance action. 13 Do you have any comments to make in that regard? 14 A. I'd just say that it got very much worse when they were 15 half a mile off, which is around 50 seconds from 16 collision. It suddenly got very much worse. And -- 17 well, that's all you can say. 18 THE CHAIRMAN: And if he'd been watching radar, monitoring 19 it at least, he'd have picked that up? 20 A. He'd have picked that up, yes. 21 THE CHAIRMAN: At half a mile? 22 A. He'd need to have been looking at the screen all the 23 time to have picked that up, but he would have picked it 24 up, yes. 25 MR SHIEH: Or even if not all the time, at more frequent</p>	<p>1 Sea Smooth, how would the absence of a green light have 2 impacted on your opinion? 3 A. Well, it wouldn't have made any difference at all 4 because the only thing that was ever seen was a shadow, 5 a black shadow, with no lights at all. So I can't see 6 that it would have made any difference. 7 Q. But from your opinion, would there be any -- is there 8 any stage in the approach of Lamma IV towards the Sea 9 Smooth where, in accordance with the aspect, that it 10 would appear to -- or the light that would appear to 11 someone on the bridge of Sea Smooth, the only light that 12 could have been viewed or seen by Sea Smooth would have 13 been the green light? 14 A. No. 15 Q. It's not. So it's blank? You see, can you envisage 16 a scenario whereby, according to the angle of approach 17 of the relative bearing, the only light that could have 18 been seen by Sea Smooth would have been the green light, 19 had it been lit. But, "Tough, it's gone". In other 20 words, does it in any way form an exculpatory element as 21 to one can see why Sea Smooth couldn't see it? 22 A. No. We spent about a day trying to decide whether we 23 could see all three lights. 24 Q. 3 degrees either way and 6 degrees in total, yes. 25 A. So I think the idea that you would only see the</p>
Page 62	Page 64
<p>1 intervals, he would have been able to pick up the turn 2 to port? 3 A. Yes. Had he put his bearing marker on it, just by the 4 odd glance, he might have done. But you've got to 5 remember this is all happening so quickly. We're 6 talking about, you know, 10 seconds here and 10 seconds 7 there. It's not many sweeps of the radar. I think we 8 agreed it was three seconds a sweep. 9 Q. There is one recent revelation that the Commission is 10 still investigating, and that is the possibility that in 11 fact on that fateful evening, the green navigation light 12 of Lamma IV could not have been on because the lines 13 were cut. 14 Now, of course, that is still something that is 15 being investigated and we do not know when it happened 16 and we don't know why it was done or who did it, if it 17 was done prior to the collision. But if, for example, 18 it is found that on that fateful night, the starboard 19 light was in fact not on at all, how would that have 20 impacted upon your assessment as to the question of 21 look-out on the part of Sea Smooth? 22 On the part of Lamma IV, there may be other 23 questions to answer, as to why anyone would have allowed 24 a ship without a green light to sail, but let's leave 25 that to one side. In terms of this look-out aspect of</p>	<p>1 starboard light -- bear in mind the starboard light is 2 the one facing the coastline, not facing the -- 3 Q. Yes. 4 A. No, I can't visualise any scenario where only the 5 starboard light would have been sighted. 6 THE CHAIRMAN: Because at all times, the masthead light 7 would have been visible? 8 A. Yes, and the port, the red light would have been 9 visible. 10 MR SHIEH: Port and the masthead should still have been 11 visible? 12 A. Yes. 13 Q. So the absence of a starboard light may throw up other 14 questions for other people to answer, but it doesn't 15 actually alter the case against Sea Smooth; is that the 16 gist of what you're saying? 17 A. Yes, indeed. 18 Q. Thank you. 19 A. I don't know if you recall but the engineer on the 20 Lamma IV specifically said he saw the green light. 21 Q. Yes. As I said, these are all credibility issues 22 because they throw up lots and lots of cans of worms 23 depending on the motivation for doing it and all the 24 rest of it, but let's leave that to one side. 25 A. Yes, and he also said he was standing next to the light</p>



Page 65	Page 67
<p>1 panel which was lit. 2 Q. Yes. 3 A. I think if you're an engineer, you don't stand next to 4 a light panel and not see it lit or see it -- I mean, 5 I think if he said it lit, it probably was. 6 Q. As I say, it's a credibility issue because it ultimately 7 depends on whether or not there's something deep 8 underneath that we have or not seen as yet because we 9 have hard evidence that we have seen this morning that 10 things were cut off. 11 A. Yes. 12 Q. Unless the police have let somebody in to cut it off 13 after the event, then there is a serious question to be 14 answered, but not for navigational aspects. 15 Can I now move on to your latest report. 16 A. May I just ask the Chairman a question before we go any 17 further? 18 Q. Yes. 19 A. Mr Chairman, we've discussed my first report and I must 20 say that apart from that one aspect in paragraph 28 21 where I feel I may have said a bit more about the 22 Lamma IV's poor look-out, would you want me to put that 23 in writing in some way? 24 THE CHAIRMAN: No, I think you've dealt with it now in your 25 testimony and we have a transcript of that. Thank you.</p>	<p>1 place in terms of local passenger vessels at the time or 2 before the incident. 3 Q. Yes. What in fact was prevailing? 4 A. Yes. But again, only those issues which I consider may 5 have had a bearing. 6 Q. I understand. 7 A. Then part D is what we have chosen to call the 8 discussion area about all the same things; it follows 9 through. 10 And then finally we have a summary. 11 Q. All these are then divided into topics. 12 A. That's right. 13 Q. Let's say there would be a topic pertaining to how 14 Mardep is to go about doing its business. There's one 15 bit about how a ferry operator should go about doing its 16 business. 17 A. That's right. 18 Q. For each of these topics, you have applicable regime, 19 what you could see was happening at the time, and 20 suggestions for possible recommendations? 21 A. Exactly. 22 Q. For each of these topics you have this three-stage 23 approach; correct? 24 A. Exactly. 25 Q. Therefore what I propose to do is actually do it topic</p>
Page 66	Page 68
<p>1 A. Okay. 2 THE CHAIRMAN: Unless there's something you wish to add. 3 A. No, no. Not at all. 4 MR SHIEH: Can we now move on to your report on part 2. 5 That is expert bundle 3 at page 1101. 6 A. Yes. 7 Q. Could I first of all ascertain the structure of this 8 report and then perhaps take you through your report not 9 one page after the other, but in terms of clusters of 10 topics. Because as I understand it, as I will hopefully 11 be asking you to confirm, your report follows a format 12 of setting out the relevant regime governing various 13 aspects, then what you could see in Mardep and by your 14 visits to the two vessels, and lastly as to suggestions 15 that you think as to what the Commission should consider 16 by way of recommendation on numerous topics. 17 A. Yes. First of all, at the beginning, they're all -- 18 first of all we have part A, which is the introduction. 19 Q. Yes. 20 A. Then part B highlights the general principles of 21 maritime safety. 22 Q. That's 1106? 23 A. Page 1106, yes. But the general principles as relevant 24 to this incident. 25 And then part C on page 1114 is the safety regime in</p>	<p>1 by topic so the Commission can see, for example, for 2 ferry operators, what you say to be the applicable 3 regime, what you saw to be on the ground, and what you 4 say to be the possible areas for recommendation. And 5 then move on to, let's say, what Mardep should be doing. 6 A. Right. 7 Q. I believe that would be the most helpful way of looking 8 at your evidence: topic by topic. 9 A. Right. 10 Q. Could I look at paragraph 8 of your report with you. 11 This basically sets out the topics or the areas that you 12 discuss in terms of possible areas that the Commission 13 should look at by way of considering whether to make 14 recommendations; right? 15 A. Yes. 16 Q. Paragraph 8(a), you talk about the ferry operator; 17 correct? 18 A. Yes. 19 Q. I think in subsequent parts of your report -- that is 20 dealt with in B.2 and C.2. 21 A. Yes. 22 Q. B.2 and C.2 will deal with the ferry operator, we'll 23 deal with that later. 24 "The vessel in service". That's B.3 and C.3 later; 25 yes?</p>

Page 69	Page 71
<p>1 A. Yes.</p> <p>2 Q. "Harbour traffic control", that would be B.4 and C.4?</p> <p>3 A. Yes.</p> <p>4 Q. Then (d) and (e) merged together, they form the subject</p> <p>5 matter of C.5?</p> <p>6 A. Correct.</p> <p>7 Q. Perhaps we can now go straight to your discussion about</p> <p>8 the ferry operator. We can go to page 1108:</p> <p>9 "Operational safety requirements for the ferry</p> <p>10 operator."</p> <p>11 In this case, the ferry operators were Hongkong</p> <p>12 Electric on the one hand and Hong Kong &amp; Kowloon Ferry</p> <p>13 on the other; correct?</p> <p>14 A. Yes.</p> <p>15 Q. Paragraph 10:</p> <p>16 "The fundamental requirement of the ISM Code is the</p> <p>17 establishment of a safety management system by the</p> <p>18 company or person who has assumed responsibility for</p> <p>19 operating the vessel. The principles of the ISM Code</p> <p>20 may be applied to all ships, which has been done in the</p> <p>21 United Kingdom and European Union."</p> <p>22 A. Yes.</p> <p>23 Q. So that is irrespective of tonnage?</p> <p>24 A. Yes. I need to say there that what they've done in the</p> <p>25 UK is, going along with some of the evidence you've</p>	<p>1 to develop or perhaps elaborate orally?</p> <p>2 A. Well, the fundamental is the domestic passenger ship</p> <p>3 safety management certificate. So therefore you have to</p> <p>4 have a certificate to say that you've done it. You have</p> <p>5 to -- "Duties of the master", paragraph 7 on page 1223:</p> <p>6 "The master ... shall operate that ship in</p> <p>7 accordance with the safety management system and on the</p> <p>8 basis of which the domestic ship safety management</p> <p>9 certificate was issued in relation to the ship."</p> <p>10 Then we move on to "Designated person":</p> <p>11 "A company shall in relation to each ship owned by</p> <p>12 it or for which it has operational responsibility</p> <p>13 designate a person who shall be responsible for</p> <p>14 monitoring the safe operation of the ship and, so far as</p> <p>15 it may affect safety, the efficient operation of the</p> <p>16 ship.</p> <p>17 (2) In particular, the designated person shall --</p> <p>18 (a) take such steps as are necessary to ensure</p> <p>19 compliance with the safety management system on the</p> <p>20 basis of which the domestic ship safety management</p> <p>21 certificate was issued ...</p> <p>22 (b) ensure that proper provision is made for the</p> <p>23 ship to be adequately manned, equipped and maintained,</p> <p>24 so that it is fit to operate in accordance with that</p> <p>25 safety management system ...</p>
Page 70	Page 72
<p>1 heard from Mardep where they feel that the ocean-going</p> <p>2 version of the ISM Code would be far too much for some</p> <p>3 of these smaller operators, the UK has come up with</p> <p>4 a domestic ISM Code which is all the principles are the</p> <p>5 same but the paperwork is a lot less.</p> <p>6 Q. Is that what you mentioned in tab 6, page 2019 of this</p> <p>7 bundle?</p> <p>8 A. Yes, that's correct. Yes.</p> <p>9 Q. Could you develop or perhaps elaborate as to how in the</p> <p>10 UK, as an example, they have gone about doing it to</p> <p>11 cater for, for example, more domestic aspects of ship</p> <p>12 owners or operators?</p> <p>13 THE CHAIRMAN: Sorry, could you give us that reference</p> <p>14 again?</p> <p>15 MR SHIEH: It's in the same bundle, page 2019. It's the</p> <p>16 Merchant Shipping (Domestic Passenger Ships) (Safety</p> <p>17 Management Code) Regulations 2001. It's in expert</p> <p>18 bundle 3, Mr Chairman.</p> <p>19 It's mentioned in Captain Pryke's report at</p> <p>20 footnote 11. Is that correct, Captain Pryke?</p> <p>21 THE CHAIRMAN: We don't have a 2019.</p> <p>22 MR SHIEH: I'm sorry, 1219. My mistake. 1219. It's</p> <p>23 appendix VI.</p> <p>24 THE CHAIRMAN: Yes.</p> <p>25 MR SHIEH: Yes, Captain Pryke. Is there something you want</p>	<p>1 (3) The company shall ensure that a designated</p> <p>2 person --</p> <p>3 (a) is provided with sufficient authority and</p> <p>4 resources, and</p> <p>5 (b) has appropriate knowledge and sufficient</p> <p>6 experience of the operation of ships ..."</p> <p>7 I think that very neatly sums it up in three</p> <p>8 paragraphs, what it's all about.</p> <p>9 Q. Is that really what you went on to develop in the</p> <p>10 following paragraphs in your report: 11 and 12?</p> <p>11 A. Yes.</p> <p>12 Q. The concept of a designated person who has direct access</p> <p>13 to the highest level of management; correct?</p> <p>14 A. Yes, that's correct.</p> <p>15 Q. In the context of what you have seen in the present</p> <p>16 case -- you have two local operators, Hongkong Electric</p> <p>17 and Hong Kong &amp; Kowloon Ferry -- how would you apply</p> <p>18 those concepts to the particular facts of this case?</p> <p>19 You have seen a bit of their corporate set-up and --</p> <p>20 A. I think the thing that illustrates the problem most is</p> <p>21 possibly Hongkong Electric's post-accident review where</p> <p>22 what you might consider the person to be the designated</p> <p>23 person comes at the bottom of a long list of engineers.</p> <p>24 The first engineer reports to the prime engineer and the</p> <p>25 prime engineer reports to the chief engineer, and way</p>

Page 73	Page 75
<p>1 below all of these people, there's the poor old 2 designated person. That really sums up where it all 3 goes wrong in that respect. 4 Obviously I understand that the Hongkong Electric 5 Company is primarily run by engineers, and this ferry is 6 just something used generally to take the staff to work, 7 and it doesn't really fit in to their normal management 8 system. Nevertheless, it ought to, in some better way 9 than it does. 10 THE CHAIRMAN: You're regarding the marine officer as the 11 person who would fit in to the category of "designated 12 person"? 13 A. I would think that would be appropriate, yes. 14 THE CHAIRMAN: And he occupies too low a place in the 15 ladder? 16 A. That is correct, yes. 17 MR SHIEH: "Highest level of management" -- that would have 18 to be somebody on the board level rather than some kind 19 of senior employee? 20 A. Precisely. I mean, that would be the way in a shipping 21 company. I fully accept that in the Hongkong Electric 22 Company, it may be slightly different because it's not 23 a shipping company. But nevertheless, that's where it 24 should be. 25 Q. Someone on board level?</p>	<p>1 [all the way up to 28] do not apply to the following 2 categories of ships: 3 .1 ships below 150 gross tonnage ... on any voyage; 4 .2 ships below 500 gross tonnage not engaged on 5 international voyages; and 6 .3 fishing vessels." 7 But if you look at regulation 19 as an example, 8 which is on page 1278: 9 "Carriage requirements for shipborne navigational 10 systems and equipment". 11 And paragraph 2 says: 12 "All ships, irrespective of size, shall have: 13 .1 a properly adjusted standard magnetic 14 compass ..." 15 Then you go down to 2.2: 16 "All ships of 150 gross tonnage and upwards and 17 passenger ships irrespective of size ..." 18 A spare compass; a daylight signalling lamp. 19 Then the next one, 2.3: 20 "All ships of 300 gross tonnage and upwards and 21 passenger ships irrespective of size ... 22 .1 an echo-sounding device; 23 .2 ... radar, or other means, to determine and 24 display the range and bearing of radar transponders and 25 of other surface craft ...</p>
Page 74	Page 76
<p>1 A. Yes. 2 Q. Moving on to paragraph 13 of your report: 3 "In addition to the ISM Code, the ferry operator 4 should comply with the standards set out in the other 5 codes and guidelines adopted by the IMO, in particular, 6 the SOLAS 1974. In light of the facts and issues 7 highlighted in the Inquiry, there are at least the 8 following aspects which I consider relevant to ferry 9 operation in Hong Kong, namely that local passenger 10 vessels should ..." 11 And then you have set out six aspects which you 12 regard as relevant, which you have taken from SOLAS. 13 A. Yes. 14 Q. Is there any particular part of those that you wish to 15 develop? I can see in footnote 17 you refer to 16 regulation 19 of SOLAS, chapter V, on which you may wish 17 to say something. It's page 1265 of this bundle; that 18 is, chapter V of SOLAS. 19 A. Yes, that's correct. Page 1265. But then -- 20 Q. Page 1265, and then page 1269 is the first page. 21 A. That's correct. Page 1269, regulation 1 of SOLAS, 22 chapter V. Then if you look at paragraph 4 of 23 regulation 1, it says: 24 "The administration shall determine to what extent 25 the provisions of regulations 15, 16, 17, 18, 19, 20</p>	<p>1 .3 an electronic plotting aid.. 2 .4 speed and distance measuring device ..." 3 Bear in mind it says "and passenger ships 4 irrespective of size". 5 Now, over the page, 2.4, again: 6 "... passenger ships irrespective of size shall be 7 fitted with automatic identification system (AIS), as 8 follows ..." 9 And then there is a series of dates. Now, it just 10 so happens that these are the items of navigational 11 equipment that I have highlighted in my report, radar 12 and AIS, as well as VHF radio. 13 So I'm not saying that the administration should 14 already have made it happen, but what I'm saying is if 15 they didn't make it happen then they should have 16 specified why they were not applying it to those 17 vessels, chapter V of SOLAS. 18 Q. What you are suggesting is that even if you look at the 19 SOLAS regime, there is not a compulsory, immutable 20 requirement, but it does forecall for an exercise of the 21 mind, the exercise of a judgment or discretion and 22 obviously some reason had to be considered -- 23 A. Precisely. 24 Q. -- as to why certain requirements can be exempted. Is 25 that what you were --</p>

