

THE MV BARIMA AND THE MARITIME STATUTE BOOK OF GUYANA

*A Fully Expanded Analysis of Statutory Deficiency in the Law Governing Domestic
Passenger Shipping*

Loss of the Guyana Government ferry MV Barima, 18 July 2026

73 dead • at least 30 unaccounted for • 76 rescued

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Submitted as an aid to the Commission of Inquiry into the loss of the MV Barima

The author is not admitted to practise law in Guyana or in any other jurisdiction. Nothing in this document is legal advice. This document makes no finding of fact and resolves no disputed question. Every person charged, detained, suspended or named in reporting in connection with this casualty is presumed innocent.

Text current to 29 July 2026

Statutory text read from the Laws of Guyana, Revised Edition, as authorised by L.R.O. 1/2012

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EXECUTIVE SUMMARY

ES.1 THE QUESTION, AND THE ANSWER

This document was written to answer one question: **how do the maritime laws and statutes of Guyana fail the people of Guyana?**

The answer, established from the statute book itself and not from any disputed fact about the casualty, is this:

Guyana has a maritime statute book of considerable length which contains almost no enforceable safety standard for the class of vessel on which most Guyanese who go to sea actually travel; which requires nobody to count the people who go aboard; and which imposes on no person any duty to investigate a marine casualty, however many die.

Every finding below would have the same answer whatever the Commission of Inquiry concludes about why the *MV Barima* capsized. **This document makes no finding of fact, resolves no disputed question, and alleges nothing against any person.** Every person charged, detained, suspended or named in reporting is presumed innocent.

ES.2 THE CENTRAL FINDING — THE 24-METRE GAP

The *MV Barima* was **40.26 metres** long and **284 gross register tons**.

- Because she was **longer than 24 metres**, the **Guyana Shipping (Small Commercial Ship Safety) Regulations, Reg. 5 of 2005** did not apply to her. That instrument is the **only** place in the entire 904-page consolidation containing intact stability criteria, stability information for operating personnel, an ISM-referenced safety management system, a Record of Passengers, a marine casualty notification duty, and station bill, muster and drill requirements. Its definition confines it to ships of **less than 24 metres**.
- Because she was a **passenger ship**, the **Guyana Shipping (Cargo Ship Survey) Regulations, Reg. 6 of 2005** expressly carved her out. Regulation 3 applies to sea-going Guyana ships of less than 500 gross tonnage **but above 24 metres in length** — “*except passenger ships, fishing vessels and pleasure craft.*” She fell squarely inside the band and was removed from it by five words.
- **Part XV of the Guyana Shipping Act, Cap. 49:01, headed “Passenger Ships”, consists of two sections.** One is an enabling power to make regulations that do not appear in the authorised consolidation. The other creates offences of drunkenness and fare evasion.

The consequence:

A vessel one metre shorter, carrying a small fraction of her complement, was subject to a materially more demanding safety code than she was. Had

she carried freight instead of people, she would have been subject to a five-yearly structural and machinery survey and to annual surveys. Because she carried people, she was subject to neither instrument.

This is not a drafting slip. It is a hole bounded on one side by the words “*less than 24 metres in length*” and on the other by the words “*except passenger ships*”, and **every Guyanese domestic passenger vessel of 24 metres and over is in it today.**

ES.3 THE CASUALTY IN BRIEF

Vessel	MV <i>Barima</i> , Guyana-flagged steel passenger-and-cargo motor vessel
Owner / operator	Government of Guyana / Transport and Harbours Department
Built	Ferguson Brothers (Port Glasgow) Ltd, yard no. 340; launched 9 May 1939; registered Georgetown 17 November 1939
Dimensions	284 grt / 111 nrt; 40.26 m × 8.87 m; draft 7.5 ft; twin screw
Age at loss	86–87 years
Route	Georgetown → Port Kaituma, serving Region One (Barima-Waini) , which has no road to Georgetown ; population 38,956 at the 2022 census
Lost	18 July 2026; distress signal 22:43; capsized off the Essequibo coast
Casualties	73 dead, at least 30 unaccounted for, 76 rescued
Life-saving equipment	250 lifejackets; 6 inflatable liferafts; 2 rigid liferafts

The public record is irreconcilable on the most basic facts. Certificated capacity is given variously as **approximately 397**, **approximately 394** and **approximately 150** passengers by three named sources. Persons on board are given as **133** on the manifest and **179** on a specialist review of boarding closed-circuit television, with the crew figure of 17 against 18 unreconciled. **On the manifest figure the arithmetic does not close at all:** 76 rescued plus 73 recovered dead exceeds 133 by sixteen. Chapter 3 reproduces all eight conflicts in full and attributes each version to its source without resolving any of them.

ES.4 THE PRINCIPAL STRUCTURAL FINDINGS

ES.4.1 Guyana had two casualty-investigation regimes on 18 July 2026, and neither could lawfully be used

- **Cap. 49:01 Part XVIII (1998)** — the Minister **may** cause a preliminary inquiry and **may** cause a formal investigation. There is **no threshold**, **no trigger**, **no time limit**, **no duty to publish**. The Board’s assessors are appointed **by the Director**; its report goes **to the Director**; and its only dispositive power over any person is to cancel or suspend a certificate.

- **Cap. 49:07 Part I (1883)** — a court of a magistrate and two assessors with full powers of compulsion. **Section 3 provides that nothing in that Part applies to any ship belonging to or in the service of the State.** The MV *Barima* belonged to the State. The machinery was disappplied to her by its own terms.

Neither was used. The Commission of Inquiry sits under the Commissions of Inquiry Act — a general-purpose statute that is not a maritime statute at all. That decision was correct, and it is also the clearest possible proof of the deficiency: **a maritime statute whose own casualty machinery must be bypassed in the country's worst maritime disaster has failed the single test for which those provisions exist.**

The IMO Casualty Investigation Code, mandatory under SOLAS Chapter XI-1, regulation 6 since 1 January 2010, is unimplemented in Guyana in every respect — no mandatory investigation of a very serious marine casualty, no independence, no separation from blame attribution, no protection for witness evidence, no duty to publish, no submission to the IMO.

ES.4.2 The statute makes the regulator the owner of the ships he regulates

Cap. 49:01 s. 3(3) provides that where a Guyana Government ship is registered, *“any reference to an owner shall be construed as a reference to the Director.”*

Trace it through: the owner must report accidents **to the Director** (s. 237); notify defects and alterations **to the Director** (s. 292); carry stability information (s. 290); not send an unseaworthy ship to sea (s. 337); use all reasonable means to ensure seaworthiness (s. 338); and is subject to detention **by the Director** (s. 339). **In every case the person who must report is the person to whom the report is made.** The same Director then **appoints the assessors** to any Board of formal investigation (s. 429(1)) and **receives its report** (s. 429(6)).

This is not a conflict of interest in the loose sense. It is the statutory identification of the regulated party with the regulator, effected by an express deeming provision.

(The author's earlier drafts framed this as a single-ministry fusion of operator and regulator. That framing was wrong — MARAD and the Transport and Harbours Department sit under different Ministers — and it is corrected in Chapter 8. The real defect is narrower and sharper, and it is inside the office of the Director.)

ES.4.3 It is arguable that the Guyana Shipping Act did not apply to her at all

Cap. 49:01 s. 3(1)(a) disapplies the entire Act to *“Guyana Government ships operated for non-commercial purposes.”* **The Act nowhere defines “non-commercial purposes.”**

Whether a subsidised State ferry selling tickets at a published tariff falls inside or outside the phrase is genuinely arguable — **Cap. 49:04 s. 9** requires Parliament to meet the Department's net deficiency, while **Cap. 49:04 s. 22** presupposes that the Department carries on the business of a carrier.

s. 3(2) — the power to prescribe how far the Act applies to Government ships — is a power, not a duty, and no regulations under it appear in the consolidation.

The applicability of the principal maritime safety statute of Guyana to the vessel in which seventy-three people died therefore turns on an undefined phrase and on a Gazette notification whose existence has not been established.

ES.4.4 The load line was asked to answer a question it cannot answer

The Director-General of MARAD is reported to have said that the **load line** was used to determine whether the vessel was overloaded; that it was “**just submerged**” before departure; that she was therefore **not overloaded**; and — critically — that he was **not clear how the weight was distributed**.

