

## **Addendum to AAG's Submission to the Ombudsman arising out of the Lamma Ferry Commission of Inquiry Report**

1. This is an Addendum to the AAG's Submission to the Ombudsman, arising out of the Lamma Ferry Commission of Inquiry Report dated 19 April 2013 (Report"). This Addendum will address only the issue of proper creation and management of records. The main Submission will address all issues relating to archival law including records: creation, management, preservation, appraisal, disposition, access and sanctions.
2. The Report contained many adverse comments against the Marine Department ("MD"), its officers and its system of control.
3. Amongst the litany of errors, the Report identifies four major causes of the loss of lives:-
  - (a) No water-tight Bulkhead door, leading to the very fast sinking of Lamma IV (90 seconds), after MD repeatedly passing inspections with no such door and with poor documentation;
  - (b) Improperly secured seats on upper deck of Lamma IV, leading to passengers being trapped amongst the seats which came loose, after MD repeatedly passed inspections with poor documentation, when MD not in position to be assured that seats were properly secured;
  - (c) No children lifejackets on board Lamma IV (required by law) after MD repeatedly passing inspections with poor documentation;
  - (d) MD deliberate non-enforcement of children lifejackets Regulations, alleged to be based on a MD oral policy, wholly undocumented and unknown to the outside world.
4. The Report is particularly damning, of:-
  - (a) The non-professional attitude of the MD and its officers to responsibility and transparency;
  - (b) The systematic and repeated failures of the system of control in the MD.The Report calls for a complete change.
5. The Report is the best evidence (also a stark reminder to the people of Hong Kong) of the crisis of our present system of Government, with no proper regard for public responsibility and transparency. The Report shows clearly that a Department of the Government failed in its obligation to properly identify and analyse the core business and responsibilities of that Department, the interests of its stakeholders and failed to set up a system of governance and control to ensure the object and purpose of that Department and its business are achieved with efficiency and transparency. The implication of the Report is that good records management system is an essential component of such required system of governance and control.
6. The Report highlights many of the short comings of the MD, with implications on records management including:-
  - (a) Important safety issues such as Ship Stability where MD

documentation noted merely "as seen" rather than being carefully assessed and then approved. AAG says that the process of assessing leading to approval is important and must be properly recorded in the documentation. Documentation is the vital tool for the passing of knowledge from one officer to another officer (separated by time and space).

- (b) All too often, the documentation in the MD is brief, rudimentary and not going into the heart of the issues required to be resolved.
  - (c) There is much disconnect between the two parts of the same safety requirement done by two different persons (i.e. plan approval by one officer and inspection of vessel done by another officer some time later) with no documentation to link the two processes and to link the knowledge of the two persons.
  - (d) All too often the learning of the requirements of the job in the MD is from the senior officer. Knowledge of maritime safety issues appears to have been mainly passed on verbally from one officer to another officer.
7. AAG suggests that continuity of knowledge within the Department should not be by the unprofessional and unreliable means of oral conversation but in addition to oral instruction must always be accompanied by good and professional records creation and management. What gives reliability to knowledge, information and data are good records, created contemporaneously and professionally under good records management system.
8. Transparency is vital as it promotes efficiency and good government and is the best protection of the public interest. All stakeholders in maritime safety such as Legco, Exco, the public, the media and The Ombudsman should be aware of important processes in the MD relating to maritime safety in HK. If the MD non-enforcement policy of children lifejackets is documented and known to the stakeholders, necessary actions would have been taken to stop such illegal policy and many lives could have been saved.
9. Transparency results in public knowledge of steps taken by MD to comply with its obligations and its enforcement of the law. Captain Pykre gave one good example of this, namely the exhibition of a Mardep Document of Compliance on board a ferry (Para. 59, page 30 of Pykre Expert Report Part 2).
10. What is urgently called for is a regime of proper documentation submitted to MD by the ferry companies implementing its safety management system based on the ISM Code (as set out at Para. 60 of Pykre Expert Report Part 2 at page 31). There should be set up:-
- (a) documentation of the MD supervision and control of the carrier's safety management system;
  - (b) documentation of MD's own safety control system. The above documentation should be publicly accessible.
11. It is ironic that the non-application in Hong Kong by MD of international

standards in respect of maritime safety in Hong Kong harbour is mirrored by the non-application by the Hong Kong Government of international standards in respect of public records management and archives.

12. The concept of a Designated Person being responsible in international safety management system should be made applicable to records management system. Just as there is to be a Designated Person in a ferry company as suggested by Captain Pyrke, there should also be a Designated Person in MD for local vessel maritime safety and equally there should be a Designated Person in MD for records management. The importance of a new approach and a new system is so that one person in the MD (and for that matter in every Government Department and Bureau) can be identified as having the ultimate goal-keeper responsibility of ensuring that the system of maritime safety control works. Hong Kong needs this new system of control with a Designated Person more than ever, because there is now prevailing in Government a total lack of any individual responsibility. We need this, in this post 1997 new political culture where meek civil servants rely on being constantly shifted from one Government post to another Government post as excuse for no one taking responsibility for failures. This has to change and the only effective change is for a particular person, the Designated Person in a Department (whether in MD in respect of local maritime safety or in other Departments) to take the credit or take the fall for the particular area of the business of the Department.
13. The value of the Designated Person concept is that particular person has access to the highest level in the management so that particular person can be assured of adequate resources and support from the senior management for the discharge of the duty of that particular person.
14. To have an efficient MD able to discharge its proper duties on maritime safety, Dr. Armstrong suggests that there should be the creation at the highest level of "Safety Aims" Objectives. (Para. D3, page 37 of Dr. Armstrong Expert Report Part 2). AAG suggests that Policy Objectives should become the norm in every aspect of the core business of a Government Department.
15. It is only with the existence of such highest level Policy Objectives, can the Department then devise a system to ensure that appropriate legislation is passed, processes established and system put in place to oversee the implementation of the Policy Objectives and provide for the measurement of the performance and the implementation. AAG suggests that well qualified records manager should be required to work with the MD senior management to ensure a good system of governance and control, under which proper records will replace the former system of so much work done verbally with no transparency and with the public and stakeholders locked out of the necessary knowledge or participation in the MD activities.
16. Hong Kong will benefit from a new system whereby the Policy Objectives can be scrutinized and assessed and the implementation of the Policy Objectives can also be scrutinized. There should be public access to the documentation on the measurement of the performance and implementation.

17. There are compelling reasons for Hong Kong, pending the eventual enactment of Archives legislation, to have urgently a professional records management system so that:-
- (a) No more discretionary recordkeeping but mandatory recordkeeping, monitored by professional records manager
  - (b) No more incompetent and non-qualified staff to manage records
  - (c) No more closed secretive records system or no system but transparent records management system open to public scrutiny
  - (d) No more staff neglect, unnoticed and unpunished but statutory sanction in the new legislation on maritime safety.
18. The important purpose and simple objective of a new legislation for maritime safety incorporating records management is to ensure public confidence in the integrity and reliability of public records. Hong Kong cannot afford a governing system with no proper records management system. With records management legislation (initially limited to maritime safety) enacted as part of the new maritime safety legislation, the reliability of public records will help to improve the reliability of the Government and to save lives in Hong Kong.