Page 77	Page 79
<p>1 A. Precisely, yes.</p> <p>2 Q. Paragraph 13 of your report, moving on. Paragraph 13(a)</p> <p>3 talks about the navigational or radar equipment. We</p> <p>4 have looked at SOLAS chapter V. Is there any particular</p> <p>5 point in the remainder of paragraph 13 that you wish to</p> <p>6 discuss or develop? Life-saving and fire-fighting</p> <p>7 appliances, trained and medically fit crew, emergency --</p> <p>8 A. Yes. I've developed this through, as you said at the</p> <p>9 beginning, going from B through to C through to D.</p> <p>10 Q. Yes. We'll come to see that perhaps when we get to D in</p> <p>11 particular, I believe, because D would be where you set</p> <p>12 out the specifics as to what you say should be</p> <p>13 considered by way of recommendations.</p> <p>14 A. I mean, to answer your question, I would like to talk</p> <p>15 about all of those things but at the appropriate place;</p> <p>16 when we get to D.</p> <p>17 Q. Yes. Because I can see D.2.2, for example, and D.2.3,</p> <p>18 where there's a lot.</p> <p>19 A. Yes.</p> <p>20 Q. We'll come to that. So that is B.2, the regime you say</p> <p>21 should apply.</p> <p>22 We'll move on to C.2 at page 1114 where you describe</p> <p>23 what you were able to observe as being the actual</p> <p>24 situation of the operators.</p> <p>25 A. Yes.</p>	<p>1 A. Yes.</p> <p>2 Q. So in a way you are making the point I think made by</p> <p>3 Mr Chairman, that the post of marine officer in Hongkong</p> <p>4 Electric could easily have slotted into the concept of</p> <p>5 a designated person?</p> <p>6 A. Yes. Yes. I mean, his job at the moment might be to</p> <p>7 run the job on as low an amount of money as possible,</p> <p>8 but not to the highest level of safety. It's a case of</p> <p>9 where you put the emphasis.</p> <p>10 Q. Yes.</p> <p>11 "C.2.3. Requirements for navigation equipment.</p> <p>12 There is also no requirement for local passenger</p> <p>13 vessels to carry VHF radio, unless it plies outside the</p> <p>14 Victoria port. Mardep's instructions to coxswains of</p> <p>15 passenger-carrying vessels in case of emergency are to</p> <p>16 inform the VTC via VHF channels 12, 14 or 67 or to dial</p> <p>17 ... 999 via mobile phone.</p> <p>18 As for navigation equipment, there is no requirement</p> <p>19 for all local passenger vessels to carry radar or AIS</p> <p>20 equipment. Radar is required to be installed only on</p> <p>21 local vessels with speed restriction exemption</p> <p>22 certificates ('SREPs') and high-speed local ferries.</p> <p>23 Only high-speed local ferries are required to have</p> <p>24 an operating manual, route operating manual, training</p> <p>25 manual and maintenance manual. Although there was</p>
Page 78	Page 80
<p>1 Q. Hereby you describe what you observed; correct?</p> <p>2 A. Yes.</p> <p>3 Q. Paragraph 22:</p> <p>4 "The first feature to highlight is that local</p> <p>5 passenger vessels are surveyed according to local rules,</p> <p>6 in particular, the 2006 Code. Under the 2006 Code,</p> <p>7 local vessels permitted to carry more than 12 passengers</p> <p>8 are considered as class I vessels, which is inclusive of</p> <p>9 local passenger-carrying high-speed craft. However,</p> <p>10 there is no local requirement for ferry operators to</p> <p>11 have a safety policy or to use a safety management</p> <p>12 system such as the ISM Code. The reason for this is</p> <p>13 attributed to the general lack of management structure</p> <p>14 amongst the owners or literacy of the crew of local</p> <p>15 vessels."</p> <p>16 A. Yes.</p> <p>17 Q. C.2.2:</p> <p>18 "Although the Hongkong Electric Company has a marine</p> <p>19 officer, there is no requirement for ferry operators to</p> <p>20 nominate a 'designated person' with responsibility for</p> <p>21 operational safety along the lines of the ISM Code.</p> <p>22 Nevertheless, it is clear that there is often</p> <p>23 an appropriate ship manager already in place who could</p> <p>24 carry out the role of a 'designated person' after</p> <p>25 training."</p>	<p>1 a tailor-made radar operations manual for Lamma IV, and</p> <p>2 the coxswain and crew members attended radar training</p> <p>3 courses, whether this was actually read or understood by</p> <p>4 the crew is questionable. I also note that there is no</p> <p>5 mention of requiring electronic charts to be on board</p> <p>6 local passenger vessels."</p> <p>7 A. We didn't read it all, but it's also a SOLAS requirement</p> <p>8 for charts to be on board, either paper charts or</p> <p>9 electronic charts.</p> <p>10 Q. That was in chapter V that we had just seen?</p> <p>11 A. I think it is, yes.</p> <p>12 Q. Page 1279. You mentioned electronic charts, did you?</p> <p>13 A. Yes, I did.</p> <p>14 Q. Can we find that in SOLAS chapter V that we have just</p> <p>15 looked at? 2.3. That's electronic plotting aid.</p> <p>16 A. Sorry, I can't put my finger on it at the moment but it</p> <p>17 is in one of these rules.</p> <p>18 Q. That's fine, but just to assist the Commission,</p> <p>19 perhaps --</p> <p>20 A. Oh, nautical charts.</p> <p>21 Q. Nautical charts would be paper charts, but you're</p> <p>22 talking about the electronic charts; correct?</p> <p>23 A. Yes.</p> <p>24 Q. Perhaps it's in the same paragraph:</p> <p>25 "2.1.4. nautical charts and nautical publications to</p>

Page 81	Page 83
<p>1 plan and display ..."</p> <p>2 And then the next line:</p> <p>3 "... an electronic chart display and information</p> <p>4 system ..."</p> <p>5 A. That sounds good. What page are you on?</p> <p>6 Q. Page 1279. Paragraph 2.1.4. The second one.</p> <p>7 A. Yes, that's correct. That's the one.</p> <p>8 THE CHAIRMAN: So it's either/or? Either paper or</p> <p>9 electronic?</p> <p>10 A. That's correct, yes. I think paper charts are pretty</p> <p>11 few and far between on local passenger vessels.</p> <p>12 MR SHIEH: And we move on to life-saving appliances, C.2.4</p> <p>13 at paragraph 26, page 1116.</p> <p>14 A. Yes.</p> <p>15 Q. "The regime concerning life-saving appliances for local</p> <p>16 vessels has already been explained in some detail, and</p> <p>17 I note that chapter VII of the 2006 Code requires</p> <p>18 life-saving appliances to be of approved types,</p> <p>19 including those which conform to the LSA Code adopted by</p> <p>20 the Maritime Safety Committee of the IMO."</p> <p>21 And you say you would highlight some features which</p> <p>22 merit consideration for improvement.</p> <p>23 "Regarding the quantity of life jackets on board</p> <p>24 local vessels, it has been explained that, according to</p> <p>25 the requirements of part 1 and part 2 of schedule 3 to</p>	<p>1 Q. At some stage later in your report.</p> <p>2 Paragraph 29:</p> <p>3 "Regarding emergency and evacuation procedures,</p> <p>4 I note that local passenger vessels are required to</p> <p>5 carry out fire drill and abandon ship drill as part of</p> <p>6 their annual final survey, and every class I vessel</p> <p>7 carrying more than 100 passengers is required to exhibit</p> <p>8 its safety plan in conspicuous places on board.</p> <p>9 However, I also note that there is no requirement for</p> <p>10 class I vessels to set out a muster list on board, and</p> <p>11 I am given to understand that, while some ferry</p> <p>12 operators do provide muster lists to Mardep, such</p> <p>13 requirement is not mandatory.</p> <p>14 Competency requirements of the crew.</p> <p>15 Mr Chairman, this is quite a long section and I see</p> <p>16 that it's almost 1 o'clock.</p> <p>17 THE CHAIRMAN: Yes. If that's a convenient moment to take</p> <p>18 a break, we'll do so.</p> <p>19 Captain Pryke, we'll break, as you're no doubt now</p> <p>20 aware, and resume at 2.30 this afternoon.</p> <p>21 (12.58 pm)</p> <p>22 (The luncheon adjournment)</p> <p>23 (2.30 pm)</p> <p>24 THE CHAIRMAN: Yes, Mr Shieh.</p> <p>25 MR SHIEH: Captain Pryke, welcome back.</p>
Page 82	Page 84
<p>1 the ... Cap 548G, a class I vessel like the Lamma IV was</p> <p>2 required to have 100% adult life jackets plus</p> <p>3 5% children's life jackets by reference to the total</p> <p>4 number of persons on board. While I take this to mean</p> <p>5 that local passenger vessels are not required to</p> <p>6 routinely carry children's life jackets with reference</p> <p>7 to the actual number of children carried on board,</p> <p>8 Mardep appears to have developed the practice of using</p> <p>9 an asterisk to designate compliance with the requirement</p> <p>10 for children's life jackets in its certificates of</p> <p>11 survey, and there is some dispute as to what this</p> <p>12 actually means."</p> <p>13 That's right, Captain Pryke? This morning you have</p> <p>14 actually seen some of the dispute.</p> <p>15 A. Yes, yes.</p> <p>16 Q. Paragraph 28:</p> <p>17 "There is no requirement for local passenger vessels</p> <p>18 (being a class I vessel) to carry life rafts for all</p> <p>19 persons on board, or to carry equipment to break open</p> <p>20 sealed windows."</p> <p>21 That's right? Captain Pryke, I understand you will</p> <p>22 have something to say about life rafts by reference to</p> <p>23 your own experience in respect of the Our Lady Patricia;</p> <p>24 is that correct?</p> <p>25 A. Yes, that's correct.</p>	<p>1 Before the lunch break we were about to go into the</p> <p>2 topic of "Competency requirements of the view" in your</p> <p>3 report at section C.2.5 at page 1118 of expert bundle 2.</p> <p>4 Paragraph 30:</p> <p>5 "The coxswains and engineers on local ferries are</p> <p>6 required to respectively hold local certificates of</p> <p>7 competency (or equivalent certificates) as a coxswain</p> <p>8 appropriate for the vessel and as an engine operator</p> <p>9 appropriate for the total propulsion power of the</p> <p>10 engines. The system of examination and certification</p> <p>11 requirements has been explained to the Commission, which</p> <p>12 I note already includes training on navigational safety</p> <p>13 and emergency situations. The coxswains and crew</p> <p>14 involved had received training. Hong Kong &amp; Kowloon</p> <p>15 Ferry Holdings Ltd and Islands Ferry Company Ltd and</p> <p>16 Hongkong Electric provide guidance on how to handle</p> <p>17 emergency situations and require crew to conduct</p> <p>18 emergency drills. However, it is striking that both</p> <p>19 coxswains involved in this incident seemed to be unaware</p> <p>20 of the high degree of attention required when vessels</p> <p>21 are approaching each other at high speed. This</p> <p>22 indicates a training requirement."</p> <p>23 Could I pause here to clarify. By "a training</p> <p>24 requirement", you mean on-the-job training and</p> <p>25 familiarisation by their respective employers?</p>

Page 85	Page 87
<p>1 A. No. I think there is probably a general training 2 requirement. Just as an example, in the High-Speed 3 Craft Code which applies to high-speed craft on 4 international voyages, and that applies to the Hong 5 Kong-Macau ferries, one of the requirements of the 6 High-Speed Craft Code is that you have to have a type 7 rating certificate. There are various types of 8 high-speed craft, obviously, and a type rating 9 certificate means that you have to demonstrate 10 a knowledge of the craft in all respects -- the steering 11 characteristics, how the engines work, the radar, 12 et cetera, et cetera. 13 I know in my own administration at home, they have 14 decided that even local high-speed craft should be 15 required to have a type rating certificate. 16 I actually asked this question in a meeting with 17 Mardep on 6 April, and I think this is in the bundle -- 18 Q. You mean February? 19 A. Sorry, I beg your pardon. February. It's on page 1185. 20 Q. Which is a transcript of the interview? 21 A. Yes. 22 Q. With Mr YK Lai? 23 A. That's correct. And on line 18, I said: 24 "Now, I know, in the UK, for example, that may not 25 be the best example, but an example, they recently</p>	<p>1 Q. We will come to that in due course, obviously, this 2 re-drawing of the lines. So Sea Smooth falls within the 3 category of non-DSC? 4 A. Yes. When I wrote this I kind of gave up on the idea of 5 type rating certificates, but I suggest, if you go on to 6 D and E, that there should be a form of high-speed radar 7 simulation course for coxswains of high-speed craft, 8 just so that they really get it into their heads how 9 quickly they can actually come upon -- it might not 10 happen. It might only happen once every three months 11 that they have a situation like this. But they really 12 should understand just how quickly they have to react. 13 Q. Yes. That's paragraph 70, which we'll come to in due 14 course. 15 A. Yes. 16 Q. So paragraph 31, coming back to the text of your report: 17 "Regarding the medical requirements of the crew, the 18 coxswain must have an eyesight test which will be valid 19 until he is 65 years old. There is no requirement for 20 seamen to have an eyesight test. There is no 21 requirement from Mardep for any crew members on these 22 vessels to have a medical certificate. There is also no 23 legislation in place for drug and alcohol testing in 24 respect of seafarers in Hong Kong." 25 A. Yes.</p>
Page 86	Page 88
<p>1 decided they should give a type rating certificate for 2 all high-speed craft, I just wondered if you ever 3 thought ... about that." 4 Then at the bottom on line 27: 5 "Under local legislation, the type rating 6 certificate only applies to dynamically supported 7 craft." 8 Then over the page, I said, at line 1: 9 "Is Sea Smooth a dynamically supported craft?" 10 Answer: No, there is no dynamically supported craft 11 in Hong Kong." 12 So there is a certificate if you have a local 13 dynamically supported craft, but it doesn't apply to 14 other fast ferries, of which obviously there are lots. 15 Q. You understood the answer in line 2 to mean no local 16 dynamically supported craft? 17 A. That's correct, yes. 18 Q. Because obviously there is Hong Kong-Macau dynamically 19 supported craft. 20 A. Yes. In fact he goes on in line 6 to explain that. 21 Q. Yes. That's where I took it from. And of course we 22 know the rules have been changed to divide it, to redraw 23 the lines between high-speed craft and non-high-speed 24 craft and all the rest of it. 25 A. Yes.</p>	<p>1 Q. So the current regime is that the coxswain must have 2 an eyesight test, but from the time when he had it, he 3 doesn't have to have ongoing, renewed eyesight tests -- 4 A. (Witness nods). 5 Q. -- and that one single eyesight test holds until 65? 6 A. As far as Mardep is concerned. I understand Hongkong 7 Electric did do -- 8 Q. That would be imposed by the employer? 9 A. Yes, yes. 10 Q. But as far as requirements by the regulatory authorities 11 are concerned, there is that one requirement? 12 A. Yes. 13 Q. And it lasts for -- well, for as long as up to he's 14 65 years old? 15 A. Yes. 16 Q. And that is the phenomenon that we have seen, that the 17 coxswain on Sea Smooth had one eyesight test in 1997, at 18 least on Mardep's record, and, again on record, none 19 thereafter? 20 A. Yes. The medical certificate -- I mean, who knows? 21 There may have been a medical episode that had something 22 to do with the not seeing of other craft. We don't know 23 that. I mean, I think it's only reasonable that people 24 should have some sort of a medical check-up at some 25 stage.</p>

Page 89	Page 91
<p>1 Q. So what you are saying is that there may not be 2 demonstrated to be some kind of a causal link between 3 a medical condition and the actual incident, but this is 4 a -- 5 A. Nobody has proved the reverse. 6 Q. Suddenly somebody collapsed or something, nobody quite 7 knew that. But as an observation, this is the situation 8 you see in Hong Kong and you highlight it -- 9 A. Yes. Yes. 10 Q. -- because, let's say, bus drivers have to undertake 11 some kind of a medical check or -- 12 A. Yes, yes. 13 Q. Yes. 14 THE CHAIRMAN: Do you know what the position is with pilots 15 and aircraft for eyesight tests? 16 A. I would imagine -- I know what it is for marine pilots. 17 Some of the marine pilots I managed myself was every 18 five years. But it must be at least every couple of 19 years for airline pilots, I should think. 20 THE CHAIRMAN: Thank you. 21 MR SHIEH: That is imposed by the regulatory regime, not 22 voluntary? 23 A. It's very interesting, actually. Most of these things 24 are always imposed at a higher level by the employer 25 than by the regime. The point I'm making is that there</p>	<p>1 imposing on the mental ability of a coxswain, to have 2 focus for 24 hours and then 24 hours off? 3 A. It depends on the whole regime. I mean, if you're 4 talking about 365 days a year, one day on and one day 5 off, that's pretty gruelling. If you have a week off 6 every so often, it's okay. I mean, if I could show you 7 page 1187. 8 Q. Yes. 9 A. Again, this was our meeting at Mardep. 10 Q. Yes. Mr Lai again? 11 A. Mr Lai. At line 17, I asked: 12 "And do you actually have rules for the number of 13 hours you are allowed to drive a ferry? 14 Answer: We don't have concrete rules on that. 15 Question: But are there any rules that say 'you 16 must have so many days [off] a week'?" 17 Q. You intended to actually say "you must have so many off 18 a week"? 19 A. Yes, there's either a misprint or I've missed a word. 20 He says: 21 "We have no legislation on this -- for foreign-going 22 vessels we have, but not for local vessels ..." 23 THE CHAIRMAN: What are the arrangements, for example, in 24 the United Kingdom about taking meal breaks? We've seen 25 the schedule of the Sea Smooth operator, during the day</p>
Page 90	Page 92
<p>1 are no requirements by the regime, so it's not difficult 2 to get above it, if you see what I mean. Mostly 3 passenger ship companies, obviously airline companies, 4 have very, very high medical standards. 5 Q. But if it remains in the hands of the employers, then it 6 very much depends on the willingness and perhaps the 7 resources -- 8 A. Yes, yes. 9 Q. -- of a particular employer. 10 Paragraph 32: 11 "As for the working hours of the crew, I note that 12 the crew of Sea Smooth work in 24-hour shifts, where 13 they would work for a whole day and rest for another. 14 Issues of fatigue and calls for more rest periods have 15 been recorded amongst the meetings of Hong Kong 16 &amp; Kowloon Ferry. There are no proper meal times for the 17 crew, such that the coxswain and crew had to heat up 18 their meals in the wheelhouse of Sea Smooth and quickly 19 have their meals before (or perhaps sometimes during) 20 trips." 21 Now, Captain Pryke, we have heard evidence about 22 this arrangement of one day on, one day off, in Hong 23 Kong &amp; Kowloon Ferry. 24 A. Yes. 25 Q. Would you regard that as normal, or particularly</p>	<p>1 of 1 October, to which you allude. What would have been 2 the position in the United Kingdom? 3 A. There would have had to have been -- I can't tell you 4 exactly, because it covers so many different types of 5 craft. But every individual would have had to have been 6 able to take a meal break. Not necessarily 7 all together, obviously. 8 THE CHAIRMAN: Yes. And that would be a meal break for the 9 lunch meal and then one for the evening meal? 10 A. Yes, indeed. Yes. 11 MR SHIEH: Paragraph 33: 12 "It appears from the evidence given to the 13 Commission that there is no consistent approach to safe 14 manning levels on local ferries. The arrangements made 15 by Hongkong Electric to cope with the increased manning 16 levels of Lamma IV from 2 to 4 in 2008 are also noted. 17 Evidence was given that Mr Lai Ho-yin was considered by 18 the coxswain to be the additional 4th crew member on 19 Lamma IV on the night of the event, but Mr Lai 20 apparently had no maritime experience and received no 21 training as a crew member. More importantly, Mr Lai was 22 not told that he was considered as an additional crew 23 member and he did not seem to know what duties to carry 24 out as the extra member of crew." 25 You have made reference to the actual testimony of</p>