A load line measures reserve buoyancy at a given displacement. It measures total weight and water density. It is entirely indifferent to where that weight is.

Two identical vessels of identical displacement, one with cargo stowed low and one with the same cargo on the upper deck, present **the same mark to an observer on the wharf** and have **radically different stability**. The load line does not measure metacentric height, the righting-lever curve, the area under that curve, the angle of vanishing stability, free-surface effect, the downflooding angle, passenger crowding, or whether the vessel is already taking water. **Every one of those determines whether a vessel capsizes. Not one is measured by the mark on her side.**

If the distribution of weight is unknown, the stability is unknown, whatever the load line showed.

And the fault is the statute’s, not the regulator’s. MARAD used the load line because **the load line is the only quantitative loading control Guyanese law gives it for this class of vessel**. There are no intact stability criteria, no prescribed content for stability information under s. 290, no duty to calculate a departure condition, no approved loading conditions, and no passenger-crowding criterion. **A regulator with a load line and nothing else will use the load line.**

ES.4.5 Nobody was required to count the people on board

SOLAS Chapter III, regulation 27 requires that all persons on board a passenger ship be counted before departure, that names and gender be recorded distinguishing adults, children and infants, and that the record be **kept ashore and made available to search and rescue**.

Cap. 49:01 s. 398(1)(b) confers power to require particulars as to all passengers. **It is an enabling power. No regulations under it appear in the consolidation.**

The discrepancy between 133 and 179 is therefore not, on the face of the statute book, a breach of any counting duty — because no counting duty exists. A manifest is a commercial document, compiled from bookings for revenue purposes. It is not a safety document.

ES.4.6 The penalties are inverted, and the most serious offence has none

Conduct	Provision	Maximum
Submerging a load line	Cap. 49:01 s. 319	\$100,000
Fraudulently altering draught marks	Cap. 49:04 s. 46	\$48,750
Sailing with no stability information	Cap. 49:01 s. 290(3)	\$10,000
Sending a ship to sea so unseaworthy that life is likely to be endangered	Cap. 49:01 s. 337 → s. 444(1)	\$25,000 and 6 months

A vessel loaded one centimetre too deep attracts four times the fine of a vessel sent to sea in a condition likely to kill everyone aboard. Section 337 prescribes no penalty of its own and falls to the general default. The equivalent offence under **Cap. 49:07 s. 26** carries **two years' imprisonment** — four times the custodial maximum available under the modern Act.

And both Acts supply a defence that sending an unseaworthy ship to sea was, in the circumstances, “reasonable and justifiable.” On a lifeline route with no road alternative, that defence is not fanciful.

This bears directly on the shape of the response to this casualty. When a State confronts seventy-three deaths and its maritime statute offers six months, the prosecutor goes to the common law. **On 28 July 2026 three employees were charged with murder.** They are presumed innocent, and this document expresses no view on the charges. It records that the recourse to common-law murder is a direct consequence of the penalty structure of the Guyana Shipping Act — **a legislative failure, not a prosecutorial choice.**

ES.4.7 Accountability reaches the master, the mate and the loader, and nobody else

Cap. 49:01 s. 429(3) permits a Board of formal investigation to cancel or suspend a **certificate**, or to censure its holder. **That is the whole of its dispositive power over persons.**

There is **no finding available against a company, a Government Department, a Ministry, the Maritime Administration Department, the Director, or any uncertificated person.** The Transport and Harbours Department cannot commit an offence under the Act, because the Act creates none capable of being committed by a Department.

Warnings already voiced publicly that this inquiry must not end by punishing only the “small man” are therefore structurally well-founded. Under the maritime statutes as they stand, the small man is the only person the law can reach.

And the Superintendent of Loading — the office the Minister has publicly identified as responsible for inspection and loading — does not exist in law at all. It is not created by, named in, or given any duty by any of the four Acts examined. No qualification is prescribed for it, no standard governs how it loads, no record is required, and no offence attaches to it. **A person cannot be regulated by an office the statute does not create.**

ES.4.8 The statute book depends on institutions that no longer perform the function

- **Cap. 49:07 s. 5(4)** requires the Minister to transmit a copy of a court of inquiry's report, with the evidence and any cancelled certificate, to **the Board of Trade of the Government of the United Kingdom** — defined in terms by s. 2, as **amended in 1998**.
- **Coasting and Passenger Trade Regulations reg. 13(3)** provides that the number of passengers a **coasting steam vessel** may carry is "*as ascertained in accordance with the survey established from time to time by the Board of Trade of the United Kingdom.*" **This is the only rule in Guyanese law for ascertaining the passenger capacity of a power-driven coasting vessel.** The Fourth Schedule even prices the exercise — **\$20 for a vessel over 120 feet by deck measurement.** The MV *Barima* was 126.5 feet.
- **Cap. 49:07 s. 35(2)** exempts from inspection any vessel holding a certificate of "*the society known as Lloyd's Register of British and Foreign Shipping.*"

ES.4.9 The 1891 river law is better than the 1998 sea law

The **River Navigation Regulations** made under Cap. 50:01 require, for river craft: **annual inspection**; branded waterlines against a statutory freeboard scale; **machinery and steering gear maintained in proper working order** on pain of detention; a certificated maximum number of persons **crew included**; that number **painted on both bows**; **one lifebelt for every certificated person**; a count of persons entered in a book at a Government Station before departure; **a prohibition on taking any additional person aboard after reporting**; and a duty to report **any accident whatever** occasioning loss of life.

Reg. 19(1), made in 1918, permits one passenger with baggage for every five square feet of deck surface, expressly excluding the space occupied by machinery, open hatches, skylights, fuel and any cargo carried on deck, with the resulting certificate framed and displayed on board.

Guyana has had a serviceable, self-executing, deck-area capacity rule for power-driven passenger vessels since 1918. It requires no foreign institution and no discretion, and it automatically reduces the permitted number of persons as deck cargo is loaded. It applies on the Barima River and on the Kaituma Creek. It does not apply on the sea passage between them and Georgetown.

And Cap. 50:01 s. 14, inserted in 1998, is the only mandatory enforcement duty in the entire Guyanese maritime statute book: "*it shall be the duty of the Director and the Maritime Administration Department to enforce*" the Act. In 1998 Parliament knew how to write such a duty. It wrote one, once, into an 1891 river statute, and did not write it into the new Act.

ES.5 WHAT THE REGULATOR ITSELF SAID, SEVEN YEARS BEFORE THE CASUALTY

This is the most significant single item of institutional evidence in the document, because it is an admission by the regulator made long before this casualty and therefore uncontaminated by it.

On **27 March 2019**, the Director General of MARAD, **Claudette Rogers**, stated publicly:

- that **“although Guyana has ratified the main International Maritime Conventions, the requisite regulations need to be enacted or put in place because the country follows the common law system”**;
- that the **IMO Member State Audit of Guyana was completed in 2018**, covering flag, port and coastal State administration;
- that **as a direct result of that audit, one of the necessary measures was “the enacting of regulations to give full and complete effect to the conventions which Guyana has ratified”**;
- that **Professor Duke Pollard**, a retired Judge of the Caribbean Court of Justice, had been retained to update Guyana’s maritime legislation and had **completed the assignment with recommendations**, expressly directed at eliminating conflicts among agencies as to where responsibility for key maritime functions resides;
- and that one observed limitation was that **Guyana had not ratified the STCW 95 amendments while Guyanese surveyors were issuing certificates on that basis**, which she described as a significant breach of international maritime law.

In July 2026 a State passenger ferry sailed under a statute that imposed on her no stability criterion, no survey cycle, no manning standard, no muster requirement, no headcount duty and no limit on persons carried.

Four documents will very largely answer the Commission’s question about institutional failure, and all four exist: the IMO Member State Audit report, Guyana’s corrective action plan, the progress reports on its implementation, and the Pollard report and recommendations.

ES.6 THE COMPARATIVE RECORD: NOTHING HERE IS NOVEL

The **MV *Christena*** — 233 dead, 91 survivors, still the deadliest maritime disaster in English-speaking Caribbean history — **was built between 1958 and 1959 by Sproston Ltd in Georgetown, British Guiana**. Guyana built her. Fifty-six years later the second worst involved a vessel operated from the same port.

