

LEGISLATIVE COUNCIL PANEL ON TRANSPORT

Tuen Mun Road Traffic Incident on 10 July 2003

Background

On 17 July 2003, Members were briefed on the design and use of vehicular parapets in Hong Kong, the work of the Tuen Mun Road Traffic Incident Independent Expert Panel (the Panel) and the immediate improvement measures being implemented.

2. At the meeting, some Members expressed the view that a statutory Commission of Inquiry should be formed instead of a non-statutory Expert Panel to investigate the causes of the traffic incident and to make recommendations on how to prevent similar incidents in the future. The Administration was asked to provide supplementary information on the reasons for not forming a statutory Commission of Inquiry.

Considerations

3. In deciding to set up the Panel rather than a statutory Commission of Inquiry, we have taken into account two major considerations – the need to come up with recommendations on preventive measures speedily and the need to ensure that the judicial process in relation to any liabilities arising from the accident would not in any way be prejudiced.

4. In view of the fact that the truck driver involved in the traffic incident has been arrested for suspected Dangerous Driving Causing Death and that the victims and their families may institute civil claims against identified parties, any actions which may have implications on the legal process which may arise therefrom should be avoided.

5. The Police has already initiated an investigation into the cause of the traffic incident immediately after its occurrence, and the findings will be submitted to the Director of Public Prosecutions in the Department of Justice to consider whether any prosecution action should be taken. An avenue is also available for the victims and their families to institute civil claims. The criminal and civil liabilities will be determined by due process of the law. Therefore, our first priority should be to identify quickly measures to enhance highway safety. In this regard, we consider that an expert panel will be fully sufficient for the purpose.

6. After careful consideration, we came to the view that a statutory Commission of Inquiry would be less suited for the priority task of making speedy recommendations on preventive and improvement measures. The procedures involved in a statutory inquiry will necessarily be more legalistic and more time-consuming and a report may not be produced quickly. A more important consideration is that in order to avoid any implications on the legal process which may arise from the incident, the Chief Executive-in-Council (even if he were minded to appoint a statutory Commission of Inquiry) may have to direct that certain matters be excluded from the terms of reference of the Commission to avoid the Commission being drawn into commenting on the guilt or innocence of an identified person. Also, an inquiry held under the Commissions of Inquiry Ordinance is deemed to be a judicial proceeding, the rule that the subject matter of the inquiry is sub-judice will apply. The same consideration applies to issues relating to civil liability.

7. We are also mindful of the importance of protecting the constitutional rights guaranteed to persons charged with a criminal offence (presumed innocent unless proved guilty). Since the person involved in the incident in question (i.e. the driver of the articulated vehicle) had not formally been charged with the offences, nor did he have the protections afforded to him in a criminal trial, it is doubtful whether a Commission of Inquiry could properly make such a finding.

8. The Independent Expert Panel as presently constituted is best placed to discharge the priority task of identifying measures to enhance highway safety without jeopardizing the proper conduct of the civil or criminal proceedings to be handled by a court of law.

Environment, Transport and Works Bureau

31 July 2003