Page 93	Page 95
<p>1 Mr Lai, the event organiser, Captain Pryke. 2 A. Yes. 3 MR SHIEH: Mr Chairman, perhaps just to follow up on the 4 signing record. 5 THE CHAIRMAN: Yes. 6 MR SHIEH: As I understand it, the records previously 7 disclosed actually did not include the 1 October sign-in 8 book. 9 THE CHAIRMAN: Or 1 July, yes. 10 MR SHIEH: But for the precise event, obviously, for 11 immediate purposes, it would be whether or not Lai 12 Ho-yin signed as the relevant officer. 13 THE CHAIRMAN: Yes. 14 MR SHIEH: But as far as I can see, we're still following 15 that up. 16 THE CHAIRMAN: As I understood it, there is no record for 17 1 October. 18 Is that right, Mr McGowan? 19 MR McGOWAN: That's correct. You'll recollect, sir, that 20 that and indeed 1 July were public holidays. 21 THE CHAIRMAN: Yes. 22 MR McGOWAN: So the normal scheduled sailings were not 23 taking place. 24 THE CHAIRMAN: So what consequence has that got to do with 25 a fourth crew member signing on as such?</p>	<p>1 material about the treatment of the requirement of the 2 fourth crew on the date in question. I may be asking 3 the obvious, but you have noted these various things. 4 What are your views on the desirability of such 5 an arrangement? 6 A. Well, it's totally unacceptable, of course. The whole 7 point of having weekly emergency drills is that the crew 8 work as a team and they all understand what their role 9 is in the event of an emergency. And you can't have 10 somebody just turning up on one day who's never been to 11 a drill with the crew. It doesn't make any sense. 12 THE CHAIRMAN: So, totally unacceptable? 13 A. I would have said so, yes. 14 THE CHAIRMAN: Thank you. 15 COMMISSIONER TANG: Captain Pryke, can I ask you a question, 16 just to follow up on this one, if I may. 17 Apart from the coxswain and the engineer, whose 18 qualifications you have mentioned, do you think it's 19 also necessary to specify what the other crew members 20 should possess in terms of skills for their jobs? 21 A. That's a very good question. I seem to remember that 22 there are no requirements. I did ask that question and 23 I think there are no basic requirements from Mardep. 24 However -- 25 MR SHIEH: Just to remind you, Mr Tang Wan-on's evidence</p>
Page 94	Page 96
<p>1 MR McGOWAN: Well, there were a number of people who were on 2 board to assist. Lai was in charge of them. 3 THE CHAIRMAN: No, for the purpose of assigning someone, 4 documenting that he is assigned, what difference does 5 the fact that it's a public holiday have? 6 MR McGOWAN: Well, that's a reason there is no record, sir. 7 The records were not kept that day. 8 THE CHAIRMAN: Yes. 9 MR McGOWAN: That's the explanation we have for it. Whether 10 you accept that is obviously a matter for you. The 11 actual ferry service was being run by Lamma II, or other 12 vessels, not Lamma IV. 13 THE CHAIRMAN: The vessel was deployed for use that day and 14 was required as a minimum manning level to have four 15 crew. And you're telling me that there's no documentary 16 record that evidences that -- 17 MR McGOWAN: Of any particular individual, yes. 18 THE CHAIRMAN: Yes. Being assigned or signing as accepting 19 that he is designated in that position. 20 MR McGOWAN: That's correct, yes. As far as I'm aware. 21 THE CHAIRMAN: Thank you. 22 MR McGOWAN: We will get perhaps on to the definition of 23 a crew member later, sir. 24 THE CHAIRMAN: Yes. 25 MR SHIEH: Well, Captain Pryke, you have heard some new</p>	<p>1 from Hongkong Electric is that when they first saw the 2 four-crew requirement, they took some internal advice 3 and they thought that since there are no requirements as 4 qualification for the concept of "crew", they then 5 developed this arrangement whereby apart from the 6 coxswain and the engineer, for the fourth crew, any 7 member would be roped in, in a way, ad hoc. 8 A. Yes. 9 Q. So this is the view taken by Hongkong Electric as well. 10 A. There are various -- 11 Q. Certain members. I was corrected. Anyway. 12 A. There are various functions that these crew will have to 13 undertake. One of them, of course, is tying the boat 14 up. There are certain skills required in tying ropes 15 and not getting in the way of ropes and not breaking 16 a leg, as it were. So, yes, they don't need to be 17 enormously well-trained but they certainly need some 18 training. As I've said here, I believe if they're going 19 to be look-outs, which most of them would have to be, 20 then they would have to have an eyesight test as well. 21 Q. It may be an obvious question, but obviously if someone 22 is to be regarded as crew, the first thing he needs to 23 be told is he mustn't be the first one to jump ship, 24 right? 25 A. Yes. Yes.</p>



<p style="text-align: right;">Page 97</p> <p>1 THE CHAIRMAN: With three lifebuoys. 2 MR SHIEH: I wasn't here, but I know ... 3 THE CHAIRMAN: I take it that when you adverted to 4 participating in emergency drills, what you had in mind 5 was a member of a crew has to be able to perform as 6 a member of a team dealing with, for example, fire, 7 abandoning ship -- 8 A. Yes. 9 THE CHAIRMAN: -- deploying the life raft, muster station 10 drills -- 11 A. And crowd control. On some of these ferries, crowd 12 control would be enormously important if the cabin was 13 full of smoke, et cetera. You need some training in 14 that, and you need, as I say, to be able to work as 15 a team. Very important. 16 And I hasten to add, in defence of Mardep, that this 17 really is the employer's responsibility to get this 18 right. Every ship is clearly a bit different. 19 MR SHIEH: Captain Pryke, you are aware of the feature in 20 our case that for Lamma II, the minimum manning 21 requirement imposed by Mardep was two at the material 22 time? 23 A. Yes. 24 Q. And for Lamma IV, the minimum manning requirement was 25 four at the material time?</p>	<p style="text-align: right;">Page 99</p> <p>1 would ever get less than four on a two-deck ship of that 2 nature. 3 Q. And, it may be an obvious question, but what do you say 4 about the minimum required manning level for Lamma II, 5 which was two at the material time? 6 A. I have absolutely no knowledge of Lamma II. I presume 7 it's much smaller, is it? 8 THE CHAIRMAN: I think it has a similar passenger-carrying 9 capacity, total capacity. 10 MR McGOWAN: It's actually a larger passenger-carrying 11 capacity. 12 THE CHAIRMAN: Yes. We could have a look at the licence, 13 could we not? We were looking at it this morning. 14 MR SHIEH: Marine bundle 11, page 3747. In terms of 15 length -- 16 THE CHAIRMAN: 26 metres length overall. Number of 17 passengers: 236. Number of persons permitted to be 18 carried: 244. 19 A. Is it two decks? 20 MR SHIEH: It is. 21 A. Well, I mean, I would find it very difficult to 22 understand why that isn't four as well. 23 THE CHAIRMAN: That is to say, the minimum safe crew manning 24 level ought to be four, or you'd find it difficult to 25 understand why it isn't four?</p>
<p style="text-align: right;">Page 98</p> <p>1 A. Yes. 2 Q. I may be jumping ahead a little bit, but to my simple 3 mind, for a two-level, two-deck vessel like Lamma IV -- 4 there's an upper deck and there's a main deck -- when 5 the vessel was departing and it was about to arrive, 6 let's say two crew members would have to depart the 7 wheelhouse respectively to get ready and stuff like 8 that. 9 A. Yes. 10 Q. There would be the coxswain. If a regime is to be 11 implemented whereby there would have to be an extra pair 12 of eyes in the wheelhouse to help with the look-out, 13 does that therefore mean that the minimum for a vessel 14 of this nature -- two decks -- would have to be four at 15 the very least? Two to take care of the disembarking 16 arrangements and departure arrangements, and one to stay 17 with the coxswain and not leave the wheelhouse to take 18 care of the deck duties? 19 A. Yes, I would have said for a vessel like that, and when 20 you prepare the muster list, I'm sure you would also 21 find that you needed four people. If, for example, two 22 men were fighting a fire with a hose or something, 23 you've got one in the wheelhouse and you've got one 24 other preparing the passengers for whatever they need to 25 do. So I would find it extremely unlikely that you</p>	<p style="text-align: right;">Page 100</p> <p>1 A. Yes. I mean, obviously you'd need to look at it in 2 a bit more detail. But I would be surprised if a safe 3 manning level was less than four. 4 MR SHIEH: We've had some evidence from Mardep that 5 individual inspectors form their own view when they 6 perform the annual survey, so to speak. So one 7 inspector would have done Lamma II, another inspector 8 would have done Lamma IV and formed his view on his 9 particular inspection, that he would raise it to four. 10 A. Yes. 11 Q. What do you say about this kind of system, whereby one 12 inspector goes around seeing Lamma IV and raises it to 13 four with, well, certainly on the evidence, no 14 communication or no overall strategy as to what is to 15 happen to similar vessels? 16 A. Further on in my report I've highlighted that rather 17 than just the one certificate, which they have at the 18 moment, and on that one certificate you have minimum 19 crew as well as maximum passengers, I recommend that 20 they have a passenger certificate and -- 21 Q. It's paragraph 69, right, which we will come to? 22 A. Paragraph 69, yes. No, it wasn't that one, actually. 23 But just to say that there should be a passenger 24 certificate and a minimum crew certificate. Because 25 they're two totally separate things.</p>

Page 101	Page 103
<p>1 Q. Yes, I know. But in terms of the organisational 2 behaviour, where you have the regulatory authority with 3 one inspector going around seeing one vessel, saying, 4 "I should increase it to four", and the other inspector 5 saying -- 6 A. But, I mean, my point is -- I didn't perhaps explain it 7 well enough. My point is that if you had to sign 8 a certificate purely for the minimum crew level required 9 for that ship, you would have to be told how to 10 establish that level, rather than it's just a number on 11 the bottom of another certificate. 12 Q. So the need for some paper trail, at least, as to the 13 thought process -- 14 A. Yes, indeed. 15 Q. -- giving rise to how four is reached, how two is 16 reached? 17 A. Yes. 18 THE CHAIRMAN: So that in the process as happened here, so 19 we've received evidence, of an officer in the Marine 20 Department determining that the minimum safe manning 21 level of Lamma IV should be increased from two to four, 22 his reasoning behind that ought to be documented so that 23 there would be an audit trail, so that a superior, to 24 start with, would be able to note the fact that that had 25 happened and so that the owner or operator of the vessel</p>	<p>1 a policy. And a route operating manual is a standard 2 document for a high-speed craft, even a local high-speed 3 craft, where things like the anchorage and the fog light 4 and the vessels coming out of the typhoon shelter would 5 all be documented in this route operating manual. 6 Q. At paragraph 51, now that we are at it, when you say 7 "the reason for this seems to be more of a technicality 8 rather than a policy", the reason is this requirement 9 only came in after the 2007 changes? 10 A. Precisely, yes. 11 Q. And it's required of HSCs, which Sea Smooth would have 12 been had it been built later? 13 A. Yes. My point is, if it was a technical requirement to 14 do with the build or the equipment on the boat, I can 15 understand it. But because it's a manual and it applies 16 equally to Sea Smooth as any other high-speed craft, it 17 just doesn't make any sense. 18 Q. You see no policy reason or proper rationale for it? 19 A. No, no. None at all. 20 Q. Save for the historical accident that Sea Smooth was 21 built at a time before this requirement came in and the 22 regime was imposed too late to capture -- 23 A. Yes, that's right. 24 Q. It fell between the cracks in a way? 25 A. In a way, yes.</p>
<p>Page 102</p> <p>1 would have an explanation as to why it's happened? 2 A. Yes, indeed. Yes. 3 MR SHIEH: I was picking up from the line of questioning 4 that had taken place with the relevant inspector. 5 THE CHAIRMAN: Yes. 6 MR SHIEH: Now, we have looked at section C.2, which 7 basically sets out our observations of what may be 8 called the problems. 9 Now we move to section D.2, which contains your 10 discussion as to possible solutions or ways of 11 improvement. Section D.2 may be found at page 1130. 12 A. May I just draw your attention to C.5.2 before we move 13 on, the issue of certificates? 14 Q. Yes. 15 A. That's where I said they're only issued with one 16 certificate; they should have a passenger certificate 17 and a safe manning certificate. Then, paragraph 51: 18 "Secondly [for some technical reason], high-speed 19 craft ... built before 2007 (such as Sea Smooth) do not 20 have to comply with the requirements of providing 21 an operating manual, route operating manual and 22 a training manual ..." 23 Which, if it had been built after 2007, even if it 24 was a local craft, it would have to do so. And I just 25 make the point this is more a technicality than</p>	<p>Page 104</p> <p>1 Q. Thank you. We are going to look at your section D.2, 2 which is page 1130. Still on the topic of the ferry 3 operator. Paragraph 59 at page 1130: 4 "As mentioned in paragraphs 22 and 23 above, the 5 main problem that I see is the absence of a domestic 6 requirement for ferry operators to implement safety 7 management systems in Hong Kong. There may sometimes be 8 exemptions granted by the administration to very small 9 operators with very basic operations for reasons of 10 strategy transport provision. Whilst I understand the 11 reason for such exemptions, I firmly believe that the 12 passenger needs to be told which ferries are fully 13 safety compliant and which are not. If nothing else, it 14 will encourage those small operators to aim at the 15 highest standard. Compliance could be publicly shown by 16 exhibiting a Mardep document of compliance on board." 17 Then over the page: 18 "In my view, all operators of launches and ferry 19 vessels carrying more than 100 passengers should be 20 required to implement a safety management system based 21 on the ISM Code to perform the functional requirements 22 of paragraph 1.4 of the ISM Code ..." 23 And then you set that out in full. 24 Paragraph 61: 25 "In the witness statement of Leung Wing-fai ..."</p>

Page 105	Page 107
<p>1 Who testified yesterday, Captain Pryke, as you might 2 have observed. 3 A. Yes, I did. 4 Q. "... he makes the point that the smaller ferry operators 5 will not be able to cope with the implementation of the 6 ISM Code. I do not believe at all that there is 7 a requirement to create a significant bureaucratic 8 requirement which is sometimes associated with the 9 implementation of the ISM Code in ocean-going vessels. 10 In the UK, for example, the administration has 11 introduced the 'Domestic Safety Management Code' for 12 smaller operations." 13 Which is the one that we looked at this morning. 14 A. Yes, it is. Yes. 15 Q. "Mr Leung also states that the setting up of a company 16 structure to run a safety management system would drive 17 some operators into bankruptcy. That is of course not 18 the aim. If dealing with a one-man operation or 19 a family-run business, then it must be clear who bears 20 the safety responsibility and that safety has the 21 highest possible priority, as evidenced by a policy for 22 safe operation. 23 I believe that the survey aspects will be addressed 24 in Dr Armstrong's expert report." 25 So it's not the existence of a corporate structure</p>	<p>1 contact the VTC directly in case of emergency, and that 2 VTC may contact all local passenger vessels to give 3 urgent safety advice. I would further suggest that all 4 local ferries or launches carrying more than 5 100 passengers should also be fitted with AIS and 6 collision-avoidance radar. It should be noted that it 7 is dangerous to use AIS equipment for collision 8 avoidance without proper training. 9 It is only common sense that all ferries of any size 10 should be fitted with radar if they are going to operate 11 in poor visibility. All class I passenger vessels 12 should routinely use radar to assist with collision 13 avoidance in any conditions. In this case, the coxswain 14 of Lamma IV had no proper radar training. The coxswain 15 of Sea Smooth who had a radar licence chose to use 16 visual look-out and neglected to use his radar." 17 And there you actually refer to the latest 18 transcript of Lai Sai-ming's evidence. 19 A. Yes. 20 Q. Is there any point you wish to develop in terms of 21 navigation equipment? Apart from the evidence about the 22 coxswains not actually looking at the radar, we have 23 actually also had evidence of the coxswains not knowing 24 how to use the latest installation, and the English 25 manual -- he couldn't even read English. That's not to</p>
<p>1 that matters? 2 A. I believe in safety and I believe in management, and 3 ISM, I understand it 100 per cent. Not everybody does 4 understand it 100 per cent, and I don't blame them for 5 that. It has taken years for the concept to take root 6 internationally. But it can be done in any 7 organisation, even a one-man organisation. Send him on 8 a course and he will understand the basics. It is 9 possible. And you have to be clear, when giving 10 instructions from ashore to the men on board the boat, 11 that they understand what is required. 12 I always remember, I learned handling ferries from 13 a Captain Thompson, and his nickname was "The late 14 Captain Thompson". He was never on time, but he never 15 had an accident. He was never more than two minutes 16 late, but he never once had an accident. And the idea 17 that you have to go tearing off at full speed on all 18 occasions is the first thing you have to instil in 19 people's minds is a complete waste of time. 20 Q. Thank you. "Navigation equipment", which is 21 paragraph 63: 22 "In light of the present requirements of navigation 23 equipment on local passenger vessels, I would suggest 24 that all local ferries or launches carrying more than 25 12 passengers should carry VHF radio, so that they may</p>	<p>1 blame him for not knowing English, but one could well 2 say there might have to be some regime of making sure -- 3 A. No, that's right. Of course, that's one of the planks 4 of the safety management system, that you have to make 5 sure that you understand the training requirements 6 amongst the crew. It's a fundamental piece of the whole 7 thing. 8 I get the impression that some of these chaps are 9 sort of keeping away from the radar because they're 10 a little bit frightened of it. They don't really 11 understand all the ins and outs, and if they push the 12 wrong button, they might not be able to get the picture 13 back. 14 If they understood 100 per cent how the thing 15 worked, I'm quite sure they'd use it all the time 16 because it's such a vital tool for any ferry operator. 17 Q. In a way, would you say it's not just a matter of 18 knowing which buttons to press; it's a culture? 19 A. Yes, it is a cultural thing to some degree. I mean, we 20 heard evidence from Coxswain Lai to that extent. But it 21 also is a training thing. I understand where he's 22 coming from. He's been at sea ever since he was 23 a child, on fishing boats, et cetera, and he's never 24 found it necessary. But we all have to get -- even 25 I know now how to use a computer, much to my children's</p>

Page 109	Page 111
<p>1 amazement. We all just have to move on. It's as simple 2 as that.</p> <p>3 Q. Yes. Because when I mean a culture -- I mean, if you 4 come from a family that grew up at sea, you may 5 sometimes develop this culture that, "Look, we know the 6 sea better than anyone else".</p> <p>7 A. Yes, that's right.</p> <p>8 THE CHAIRMAN: And the starting point is that the operators 9 of the vessel should understand the training needs of 10 their crew?</p> <p>11 A. Absolutely.</p> <p>12 MR SHIEH: "Life-saving appliances", D.2.3. 13 "I leave that all vessels carrying more than 14 12 passengers should be required to carry life rafts 15 sufficient to accommodate all persons on board if the 16 voyage extends beyond Victoria Harbour. This is not 17 just because of life-saving in the event of collision or 18 grounding but also in the event of fire. I realise that 19 there is currently no such requirement in Hong Kong 20 legislation. Photograph 1 below shows two local 21 high-speed ferry vessels (which are very similar to Sea 22 Smooth) I managed the introduction of in 1986 on the 23 route from Portsmouth Harbour to Ryde Isle of Wight. 24 In my view, in line with 'the evolution of the 25 regime concerning life-saving appliances for local</p>	<p>1 actually a fire regulation at the time, and it was for 2 DSC vessels -- sorry, Dynamically Controlled Craft Code, 3 which is the predecessor to the High-Speed Craft Code. 4 If the fire protection is one hour, which it was in 5 those vessels, so if the engine caught fire, the fire 6 protection would last for an hour, the rule said you had 7 10 minutes to make your mind up what to do, divide the 8 remaining figure of 50 minutes by 3, and we had to do 9 a full evacuation in 17 minutes, which we did.</p> <p>10 Q. In paragraph 66, you mooted the suggestion about 11 requiring the provision of life rafts for all persons on 12 board in respect of longer voyages.</p> <p>13 A. Yes.</p> <p>14 Q. Now, I know this is not a question of a statutory 15 definition of what is meant by "long".</p> <p>16 A. No.</p> <p>17 Q. But how long is "long"?</p> <p>18 A. Well, I would have thought Lamma Island would be long 19 enough.</p> <p>20 Q. Yes. Three-quarters of an hour or so?</p> <p>21 A. Yes, yes.</p> <p>22 Q. But not in respect, for example, of Star Ferry from 23 Central to Tsim Sha Tsui?</p> <p>24 A. No. I can see that that's probably where the old rule 25 came from. It probably came from the Star Ferry and</p>
Page 110	Page 112
<p>1 vessels', consideration should be given to the provision 2 of life rafts for all persons on board in respect of 3 longer voyages. Photograph 2 shows the life rafts used 4 in the mass evacuation exercise of Our Lady Patricia." 5 That we can see over the page. 6 Pausing here first. Before we move on to the 7 question of life jackets, because you have personal 8 experience of introducing this regime of life rafts in 9 Our Lady Patricia. 10 Perhaps you could develop this for us? 11 A. We developed the idea of open reversible life rafts, 12 which means unlike the sort of thing you'd have in the 13 middle of the Atlantic which has a canopy and you can 14 get shelter in, it's just a very simple raft for local 15 vessels and -- in those days, up to 80 people -- you can 16 probably have them for more now. But the idea of 17 elderly people and very young children just jumping into 18 the harbour in the middle of the night is, if I may say 19 so, a very old-fashioned idea. And then you're going to 20 throw them a life ring and probably knock them out in 21 the process. It strikes me that something wants a bit 22 of updating here. 23 Q. As a matter of interest, the photograph at page 1134, 24 that's during an evacuation drill, is it? 25 A. Yes. The reason we had to do that was -- it was</p>	<p>1 everybody said, "Well, I can see the other side; it's 2 all right." But once you start going on faster ferries, 3 longer distances, I don't think that's really 4 appropriate anymore. And I have heard of the fact that 5 very old people can actually die purely by jumping in 6 the water. 7 Q. Because of temperature? 8 A. Well, heart attack. 9 Q. Heart attack. 10 THE CHAIRMAN: Can you help us as to how these open life 11 rafts are equipped? Would they have, for example, 12 flares and signalling mirrors and drogues or not? 13 A. I don't believe so, no. 14 THE CHAIRMAN: So just a life raft? 15 A. I think they're just a life raft, yes. 16 THE CHAIRMAN: For short-term survival? 17 A. Exactly. Very short-term, yes. 18 THE CHAIRMAN: In waters where you'd expect to be picked up 19 quite quickly? 20 A. Yes. 21 THE CHAIRMAN: As happened in the circumstances here? 22 A. Indeed. Indeed, yes. 23 MR SHIEH: But can you help us identify on the photograph at 24 page 1133 where the life rafts can be seen? 25 A. Yes. There are six on these craft. There's one just</p>