The Renwick Commission of Inquiry, constituted under the **Commissions of Inquiry Act**, heard 45 witnesses and **reported in October 1970 — about ten weeks after the loss**. It found the vessel dangerously overloaded and improperly loaded, and **no reliable system for counting passengers before departure**. She had sailed with her **ballast tanks empty** as standard practice, adopted so she would ride higher and passengers would stop complaining about spray.

Across *Christena* (1970), *Doña Paz* (1987), *Bukoba* (1996), *Joola* (2002) and *Sewol* (2014), the recurring causal factors are: **certificated capacity exceeded; no reliable count of persons; improper cargo loading; insufficient ballast; a known defect not acted upon; modification raising the centre of gravity; closures unsecured; slow rescue; and a lifeline route with no alternative.** Every one maps to a Guyanese deficiency identified in this document.

Nothing about the loss of the MV *Barima* is novel, and nothing required to prevent the next one has to be invented.

ES.7 THE DEFICIENCY COUNT

Severity	Number
CRITICAL	42
HIGH	29
MEDIUM	11
LOW	3
URGENT-TIME	2
Total	87 numbered, plus 20 unnumbered structural items

Chapter 11 sets out every one against its provision, gap, MV *Barima* nexus, international benchmark and recommended reform.

ES.8 THE MOST URGENT ITEM: A DEADLINE OF 18 JANUARY 2027

Cap. 49:04 s. 23 requires that no action against the Transport and Harbours Department be commenced until **one month after written notice** naming the claimant's **legal practitioner** has been served; and that every such action be commenced **within six months after the thing done or omitted, and not otherwise.**

Event	Date
The casualty	18 July 2026
Six months expires	on or about 18 January 2027
Notice must therefore be served by	on or about 18 December 2026

Six reasons this is a trap for exactly the people least able to avoid it:

1. The period runs from the act or omission — **not from knowledge, not from death, not from identification of a body, not from a grant of representation.**
2. **The Commission will very probably not have reported within six months.** A family that waits — the natural thing to do — may find the period gone.
3. Claimants are disproportionately **Region One residents with no road to Georgetown**, and the vessel that connected them to it is on the seabed.

4. **The notice must name a practitioner**, so a family must find and instruct one before the clock can be stopped.
5. **Five recovered victims remained unidentified** as at 27 July 2026 and **at least thirty were unaccounted for**. A family with no body and no death certificate cannot readily obtain a grant of representation, and s. 23 makes no allowance.
6. **Ex gratia assistance is not compensation and does not stop the clock**. The President has been emphatic that the assistance being arranged is not compensation.

And there is no insurer to claim against. Cap. 49:01 s. 398(2) requires the Minister to have due regard to the **Athens Convention** when making passenger-ship regulations. **No such regulations were made, so the requirement of due regard never attached to anything**. Guyana has enacted the **limitation** of liability in Part XVI and not the **liability** — the protective half of the international bargain was omitted and the limiting half retained. There is no strict liability for a shipping incident, no presumed fault, **no compulsory insurance and no direct right of action against an insurer**.

Recommended, as an interim measure not requiring the Commission's final report: either a published undertaking by the State not to rely on s. 23 in respect of claims arising from this casualty, or **emergency legislation** suspending it until a defined period after the Commission reports. Both are simple, both are precedented after mass-casualty events elsewhere, and neither prejudices any question the Commission has to decide. **Chapter 12.1 supplies drafted text for both.**

ES.9 THE TEN REFORMS THAT CLOSE THE EXPOSURE

The most important safety reform is also the fastest, because Parliament already gave the power away twice — in 1883 and in 1998 — and nobody has used it. Regulations closing the 24-metre gap can be made under **Cap. 49:01 ss. 251, 398 and 452**, or under **Cap. 49:07 s. 25** by the Director subject to affirmative resolution. **No new Act is required.**

1. **Enact a domestic passenger vessel safety code for all vessels of 24 metres and over**, based on the **IMO Model Regulations on Domestic Ferry Safety**, covering stability, subdivision, fire, life-saving, manning, muster and drill, and survey.
2. **Fix the maximum number of persons by published rule** — the lesser of survival craft capacity, lifejacket count, evacuation capacity and stability compliance, reduced for deck cargo; mark it on the vessel; make exceeding it an offence **by the carrier**.
3. **Require every person to be counted at embarkation**, recorded by name and category, with the record held ashore, and **no boarding after the count is closed**.
4. **Prescribe the content of stability information under s. 290** and require the departure condition to be **calculated, recorded and certified** before every voyage.
5. **Establish an independent, permanent, multi-modal Transport Safety Board reporting to Parliament** — compulsory powers, protected evidence, a no-blame

mandate, mandatory investigation of every very serious marine casualty, mandatory publication, submission to the IMO, and recommendation tracking.

6. **Repeal Cap. 49:01 s. 3(3)** so the regulator is no longer the owner, and **define “non-commercial purposes”** to exclude any ship carrying passengers or goods for reward.
 7. **Repeal the “reasonable and justifiable” defence** and prescribe a penalty for s. 337 commensurate with the harm risked.
 8. **Accede to and enact the Athens Convention 2002 Protocol** — strict liability, compulsory insurance, and direct action against the insurer.
 9. **Deal with Cap. 49:04 s. 23 now**, before 18 January 2027.
 10. **Enact a Maritime Search and Rescue Act** establishing the MRCC, the search and rescue region, distress alert routing and response time standards. **At present the MRCC has no statutory existence, and the SAR Convention 1979 is unimplemented.** On the night, the distress signal reached an **aviation** authority at 22:43 and took **twenty minutes**, through two intermediaries, to reach the maritime rescue authority.
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ES.10 WHAT THIS DOCUMENT IS, AND WHAT IT IS NOT

It is an analysis of the architecture of a statute, offered as an aid to the Commission of Inquiry, to the National Assembly, to the Ministry of Legal Affairs, to MARAD, to the Transport and Harbours Department, and to the public of Guyana. Every provision cited has been read directly from the authorised text of the Laws of Guyana as authorised by **L.R.O. 1/2012**.

It is not an accident investigation; it has no access to the wreck, the certificates, the stability book, the manifest or any witness. **It is not** a submission that any particular provision was breached. **It is not** a criticism of the individuals who administer the Guyanese maritime system — a regulator cannot enforce a standard Parliament has not enacted. **It is not** a substitute for the independent marine safety investigation that SOLAS XI-1/6 requires and that Guyanese law makes institutionally impossible.

Two limitations are disclosed rather than concealed. First, the consolidation relied on is current only to **L.R.O. 1/2012**; every finding expressed as the absence of a regulation is subject to verification against post-2012 instruments and the Official Gazette. Second, **Guyana’s accession status could not be verified instrument by instrument** against the IMO Status of Conventions table by the means available; Chapter 9 asserts nothing that depends on it, and the table is Priority One verification item number one.

ES.11 THE CLOSING PROPOSITION

Seventy-three people are known to have died and at least thirty more are unaccounted for. Most were travelling on the only connection between the capital of their country and a region of 38,956 people that has no road.

The maritime laws of Guyana failed them by leaving the vessels that carry the most people subject to the least law; by conferring powers to make safety regulations in 1883 and again in 1998 and never using them; by making the regulator the owner of the ships he regulates; by making investigation discretionary and excluding the State's own ships from the only regime with real investigative teeth; by pointing, in 2026, at the Board of Trade of the United Kingdom; by punishing a submerged load line four times more heavily than sending a ship to sea in a condition likely to kill everyone aboard, and supplying a defence that doing so was reasonable; by giving a master no protection for refusing to sail and a defence for sailing; by naming the Athens Convention and enacting none of it; and, most of all, **by requiring nobody to count the people who went aboard.**

Every one of those failures was identified before this casualty — most by a British commissioner in Nevis in October 1970, and the rest by an IMO audit of Guyana in 2018 and by a retired Judge of the Caribbean Court of Justice whose report was completed before March 2019.

None of it required this ship to be lost.

CHAPTER 1 — PURPOSE, SCOPE, STATUS, METHOD AND EVIDENTIAL CAVEATS

STATEMENT OF NON-LEGAL STATUS AND OF PURPOSE

The author is not admitted to practise law in Guyana or in any other jurisdiction.

Nothing in this document is legal advice. Nothing in it should be acted upon as legal advice. Any person with a legal interest arising out of the loss of the MV *Barima* — and in particular any bereaved family, any survivor, and any person accused — must obtain advice from a legal practitioner admitted in Guyana, and must obtain it urgently, for reasons set out in the chapter of this document dealing with limitation periods.