<p style="text-align: right;">Page 113</p> <p>1 under the lifebuoy astern, one just under the bridge, 2 and one on the foredeck. These vessels actually carried 3 475 people. 6 times 8 is 480. So we evacuated 480 4 people in 17 minutes. 5 THE CHAIRMAN: Is this a subject that you discussed with 6 Marine Department officers; the use of life rafts of 7 this kind as an improvement to the current system? 8 A. I think I did. I can't remember where it is. 9 MR SHIEH: I'm trying to check. There's a discussion as to 10 life jackets. 11 A. Yes, I did, sir. On page 1166, the top of the page. 12 Q. Yes. Thank you. 13 A. This was a meeting with Mr Leung and Mr SH Wan. 14 Q. Mr Leung who gave evidence yesterday? 15 A. Yes. 16 Q. "One of the things I've been thinking about is the 17 provision of life rafts on smaller ferries." 18 That's the part, right? 19 A. Yes. 20 Q. But that's part of an introduction to a question leading 21 to AIS, where Mr Leung replied, over the next page. But 22 as far as I can see, there isn't a specific response by 23 Mardep, although the point has been raised in their 24 presence. 25 A. Yes. There's actually a slight misprint there.</p>	<p style="text-align: right;">Page 115</p> <p>1 international classification societies as long as it has 2 a certificate and is seen to be adequate. I have been 3 told that there is no possibility of Mardep insisting on 4 any one particular design." 5 Can you take us to that part of your interview with 6 Mr Leung Wing-fai; that is, in the same bundle at 7 page 1174, I think. Line 23 onwards. That is really 8 the part of your discussion about life jackets; is that 9 correct? 10 A. Yes, indeed. 11 Q. Could you draw our attention to any part that you wish 12 to develop or comment upon Mardep's attitude on this 13 point? 14 A. Well, I have to rather sympathise with his answer 15 because they deal with I think it's six international 16 classification societies who all stamp approval on 17 various pieces of equipment, and all to a SOLAS 18 standard, obviously. So it is actually quite difficult 19 for an authority to say, "Well, I don't like the German 20 one. I'm only going to have the Chinese one", or 21 whatever. I think they have to, as members of SOLAS, 22 accept equipment that complies with the rules. 23 I understand that to be the case. 24 The question about the long tapes getting caught in 25 the seats was, I thought, rather interesting.</p>
<p style="text-align: right;">Page 114</p> <p>1 Line 11, that should read "dry shod evacuation"; in 2 other words, you get off without getting your feet wet. 3 THE CHAIRMAN: Of course, one consideration for the use of 4 life rafts going to the Isle of Wight might well be the 5 likely sea temperature. Now, Hong Kong enjoys much 6 warmer waters. Do you know what the position is, for 7 example, in Australia, in Sydney Harbour, for example, 8 with the Manly Ferry, or in Perth, perhaps going to 9 Fremantle? 10 A. I'm sure Dr Armstrong would know the answer to that. 11 I'm afraid I don't know. 12 THE CHAIRMAN: That would be a factor, would it not, sea 13 surface temperature? 14 A. Yes, it could be a factor. Yes. But I think my point 15 really is that in this day and age, it's not necessary. 16 The cost is not that huge when you're building a new 17 ship. I understand if you suddenly did it tomorrow for 18 all ships, it would cost a lot of people a lot of money. 19 But in the future, if you plan building a new ship, it 20 wouldn't be a huge cost. 21 THE CHAIRMAN: Thank you. 22 MR SHIEH: Moving on to paragraph 67: 23 "In respect of the type of adult life jackets 24 required, I understand from Mardep that they must accept 25 any SOLAS 1974 standard jacket approved by the main</p>	<p style="text-align: right;">Page 116</p> <p>1 Q. That's page 1175, line 7. 2 A. Yes. I'm not sure if it's here, but he said to me that 3 the longer tapes were put on because European people are 4 fatter and they wear bigger coats and you have to get 5 the tapes around the coats. 6 Q. At line 30. It talks about people of abnormal size. 7 A. Yes. 8 Q. "... Europeans, if they are bigger sizes, if the life 9 jackets ... they wear thicker clothes ..." 10 A. Well, it just shows they've thought about the problem, 11 doesn't it. 12 THE CHAIRMAN: We know this to have been a problem because 13 we've received a considerable amount of evidence 14 about it. 15 A. I see no reason why, if it's a problem, the tapes 16 shouldn't be shortened. I personally agree that the 17 buckle type is probably a better bet. But -- 18 THE CHAIRMAN: Well, that's received the vote of the 19 Hongkong Electric employees, the survivors of disaster, 20 and the management listened to what they said. 21 A. Yes. I think they're right, and I think it's less easy 22 for the management of Mardep to make a decision on one 23 particular type for everybody. 24 But you raise a good point, sir, in that it is 25 always the owner of the ferry that makes this decision</p>

Page 117	Page 119
1 and not really Mardep. 2 THE CHAIRMAN: Mardep give them a menu from which to choose? 3 A. Precisely. 4 THE CHAIRMAN: And choice often has a cost implication. 5 A. That's true. 6 THE CHAIRMAN: I think we have evidence that the cost change 7 for Hongkong Electric was from \$70 per life jacket to, 8 I think, \$150, or perhaps by an increase of 150. 9 MR McGOWAN: Certainly an increase. 10 THE CHAIRMAN: So the buckle type cost more, and perhaps 11 that's why styrofoam life jackets with long tapes are to 12 be found on most vessels: because they cost least. 13 A. I suspect that's true. 14 MR SHIEH: Paragraph 68 69: 15 "In respect of children's life jackets, I understand 16 that Mardep is considering a requirement that, not only 17 must there be 5 per cent of additional life jackets on 18 board for children, but also there must always be enough 19 children's life jackets on board a class I vessel for 20 every child on board. This is a sensible approach 21 insofar as children are concerned." 22 THE CHAIRMAN: That's the only prudent choice to take, 23 surely, Captain Pryke, dealing with children? 24 A. Yes, indeed. 25 THE CHAIRMAN: Every child on board the vessel must have	1 Q. Section D.2.4, "Minimum manning levels", at page 1135: 2 "Regarding the minimum manning levels of local 3 passenger vessels, I understand a review is taking place 4 in respect of crew numbers on class I ferries. 5 Reference should be made to the Principles of Safe 6 Manning adopted by the IMO. In particular, Mardep 7 should ensure that the minimum safe manning level of 8 a ship 'contains the number and grades/capacities of 9 personnel to fulfil the tasks, duties and 10 responsibilities required for the safe operation of the 11 ship, for protection of the marine environment and for 12 dealing with emergency situations'. In my lifetime of 13 experience in the ferry operating business, it is always 14 the emergency muster list requirement that governs the 15 number of crew required to be carried on passenger 16 ferries. This aligns with my view that there should be 17 a muster list for all local passenger vessels carrying 18 more than 100 passengers detailing the emergency and 19 evacuation duties of each crew member." 20 Anything to develop on this? We touched upon this 21 muster list point. Really, you work backwards. You 22 have to start with the muster list and then work out, 23 based on this muster list, what would be the minimum 24 manning requirement for the vessel? 25 A. On the type of vessel we're talking about, this 30-odd
Page 118	Page 120
1 a life jacket. 2 A. Yes. I think we need to be careful that we specify 3 what's meant by "a child", don't we? A lot of what we 4 would call children can wear an adult life jacket. It's 5 not on the top of my head, but there is a weight limit. 6 THE CHAIRMAN: Weight and height? 7 A. Yes, weight and height. 8 THE CHAIRMAN: 43 kg? 9 A. That sounds about right, yes. 10 MR SHIEH: But logistically, how would one go about 11 determining in advance how many life jackets to store 12 for children? 13 A. I think, broadly speaking, the regular ferry companies 14 have a very good idea what might be a run which included 15 a lot of schoolchildren, et cetera, and they could 16 easily have children's life jackets stored on the pier. 17 I think it's not beyond their wit to do it. 18 Q. Instead of a rigid number of 5 per cent, it would be 19 a matter of judgment -- 20 A. Yes. 21 Q. -- depending upon the particular service, the particular 22 route in question? 23 A. Yes. I think if they kept a few containers full of 24 children's life jackets on various piers, they could 25 relatively easily sort that one out.	1 metre vessel, it would almost certainly be roughly the 2 same for the safe operating as well, because, after all, 3 when you're tying up you need one man at each end, one 4 on the bridge, and the engineer may have to do other 5 things. 6 So for this type of ship, it's going to be about the 7 same. 8 Q. When you say "about the same", the same as what? 9 A. The actual routine operating is going to be very similar 10 to the emergency. 11 If, for example, you had a similar vessel with three 12 decks instead of two, you might need an extra person. 13 And of course very often with these types of local 14 ferries, you would have some sort of bar or T-bar where 15 the catering staff form a significant part of the muster 16 crew. 17 Q. D.2.5, "Competency requirements of crew". Paragraph 70: 18 "I am surprised that it is possible to qualify as 19 a coxswain of a class I passenger vessel without having 20 a basic level of literacy. A coxswain has to read 21 information on a chart. He has to be able to read MD 22 Notices, the Rule of the Road, et cetera. He needs to 23 be able to write up his log and various reports to 24 company management and Mardep. I understand that the 25 Marine Department is reviewing the qualification

Page 121	Page 123
<p>1 requirements, I also note that the training of the 2 coxswain of Sea Smooth is not much different from that 3 of Lamma IV, and I would common on the apparent lack of 4 awareness of the need to use radar for collision 5 avoidance. I would add that, because of the frequency 6 of collisions in this very busy harbour, and the extreme 7 hazard associated with high-speed collisions, Mardep 8 should consider the mandating of a high-speed radar 9 simulator course for all coxswains of high-speed craft 10 (built before and after 2007)."</p> <p>11 Do you have any particular points to supplement or 12 develop on this?</p> <p>13 A. Well, it's just that you don't know, purely from this 14 incident, where to start. I mean, it may be that 70 per 15 cent of the coxswains of local high-speed craft are 16 absolutely excellent and don't need any training at all. 17 But it may well be that there's 20 per cent spread 18 around that do desperately need some training. So you 19 have to kind of start with a big brush, I think.</p> <p>20 Q. Section D.2.6: 21 "Crew fitness for duty. 22 The medical standards for coxswains and crew are not 23 stated. In London and Sydney, a medical certificate is 24 routinely required for crew members on local ferries. 25 In my opinion, all coxswains should have a basic medical</p>	<p>1 Q. Vessel in service, we start at paragraph 8(b), 2 page 1107. That's "the vessel in service". That 3 corresponds to page 1110: 4 "B.3. General safety requirements in service 5 Regarding the human element in the service and 6 performance of local passenger vessels, safety of 7 navigation must be given the highest priority. 8 Reference can be made to the many conventions and 9 guidelines issued by the IMO, in particular SOLAS, 10 COLREG, STCW Convention and the STCW Code. 11 In my view, the following principles should be 12 highlighted to address the issues relating to vessels' 13 crews in service in light of the incident ... 14 (a) Appropriate use must be made of the radio, radar 15 and other navigation equipment provided. 16 (b) Look-out should be maintained throughout the 17 trip of the vessel. In my opinion, the provision of 18 an additional person as a look-out on the bridge to 19 assist the master/coxswain would decrease the 20 possibility of human error on the bridge. 21 (c) Passengers should receive a safety briefing at 22 the commencement of each trip. 23 (d) The crew should be regularly exercised in their 24 emergency duties and the muster list kept up-to-date so 25 that every member of the crew knows exactly what is</p>
Page 122	Page 124
<p>1 examination and eyesight test at intervals not exceeding 2 5 years and that all seamen required to keep a look-out 3 should have an eyesight test.</p> <p>4 Thought should also be given to a policy on drug and 5 alcohol testing of seafarers operating within Hong Kong 6 waters. During interview with Mr Leung Wing-fai, it was 7 agreed that there should be monitoring of the working 8 hours of coxswains and crew in order to avoid fatigue 9 and associated risk of accidents. Random drug and 10 alcohol tests are carried out by some of the larger 11 operators of local passenger ferries in New York and 12 Sydney. In UK, it is an offence for a professional 13 master, pilot and seaman to have his ability to carry 14 out his duties impaired because of drink or drugs. In 15 Sydney Harbour, random drug and alcohol tests are also 16 carried out by New South Wales Maritime and Water 17 Police. Testing is always carried out after 18 an incident."</p> <p>19 We have now completed your views on one topic, 20 namely issues concerning the operator. We have gone 21 from B.2 to C.2 and then D.2. So unless you have 22 anything to add to the points about the ferry operator, 23 I now propose to move on to the next big topic; that is 24 to say, the vessel in service. 25 A. Okay.</p>	<p>1 expected of him in the event of an emergency." 2 How practical or realistic is it, for example, to 3 implement (c), receiving a safety briefing at the 4 commencement of each trip? Because we have regular 5 ferries and people travel on them every day, and the 6 trip could be quite short.</p> <p>7 A. Exactly. I think, as with all these things, it's horses 8 for courses, and it will not be the same on one as 9 another. When it's a much longer trip, I think people 10 should be made aware of the emergency signal and the 11 abandon ship signal. I think on a short trip across the 12 harbour, for example, there should be notices on the 13 piers, for example, as to what the emergency situation 14 is and where you can find your life jackets. And 15 I think, however short the trip is, the crew members, 16 when they're walking from the after deck up to the 17 bridge, they shouldn't hesitate to talk to people and 18 show them where life jackets are and all that kind of 19 thing.</p> <p>20 I think it doesn't always have to be as formal as it 21 would be on bigger ships. On the bigger ships, when 22 you're talking about sometimes 200, 250 people, then 23 I think perhaps it should be a bit more formal, in the 24 form of a tape and even a video. I mean, videos are 25 quite easy to do these days. But certainly an audiotape</p>

Page 125	Page 127
<p>1 is very easy.</p> <p>2 Q. So some means of disseminating the information,</p> <p>3 commensurate with the --</p> <p>4 A. Yes, commensurate with the --</p> <p>5 Q. Perhaps the size of the vessel?</p> <p>6 A. Exactly, yes.</p> <p>7 Q. Because if you go on a cruise ship, you actually have to</p> <p>8 go on a drill before the ship sets sail.</p> <p>9 A. In theory.</p> <p>10 Q. It does happen?</p> <p>11 A. Yes. Funnily enough, I was on a cruise the week after</p> <p>12 the Costa Concordia and I didn't have a muster for six</p> <p>13 days.</p> <p>14 Q. Did you point that out?</p> <p>15 A. I did.</p> <p>16 Q. So that's B.3, where you pointed out the regime you</p> <p>17 think should apply.</p> <p>18 I'll move on to C.3, where you set out what you have</p> <p>19 been able to observe on the shop floor. That is</p> <p>20 page 1120, "General safety requirements in service".</p> <p>21 Paragraph 34:</p> <p>22 "I do not make any further comments on what has</p> <p>23 already been set out [in] my previous reports and</p> <p>24 evidence given to the Commission in relation to the</p> <p>25 cause of the collision ... However, I do attribute one</p>	<p>1 there was no requirement to advise passengers of the</p> <p>2 emergency signal or the abandon ship signal."</p> <p>3 So these are what you may call the shortcomings that</p> <p>4 you had observed?</p> <p>5 A. Yes.</p> <p>6 Q. Then coming to your proposed solutions, if I may put it</p> <p>7 that way. It's page 1137, under section D.3,</p> <p>8 "Navigational safety on the bridge":</p> <p>9 "In the UK, two officers are required to be on the</p> <p>10 bridge of local high-speed ferries."</p> <p>11 Pausing here. Local high-speed ferries would be of</p> <p>12 a type similar to Sea Smooth in our case?</p> <p>13 A. Yes.</p> <p>14 Q. But not similar to Lamma IV?</p> <p>15 A. Well --</p> <p>16 Q. Lamma IV would not have fallen within the definition of</p> <p>17 "high-speed craft" under the new regime?</p> <p>18 A. It's interesting. According to what we know, Lamma IV</p> <p>19 has never run at her top speed. I mean, I presume if</p> <p>20 she ran at her top speed she would actually be</p> <p>21 a high-speed craft.</p> <p>22 Q. Yes.</p> <p>23 A. And she's built like a high-speed craft. She's</p> <p>24 a lightweight catamaran build.</p> <p>25 But I understand the point of your question, yes.</p>
Page 126	Page 128
<p>1 of the main reasons for the collision to be the failure</p> <p>2 to maintain adequate look-out on the bridge of the</p> <p>3 vessels. It appears to me that there has been a heavy</p> <p>4 reliance on a visual look-out, and a general neglect of</p> <p>5 the use of electronic navigational aids, notwithstanding</p> <p>6 the presence of radar on board Lamma IV and Sea Smooth.</p> <p>7 I also note here that there is no requirement for</p> <p>8 another person to be on look-out on the bridge with the</p> <p>9 coxswain.</p> <p>10 C.3.2. Dissemination of safety information to</p> <p>11 passengers.</p> <p>12 There is an express requirement in the 2006 Code for</p> <p>13 the coxswain to ensure, before the commencement of the</p> <p>14 voyage, that all persons on board are briefed on the</p> <p>15 stowage and use of personal safety equipment such as</p> <p>16 life jackets, buoyancy aids and lifebuoys, and the</p> <p>17 procedures to be followed in cases of emergency.</p> <p>18 However, no safety briefings were actually given to the</p> <p>19 passengers of either Lamma IV or Sea Smooth.</p> <p>20 It is also an express requirement for the provision</p> <p>21 of safety information by way of safety guide plates or</p> <p>22 cards. There were notices posted on Lamma IV and Sea</p> <p>23 Smooth which set out evacuation routes and procedures to</p> <p>24 don life jackets. However, there was no provision for</p> <p>25 safety information to be displayed at the pier, and</p>	<p>1 That is correct.</p> <p>2 Q. "In the case of high-speed ferries in Hong Kong,</p> <p>3 I believe that a look-out should be on the bridge with</p> <p>4 the coxswain at all times."</p> <p>5 A. Yes. This is from the evidence that we heard from the</p> <p>6 crew of Sea Smooth. The very idea that somebody might</p> <p>7 choose to sit in the second navigation seat or not, as</p> <p>8 the case may be, is just outrageous. There should be</p> <p>9 some person in that seat all the time. If that is the</p> <p>10 look-out seat, that's where the look-out sits. Unless</p> <p>11 for some reason he's outside on the wing of the bridge.</p> <p>12 Q. Yes. Incidentally --</p> <p>13 THE CHAIRMAN: And the person designated to be the look-out</p> <p>14 on a particular voyage would be designated as such by</p> <p>15 the captain at the outset?</p> <p>16 A. Yes, indeed.</p> <p>17 THE CHAIRMAN: "You're the look-out".</p> <p>18 A. "You're the look-out". And the idea that it's somehow</p> <p>19 the office that decides that is ridiculous.</p> <p>20 MR SHIEH: The natural place on a ship like the Sea Smooth</p> <p>21 for that person to be stationed would be -- well, as we</p> <p>22 have -- well, certainly in the case like the Sea Smooth,</p> <p>23 it would be the seat next to the conning chair?</p> <p>24 A. Yes, indeed. Yes. I mean, I'm not sure what the</p> <p>25 legislation is about keeping a log, but what you would</p>



Page 129	Page 131
<p>1 normally expect is that there would be some sort of very 2 brief logbook where the name of the coxswain and the 3 look-out would be put in for various times of the day. 4 Q. I'll return to your paragraph 73: 5 "In 1986 when I introduced Our Lady Patricia, there 6 were always two officers on the bridge, as shown in 7 photograph 3 below. In my view, all conventional 8 ferries/launches carrying more than 100 passengers 9 should have a look-out on the bridge in addition to the 10 coxswain during the hours of darkness, during periods of 11 reduced visibility and at any other time that the 12 coxswain needs assistance." 13 And over the page, we see the layout of the bridge 14 of Our Lady Patricia. 15 How does Our Lady Patricia compare with the Sea 16 Smooth in terms of size and tonnage and length? 17 A. Exactly the same length, actually. It has one deck 18 more. So it carries more people. But -- 19 Q. You mean Our Lady Patricia? 20 A. Yes, yes. It actually has three decks rather than two. 21 Q. So two operating seats, two radar sets and two VHF sets? 22 A. Yes. 23 Q. And it travels from Portsmouth to Isle of Wight? 24 A. Yes. About a 12-minute trip. 25 THE CHAIRMAN: As far as the look-out is concerned, if one</p>	<p>1 him to stick his neck to the starboard side to take 2 a look at the radar monitor. So it's a convenience 3 thing. 4 What do you have to say to that? 5 A. Well, I think he told us all that he didn't steer with 6 the wheel; he steered with the toggle. And he could 7 hold the toggle in his left hand and look at the radar 8 quite adequately, I should think. 9 Q. Yes, he steered with the joystick. 10 A. Joystick, yes. 11 Q. Yes. So it's perfectly possible for him to have 12 movement of the joystick and then -- 13 A. Yes, I think more sensibly he could have had the radar 14 moved such that it could swing towards the helmsman. 15 Q. So it's perfectly achievable, even with one person 16 manoeuvring, navigating -- 17 A. Oh, absolutely, yes. 18 Q. -- for him to simultaneously manoeuvre and then take 19 a look at the radar? 20 A. Yes. I mean, it's quite interesting, really. If you 21 look at that photograph, compared to my photograph from 22 1986 -- 23 Q. That's page 1138, yes? 24 A. Yes, page 1138. I mean, that was a bridge that had some 25 thought in its design. The design of the Lamma IV's</p>
Page 130	Page 132
<p>1 was dealing with a high-speed craft, in terms of 2 recommendations, you're recommending that there should 3 be a pre-assigned look-out assigned by the skipper, 4 documented by entry in a log. Should he be someone who 5 has a radar observer's certificate? 6 A. I think that might be going slightly too -- I mean, it 7 obviously would be a very good thing. I think it should 8 be somebody to whom the radar has been explained, and he 9 knows what he's looking at when he looks at the radar. 10 I think the coxswain should certainly train all of his 11 look-outs what they're looking for on a radar set. 12 MR SHIEH: In terms of look-out, and what happens on the 13 bridge, could I ask you to look at the photograph in 14 marine bundle 1, page 140. 15 For the purpose of asking you to look at these 16 photographs, these photographs show the layout of the 17 Lamma IV wheelhouse. You can see the radar. Can you 18 see in the top picture the radar monitor? 19 A. Yes, yes. 20 Q. The coxswain, Coxswain Chow of Lamma IV, when he was 21 asked why he had not kept a more regular look-out on the 22 radar, he gave as one of his explanations -- whether 23 that explanation is accepted is another matter, but the 24 explanation that he gave was that if he was actually at 25 the helm, it would actually have been quite a strain for</p>	<p>1 bridge leaves -- you know, a primary school class could 2 come up with a better design than that, quite honestly. 3 Q. Because in a way you can say if one truly had to keep 4 a more constant look-out by looking at the radar, one 5 has to be seated perhaps closer to the radar? 6 A. Yes. Yes. 7 Q. Perhaps a chair in front of that would be nice? 8 A. Yes, but it's the siting of the radar, really. Again, 9 if you look at page 1138 you can see that there are two 10 radar sets sited right in front of the seats. It's very 11 simple to do. 12 Q. Whereas in the bridge of the Lamma IV, which is marine 13 bundle 1, page 140, the radar monitor is not in front of 14 the coxswain and if you want to be in front of the radar 15 monitor, you actually have to stand in front of it? 16 A. It rather looks as if this bridge was built before they 17 ever thought of having a radar set, and the radar set is 18 an afterthought. 19 Q. It wasn't required, so -- 20 A. Probably not, no. 21 Q. It was actually in fact not a licensing requirement that 22 it had a radar. 23 A. No. 24 Q. So that perhaps explains it. 25 THE CHAIRMAN: Could we have a look at a view from the</p>

Page 133	Page 135
<p>1 Lamma IV bridge, looking from starboard to port, so that 2 we can see the conning chair. 3 MR SHIEH: Lamma IV from starboard to port. Well, it would 4 be photo 2. The conning chair has disappeared in this 5 photograph, but -- 6 THE CHAIRMAN: Yes. That's just the base, is it not? 7 MR SHIEH: That's the base. 8 THE CHAIRMAN: Yes. 9 MR SHIEH: I seem to remember there is a better photograph 10 in the police album which could show the missing part. 11 I'll just try to locate it. 12 Page 546. Well, page 543 is better. Mr Chairman, 13 you said from starboard to port? 14 THE CHAIRMAN: Yes. 15 MR SHIEH: Police album IX, page 543. 16 THE CHAIRMAN: Ah, yes. 17 MR SHIEH: That's the one where we identify -- 18 THE CHAIRMAN: Thank you very much. That's the one I had in 19 mind. 20 MR SHIEH: So, Captain Pryke, you can see this is the shape 21 of the wheelhouse. In fact page 543 shows you the 22 position of the helm relative to the radar monitor. 23 A. Yes. I would have thought that the radar set could be 24 made tiltable in some way. 25 THE CHAIRMAN: It certainly looks in that photograph as</p>	<p>1 could be seen from the pilot's chair. 2 Q. But anyway, whether it's due to a personal habit or 3 general ignorance as to how it could be swivelled or 4 turned, basically it's achievable -- 5 A. Definitely, yes. 6 Q. -- that somebody at the conning chair could have, 7 perhaps by straining a bit -- 8 A. Well, it may have needed spanners, but it could have 9 been done. 10 Q. Paragraph 74 of your report: 11 "In vessels carrying more than 100 passengers, 12 appropriate use must be made of VHF radio, radar, AIS 13 and any other navigation equipment provided. All such 14 vessels must ensure that radar operators are properly 15 trained. For coxswains of local high-speed craft, 16 I would suggest a requirement for a high-speed radar 17 simulator course." 18 A. This is the sort of thing that the local navigation 19 college could put on for 20 people at a time. I mean, 20 even a day's course would have some benefit. 21 Q. And that would have covered what aspects? 22 A. Well, it's this whole business that I get the very nasty 23 feeling that some of these seafarers are not really 24 aware of exactly how quickly they're closing on 25 something that's coming the other way. In other words,</p>
<p>Page 134</p> <p>1 though it tilts through a vertical axis. 2 A. Yes. 3 THE CHAIRMAN: But the other point, really, is that it ought 4 to be perhaps swivellable so it can be swivelled towards 5 where the coxswain is or, if somebody was keeping 6 look-out in a different position, perhaps swivelled so 7 that he could see it. 8 A. Yes. Yes. 9 THE CHAIRMAN: Do we have the radar manual for this machine? 10 MR McGOWAN: Yes, it's in the -- 11 MR SHIEH: It's one of the police bundles. 12 MR McGOWAN: It's also in -- 13 THE CHAIRMAN: I don't want to interrupt things, but perhaps 14 somebody could have a look at that and the issue is 15 whether or not, if he'd wished, Coxswain Chow could have 16 swivelled the radar. 17 MR SHIEH: Police bundle O, page 4415. 18 The Furuno NavNet. 19 Captain Pryke, we are now looking at the manual for 20 the radar. 21 A. Yes. 22 Q. There's an operator's guide, which is a simpler version, 23 and then there is an operator's manual, which is a book. 24 A. Yes. I'm not sure if it's obvious that it actually 25 swivels, but I'm sure it could be adjusted so that it</p>	<p>Page 136</p> <p>1 when you add two speeds together, it suddenly becomes 2 a very fast operation indeed. Mostly, of course, it 3 doesn't happen, because they're following something up 4 the harbour when it's crowded within a speed limit. But 5 when they're out in the open and going pretty much full 6 speed, and something's coming the other way, you really 7 have to act very, very quickly. 8 Q. I move on to D.3.2: 9 "Dissemination of safety information to passengers. 10 The requirement to give a safety briefing to 11 passengers at the commencement of each voyage is noted. 12 This is appropriate to all passenger vessels of any 13 size. Specific advice on the content should be provided 14 by Mardep and should include the emergency signal and 15 the abandon ship signal. 16 In my opinion, all ferries/launches carrying more 17 than 100 passengers are required to have a muster list 18 and each crew member must be aware of his duties." 19 Is there anything you wish to add beyond what has 20 already been discussed? 21 A. It's very difficult, the scope of, you know, the number 22 of different craft that we're talking about. I mean, it 23 may very well be appropriate that you put that number at 24 60 passengers. But certainly 100 would be a good start. 25 I don't say that you should ignore the rest. I think it</p>

Page 137	Page 139
<p>1 applies to just about any passenger vessel. But I think 2 concentrating on the bigger ones first is probably the 3 right thing. 4 Q. Captain Pryke, there could be a problem -- I don't know 5 whether or not it is a prevalent problem where you come 6 from, but let's say in Hong Kong, a number of these 7 seamen, seafarers, come from, let's say, local fishing 8 families and they might not have received a good deal of 9 formal education, as we have seen, so they work their 10 way up, they follow their family fishing vessel and then 11 eventually move on to become sailors and then make their 12 way up to become engineers or get a master's certificate 13 of competency. 14 First of all, they may not be used to this culture 15 of paper-shuffling; and two, they may have limited 16 literary skills. Whereas a good deal of these 17 recommendations turn on the formal list, you know, 18 you're supposed to read it and fill in the log and tick 19 a box. 20 How would you tackle a problem like this which may 21 or may not be localised for Hong Kong? 22 A. Are you aware that Hong Kong has one of the highest 23 rates of literacy in the world? I looked it up on 24 Google the other day. 25 Yes, it's a good question. But you can do a lot</p>	<p>1 A. Yes. I mean, I wouldn't have thought it's all that 2 common, is it? 3 Q. Mr McGowan actually draws my attention to the fact that 4 in the relevant rules in Hong Kong in respect of 5 certificates of competency, there is actually an express 6 provision dealing with people who are illiterate. 7 A. Oh, really? 8 Q. Yes. Can I have the legislation bundle, bundle 3. It's 9 tab 13B, which is the "Examination Rules for Local 10 Certificates of Competency". 11 THE CHAIRMAN: I think we need a page number to put it on 12 the screen. Perhaps not. 13 MR SHIEH: Perhaps we'll locate the actual tab first. 14 It's 13B. Internal page 18. 15 "Coxswain Grade 3 Examination. 16 ... 17 A candidate who claims to be illiterate and hence 18 unable to sit for the written examination ... will be 19 allowed to take the examination in oral form upon 20 presenting evidence in the form of a letter from 21 an employer or other acceptable evidence of his 22 illiteracy. Candidates opting for this approach may be 23 required, at the discretion ... to attend at one of the 24 Marine Department District Offices to undergo 25 a practical test of ability.</p>
<p>1 with audiotapes. You can do a lot with various other 2 learning tools. But sometimes you just have to show 3 people how to do the job. 4 As I say, I find it very strange that you can pass 5 your certificate to be a coxswain without being able to 6 write anything. I find that rather strange. 7 Q. Well, I'm sure he was able to write something. He was 8 able to write his name. But it's a matter of degree. 9 A. Yes. 10 Q. It's a matter of perhaps not being used to dealing with 11 words and communicating in written form and that sort of 12 thing. Is that something that you encounter in your 13 jurisdiction? 14 A. I mean, I've been a seafarer all my life and I've been 15 with crews from many, many nations. 16 I'm sure I've sailed with lots of illiterate crew 17 members. I have never, ever found it a problem. 18 What we used to do on the bigger passenger ships is 19 the crewman had to carry around his emergency card which 20 said what particular life raft he had to go to or what 21 particular life boat, what his fire station was. You 22 can do that sort of thing with symbols; it doesn't have 23 to be written. But you can still do all these things. 24 Q. And it may be that with education becoming more popular, 25 illiterate coxswains or crew may be a thing of the past?</p>	<p>1 For the practical test, the candidate is required to 2 arrange a suitable boat, which is at all time being 3 taken charge by a qualified coxswain and an engine 4 operator while the boat is underway in Hong Kong 5 waters." 6 A. I understand that, but if you put a new radar set on 7 a boat where you know the coxswain is illiterate, then 8 you have the duty to go down with the manual and explain 9 it to him, probably more than once, because most of us 10 would need to refer to the book a dozen times at least. 11 So -- 12 Q. Well, sometimes, if you don't actually use a function, 13 you don't need to remember it and you only need to look 14 it up as and when you need to use that function. 15 A. Yes, that's right. But it does beg the question of the 16 type of equipment that you can put on the ship. It's 17 not impossible, but it tells you that if your coxswain 18 is illiterate, you must have a radar set that is readily 19 understandable by him and not, as we saw evidence of, 20 a manual that takes about 200 pages to understand 21 everything. 22 Q. And in English. 23 A. And in English, yes. So I think these things need to be 24 thought about; that's the point. Regrettably, it's 25 always the employer who has to think.</p>

<p style="text-align: right;">Page 141</p> <p>1 Q. Because even though complete illiteracy may be a thing 2 of the past, English illiteracy or limited knowledge of 3 English could well still be a prevalent problem. So the 4 point you're trying to get at is, leaving aside whether 5 one calls it a literacy problem, efforts have to be made 6 so that the knowledge about how to use the equipment 7 should be imparted to the person in question, whether 8 orally, by teaching him, or whether by doing a manual in 9 a language that is understandable to him? Would that be 10 a fair way of putting it? 11 A. Yes. Incidentally, what you've just referred to, my 12 learned friend next to me tells me, is a coxswain 13 grade 3 certificate. 14 THE CHAIRMAN: That will be a sampan, won't it? 15 A. Yes, it is, pretty much. A vessel of not more than 16 16.5 metres. 17 MR SHIEH: Yes. But coming back to the point, what you're 18 trying to say is that leaving aside whether you call it 19 a question of illiteracy, the point remains that you 20 should use whatever appropriate means to -- 21 A. Yes, indeed. Yes. 22 Q. -- bring home to the operator. If he's really 23 illiterate, you tell him orally. If he's partly 24 literate, you communicate to him in a language he 25 understands.</p>	<p style="text-align: right;">Page 143</p> <p>1 provides that governments may establish vessel traffic 2 services when the volume of traffic or the degree of 3 risk justifies such services. Hong Kong already has 4 a well-established VTS operated from the VTC which forms 5 the centre of harbour control in Hong Kong." 6 Could I just pause here to observe that you have 7 personally visited the VTC and observed it in action? 8 A. Yes, I've been on two occasions. 9 Q. "It would be safe to say that most, if not all, of the 10 general principles of effective harbour control are 11 already in place in Hong Kong and there is a continual 12 improvement in the VTS infrastructure. 13 Nevertheless, in my opinion, the following issues 14 have been raised by the incident of 1 October 2012 in 15 relation to harbour control and would merit commenting: 16 (a) management and approval of shore navigation 17 lights; 18 (b) vessel traffic management including VTS radar 19 control and communication with vessels; 20 (c) management of appropriate speed limits; 21 (d) notices to mariners and other safety notices; 22 and 23 (e) the issue of pilot exemption certificates." 24 So that is the big topic that you set out in B.4, 25 port control.</p>
<p style="text-align: right;">Page 142</p> <p>1 A. Yes. Collision-avoidance radar can be very, very 2 complicated, or you can use a very simple header 3 relative motion set. But as long as you're trained how 4 to use it, it's the simplest thing in the world. But 5 you need to think about the type of equipment you're 6 giving to the people that need to use it. It's as 7 simple as that, really. 8 Q. We have completed the section in section D concerning 9 the vessel in service. I now go back to your list of 10 topics. The next one -- unless you have anything 11 specific to add, Captain Pryke? 12 THE CHAIRMAN: We'll take a break at that stage. 13 MR SHIEH: Yes. 14 THE CHAIRMAN: We'll take a 10-minute break, Captain, and 15 resume therefore at about 4.15. 16 (4.04 pm) 17 (A short break) 18 (4.16 pm) 19 THE CHAIRMAN: Yes, Mr Shieh. 20 MR SHIEH: Captain Pryke, we have completed the topic under 21 paragraph 8(b) concerning vessel in service, which is 22 page 1107. 23 I move on now to 8(c), harbour traffic control. 24 First of all, B.4, page 1111, paragraph 16: 25 "Chapter V (Safety of Navigation) of SOLAS 1974</p>	<p style="text-align: right;">Page 144</p> <p>1 As to the observations that you have, can I ask you 2 to look at page 1122 of this bundle. At C.4.1, we see 3 "Management and approval of shore lights": 4 "The only issue regarding shore lights relating to 5 this incident is the power of the fog light on the end 6 of the typhoon shelter pier which may have affected the 7 Coxswain Lai's vision on board Sea Smooth. I am given 8 to understand that there is a complaints system in place 9 for Mardep to receive complaints about shore lights 10 affecting navigational safety, and there were no serious 11 complaints about this fog light prior to 1 October 2012. 12 Harbour traffic management ..." 13 THE CHAIRMAN: Were there any complaints that the Marine 14 Department had received? 15 A. Can I just look up my interview with Raymond Chung? 16 I think it was mentioned. 17 THE CHAIRMAN: Yes, please take your time. Please do so. 18 MR SHIEH: Appendix V, Chung Siu-man. It's page 1190. 19 That's commencement of the transcript. 20 The fog light is mentioned at page 1199. Line 4 21 onwards. 22 I think the answer is line 7: 23 "... nobody has reported to us." 24 Mr Chairman, it's line 7. 25 THE CHAIRMAN: Thank you.</p>