This document is an analysis of the architecture of a statute. It is not an allegation against any person. It does not assert that any named individual, any company, any department of state, any Ministry or any office-holder committed any offence, breached any duty, or caused or contributed to the loss of the vessel or to any death. It makes no finding of fact. It resolves no disputed question. Where the public record contains conflicting accounts, this document reproduces the conflict and attributes each version to its source; it does not choose between them.

Every person detained, arrested, charged, suspended, sent on leave, or named in reporting concerning this casualty is entitled to the presumption of innocence. On 28 July 2026 three men were charged with murder in connection with this casualty. They have not entered pleas. They are presumed innocent. Nothing in this document should be read as commenting on the guilt or innocence of any accused person, and nothing in it is offered as evidence in any criminal proceeding.

The Commission of Inquiry has not reported. No conclusion about the cause of the capsizing, the condition of the vessel, the number of persons on board, the weight or disposition of cargo, the conduct of any person, or the adequacy of the response, is available. This document assumes nothing about any of those matters and does not need to. Its subject is what the law of Guyana required, permitted, and failed to require **before the vessel sailed** — a question that can be answered from the statute book alone and that would have the same answer whatever the Commission finds.

This document is offered as an aid to the Commission of Inquiry, and to the National Assembly, to the Ministry of Legal Affairs, to the Maritime Administration Department, to the Transport and Harbours Department, and to the public of Guyana. Its central question is narrow and it is this:

How do the maritime laws and statutes of Guyana fail the people of Guyana?

The answer offered here is that they fail in a specific, identifiable and repairable way:

Guyana has a maritime statute book of considerable length which contains almost no enforceable safety standard for the class of vessel on which most Guyanese who go to sea actually travel, and which contains **no duty on any person to investigate a marine casualty**, however many people die.

THE CENTRAL PROPOSITION IN ONE PARAGRAPH

The MV *Barima* was 40.26 metres long and 284 gross registered tons. Because she was **longer than 24 metres**, the only Guyanese subsidiary instrument that contains intact stability criteria, a safety management system requirement, a record-of-passengers requirement, a station bill, muster and drill regime, and a marine casualty reporting duty — the Guyana Shipping (Small Commercial Ship Safety) Regulations, Regulation 5 of 2005 — **did not apply to her**. Because she was a **passenger ship**, the only other survey instrument in the consolidated statute book — the Guyana Shipping (Cargo Ship Survey) Regulations, Regulation 6 of 2005, which by regulation 3 applies to sea-going Guyana ships of less than 500 gross tonnage but above 24 metres in length — **expressly carved her out**. Part XV of the Guyana Shipping Act, Cap. 49:01, headed “Passenger Ships”, consists of two sections, one of which is an enabling power to make regulations that do not appear in the authorised consolidation and the other of which creates offences of drunkenness and fare evasion. The result is that **a vessel one metre shorter, carrying a small fraction of her complement, was subject to a materially more demanding safety code than she was**. Had she carried freight instead of people, she would have been subject to a five-yearly structural and machinery survey. Because she carried people, she was subject to neither instrument. That is the gap. It is not a drafting slip. It is a hole in the statute book roughly the size of the domestic ferry fleet of Guyana.

METHOD

1. Sources of statutory text. Every provision quoted or cited in this document has been read directly from the authorised text of the Laws of Guyana, Revised Edition, as authorised by the Law Revision Order **L.R.O. 1/2012**, in the following volumes:

Chapter	Short title	Principal Act	Authorised pages	Source used
Cap. 49:01	Guyana Shipping Act	Act 7 of 1998, amended by Act 7 of 2006	1–904, L.R.O. 1/2012	Full text of the authorised consolidation, including four instruments of subsidiary legislation
Cap. 49:04	Transport and Harbours Act	Act 30 of 1931	1–123, L.R.O. 1/2012	Full text of the authorised consolidation, including five instruments of subsidiary legislation

Chapter	Short title	Principal Act	Authorised pages	Source used
Cap. 49:07	Shipping Casualties (Investigation and Prevention) Act	Act 4 of 1883, amended by Acts 2 of 1895, 3 of 1914, 32 of 1914, 11 of 1978, 7 of 1998, and Resolution 9 of 1982	1–45, L.R.O. 1/2012	Full text of the authorised consolidation, including two instruments of subsidiary legislation
Cap. 50:01	River Navigation Act	Act 17 of 1891, amended by Acts 11 of 1924, 18 of 1944, 8 of 1948, 29 of 1961, 6 of 1997 and 7 of 1998	1–50, L.R.O. 1/2012	Full text of the authorised consolidation, including six instruments of subsidiary legislation
Cap. 47:01	Post and Telegraph Act	—	1–68, L.R.O. 1/2012	Full text; relevant only at ss. 36–42 (ship letters) and ss. 63–65 (wireless telegraphy on ships)

Note on independent verification. The authorised texts of **Cap. 49:07** and **Cap. 50:01** were each subsequently supplied to the author a second time, from a separate copy, and **every provision cited in this document from either Chapter has been re-read and confirmed against that second copy.** In the case of Cap. 50:01 this is a material upgrade: the analysis of that Chapter in Chapters 4 and 6 originally rested on a text retrieved from the Ministry of Legal Affairs website, and it now rests on a direct reading of the authorised text. **No discrepancy of any kind was found between the two copies of either Chapter.**

2. A correction to the author’s earlier work, and the recovery of Cap. 49:07. In earlier drafts the author recorded that the text of **Cap. 49:07 could not be obtained**, and treated its existence as a Priority One verification item inferred only from the surviving cross-reference in Cap. 49:04 s. 24(1)(e) and from a legislative-drafting paper of the IMO International Maritime Law Institute. **That is now resolved. The text has been obtained and read in full.** The Ministry of Legal Affairs publishes several distinct PDF files bearing near-identical filenames of the form “Volume 11 Cap. 49.02 – 58.01”; one of these, notwithstanding its filename, is the authorised text of Cap. 49:07. The consequence is set out in Chapter 6 of this document and it is more serious than anything in the earlier drafts: **Guyana has two parallel casualty-investigation regimes, enacted 115 years apart, which do not refer to each other, neither of which could lawfully be applied to this casualty, and neither of which implements the IMO Casualty Investigation Code.**

3. A correction to the author’s earlier section numbering of Cap. 49:04. The author’s earlier analysis of the Transport and Harbours Act cited the immunity of the Government and the Department as s. 46, exemption from personal responsibility as s. 52, compulsory pilotage as s. 32, the regulation-making power as s. 48, and repeal and savings as s. 53.

Those numbers are wrong for the authorised text. In the L.R.O. 1/2012 consolidation the corresponding provisions are **s. 47, s. 53, s. 34, s. 49 and s. 54** respectively. Two numbering schemes are in circulation: older editions and some third-party databases (including FAOLEX) render the tail of the Act as “52. Exemption from personal responsibility / 53. Repeal”, whereas the authorised L.R.O. 1/2012 text renders it as “53. Exemption from personal responsibility / 54. Savings”. **This document uses the L.R.O. 1/2012 numbering throughout.** Wherever a provision is affected by the divergence, a footnote records the alternative number, so that a reader checking against a different edition is not misled into thinking the citation is wrong.

4. Treatment of statutory language. Statutory provisions are cited by section, subsection and paragraph number. Where the exact words matter — and in a deficiency analysis they usually do, because the deficiency is often located in a single permissive verb or a single carve-out — the operative words are set out. Where the sense rather than the wording matters, the provision is described in the author’s own words and identified as a description. **Paraphrase is never presented as quotation.**

5. Treatment of contested fact. The public record on this casualty is, as at the date of this text, internally inconsistent on the certificated capacity of the vessel, on the number of persons on board, on the number of crew, on the time of departure, on the time and routing of the distress signal, on the position of the casualty, and on the cause. Chapter 3 sets out a **Conflict Register** which reproduces each version and attributes it to the person or institution who gave it. **No attempt is made to reconcile them.** That is the Commission’s function and it requires evidence this author does not have.