<p style="text-align: right;">Page 145</p> <p>1 A. Yes, that's correct. He hadn't had any reports. He had 2 some reports about a container terminal light, and they 3 sorted it out. But, no, I think it's fair to say that 4 at that stage, they'd had no formal complaints. 5 THE CHAIRMAN: So we can remove "serious"? There were no 6 complaints -- 7 A. Yes, I believe so. 8 MR SHIEH: Yes. I think factually we should say Mardep has 9 received no complaints about this fog light. 10 THE CHAIRMAN: Yes. 11 MR SHIEH: Because when you say "no serious", it seems to 12 suggest that some complaints are not so serious. 13 A. Yes. I don't know whether -- I think it was a surprise 14 to him when I asked the question. 15 Q. Anyway, so the answer from Mardep -- at least Mr Chung, 16 who you spoke to -- was that they'd had no complaints, 17 so we can perhaps say Mardep has received no complaints 18 about this fog light, and the source of that would be 19 the transcript of the interview that we have looked at. 20 A. Yes. 21 Q. At C.4.2, paragraph 38: 22 "The control of marine traffic in the port of Hong 23 Kong through the VTS system has been explained to the 24 Commission. There are a few points to raise. First, no 25 warning was issued to Sea Smooth by VTS control</p>	<p style="text-align: right;">Page 147</p> <p>1 going to come on later to talk about the chart, but in 2 a place like Lamma -- I've been used to managing small 3 ferry ports around the coast and normally in a place 4 like Fishguard or Stranraer, Holyhead, Weymouth, 5 Newhaven, you would have some sort of rudimentary port 6 control even though there was only one ferry port in the 7 place. Whereas at Lamma, there is nothing at all. In 8 an ideal world, Lamma IV would have called up port 9 control and said, "I'm just leaving for the fireworks 10 display. Permission to leave?" And the operator would 11 have said, "Well, we've got a ferry coming into the 12 ferry berth. Just wait five minutes and then go." That 13 that's the normal thing you would expect to happen. 14 That clearly doesn't happen. I did raise the 15 question whether it would be possible for that to happen 16 within the VTS system rather than at Lamma, and I think 17 I got the answer that there are so many of them, the 18 offshore ferry terminals, that even that would be very, 19 very difficult. I'm not 100 per cent sure of that. 20 I think that could be looked at. 21 But again, I think when you're doing a big spend on 22 a VTS system -- and these things cost many, many 23 millions -- I think it's worth throwing everything into 24 the pot and asking for as much as you can get. 25 I think, you know, the computerised systems are so</p>
<p style="text-align: right;">Page 146</p> <p>1 notwithstanding the collision alerts shown in the VTS 2 system. Recognising the degree of difficulty for the 3 operator to monitor all collision alerts there may be 4 an opportunity for technical improvements to the 5 system." 6 Can I pause here. On the one hand, you recognise 7 the degree of difficulty to monitor all collision 8 alerts, but immediately you say "there may be 9 an opportunity for technical improvements to the 10 system". So what technical improvements to the system 11 do you have in mind? 12 A. Well, I know they're working on the latest of their new 13 equipment changes, which will be, I'm sure, radars, 14 computers and everything. And I just wonder if there is 15 an opportunity there, when they're looking at new 16 equipment, whether you could specify something slightly 17 different than what is currently specified, with a view 18 to leaving out the ones you don't want to see and trying 19 to establish a way of highlighting something that you do 20 want to see. Maybe it would be a timing thing. 21 Q. It's really a matter of defining the parameters? 22 A. Exactly, yes. I think it has to be worth looking at and 23 I'm sure they will look at it, but I just thought it 24 would be worth mentioning. 25 The other issue there which -- and I know we're</p>	<p style="text-align: right;">Page 148</p> <p>1 good now that it's not out of the question that there 2 could be some way of managing small -- I was going to 3 say harbours. It's not really a harbour, but it's 4 a little place with two berths close to each other. 5 Q. So what you are suggesting is that the VTC, located, as 6 it were, in Shun Tak, would provide a service of 7 advising vessels, let's say, embarking on a voyage from 8 the various outlying islands, call them ports or 9 harbours, or whatever, Cheung Chau or Lamma or Lantau -- 10 A. I accept the fact, as Raymond Chung said yesterday, that 11 he has one operator who is on the VHF and he's dealing 12 with piloted ships and river traffic vessels, et cetera, 13 and it would not be practical as the thing is set out at 14 the moment. But there are, as I understood it, two 15 operators, only one of whom is fairly active. It's not 16 impossible, I suppose, for the other operator to do, 17 let's say, lesser work. 18 THE CHAIRMAN: Sea Smooth was not a vessel traffic system 19 participant, was it? 20 A. No, I understand that. 21 THE CHAIRMAN: Certainly not Lamma IV, because she didn't 22 have VHF. 23 A. No. Wasn't there some definition of "less than 24 30 metres", I think? 25 THE CHAIRMAN: 35, perhaps.</p>

Page 149	Page 151
<p>1 A. Or 35 metres, yes. 2 THE CHAIRMAN: Thank you. 3 Is this perhaps what you have in mind, that these 4 are vessels -- Sea Smooth as an example -- that travels 5 at high speed and therefore creates a greater risk of 6 collision? 7 A. Yes, that's -- 8 THE CHAIRMAN: And that's why one should be looking at what 9 more could we be doing with them? 10 A. Yes, that's exactly what I was thinking. 11 THE CHAIRMAN: Recognising that perhaps in the inner 12 harbour, there's not very much one can do with alerts 13 because they would be flashing red day and night. But 14 once you're on this passage, beyond Green Island, you're 15 into different kinds of waters? 16 A. That's exactly right. As it happens, my room overlooks 17 the inner harbour at the moment and I spend a lot of 18 time just looking at them. Of course, they're all 19 observing the speed limit in the inner harbour and it's 20 not really too much of a problem, it doesn't appear to 21 be. I think you're quite right. When you get outside, 22 even though there are fewer ships in a small space, the 23 danger is probably greater. 24 MR SHIEH: I read on at paragraph 38. You say: 25 "Secondly, the vast majority of local vessels are</p>	<p>1 MR SHIEH: Mr Chairman, you asked about the qualifications 2 for participating in VTS. I think non-participating 3 vessels are vessels less than 35 metres. 4 THE CHAIRMAN: Yes. Thank you. 5 MR SHIEH: I think it's part of the transcript yesterday. 6 "C.4.3. Regulation of speed limits 7 "The position where the collision occurred was not 8 situated in areas with specific speed limits. The 9 system of speed limits and traffic management has been 10 explained to the Commission. Generally speaking, while 11 there are speed-restricted zones for local vessels in 12 Victoria Harbour, Mardep would also grant SREPs [that 13 is, speed restriction exemption permits] to local 14 passenger ferries to facilitate efficient public 15 transportation of passengers. 16 SREPs are valid and applicable in conditions where 17 the visibility is above one nautical mile, which means 18 that speed limits must be obeyed by all vessels when the 19 visibility falls below one nautical mile. Vessels with 20 SREPs are also subject to special safety requirements 21 which are set out in the particular SREP, including 22 requirements to install AIS, navigate in specific 23 routes, and following the fairways while within Victoria 24 Harbour, and also the safe speed requirement of rule 6 25 of the COLREG. An appropriate route operating manual</p>
Page 150	Page 152
<p>1 not VTS participants." 2 A. Yes. That's the point. 3 Q. You recall the evidence given as to the significance of 4 at least one vessel being a VTS participant. 5 A. Yes. 6 Q. Because if neither were VTS participants, then I think 7 the evidence is that, simply, there would be no alert? 8 A. Yes, that's correct. 9 Q. At least one would have to be a VTS participant so that 10 that vessel would attract -- 11 A. It would trigger the alert. 12 Q. It would trigger the alert. 13 A. Yes. 14 Q. "Thirdly, no warning could have been issued to Lamma IV 15 because she was not equipped with VHF radio. Fourthly, 16 the location of Yung Shue Wan and the position where the 17 collision occurred is situated beyond the southern-most 18 extent of the VHF sector of channel 14 assigned for 19 communication with the VTC." 20 That is 67; is that right? 21 A. Yes. 67 and 14 join on to each other. 22 Q. So the point of the collision was channel 67 territory, 23 was it? 24 A. Yes, that's right. But it's just a very small sliver of 25 channel 67 in that area.</p>	<p>1 would assist coxswains in understanding the 'safe speed' 2 rule. 3 There appears to be no requirement in the SREPs to 4 have any special lights or indication that the vessel 5 possesses an SREP, such that there are no simple means 6 of distinguishing vessels with or without SREPs. It is 7 interesting to note that, while Sea Smooth would have 8 been a 'high-speed craft' if it was constructed in 9 accordance with [the 2007 Ordinance], she is not 10 required as a matter of law to be fitted with a yellow 11 flashing light." 12 Although in the footnote, you note that Sea Smooth 13 was nevertheless fitted with a yellow flashing light. 14 As I understand it, it was only DSCs which had to be 15 fitted with yellow flashing lights; is that your 16 understanding, Captain Pryke? 17 A. Yes, that is my understanding. But I think a lot of the 18 Hong Kong-Macau ferries have them. There are one or two 19 DSCs there. The old jetfoil, for example. 20 I have asked lots and lots of questions about yellow 21 flashing lights, but I'm not sure that I know the 22 answer. Far be it for me to say that it's not a good 23 idea. I really do think it is a good idea, actually. 24 But it hasn't been properly documented for some reason. 25 Q. And what we have in the current situation is that even</p>

<p style="text-align: right;">Page 153</p> <p>1 though there is no legal requirement which applies to 2 Sea Smooth which required it to have a yellow flashing 3 light, as a matter of fact the owners either had been 4 advised to install it or chose to install it. 5 A. Yes. 6 Q. As a matter of fact -- 7 THE CHAIRMAN: I think we were told that Cheoy Lee delivered 8 it with one flashing -- 9 MR SHIEH: Yes. 10 THE CHAIRMAN: -- and they weren't quite sure why. 11 MR SHIEH: I think a gentleman at Cheoy Lee was told by 12 somebody in turn that they should have it. I don't 13 know. 14 THE CHAIRMAN: Very well. 15 MR SHIEH: But anyway, it came with a yellow flashing light 16 as a matter of fact. And you would have no complaint 17 about the existence? 18 A. No, I think it's a very sound idea. But if it's to be 19 done then it should be done in such a fashion that there 20 is an MD Notice put out saying what the yellow flashing 21 light is for and who's allowed to have it. That seems 22 to me -- 23 Q. There should be a convention so that people would know 24 the meaning to be attributed? 25 A. Yes, absolutely. And if they are ships that are allowed</p>	<p style="text-align: right;">Page 155</p> <p>1 Q. But since, as we understand, there aren't any local 2 DSCs, as a matter of Mardep's policy or requirement 3 there would not be any local vessels required to carry 4 a yellow flashing light. 5 A. No. But I do really believe they should grasp the 6 nettle and decide either it's good thing or it's not 7 a good thing, and if they think it isn't a good thing, 8 tell people to stop flashing them, and if it is a good 9 thing, make sure you have a proper list of the vessels 10 that it applies to. 11 Q. And the sentence at the beginning of paragraph 41, when 12 you say there is no requirement in the SREPs to have any 13 special lights vessels, and there is no simple means of 14 distinguishing vessels with or without SREPs, you make 15 that statement in the sense of identifying what you 16 regard to be a problem which needs to be resolved? 17 A. Well, if somebody -- 18 Q. Because if I see a vessel, I've no idea if it's got 19 an exemption permit or not. 20 A. Well, exactly. If somebody is exceeding a speed limit 21 and is permitted to exceed that speed limit by Mardep, 22 then I think other users of the harbour are entitled to 23 know, really. So therefore if somebody is exceeding the 24 speed limit and is not entitled to, then a report can be 25 made in the proper channels.</p>
<p style="text-align: right;">Page 154</p> <p>1 to have it and should have it, then they should be 2 required to change the bulb when it goes. Otherwise if 3 it's not a requirement, they won't need to change the 4 bulb. 5 Q. As you understand the situation under the current 6 regime, which divides vessels into HSCs and non-HSCs, 7 neither would be required to have a yellow flashing 8 light; is that your understanding? 9 A. I'm not sure. I've got a feeling that the post-2007 10 ones are supposed to have. But I'm not sure. They have 11 everything else that, virtually, the High-Speed Code 12 talks about. 13 Q. Perhaps we'll look at Mr Wong Wing-chuen's statement. 14 Marine bundle 12, page 4640, paragraph 10. 15 Over the page at 4641, at the end of paragraph 11: 16 "For the Commission's information, there is no 17 requirement that a yellow flashing light be installed on 18 a non-DSC, a HSC or a non-HSC. Mardep's policy is to 19 require such a light to be installed on DSCs only. 20 Since Sea Smooth is not a DSC, it is not required to be 21 installed with a yellow flashing light." 22 So the only kind of vessel which would have been 23 required by Mardep to have a yellow flashlight would 24 have been DSCs? 25 A. Yes. Well, that's very clear anyway.</p>	<p style="text-align: right;">Page 156</p> <p>1 Q. But in reality, people observe the speed of, let's say, 2 an approaching vessel or a crossing vessel by ordinary 3 means of look-out: observing the aspect, the change in 4 the bearing and also the radar. They wouldn't actually 5 rely on any indication that it has an exemption. 6 A. No. 7 Q. How realistic is this problem? 8 A. I honestly don't know whether it's a problem or not. 9 But presumably, if the speed limit has any value at all, 10 then it's important that not everybody is exempt 11 from it. If there is a reason for the speed limit, it 12 should be maintained except for a particular reason. 13 And the particular reason given is that the Transport 14 Department want certain high-speed routes, and therefore 15 the vessels allocated to those routes are given 16 an exemption. 17 Q. Can I move on to C.4.4, "Dissemination of Marine 18 Department Notices": 19 "Mardep disseminates port- or navigation-related 20 information to the port and shipping communities in Hong 21 Kong through Marine Department Notices, which are issued 22 to, faxed or emailed to members of the port and shipping 23 communities on Mardep's distribution list, and are 24 accessible via Mardep's website. The operating 25 companies do not appear to have a satisfactory system to</p>

<p style="text-align: right;">Page 157</p> <p>1 ensure that crew members (some have little formal 2 education) understand the content of such MD Notices and 3 implement the provisions and requirements set out in 4 such notices. 5 MD Notices would also be used for special events, 6 such as the 2012 National Day fireworks display, 7 MD Notice 131, which set out special marine traffic 8 control measures and advised safety measures to masters, 9 coxswains, owners and operators of vessels. In addition 10 to the usual faxing and emailing, Mardep also raised 11 awareness of MD Notice 131 by holding two meetings 12 before the event, and broadcasting safety messages via 13 VHF radio and fax. 14 Most of the advice in MD Notice 131 was advisory in 15 nature, including the advice that all children on board 16 were required to don life jackets at all times. This 17 meant that it was left to the discretion of the operator 18 of the vessel to decide how to implement such advice." 19 THE CHAIRMAN: Just pausing there. The discretion was left 20 to the operator, owner and coxswain, was it not? 21 A. Yes, sir, that's correct. 22 MR SHIEH: Because if the owners do nothing, then it's 23 really down to the coxswain? 24 A. Yes. 25 Q. Paragraph 45:</p>	<p style="text-align: right;">Page 159</p> <p>1 operators and find out the kinds of things that they're 2 concerned about, and vice versa. The coxswains will 3 have knowledge of areas of the harbour that the VTS 4 operators do not have knowledge of. And in fact, 5 probably, the coxswains of local vessels have an awful 6 lot of knowledge that is not generally known to other 7 people. For instance, where there is floating debris in 8 the harbour, that sort of thing. They would be well 9 aware, more than other people. 10 So I think it's highly desirable for the coxswains 11 of local vessels to have routine visits, I'm not saying 12 every week or every month, but a small group every so 13 often, to join in with pilots and people who have pilot 14 exemption certificates. 15 I mean, my first thought, quite honestly, was that 16 it would be useful to give them some form of pilot 17 exemption certificate. But I realise that would be 18 putting much too much strain on the system. But it 19 doesn't mean you ignore it altogether. I think they can 20 be included in some of this exchange of information. 21 They have a lot to offer. I mean, they're very 22 knowledgeable people. 23 Q. Having described what you have observed on the ground, 24 we move on to section D.4, which is page 1139, where you 25 address the question of port control and discuss</p>
<p style="text-align: right;">Page 158</p> <p>1 "Mardep made efforts to monitor compliance with 2 MD Notice 131 on 1 October. However, the focus of such 3 monitoring was on violations of the law such as 4 travelling at excessive speed, overloaded of persons on 5 board and illegal carriage of passengers, and Mardep did 6 not check to see if children on board were wearing life 7 jackets. 8 C.4.5. Pilot Exemption Certificates. 9 The Port Control Division does not issue pilot 10 exemption certificates to coxswains of local ferry 11 vessels. There is a local knowledge aspect to the 12 coxswains licence. Pilots, trainee pilots and captains 13 of high-speed ferries visit the VTS centre to exchange 14 views. This does not currently include masters of local 15 passenger vessels." 16 What sort of problem do you see from this, that 17 local ferry vessels do not attend these perhaps 18 brainstorming or view-exchanging sessions? 19 A. Well, I think it's very important and I think it's just 20 one more example, actually, of the fact that local 21 passenger vessels are kind of the poor relation in the 22 marine community. They're just not included in a lot of 23 things. 24 I think it's actually very important that the key 25 people do get to go into the VTS centre, talk to the</p>	<p style="text-align: right;">Page 160</p> <p>1 suggestions for improvement. 2 "D.4.1. Review of the fog light/visits of coxswains 3 to VTC. 4 With respect to the issue of the fog light's effect 5 on navigational safety, I understand from Mr Chung 6 Siu-man that the fog light will be reviewed by the Port 7 Control Division." 8 We have looked at the interview record which you had 9 with Mr Chung. 10 "At a meeting with Mr Chung Siu-man, the idea of 11 visits to the VTC for coxswains of all vessels carrying 12 more than 100 passengers was discussed. I believe it is 13 appropriate to extend the current practice which 14 includes pilots and HSC masters to coxswains of 15 passenger vessels." 16 That was the point we have just discussed; is that 17 correct? 18 A. Yes, indeed. 19 Q. "D.4.2. Extension of VTS to local passenger vessels. 20 I understand the limited capacity of the VTS system. 21 At a meeting with Mr Chung Siu-man, he advised me that 22 there would be sufficient capacity in the VTS system to 23 cope with the increase in AIS signals if the requirement 24 was for vessels carrying over 100 passengers." 25 A. Yes. I think he very quickly calculated that in his</p>



<p style="text-align: right;">Page 161</p> <p>1 head, and I wouldn't criticise him if he came back and, 2 after further thought said, "It was quite difficult". 3 But I hope it can be done, because I really believe that 4 AIS -- and indeed I think we saw this morning, that it's 5 very much a matter of SOLAS, apart from anything else. 6 Q. For carriage of AIS signals? 7 A. Yes. 8 Q. But that would not entail the broadcasting of alerts; 9 that simply widens the pool for vessels who are 10 qualified to join the club, the VTS club? 11 A. Well, the whole point about it is -- I mean, a lot of 12 people forget what AIS is all about. AIS is primarily 13 an identification signal. If you have automatic 14 identification, it does mean that the VTS operator knows 15 exactly what every blob is on his screen, because they 16 all have an identification code. So in this particular 17 instance, Lamma IV would not have had a signal because 18 it didn't have AIS. So the operator couldn't have 19 spoken to -- well, he couldn't have spoken to him 20 because he didn't have a radio, but he wouldn't have 21 been able to speak to him anyway because he wasn't 22 identifiable. 23 So I think closing those two loopholes, firstly the 24 VHF and secondly the AIS, gives the opportunity at least 25 for the VTS operator to contact.</p>	<p style="text-align: right;">Page 163</p> <p>1 Q. Yes. 2 "D.4.3. Extension of VHF Channel 14. 3 Consideration should be given to require all 4 passenger vessels with more than 12 passengers be fitted 5 with VHF radio in order to contact VTS in urgency or 6 emergency situations or for VTS operators to issue 7 advice to all vessels. For the benefit of all vessels 8 on routes into Lamma Island, I suggest considering 9 a slight adjustment to the VTS boundary between VHF 10 coverage of channel 67 and channel 14, such that the 11 ferry pier and the typhoon shelter are brought within 12 the channel 14 area. A sample illustration of such 13 adjustment is shown in diagram 1 below. This would 14 avoid the need for vessels running into the Lamma Island 15 berths to change channels at a crucial time." 16 So could we close in on diagram 1. 17 A. Yes. I did discuss this with Raymond Cheung, and he 18 said of course there are reasons why channel 67 is where 19 it is, and I think he was going to look at it. 20 But just off the top of my head, it doesn't seem 21 that there would be a problem with making that small 22 adjustment. It certainly would be helpful for those 23 ships running to Lamma Island from Central. 24 Q. What was the reason given to you for actually carving 25 out the area for channel 67 and not 14?</p>
<p style="text-align: right;">Page 162</p> <p>1 Q. Yes. 2 THE CHAIRMAN: So that would go hand in glove with 3 a requirement that vessels that carry more than 4 100 passengers must be equipped with AIS and VHF? 5 A. Yes. 6 THE CHAIRMAN: And monitor the appropriate channel for the 7 waters that they're in? 8 A. Yes, indeed. Yes. 9 MR SHIEH: But then it's a separate point from whether or 10 not Mardep would actually be calling them up to warn 11 them of any risks, because that goes with the other 12 point about otherwise, Mardep would be flooded with -- 13 A. Well, there are a number of issues here. I mean, he was 14 particularly talking about the collision -- 15 Q. Collision alerts. 16 A. -- alerts. 17 Q. Yes. 18 A. But there are lots and lots of other things. I mean, 19 for instance, if there was a man overboard on a yacht in 20 a certain position, wouldn't it be nice just to pick up 21 channel 14 and say to all of the vessels in the area, 22 "There's a man overboard in position X, please assist"? 23 Q. Yes, yes. 24 A. There are loads and loads of reasons for talking to 25 these guys.</p>	<p style="text-align: right;">Page 164</p> <p>1 A. It's probably -- 2 Q. It's in the interview transcript, is it -- appendix V? 3 A. It's page 1193, line 9. 4 Q. Yes. I notice that, but what do you understand by "tie 5 in with our service area"? 6 A. I'm not really sure, I'm afraid. When he says his 7 "service area", I suspect he's dividing up the work 8 between the various desks in the VTS. So in other 9 words, obviously channel 14 is the busiest area, or, if 10 you like, the busiest desk. For some reason he was 11 trying to give 67 more to do. I think that's 12 probably it. 13 Q. Yes. Can we go back to your diagram 1. 14 A. Yes. 15 Q. It's page 1140. 16 A. Yes. 17 Q. If we can zoom in on that. Yes. 18 The black shaded area is the proposed addition of 19 channel 14 area; yes? 20 A. Yes, and it's currently within -- 21 Q. Currently 67? 22 A. 67, yes. 23 Q. But that would only cover the position up to and perhaps 24 a little bit beyond Shek Kok Tsui. 25 A. Well, it would cover the typhoon shelter as well,</p>

<p style="text-align: right;">Page 165</p> <p>1 I think. 2 THE CHAIRMAN: That's what you've said in the text of your 3 report: 4 "... such that the ferry pier and the typhoon 5 shelter are brought within the channel 14 area." 6 A. That was certainly the intention. If I've drawn the 7 line in slightly the wrong place, I apologise. 8 MR SHIEH: Yes. Because if I look at the map of Lamma, that 9 might not have extended to the typhoon shelter. 10 A. I see, yes. 11 THE CHAIRMAN: But that's what you obviously intended? 12 A. Yes, it was. 13 MR SHIEH: It will go all the way down to the typhoon 14 shelter? 15 A. I beg your pardon. That's a mistake. 16 MR SHIEH: Very well. But the intention is clear: it will 17 go all the way down to the typhoon shelter. Thank you. 18 The power station, that is. 19 I've been reminded by Ms Lok for the Department of 20 Justice that the evidence or the explanation is that 21 channel 14 is very busy. It's page 1194, line 11. 22 In fact it starts at line 1. This is a joint 23 interview with Mr Chung and Mr Wong Wing-hung. 24 THE CHAIRMAN: Yes. 25 MR SHIEH: So there's a reference to channel 14 being the</p>	<p style="text-align: right;">Page 167</p> <p>1 Q. It was the correct one. My apologies. You shaded the 2 correct area. 3 And the shaded area we see in diagram 2 is the 4 proposed area for the new speed limit of 15 knots? 5 A. Yes, that's correct. It goes back to what I was saying 6 earlier on, about the fact that there's no port control 7 for this area. If you were down on 15 knots when you 8 came into that shaded area, you could still have 9 a collision but it wouldn't be nearly so serious. The 10 difference in time from the edge of that area to the 11 berth, I worked it out as being 6 cables at 24 knots is 12 one minute and 30 seconds; and 6 cables at 15 knots is 13 two minutes and 24 seconds. So there would be a 14 54-second difference, basically. 15 And I should think some of the coxswains do slow 16 down a bit before that anyway. 17 Q. Anyway, the point is that the proposed speed limit only 18 reduces speed near the tail end of the voyage anyway and 19 it would not have eaten into a good deal of travel 20 time -- it would not have eaten into a good part of the 21 journey so as to unduly lengthen the travel time. 22 A. No. That's correct. 23 Q. We now come to D.4.5, "Marine Department Notices". 24 Paragraph 82: 25 "I understand that new arrangements are already</p>
<p style="text-align: right;">Page 166</p> <p>1 busiest channel. 2 A. Yes. 3 Q. So that was the information being conveyed to you? 4 A. Yes, that's correct. 5 Q. Can I move on now to D.1.4, which is your point about 6 new speed limit. Paragraph 80: 7 "In my view, consideration should be given to a new 8 speed limit of 15 knots maximum covering the approaches 9 to Lamma Island, as shown in diagram 2 below. The 10 boundary might run from the northern end of the coal 11 pier due north until the boundary of the North-west 12 Lamma Anchorage then due east to the Lamma Island shore. 13 This formal speed limit would guarantee an added degree 14 of safety to the approaches to the ferry piers where 15 there is no formal port control. It would add less than 16 a minute to the passage time of the fast ferries." 17 Then over the page: 18 "A formal route operating manual for all fast 19 ferries would be helpful in highlighting the particular 20 hazards which need to be considered on each specific 21 route." 22 My apologies, because it seems your sketch about the 23 new proposed channel 14 area is the correct one, 24 because -- 25 A. I was just going to raise that, yes.</p>	<p style="text-align: right;">Page 168</p> <p>1 under consideration for future special events in the 2 harbour. Mardep public safety notices should be 3 considered as compulsory and not as optional. There 4 should be a distinction between 'advisory notices' and 5 'compulsory notices'. 6 THE CHAIRMAN: Mr Shieh, can you help me. Is there any 7 legislative provenance of the issue of Marine Department 8 Notices? Is there a power in the Marine Department to 9 disseminate information in this way? 10 MR SHIEH: We can check. But I suppose if it's non-binding, 11 if it's intended to be non-binding, then I suppose one 12 might say it simply falls within part of good government 13 to actually give friendly advice to people. It's only 14 when it's intended to have some sort of mandatory 15 effect -- 16 THE CHAIRMAN: Well, that's what's highlighted here. To 17 have a mandatory effect you must have a legal base. 18 MR SHIEH: I have in fact looked up the relevant bit. It's 19 miscellaneous bundle, page 49, which is in rather 20 general language which doesn't take the matter further. 21 But since the question of the strict legal basis for 22 imposing mandatory requirements has been raised -- 23 miscellaneous bundle, page 49. That is a study paper 24 issued following the incident. It's (iii) at page 49. 25 If we look at this document, it is a document of the</p>

Page 169	Page 171
<p>1 Local Vessels Advisory Committee. 2 It starts at page 44, "Purpose", and then 3 paragraph 2 sets out the "Background". It's actually 4 the immediate aftermath of this incident. Page 49, 5 under (iii) -- well, I should start at the top: 6 "Advisory guidance regarding traffic control and 7 safety measures in firework displays and other major 8 events. 9 The marine traffic control measures adopted in 10 fireworks... have been used since early 1990. The 11 control measures in respect of the following areas are 12 stipulated in MD Notice ... issued before each major 13 marine event. 14 ... 15 The control measures are in the form of advisory 16 guidance to operators [et cetera]. For those not 17 following the advisory guidance, they have no statutory 18 liability." 19 So perhaps that answers the question. As long as it 20 remains advisory in nature, there's no express statutory 21 sanction for disobedience. 22 "Mardep will explore ways to further strengthen the 23 control measures in particular on speeding of vessels 24 within the short period of time after the completion of 25 the display or event, and study how the advisory</p>	<p>1 and Port Control Ordinance, section 16B, subsection (1). 2 It says: 3 "Where the Director reasonably believes that it is 4 necessary in the interests of safety to close any area 5 of the waters of Hong Kong to all vessels, or to any 6 vessel belonging to any class, type or description of 7 vessel, he may, by notice in the gazette, close that 8 area to such vessels or vessel, as the case may be." 9 THE CHAIRMAN: Thank you. 10 MR BERESFORD: There are other provisions in the locality of 11 the same ordinance dealing with other notices that may 12 be given. 13 THE CHAIRMAN: Is there anything that comes close to 14 addressing the issue that's currently being considered; 15 that is, other directions that are not now advisory but 16 are mandatory? 17 MR BERESFORD: There are provisions for notices to be given 18 in the gazette. So, for example, in section 16A there's 19 a power to give directions generally. And in section 16 20 there's a power to give directions. 21 THE CHAIRMAN: Which bundle is this in? 22 MR BERESFORD: This legislation bundle. 23 THE CHAIRMAN: Number 1 or 2? 24 MR BERESFORD: It should be tab 4, so that will be bundle 1. 25 THE CHAIRMAN: Yes.</p>
<p>Page 170</p> <p>1 guidance can be upgraded to mandatory requirements." 2 A. Yes, I understand. 3 Q. So it may well be that the study proposed by Mardep 4 would also include the question whether, insofar as 5 currently there is no statutory backing for any 6 mandatory requirement, Mardep would take it upon itself 7 to propose a revamping of any -- 8 THE CHAIRMAN: Presumably there is a power in the Marine 9 Department to declare an area a closed area, and that 10 must be a legal basis. Do we know where that power 11 lies? 12 A. Well, in the UK it would be in the Harbours Act, that 13 the harbour master could close an area. 14 MR SHIEH: Within the labyrinth of the legislation, I'm sure 15 one can look somewhere for it, because we see that for 16 the night in question the MD actually set out restricted 17 areas -- 18 THE CHAIRMAN: Ms Lok can help us, no doubt. 19 MR SHIEH: Ms Lok may be able to assist. 20 THE CHAIRMAN: On what basis does the Marine Department 21 declare an area a closed area? 22 MS LOK: I will have to look into the regulations. 23 MR SHIEH: Mr Beresford may be able to help because there's 24 an express section. 25 MR BERESFORD: Mr Chairman, it's in Cap 313, the Shipping</p>	<p>Page 172</p> <p>1 MR BERESFORD: We're starting at section 16, Mr Chairman, 2 "Power to give directions." 3 THE CHAIRMAN: Are there any page numbers? 4 MR BERESFORD: Internal page. It should be tab 4, the 5 English version. 6 THE CHAIRMAN: Yes, I have it. Yes? 7 MR BERESFORD: Internal page 8, section 16, "Power to give 8 directions". 9 THE CHAIRMAN: Yes. But is there anything that fits this 10 specifically? 11 MR BERESFORD: I'm not sure I've quite got your question, 12 Mr Chairman. 13 THE CHAIRMAN: I'm not sure we're looking at the same thing. 14 I'm looking at the Shipping and Port Control Ordinance 15 1986. You're looking at something that's more updated 16 than that. 17 A. 1997. 18 THE CHAIRMAN: My tab 4 has Code of Practice: Safety 19 Standards for Classes I, II and III. 20 MR BERESFORD: No, it's not the code of practice. I think 21 it may be tab 4A. 22 THE CHAIRMAN: Yes. We're on the same page now. 23 MR BERESFORD: My apologies. It's my fault, Mr Chairman. 24 So section 16, "Power to give directions" -- 25 THE CHAIRMAN: Yes.</p>

Page 173	Page 175
<p>1 MR BERESFORD: -- which includes at (f) a direction for 2 ensuring the safety of the vessel. 3 THE CHAIRMAN: So that might be construed as a power to give 4 such advisory guidance mandatory force? 5 MS LOK: Mr Chairman -- I'm sorry to interrupt -- if I can 6 assist on one small point. I think section 3 of Cap 313 7 provides that this particular Ordinance does not apply 8 to local vessels. 9 MR BERESFORD: That in turn raises an interesting question, 10 Mr Chairman, because Cap 548 defines "local vessels" as 11 excluding passenger ships, and of course "passenger 12 ships" would include the Lamma IV and the Sea Smooth. 13 THE CHAIRMAN: Yes. Somehow it's not a surprise to find 14 that there is an issue like this in this legislation. 15 MR BERESFORD: No, indeed, Mr Chairman. 16 THE CHAIRMAN: It comes as a comforting reassurance that 17 nothing changes. 18 Yes, Mr Shieh. 19 MR SHIEH: Mr Chairman, as I say, within the myriad of 20 legislation, one may or may not be able to find 21 a provision which bears some semblance to an enabling 22 provision for the Director of Marine to issue some kind 23 of directive notices with binding effect or with 24 particular legal sanction. The tension is always 25 perhaps one where, if you fall by the provision we have</p>	<p>1 MR SHIEH: Captain Pryke, what do you understand to be the 2 sort of mandatory direction that Mardep is thinking of? 3 You see, one particular problem in our case is that 4 under Marine Notice 131, there is an advisory paragraph 5 saying that all children should don life jackets at all 6 times. That was construed by everybody as being merely 7 "friendly advice", with no binding effect, and so not in 8 a way strictly adhered to by everybody. Is that the 9 sort of thing you understand Mardep may be looking at in 10 terms of upgrading it to some kind of a mandatory 11 requirement? 12 A. No, frankly. No. Looking at that particular one, 13 I think that could well be strong advice. When you're 14 talking about "compulsory", I'm thinking of things like 15 an oil spill in the harbour, telling all vessels to keep 16 clear; you know, a nuclear waste container falling off 17 a ship and telling people to keep clear. There must be 18 a form of notice that is mandatory. There has to be. 19 Maybe it's through that section 16. But all I'm saying 20 is that these notices ought to be "A", advisory, and 21 "C", compulsory, or words to that effect. 22 It should be clear to everybody who receives 23 a notice whether it's mandatory or whether it's 24 advisory. 25 THE CHAIRMAN: I think it's clear from the evidence we've</p>
Page 174	Page 176
<p>1 looked at, it has to be by gazette, which has the status 2 of subsidiary legislation. 3 THE CHAIRMAN: Ms Lok, could we invite you to address this 4 for us from the Director of Marine's perspective, as to 5 whether or not there is such a power and where it is? 6 The hitherto advisory guidance given in, for example, 7 the 1 October 2012 notice, if the Director wished to 8 make that mandatory, does he need new legislation or has 9 he got the power? 10 MS LOK: I will try my best to assist. 11 THE CHAIRMAN: Thank you. 12 MR SHIEH: As between sections 16 and 16A, one may require 13 gazetting, one may not require it. But as to the 14 precise subject matter of the notice -- for example, if 15 you look at the subject matter of Marine Notice 131, it 16 covers a whole host of subject matters, one of which is 17 that all children should don life jackets, which may 18 fall within the subject matter of section 16A but not 19 section 16, which would have required gazetting. 20 THE CHAIRMAN: Yes. 21 MR SHIEH: But I'm sure all these may be the sort of things 22 that Mardep in that discussion paper may be considering. 23 But perhaps I can ask Captain Pryke as to his 24 understanding as to -- 25 THE CHAIRMAN: Yes, very well.</p>	<p>1 received that everyone understood that "advisory" was 2 something you could safely ignore completely, because it 3 was only from Government. 4 MR SHIEH: I see. You are not actually there suggesting or 5 mooted the possibility of a specific power to declare 6 a particular issue to be mandatory; you are simply 7 advocating a clearer delineation between notices which 8 are mandatory, in effect, and notices which are perhaps 9 only advisory? 10 A. Well, yes. I think that's quite an important thing. 11 I mean, for instance, if there was, I don't know, 12 a swimming race from Central to Kowloon and they said, 13 "You must keep clear between the hours of so and so, and 14 so and so", it wouldn't be advisory; it would be 15 compulsory. 16 THE CHAIRMAN: That could be solved by closed areas, and 17 there is such a race that goes down from the northern 18 coast of Hong Kong Island around across the harbour 19 which they've restarted. 20 A. Oh, right. 21 THE CHAIRMAN: But I'm sure that's dealt with by closed 22 areas. 23 A. Right. I beg your pardon -- wrong example. But I'm 24 sure there are right examples of things that should be 25 absolutely compulsory. For example, letting off your</p>