6. Currency of the legal research, and its principal limitation. The consolidation relied on is authorised only to **L.R.O. 1/2012**. Any regulation, order, notice or Gazette instrument made under any of these Acts **after 2012 will not appear in it.** Wherever a deficiency identified in this document rests on the proposition that a particular regulation does not exist — most importantly the proposition that no regulations have been made under Cap. 49:01 s. 398 governing passenger-ship safety, and none under s. 290 prescribing the content of stability information — **that proposition is expressed subject to verification against the current subsidiary legislation of the Maritime Administration Department and against the Official Gazette of Guyana.** This is stated once here and repeated at each point where it bites. It is a real limitation and it is disclosed rather than concealed. It does not, however, disturb the primary findings, because those rest on the text of the primary Acts and of the four and two instruments actually reproduced in the authorised volumes, not on an inference from silence.

7. Currency of the factual record. The factual matter in this document is current to **29 July 2026** and is drawn from statements attributed in published reporting to the President of Guyana, the Prime Minister, the Minister of Public Works, the Director-General of the Maritime Administration Department, the Guyana Police Force, the Ministry of Health, named Opposition figures, and named civil-society organisations, together with agency reporting by Reuters, the Associated Press, the Caribbean Media Corporation and Guyanese outlets. Where a figure changed over time, the sequence of figures is given rather than the last one only, because the sequence is itself a fact about the response.

WHAT THIS DOCUMENT IS NOT

- It is **not an accident investigation**. It has no access to the wreck, to the vessel's certificates, to her stability book, to her loading condition, to the manifest, to the survey records, to the docking reports, to the weather record, or to any witness. It draws no conclusion about why the vessel capsized.
 - It is **not a submission that any particular provision was breached**. Whether the Act was complied with on 18 July 2026 is a question of fact for the Commission and, separately, for the criminal courts. The subject of this document is what the Act **required**, and the answer in the great majority of instances is that it required nothing.
 - It is **not a criticism of the individuals who administer the Guyanese maritime system**. A regulator cannot enforce a standard that Parliament has not enacted. Several of the deficiencies identified here operate to leave marine officers, surveyors and inspectors without legal power to do things that a marine professional would expect them to be able to do.
 - It is **not a comparison of Guyana to wealthy flag States as though resources were equal**. The comparative chapter deliberately selects States that legislated after their own mass-casualty ferry losses, several of them poorer than Guyana at the time.
 - It is **not a substitute for the independent marine safety investigation** that the joint parliamentary opposition has called for and that SOLAS Chapter XI-1, regulation 6 requires. It is an argument that such an investigation is legally required and institutionally impossible under the statute book as it stands.
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CHAPTER 2 — GLOSSARY

This chapter defines every technical term used in this document. It is written for an intelligent reader who is not a mariner, not a naval architect and not an admiralty lawyer. **No term is used later in the document that is not defined here.** Terms are grouped by field rather than alphabetically, because in this subject the meaning of each term depends on the ones around it, and an alphabetical list would separate ideas that only make sense together. Within each group the terms are ordered so that each builds on the one before.

PART A — THE MEASUREMENT OF A SHIP

A.1 Length overall (LOA)

The distance from the foremost point of the vessel's structure to the aftermost point, measured parallel to the waterline. It is the figure a layman means by "how long is she". For the MV *Barima* this figure is recorded as **126.5 feet, that is 40.26 metres**.

A.2 Registered length, and why the legal length may differ from the physical length

Statutes and conventions frequently define length not as length overall but by a formula — commonly 96 per cent of the total length on a waterline at 85 per cent of the least moulded depth, or the length from the fore side of the stem to the axis of the rudder stock on that waterline, whichever is greater. The practical importance is this: **a threshold expressed as "24 metres in length" is a legal threshold, and which of several possible measurements the draftsman intended must be ascertained from the instrument itself.** Neither the Guyana Shipping (Small Commercial Ship Safety) Regulations nor the Guyana Shipping (Cargo Ship Survey) Regulations resolves this by an internal definition of length in a manner that a reader can apply without expert input, and the Guyana Shipping Act, Cap. 49:01, uses "twenty-four metres in length" in s. 49(1) and elsewhere without a definitional anchor in s. 2. In the case of the MV *Barima* the ambiguity is of no practical consequence, because she was 40.26 metres by any measure and therefore far above the threshold. In the case of the wider domestic fleet, it matters a great deal, because a vessel of about 24 metres may fall on either side of the line depending on which rule is applied, and the safety consequences of falling on one side rather than the other are, as this document shows, very large.

A.3 Beam

The maximum width of the vessel. For the MV *Barima*, **29.1 feet, that is 8.87 metres**. Beam matters to stability out of all proportion to its apparent significance, because — as explained at C.6 below — the initial stability of a vessel varies approximately with the **cube** of her beam. A wide, shallow vessel is initially very stiff; a narrow, deep vessel is initially tender. That relationship is one of the reasons why "she looked fine sitting at the wharf" is not evidence of anything.

A.4 Draft (also spelled draught)

The vertical distance from the waterline down to the lowest point of the hull. It tells you how deep in the water the vessel is floating and therefore how much water she needs beneath her. For the MV *Barima*, a figure of **7.5 feet** is recorded. Draft increases as weight is added. Draft is measured at the bow (forward draft) and at the stern (after draft); the difference between them is **trim** (see A.9).

A.5 Depth

The vertical distance from the keel to the uppermost continuous deck at the side. Depth is not the same as draft. Depth is a property of the ship as built; draft is a property of the ship as loaded on a given day. **The difference between depth and draft, measured at the side amidships, is freeboard** (see B.1).

A.6 Displacement

The total weight of the vessel and everything in her, expressed in tonnes. It is called displacement because a floating body displaces a volume of water whose weight exactly equals the weight of the body — the principle of Archimedes. Displacement is the single most important weight figure in naval architecture, because every stability calculation begins with it.

- **Lightship displacement** — the weight of the vessel as built, complete with machinery, permanent equipment and the liquids in her machinery systems, but with no cargo, no fuel, no fresh water, no stores, no crew and no passengers.
- **Loaded displacement** — the weight of the vessel in any given loaded condition.
- **Deadweight** — the difference between the two: the total weight of everything the vessel is carrying, comprising cargo, fuel, lubricating oil, fresh water, ballast water, stores, crew, passengers and their effects. Deadweight is a **carrying capacity by weight**. It is not a measure of how many people a vessel may lawfully carry, and it is not a measure of safety.

A.7 Gross tonnage, gross register tonnage, and net register tonnage — volume, not weight

This is the single most frequently misunderstood set of terms in shipping, and it matters here, because the MV *Barima* is described as **284 grt** and **111 nrt**, and because a reader who assumes “284 tons” means “she weighs 284 tons” or “she can carry 284 tons of cargo” will draw wrong conclusions.

- **Gross register tonnage (grt)** is a measure of the **total enclosed internal volume** of a ship, expressed in “tons” of 100 cubic feet each. It is a **volume**, not a weight. The historic unit derives from the *tun*, a large cask of wine. A vessel of 284 grt has, under the old measurement rules, roughly 28,400 cubic feet of enclosed space, subject to the deductions and exemptions of the applicable measurement rule.
- **Net register tonnage (nrt)** is gross tonnage less the volume of spaces not available for the carriage of cargo or passengers — machinery spaces, crew accommodation, navigation spaces, and similar. It is intended as a measure of **earning capacity**. It is

the figure most commonly used to calculate port dues, canal tolls, light dues and tonnage dues. The MV *Barima*'s 111 nrt against 284 grt tells you that a substantial proportion of her internal volume was machinery and accommodation rather than revenue-earning space, which is entirely normal for a twin-screw motor vessel of her era and type.

- **Gross tonnage (GT)** — without the word “register” — is the modern parameter introduced by the **International Convention on Tonnage Measurement of Ships, 1969**, which entered into force in 1982. GT is calculated by a logarithmic formula from the total moulded volume of all enclosed spaces of the ship. **GT is a dimensionless index number. It is not expressed in tons of anything.** Because grt and GT are computed by different rules, **they are not interchangeable**, and a vessel's grt figure and her GT figure will generally differ.

Why this matters to this casualty. Three distinct numbers in the public record are all rendered as “tons” or “tonnes”: the vessel's **284 grt** (a volume index); the **284 tonnes of cargo** which the Minister of Public Works is reported to have said she was licensed to carry (a weight); and the approximately **126 tonnes** of cargo which the Director-General of the Maritime Administration Department is reported to have given (a different weight). The coincidence of the figure 284 appearing both as the vessel's gross register tonnage and as a stated cargo capacity in tonnes is, on its face, striking, and it is a matter the Commission will wish to examine. **This document does not assert that the two were confused.** It records that the figures are numerically identical, that they measure entirely different things, and that the public record does not explain the coincidence.

A.8 List and heel — two words for a transverse inclination, with different causes

Both words describe the vessel leaning to one side. They are not synonyms and the distinction is diagnostically important.

- **Heel** is a transverse inclination caused by an **external** force — wind on the side of the ship, the centrifugal effect of a turn, a wave, a tow line, the pull of a crane. Remove the force and the vessel returns upright, provided she is stable.
- **List** is a transverse inclination caused by an **internal** condition — an asymmetric distribution of weight, water in a compartment on one side, cargo shifted to one side, or a fuel or ballast tank emptied on one side and full on the other. **A list does not go away when the wind drops.** It persists because the vessel's centre of gravity is no longer on the centreline.

Why this matters to this casualty. Survivor accounts in the public record describe two things which, if both occurred, are not the same event: a **large wave striking the vessel and “canting” her** (that is a heel), and the vessel **listing to one side before capsizing** (that is a list). A vessel that develops a list before she encounters the sea that finishes her is a vessel that already has an internal problem — weight distribution, flooding, or a stability defect. A vessel that heels to a wave and does not come back is a vessel whose righting ability has been overcome. **These are different failure modes with different causes and different legal consequences.** This document expresses no view on which, if either, occurred.

A.9 Trim

The longitudinal equivalent of list: the difference between the forward and after drafts. A vessel “down by the head” has more draft forward; “down by the stern” has more draft aft. Trim affects freeboard at the ends, the point at which the deck edge immerses, and the vessel’s behaviour in a following or quartering sea.

A.10 Angle of loll

A specific and dangerous condition which must be distinguished from an ordinary list, because the two look identical from the wharf and require opposite responses.

A vessel is at an **angle of loll** when her initial stability is **negative** — that is, when upright she has no tendency to return to upright, and instead falls to one side until the shape of the immersed hull generates enough righting effect to hold her there. She then sits at a steady angle, apparently stable, and will flop to the corresponding angle on the other side if disturbed. **A vessel at an angle of loll is not listed because weight is off-centre; she is lolled because her centre of gravity is too high.** The critical practical point is this: **the corrective action for a list and the corrective action for a loll are opposite.** Adding weight low on the high side corrects a list. Doing the same thing to a lolled vessel can capsize her. A vessel that “flops” from one side to the other and settles at a similar angle each time is exhibiting loll, not list. This distinction is one of the reasons why the presence or absence of stability information on board, and the training of the master and mate in using it, is not a paperwork question.

PART B — FREEBOARD, LOAD LINES AND RESERVE BUOYANCY

B.1 Freeboard

The vertical distance, measured at the side of the ship amidships, from the waterline up to the upper edge of the **freeboard deck** — the uppermost complete deck exposed to weather and sea which has permanent means of closing all openings in it, and below which all openings in the ship’s sides are fitted with permanent watertight closings. Freeboard is what is left of the ship’s depth after the draft is taken out of it.

B.2 Reserve buoyancy

The volume of the watertight hull **above** the waterline. It is called reserve buoyancy because it is buoyancy the vessel is not currently using but can call on: if the vessel is pressed deeper — by a wave, by added weight, by heeling, or by flooding — that volume becomes immersed and generates additional upward force. **Freeboard is the visible measure of reserve buoyancy.** A vessel with little freeboard has little in reserve.

B.3 The load line, or Plimsoll mark

A permanent marking on each side of the hull amidships, consisting of a circle bisected by a horizontal line, with a comb of horizontal lines forward of it marking the maximum

permissible loaded draft in different seasons and water densities — Tropical, Summer, Winter, Winter North Atlantic, Tropical Fresh and Fresh. The mark exists to enforce a **minimum freeboard**, and it is named after Samuel Plimsoll, the nineteenth-century Member of Parliament for Derby whose campaign against the deliberate overloading and over-insuring of unseaworthy ships produced the British Merchant Shipping Act 1876.

The rule is stated in Guyanese law at **Cap. 49:01 s. 319(1)**: no ship shall be so loaded as to submerge in salt water, when the ship has no list, the appropriate load line on each side. **Note the words “when the ship has no list”**. The load line is a measurement to be read on an upright vessel. A vessel with a list does not present a meaningful load line reading on either side, because one side is deeper and the other shallower than the true mean.

B.4 Why sea water and fresh water produce different readings

Sea water is denser than fresh water — approximately 1,025 kilograms per cubic metre against approximately 1,000. A given weight of ship therefore displaces a smaller **volume** of sea water than of fresh water, and floats **higher** in the sea than in a river. The difference for a given vessel is the **fresh water allowance**. A vessel that leaves a river berth floating to her fresh water mark will rise as she passes into salt water and will then be floating correctly to her salt water mark. **This is ordinary, expected and unremarkable, and it is the phenomenon the Director-General of the Maritime Administration Department is reported to have described when he said that the vessel floats higher in denser sea water.** That description of the physics is correct.

B.5 The critical limitation: what a load line cannot tell you

This is the single most important technical point in this document and it is developed at length in Chapter 5. The short statement is this:

The load line measures reserve buoyancy at a given displacement. It measures nothing else. In particular, it does not measure stability.

A load line reading answers one question only: *is this vessel floating deeper than the maximum draft assigned to her?* It answers that question by reference to the **total weight** on board and the **density** of the water she is in. It is entirely indifferent to **where** that weight is. Two vessels of identical displacement, drawing identical drafts, showing identical load line readings, one with her cargo stowed low in the hold and one with the same cargo stowed on the upper deck, will present the **same mark to an observer on the wharf** and will have **radically different stability**. The second may be incapable of surviving a beam sea that the first would shrug off.

Consequently, a statement that a vessel’s load line was “just submerged” or “barely submerged” and that she was therefore **not overloaded** is a statement about weight and freeboard. It is **not** a statement about stability, and it cannot be converted into one. It says nothing about the vertical position of the centre of gravity, nothing about metacentric height, nothing about the righting-lever curve, nothing about free-surface effect, nothing about the angle at which the vessel would begin to take water down an opening, and nothing about whether heavy items were placed high. The Director-General is also

reported to have said that he was **not clear how the weight was distributed**. Those two statements, taken together, are internally coherent only if the second is understood to defeat any stability inference from the first. **Weight distribution is the whole of the stability question**. A person who does not know how the weight was distributed does not know whether the vessel was stable, whatever the load line showed.

PART C — STABILITY

C.1 Centre of gravity (G)

The single point through which the entire weight of the vessel and everything in her may be taken to act vertically downwards. Its vertical height above the keel is written **KG**. Every item placed on board moves G: weight added high raises G, weight added low lowers G, weight added off the centreline moves G off the centreline. **Raising G reduces stability. There is no exception to that rule.**

C.2 Centre of buoyancy (B)

The geometric centre of the underwater volume of the hull — the point through which the total buoyant force may be taken to act vertically upwards. Unlike G, **B moves as the vessel heels**, because the shape of the immersed volume changes. As the vessel leans, the immersed volume becomes fuller on the low side and finer on the high side, and B shifts towards the low side.

C.3 The metacentre (M) and metacentric height (GM)

When a vessel heels through a small angle, the vertical line through the new position of B intersects the original centreline at a point called the **transverse metacentre**, M. For small angles — conventionally up to about 7 to 10 degrees — M is effectively fixed.

Metacentric height, GM, is the vertical distance from G to M. It is the standard measure of a vessel's **initial stability**, and its sign determines whether the vessel is stable at all:

- **GM positive** (M above G) — the vessel is stable upright. Heel her and she generates a moment that pushes her back.
- **GM zero** — neutral. Heel her and she stays where she is put.
- **GM negative** (G above M) — **unstable upright**. Heel her and she continues to fall, until the changing hull shape arrests her at an **angle of loll** (see A.10) or, if the hull shape cannot arrest her, until she capsizes.

A vessel with a large GM is **stiff**: she resists heeling strongly and rolls back upright quickly, with a short, violent roll period that is uncomfortable and hard on cargo lashings. A vessel with a small positive GM is **tender**: she heels easily and rolls slowly and lazily. **Tenderness is not in itself unsafe, and stiffness is not in itself safe** — but a long, slow, lazy roll is a recognised warning sign to any experienced mariner that GM has fallen, and it is the sensation that survivors of stability casualties most often describe in the hours before the loss.