Page 177	Page 179
<p>1 own fireworks from your own boat. There should be 2 a possibility of a Marine Department Notice saying you 3 mustn't do it, and that wouldn't be advisory; that would 4 be compulsory. 5 MR SHIEH: I think that's the law generally. 6 THE CHAIRMAN: That's dealt with by another law that says 7 possession of fireworks is illegal. 8 A. Right. 9 MR SHIEH: By default, you can't do it. But I think we get 10 the gist of the point you are trying to make, Captain 11 Pryke. 12 Now I move on to the last area. Coming back to 13 paragraph 8 of the various areas you discuss, at 14 page 1107 of the expert bundle, I think we can treat (d) 15 and (e) in one go because (d), "the monitoring of 16 compliance with local regulations by the LVSB of Mardep; 17 and (e) the investigation of marine accidents involving 18 local passenger vessels in Hong Kong waters by MAISSPB", 19 these two were clustered together in your subsequent 20 section as under the heading of 5, C.5 and D.5, so 21 I will treat them in one go. 22 A. Rightly or wrongly, they both come under Mardep. 23 Q. Yes. So, first of all, section B.5. That is page 1112. 24 "General requirements for the safety administration. 25 The final category of requirements of maritime</p>	<p>1 Given that the functions mentioned above largely 2 relate to Mardep, in particular LVSB, I refer this 3 category as 'General requirements for LVSB' in the 4 discussion below." 5 We move on to C.5: 6 "General requirements for LVSB. 7 Setting of standards in local legislation and 8 regulations. 9 I note that Mardep's approach to review and 10 improvement is incremental, and the 2006 Code was 11 developed by Mardep in consultation with the local 12 maritime industry through representation in relevant 13 working groups and committees. It appears to me that 14 change is mostly negotiated with local trade unions and 15 operators at stakeholders meetings. 16 I see from the papers that Mardep has been reviewing 17 various aspects of its regime since the incident and 18 have made various suggestions for improvement, for 19 instance, regarding the regime concerning life-saving 20 applications for local vessels. However, the timetable 21 for implementing such changes is unclear. 22 Issue of certificates. 23 There are at least two aspects of certification 24 which, in my opinion, require review. 25 First, local ferries and launches are not issued</p>
Page 178	Page 180
<p>1 safety relates to the setting and regulation of safety 2 requirements for local vessels in local legislation and 3 regulations, the reporting and investigation of 4 incidents, and the enforcement of such standards in 5 Hong Kong waters. In my view, this would involve the 6 performance of the following functions: 7 (a) setting out safety requirements for local 8 vessels in local legislation or regulations and 9 providing or specifying and training requirements; 10 (b) monitoring compliance with international and 11 local safety requirements through surveying and 12 auditing, and issuing passenger safety certificates, 13 safe manning certificates and documents of compliance 14 with safety management codes as appropriate; 15 (c) ensuring non-compliance is managed effectively 16 and that there are procedures in place for dealing with 17 non-compliant vessel owners and masters through 18 effective sanctions; 19 (d) ensuring all serious accidents and 20 life-threatening incidents and 'near misses' to be 21 reported to and properly investigated by an independent 22 marine accident investigation unit; and 23 (e) continuously modernise and revise safety 24 legislation for local passenger vessels in line with new 25 craft and higher international standards.</p>	<p>1 with passenger certificates or safe manning 2 certificates. Each vessel has an annual survey (and if 3 successful) will be issued with a safety certificate 4 which is known as the certificate of survey. This will 5 state the maximum passenger number to be carried and the 6 minimum crew required, and will be displayed in 7 a conspicuous place at all times on local passenger 8 vessels. 9 Secondly, high-speed craft which were built before 10 2007 (such as Sea Smooth) do not have to comply with the 11 requirements of providing an operating manual, route 12 operating manual and a training manual, which are 13 actually requirements in the HSC Code. As mentioned in 14 paragraph 41 above, the reason for this seems to be more 15 of a technicality rather than policy. 16 C.5.3. Reporting and investigation of incidents. 17 Shipowners, their agents and the coxswains have 18 a statutory duty to report marine incidents (including 19 collisions, sinkings, strandings, fatalities, serious 20 injuries et cetera) to Mardep within 24 hours of the 21 occurrence. In this connection, Mardep has an 22 established reporting system which allows reporting of 23 marine accidents by telephone, in person, fax, or email. 24 A person who fails to comply with the above reporting 25 requirement may be prosecuted, and there is a record of</p>

<p style="text-align: right;">Page 181</p> <p>1 cases of prosecution for failure to discharge the 2 statutory duty of reporting marine accidents. 3 I am aware that the MAISSPB of Mardep is responsible 4 for conducting investigations into all marine accidents 5 occurring in Hong Kong and on board Hong Kong-registered 6 ships. The primary purpose of investigation carried out 7 by MAISSPB is to ascertain the circumstances and the 8 causes with the aim of improving the safety of life at 9 sea and, by publishing the findings of the 10 investigations, the avoidance of accidents in the 11 future. It is not the purpose of the investigation or 12 the report to apportion blame or to take disciplinary 13 action. In addition, the summary together with the 14 lessons learnt and the full investigation report on 15 serious and very serious accidents will be posted on 16 their website. 17 There has been some difficulty at the inquiry to 18 ascertain all the relevant facts leading to the 19 collision. I also note the absence of voyage data 20 recorders on either Lamma IV or Sea Smooth, and the 21 absence of requirements of local passenger ships to 22 carry VDRs or closed-circuit television systems to 23 assist in accident investigations." 24 THE CHAIRMAN: Just dealing with voyage data recorders, is 25 that a requirement in the United Kingdom for vessels of</p>	<p style="text-align: right;">Page 183</p> <p>1 were discussing the merits of the board, then the board 2 would listen to their conversation at some future date. 3 But that never happened and it was never a problem. 4 Q. Thank you. Then we come to "Enforcement", C.5.4: 5 "Mardep has a prosecution unit which is responsible 6 for all cases referred to them by the enforcement units 7 of Mardep. As the prosecution policy of the prosecution 8 unit is a general one, it would appear that prosecution 9 is not common practice for safety deficiencies in local 10 ferries. As mentioned in paragraph 41 above, I note the 11 ambiguity in differentiating vessels possessing a SREP, 12 and I suppose this may create some difficulty with 13 enforcement on speed limits. As mentioned in 14 paragraph 41 above, I also note the absence of drug and 15 alcohol testing in Hong Kong waters. 16 C.5.5. Updates with modern international standards. 17 Change is sometimes slow to take place, as evidenced 18 by the non-requirement for Sea Smooth to comply with the 19 2007 HSC Rules." 20 THE CHAIRMAN: Before you move on, because this comes really 21 under a general consideration of enforcement, you've 22 heard the evidence about how apparently some people 23 within the Marine Department had decided not to enforce 24 the law as far as the need to have children's life 25 jackets in particular on the Lamma IV. Have you ever</p>
<p style="text-align: right;">Page 182</p> <p>1 the size of Sea Smooth? 2 A. Not normally, no. It would be for cross-Channel 3 ferries, yes, even at the size of Sea Smooth, if it was 4 an on international voyage. 5 THE CHAIRMAN: Yes. 6 A. But, no, it's not. And I'm not recommending it. But 7 I raise it purely because there are -- in this day of 8 high-technology, these sort of things become ever 9 cheaper, and I'm pretty certain there's a version of 10 a VDR that you can buy for next to nothing these days. 11 So it's just worth mentioning, I think. 12 THE CHAIRMAN: That would be something that would pick up 13 what was said in the wheelhouse? 14 A. Yes, yes. 15 THE CHAIRMAN: Which is a device that one finds in 16 ocean-going ships? 17 A. Yes. In fact, it's very interesting -- the officers and 18 masters of ocean-going ships obviously resented this 19 hugely initially, but once they realised it was only 20 ever used by accident investigators, then they became 21 quite relaxed about it. 22 MR SHIEH: The resentment came from what? Regarding it as 23 an intrusion into their privacy, what they said and what 24 they did? 25 A. Yes. The thought was if the master and the engineer</p>	<p style="text-align: right;">Page 184</p> <p>1 come across a policy operated in that way, without it 2 being documented, promulgated? 3 A. No. No. I mean, I've heard of things that have been 4 allowed to go on on existing ships for a number of 5 years, but it's been widely promulgated and everybody 6 knows what they're doing. But that was a very, very 7 unusual occurrence. 8 THE CHAIRMAN: Perhaps the lawyers can help here. Is the 9 failure to have carried the requisite number of life 10 jackets on the vessel something that creates liability 11 in criminal law? 12 A. I'm not aware of any cases personally. 13 THE CHAIRMAN: Mr Shieh? 14 MR SHIEH: We are checking whether or not there is any 15 criminal sanction or backing to the requirement let's 16 say of 5 per cent. 17 THE CHAIRMAN: Yes. 18 MR SHIEH: There must be some sanction, whether it's 19 criminal or whether it's revocation of a licence or 20 whatever. 21 THE CHAIRMAN: Perhaps while you're doing it, you'd check 22 whether there's a time limit for initiating 23 a prosecution. 24 MR SHIEH: Mr Beresford might have the answer. 25 MR BERESFORD: The provision is section 32 of the Merchant</p>

Page 185	Page 187
<p>1 Shipping (Local Vessels)(Safety and Survey) Regulation, 2 Cap 548G. 3 THE CHAIRMAN: Yes. 4 MR BERESFORD: It provides in subsection (1) a general 5 requirement that: 6 "All life-saving appliances provided on board 7 a local vessel shall be -- 8 (a) sufficient to ensure the safety of persons on 9 board the vessel ..." 10 And then subsection (2): 11 "Without limiting the generality of subsection 12 (1) -- 13 (a) every local vessel shall comply with the general 14 requirements as regards the provision of life-saving 15 appliances set out in part 1 of schedule 3; and 16 (b) every local vessel belonging to any class, type, 17 category or description of vessel specified in any table 18 in part 2 of schedule 3 shall comply with the specific 19 requirements as regards the provision of life-saving 20 appliance set out in that table." 21 That, of course, Mr Chairman, takes us to the table 22 that we're familiar with, that provides for the 23 100 per cent adult life jacket and 5 per cent children's 24 life jacket. 25 Then subsection (3) provides:</p>	<p>1 number of collisions and number of casualties in Hong 2 Kong waters. In 2008 there were 163 collisions with 3 18 fatalities; in 2009, 159 collisions with 1 fatality; 4 in 2010, 183 collisions with 8 fatalities; in 2011, 204 5 collisions with 1 fatality; and in 2012, 147 collisions 6 with 39 fatalities. I have been unable to establish how 7 these figures relate to local passenger vessels and 8 local high-speed craft." 9 I believe that yesterday we have received some more 10 breakdown from the Marine Department. 11 Captain Pryke, have you seen a copy of that? 12 A. Yes, I have. It didn't have as much information as 13 I would have liked, actually. The whole point about the 14 MAISSPB -- and I'm not really sure where Mr Chung gets 15 his figures, whether he gets them from the MAISSPB or 16 whether they're his own figures from Port Control, 17 I don't know. But the whole point about having the 18 independent figures from MAISSPB is that they are purely 19 to be used from the point of view of risk assessment and 20 assessing safety, safety improvement, safety 21 non-improvement, et cetera. 22 So the more detail there is in terms of why these 23 collisions occurred, were they between local vessels, 24 did they happen because nobody was on look-out -- 25 I mean, all that kind of information would be very, very</p>
Page 186	Page 188
<p>1 "If, without reasonable excuse, subsection (1) or 2 (2) is contravened, the owner of the local vessel 3 concerned, his agent and the coxswain each commits an 4 offence and is liable on conviction to a fine at level 3 5 and imprisonment for 6 months." 6 So, section 32(3), is the short answer. 7 THE CHAIRMAN: Thank you. 8 MR SHIEH: So there is indeed a sanction. As to whether or 9 not it would be subject to any sort of limitation 10 period, we would look at that. We'll check that, 11 Mr Chairman. 12 THE CHAIRMAN: Thank you. 13 MR SHIEH: Mr Chairman, perhaps I can just finish off C.5.5 14 and then we'll break for the day, before I move on to 15 section D tomorrow. 16 THE CHAIRMAN: Yes, please do. 17 MR SHIEH: Paragraph 56: 18 "Also the requirement for the carriage of children's 19 life jackets seems not to have been fully implemented. 20 Although I am aware of the Local Vessels Advisory 21 Committee under Mardep, and the presence of local 22 industry representatives therein, I have so far not been 23 given any reference to risk assessment and risk control 24 in relation to maritime safety of local vessels in Hong 25 Kong. There are statistics provided by MAISSPB for the</p>	<p>1 helpful in deciding if this was, you know, a really 2 serious, deep-seated problem or whether it was 3 a one-off. And I'm not sure that the figures we've seen 4 actually give the answer to that. 5 MR SHIEH: Mr Chairman, I see that it's 5.30. 6 THE CHAIRMAN: Yes. We can relieve Captain Pryke. 7 We're going to adjourn now, Captain, and we'll 8 resume, if we may, with your testimony at 10 o'clock 9 tomorrow. But you're free to leave the witness box now 10 whilst counsel raise other matters with me. 11 A. Right. 12 MR SHIEH: Mr Chairman, looking ahead, Dr Armstrong is in 13 town, as I understand working in the offices of the 14 Commission's solicitors finalising his report, which 15 hopefully should be able to be finalised within today. 16 And also Professor Ho, the electrical engineer, although 17 an inspection is now scheduled to take place tomorrow at 18 11 am, on the basis of the materials as they stand, he 19 has been asked to finalise his report, again within this 20 afternoon or this evening. 21 THE CHAIRMAN: Yes. 22 MR SHIEH: So this evening we are looking at two reports by 23 two experts, which hopefully can both be served tonight. 24 Now, tomorrow, subject to any questioning by other 25 parties and counsel, Captain Pryke should comfortably</p>

Page 189	Page 191
<p>1 finish within the morning. 2 THE CHAIRMAN: Mr McGowan, can you help at all as to that? 3 MR McGOWAN: I do have some questions, yes. I wouldn't have 4 thought they'd take more than half an hour, and probably 5 much less than that. 6 THE CHAIRMAN: Thank you. 7 Ms Lok? 8 MS LOK: If we do have any questions, it won't take long, 9 Mr Chairman. 10 THE CHAIRMAN: Thank you. 11 Let me enquire from Hong Kong &amp; Kowloon Ferry. 12 MR CHAN: We do not anticipate any questions, Mr Chairman. 13 THE CHAIRMAN: Thank you. 14 MR McGOWAN: One matter is Coxswain Lai. He might have some 15 questions. I don't know whether he's been invited to 16 come along and listen. 17 THE CHAIRMAN: He's been invited to attend so that he could 18 hear the evidence and in order to ask questions, but 19 I see he's not here. 20 MR McGOWAN: Yes. 21 MR SHIEH: So two reports are expected to be coming. A bit 22 of juggling of time will have to be done because as 23 I understand it, Professor Ho has travelling commitments 24 on Friday. So if Professor Ho is indeed required to 25 give oral testimony, then he would have to give evidence</p>	<p>1 is that he says. 2 MR SHIEH: Yes. But I've had a conversation with those 3 representing Hong Kong &amp; Kowloon Ferry and now that the 4 question of the lights has come up, the provisional 5 indication is that they are likely to want to question 6 Professor Ho, although obviously the report hasn't 7 arrived yet. 8 THE CHAIRMAN: Yes. 9 MR SHIEH: But the subject matter is known. 10 THE CHAIRMAN: I follow that. 11 MR SHIEH: On one view, one can say that given Captain 12 Pryke's evidence that the starboard light is probably 13 irrelevant, in his view, but I can understand from the 14 Sea Smooth's perspective, they may want to open up other 15 areas of inquiry. 16 THE CHAIRMAN: Yes. 17 MR SHIEH: So that is perhaps what one may call a heads-up 18 as to what may be coming our way in terms of evidence. 19 So we are looking at two experts coming in. But as to 20 who goes in first, it really depends on how we go 21 tomorrow morning. 22 THE CHAIRMAN: We'll have to juggle it as best we can 23 tomorrow, and make the best use we can of the time 24 available. 25 MR SHIEH: Yes. And obviously once Professor Ho's report is</p>
Page 190	Page 192
<p>1 before Friday, probably before Dr Armstrong. 2 THE CHAIRMAN: Yes. 3 MR SHIEH: Because Professor Ho is likely to be short and 4 self-contained, whereas Dr Armstrong may flow on to 5 Friday. So if Professor Ho is required to give 6 evidence, he may be giving evidence tomorrow, but 7 obviously subject to the scheduled inspection at 8 11 o'clock where he would be present. So it may well be 9 that if the evidence of Captain Pryke finishes let's say 10 before 11 o'clock, there may have to be a short hiatus 11 while we wait for Professor Ho to come back, maybe after 12 the inspection, maybe in the afternoon. 13 THE CHAIRMAN: Is there any reason why we couldn't start 14 with Dr Armstrong in those circumstances, and then 15 interject Professor Ho? 16 MR SHIEH: Could be. Could be. That's one way of going 17 about it, depending on the state of progress with 18 Dr Armstrong's report. Obviously if his report is 19 already finalised tonight and everyone has had a chance 20 of looking at both their reports, that is one 21 possibility. 22 THE CHAIRMAN: Yes. 23 MR SHIEH: The other question is the need for Professor Ho 24 to be called in the first place, because -- 25 THE CHAIRMAN: Well, that will depend, no doubt, on what it</p>	<p>1 ready, we will obviously pass it on to Dr Cheng of the 2 government chemist to see whether or not he wishes to 3 comment on any aspect of it, including the bit about the 4 presence of tungsten oxide. 5 THE CHAIRMAN: Yes. 6 MR SHIEH: But this is all behind the scenes. If he wants 7 to say anything more, no doubt he would put in something 8 in writing, or he can be asked to. 9 THE CHAIRMAN: Do we know whether the forensic scientist who 10 will be present tomorrow on behalf of the Marine Police 11 is Dr Cheng? 12 MR SHIEH: Dr Cheng is attending. He may not be for Marine 13 Police, but he will be one of the government 14 representatives who will be there, as I understand it. 15 THE CHAIRMAN: Let me ask Ms Lok. 16 MS LOK: My apologies. I really do need to take some 17 instructions on this. 18 THE CHAIRMAN: Yes. 19 MR SHIEH: The secretariat informs me that Dr Cheng will be 20 there. 21 THE CHAIRMAN: Well, it's obviously important that the 22 various experts are kept in touch with one another's 23 findings so that they can consider their position. 24 MR SHIEH: Because if Dr Cheng can be there as well, maybe 25 he can have a direct chat with Professor Ho and then</p>



Page 193	Page 195
<p>1 they can immediately sort out any issues.                  2 THE CHAIRMAN: They're expert witnesses and they know how to                  3 conduct matters.                  4 MR SHIEH: Yes. So perhaps I can just leave the matter                  5 there?                  6 THE CHAIRMAN: Yes.                  7 Now, at some stage we must revert to Mr Dominic                  8 Yeung's application to adduce evidence on behalf of the                  9 China Classification Society. So perhaps you would                  10 contact him or his solicitors to find out what their                  11 current position is.                  12 MR SHIEH: Yes. And in respect of the application                  13 concerning the other Dr Cheng, Dr Peter Cheng, I've had                  14 some indication from Dr Armstrong as to his stance.                  15 I should be able to advise the Commission finally                  16 tomorrow morning. I have yet to look at Dr Armstrong's                  17 response in detail.                  18 THE CHAIRMAN: Thank you. That would be helpful.                  19 MR SHIEH: Also I think the representative from the trade                  20 union, Mr Lee, has kindly provided a draft statement.                  21 So we will be looking at it and if we are to call him --                  22 I think we are calling him -- the statement will be                  23 finalised soon. Tonight, I believe.                  24 THE CHAIRMAN: Good. We look forward to receiving what it                  25 is that he's got to contribute.</p>	<p>1 I N D E X                  2 MR WONG KAM-CHING (affirmed in .....16                  Puntì)                  3 Examination by MR BERESFORD .....16                  4 Examination by MR McGOWAN .....22                  5 (The witness withdrew) .....28                  6 MR LAU WING-TAT (affirmed in Puntì) .....28                  7 Examination by MR BERESFORD .....28                  8 Examination by MR McGOWAN .....36                  9 Further examination by MR BERESFORD .....43                  10 (The witness withdrew) .....43                  11 CAPTAIN NIGEL ROBERT PRYKE (sworn) .....44                  12 Examination by MR SHIEH .....44                  13                  14                  15                  16                  17                  18                  19                  20                  21                  22                  23                  24                  25</p>
Page 194	
<p>1 We'll adjourn now until 10 o'clock tomorrow.                  2 (5.36 pm)                  3 (The hearing adjourned until 10 am on the following day)                  4                  5                  6                  7                  8                  9                  10                  11                  12                  13                  14                  15                  16                  17                  18                  19                  20                  21                  22                  23                  24                  25</p>	