C.4 The righting lever (GZ) and the righting-lever curve

GM describes behaviour at small angles only. At larger angles the true measure is the **righting lever**, written **GZ**: the horizontal distance between the vertical line of gravity acting down through G and the vertical line of buoyancy acting up through the heeled centre of buoyancy. The product of GZ and the displacement is the **righting moment** — the actual turning effect, in tonne-metres, tending to restore the vessel to upright.

Plotting GZ against angle of heel produces the **righting-lever curve** or **GZ curve**, which is the true picture of a vessel's stability. Its important features are:

- **Initial slope** — proportional to GM.
- **Maximum GZ** and the angle at which it occurs — the greatest righting effect the vessel can generate, and how far she must lean to generate it.
- **Angle of vanishing stability** — the angle at which GZ returns to zero. Beyond this angle **the vessel has no righting ability at all and will continue to capsize**.
- **Range of stability** — the span of angles over which GZ is positive.
- **Area under the curve** — this is proportional to the **energy** the vessel can absorb before capsizing, and it is the property that actually determines survival in a seaway, because a wave delivers energy, not a static angle.

International intact stability criteria are expressed as minimum values of these properties — a minimum GM, a minimum area under the curve up to 30 degrees, a minimum area between 30 and 40 degrees or the downflooding angle, a minimum maximum-GZ, a minimum angle at which maximum GZ occurs, and additional criteria for passenger ships covering the heel produced by the crowding of passengers to one side and the heel produced by turning. **None of these criteria appears anywhere in the Guyana Shipping Act, Cap. 49:01, or in the Transport and Harbours Act, Cap. 49:04, or in the Shipping Casualties (Investigation and Prevention) Act, Cap. 49:07, or in any subsidiary instrument reproduced in the authorised consolidation that applies to a vessel of the MV *Barima*'s size.** They appear only in the Guyana Shipping (Small Commercial Ship Safety) Regulations, Reg. 5 of 2005, which by definition applies only to ships of **less than 24 metres**.

C.5 Free-surface effect

The most commonly underestimated stability hazard afloat, and the reason why partly filled tanks and water on deck are dangerous out of all proportion to their weight.

When a compartment or tank is **completely full**, the liquid in it behaves as a solid weight: it cannot move. When the same compartment is **partly full**, the liquid has a free surface, and when the vessel heels the liquid runs to the low side. That movement shifts the vessel's centre of gravity towards the low side, which **reduces the righting lever**. The effect is mathematically identical to raising G, and it is therefore expressed as a **virtual rise in G**, producing a **reduced or "fluid" GM**.

Three properties of free-surface effect make it treacherous:

1. **It depends on the surface area of the liquid, not on its weight.** The loss of GM varies with the **cube of the breadth** of the free surface. A shallow layer of water spread across the full width of a deck is far more damaging than a deep quantity of the same weight in a narrow tank.
2. **A very small quantity of water can produce a very large effect.** A few inches of water lying across a wide vehicle deck or cargo space can extinguish the stability of a vessel that is otherwise adequately loaded.
3. **It gets worse as the vessel heels.** Water on one side stays on that side, converting a transient heel into a permanent list, which admits more water, which increases the list. This is a **positive feedback loop** and it is the mechanism by which a vessel can go from apparently normal to capsized in a very short time. It is the mechanism identified in the losses of the *Herald of Free Enterprise* (1987) and the *Estonia* (1994).

Why this matters to this casualty. Survivor accounts in the public record allege that **water was entering the cargo area before the vessel overturned.** If that occurred, free-surface effect is the mechanism by which it would have destroyed her stability, and it would have done so at a weight far too small to move the load line perceptibly. **This document asserts nothing about whether it occurred.** It records that if it did, the load line reading taken before departure would not have detected it, could not have detected it, and was never capable of detecting it.

C.6 Why beam matters so much

The transverse metacentric radius — the distance BM, from the centre of buoyancy to the metacentre — is given by the second moment of area of the waterplane divided by the volume of displacement. The second moment of area of the waterplane varies with the **cube of the beam**. The practical consequence is that **initial stability is extraordinarily sensitive to beam**, and that a relatively narrow vessel has much less margin than a wide one. The MV *Barima*'s ratio of length to beam was approximately 4.5 to 1 (40.26 metres by 8.87 metres), which is a normal, moderately slender ratio for a vessel of her type and era, and which means she had no unusual reserve of form stability to draw on.

C.7 Intact stability and damage stability

- **Intact stability** is the vessel's stability with her hull undamaged and all watertight boundaries intact. This is the everyday case. It is governed internationally by the **International Code on Intact Stability, 2008 (2008 IS Code)**, made mandatory in part through SOLAS.
- **Damage stability** is the vessel's stability after a defined extent of hull damage has admitted water into one or more compartments. It is governed by **SOLAS Chapter II-1**, and for passenger ships it is far more demanding than for cargo ships, because a passenger ship is required to survive damage and remain afloat long enough for evacuation.

The two are related through **subdivision** (see C.9). A vessel may have excellent intact stability and negligible damage stability, if she has no effective watertight subdivision.

C.8 Downflooding and the downflooding angle

Downflooding is the entry of water into the hull through an opening that is above the waterline when the vessel is upright but becomes immersed when she heels — a doorway, a hatch, a ventilator, an engine-room air intake, a scuttle, a cargo opening, a companionway. The **downflooding angle** is the angle of heel at which the lowest such opening immerses.

The downflooding angle is often the true limit of a vessel's stability, and it is frequently **much smaller** than the angle of vanishing stability calculated from the hull form alone. A vessel may have a theoretical range of stability to 60 degrees and a downflooding angle of 25 degrees; in practice she is finished at 25 degrees, because beyond that she is taking water in. **This is why openings, and whether they were closed, matters as much as loading.** It is also why the international regime insists on **weathertight and watertight closing appliances** and on their being kept closed at sea.

C.9 Subdivision, watertight integrity, and the difference between watertight and weathertight

- **Subdivision** is the division of the hull into separate compartments by **transverse watertight bulkheads**, so that flooding of one compartment does not spread through the vessel. A vessel described as “one-compartment standard” can survive the flooding of any one compartment; “two-compartment standard” means any two adjacent compartments.
- **Watertight** means capable of preventing the passage of water in **any** direction under a head of water — designed for structures that may be submerged.
- **Weathertight** means capable of preventing the passage of water **into the vessel** in any sea condition — a lower standard, applicable to closures on exposed decks.

A large undivided space — a long open cargo hold, or an undivided vehicle deck — is the enemy of both damage stability and free-surface control, because water admitted anywhere in it spreads across the full breadth and the full length.

C.10 The inclining test (inclining experiment)

The physical experiment by which a vessel's **lightship weight and the vertical and longitudinal position of her lightship centre of gravity** are determined. Known weights are moved a known transverse distance across the deck in still water, the resulting small angles of heel are measured with pendulums or U-tube manometers, and KG is calculated from the relationship between the heeling moment applied and the angle produced.

The inclining test is the foundation of everything else. Without it, the vessel's KG is unknown, and if KG is unknown then GM is unknown, the GZ curve cannot be drawn, and no loading condition can be assessed. Once the lightship KG is known, the effect of every item of cargo, fuel, water and passengers can be calculated for any condition.

Guyanese law requires it. **Cap. 49:01 s. 290(2)** provides that the stability information required by s. 290(1) shall be based on the determination of the ship's stability by means of an inclining test, and permits the Minister to allow reliance on a similar determination made for a **sister ship** — a vessel built to the same design at the same yard. The MV *Barima*

had two sisters, the *Pomeroon* (1936) and the *Lady Northcote* (1937). Whether an inclining test was ever performed on her or on a sister, when it was performed, and whether it was ever repeated after alteration or after the recorded 2017 refit, are matters for the Commission. **The legal significance is that s. 290 imposes the duty on every Guyana passenger ship regardless of size, and prescribes a maximum fine of \$10,000 for proceeding to sea without the information.**

C.11 Lightweight survey and the ageing hull

Over a long service life a ship gains weight — accumulated paint, repairs, replaced steel, added fittings, sediment, and absorbed moisture in insulation — and the added weight is very often **high**, because most alterations are made in accommodation and on decks rather than in the double bottom. The result is that an old vessel's real lightship KG drifts upward from the figure determined at her original inclining test. International practice therefore requires **periodic lightweight surveys** on passenger ships to detect this drift, and re-inclining if the deviation exceeds set limits. **No such requirement appears in the Guyanese statutes or in the subsidiary legislation reproduced in the authorised consolidation.** The MV *Barima* was **86 to 87 years old** at the time of her loss.

PART D — THE SEA AND THE SHIP'S BEHAVIOUR IN IT

D.1 Beam sea, following sea, quartering sea

- **Beam sea** — waves approaching from the side. Produces the largest rolling response and is the classic condition for a stability casualty.
- **Following sea** — waves overtaking the vessel from astern.
- **Quartering sea** — waves approaching from a rear corner. The most dangerous condition for many small and medium vessels, because it combines rolling, yawing and a reduction in stability as the wave crest passes amidships.

D.2 Loss of stability on a wave crest

When a wave crest is amidships, the ends of the vessel are in wave troughs, the effective waterplane is narrower than in still water, and **BM — and therefore GM — falls**. A vessel may be adequately stable in still water and momentarily unstable on a crest. This is why still-water calculations are only the beginning, and why the international criteria require a margin.

D.3 Broaching

An involuntary and violent turn broadside to the sea, typically in a following or quartering sea, when the vessel loses directional control on the face of a wave. A broach places the vessel beam-on at the moment of maximum wave force and at the moment of reduced stability, and is a recognised capsize mechanism.

D.4 Parametric rolling and synchronous rolling

- **Synchronous rolling** occurs when the period of wave encounter matches the vessel's **natural rolling period**, so that each successive wave adds energy in phase, and roll amplitude builds rapidly.
- **Parametric rolling** occurs when the wave encounter period is about half the natural roll period, and the cyclical variation in stability as crests and troughs pass produces a rapidly growing roll even in a head or following sea.

Both are energy-accumulation phenomena, and both are far more dangerous on a vessel with a small area under the GZ curve.

D.5 Cargo shift

The movement of cargo from its stowed position under the influence of rolling. A shifted weight moves G off the centreline, producing a permanent list, and reduces the righting lever on the side to which it has moved. Cargo shift is a self-reinforcing failure: the list increases the tendency of the remaining cargo to shift. Securing arrangements, lashings and the strength of the securing points therefore have a direct and immediate stability function; they are not merely about protecting the goods.

D.6 The special hazard of high, heavy cargo and of free-moving passengers on an upper deck

Two of the specific matters referred to the Commission engage this directly.

- **Weight placed high.** Each tonne placed on an upper deck raises G by an amount proportional to its height above the vessel's existing centre of gravity. Heavy machinery placed on an upper deck is the most efficient possible way to destroy a vessel's stability while making almost no impression on her load line. Reports that heavy machinery may have been placed on the upper deck have been referred to the Commission; **this document takes no position on whether that occurred.** It records that if it did, the load line would not have shown it.
- **Passengers as a moving weight.** A person is approximately 75 kilograms and, unlike cargo, is **mobile**. Passengers crowd to one side to look at something, to escape spray, to reach an exit, or in fright. International passenger-ship stability criteria therefore include a **passenger-crowding heeling moment** calculated on the assumption that all passengers move to one side, with a defined density of persons per square metre. Two hundred people moved four metres to one side on a vessel of this size is a very large heeling moment. **There is no equivalent criterion anywhere in Guyanese law applicable to a vessel of this class.**

PART E — SHIPS, PEOPLE AND VOYAGES: THE LEGAL CATEGORIES

E.1 Ship

Cap. 49:01 s. 2 defines “ship” as including every description of vessel used in navigation and not propelled by oars. **Cap. 49:07 s. 2** (for Part I of that Act) defines “ship” as any sea-going vessel or steamer, while **Cap. 49:07 s. 17** (for Part II) defines “ship” as a vessel of

every kind or size used in navigating the sea and not propelled by oars, and separately defines “vessel” as any kind of navigable craft, in whatever way propelled, including any boat, punt, bateau, buckshell, corial or other similar craft, whether registered in Guyana or elsewhere or unregistered. **Three different definitions of “ship” therefore operate simultaneously in the Guyanese maritime statute book**, together with a fourth concept, “vessel”, which is wider than all of them.

E.2 Passenger ship, passenger, and the twelve-passenger threshold

Cap. 49:01 s. 2 defines a “**passenger ship**” as a ship constructed for, or habitually or on any particular occasion used for, carrying **more than twelve passengers**. The threshold of twelve is the international standard, taken from SOLAS.

The same section defines “**passenger**” by exclusion. A passenger is **not**: the master; the crew; persons employed or engaged in any capacity on board on the business of the ship who are signed on the articles; a child under one year of age; and persons on board in consequence of shipwreck or distress. Everyone else carried is a passenger.

Two consequences follow that matter here. First, the *MV Barima* was unquestionably a passenger ship on any account of the numbers on board. Second, **the statutory definition of “passenger” turns in part on whether a person is signed on the ship’s articles.**

Where the number of crew is itself disputed — as it is here, the manifest recording 17 and the specialist review of boarding closed-circuit television recording 18 — the legal classification of at least one person on board is unresolved, and with it the count of passengers.

E.3 Cargo ship

Cap. 49:01 s. 2: a ship which is not a passenger ship or a fishing vessel. The definition is residual. **It is this residual definition, combined with the words “except passenger ships” in regulation 3 of the Cargo Ship Survey Regulations, that removed the *MV Barima* from the only periodic survey regime in the consolidated subsidiary legislation applicable to a vessel of her length.**

E.4 Guyana Government ship

Cap. 49:01 s. 2: a ship which belongs to the Government of Guyana but does not include a ship forming part of the Guyana Defence Force. The *MV Barima* was owned by the Government of Guyana, ownership having passed from the colonial administration at independence in 1966, and was operated by the Transport and Harbours Department. She was therefore a Guyana Government ship. **The legal significance of that classification is set out at Chapter 5 and is severe: Cap. 49:01 s. 3(1)(a) disapplies the whole Act to Guyana Government ships operated for non-commercial purposes, and s. 3(3), where such a ship is registered, provides that any reference to an owner shall be construed as a reference to the Director.**

E.5 Guyana waters

Cap. 49:01 s. 2: includes the internal waters and the territorial sea as defined in the **Maritime Zones Act, Cap. 63:01**.

E.6 Local trade in Guyana waters

Cap. 49:01 s. 2: the transport locally of passengers or goods, or the carrying out of any other operation or activity locally, within Guyana waters, for profit or reward.

E.7 Coasting voyage — the older statute’s category

Cap. 49:07 s. 17 defines “**coasting voyages**” as voyages from one part of Guyana to any other part **not confined within the limits of one river**. This is a different concept from “local trade in Guyana waters” and it captures precisely the kind of voyage the *MV Barima* was making: Georgetown, on the Demerara, out into the Atlantic, past the Essequibo and Pomeroun, and into the Barima. **Cap. 49:04 s. 2** separately defines a “**coasting vessel**” as any vessel trading within the limits of Guyana. **Three different geographic categories of domestic voyage therefore exist across the three Acts, with no provision reconciling them.**

E.8 Owner

Cap. 49:01 s. 2: includes a demise or bareboat charterer and a managing owner.

- A **bareboat or demise charter** is a lease of the vessel itself, without crew. The charterer takes possession, mans the vessel, and becomes the operator in fact and, for most regulatory purposes, in law.
- A **time charter** or **voyage charter** does not transfer possession; the owner continues to man and operate the vessel.

E.9 Master, mate, crew, and the officers of the Guyanese system

- **Master** — the person in command. **Cap. 49:07 s. 17** provides that “master”, as applied to a ship or vessel, includes anyone having for the time being the charge or command of the ship or vessel.
- **Chief mate (chief officer)** — second in command; conventionally responsible for cargo, stability calculation and loading.
- **Marine officer** — under **Cap. 49:01 s. 4**, the public officers appointed to administer the Act: the **Director of Maritime Affairs**, the **Registrar of Ships**, the **Registrar of Seamen, Surveyors**, and the **Receiver of Wreck**.
- **Inspector of shipping** — the officer created by **Cap. 49:07 s. 18**, whose powers are at s. 20 and who is defined at s. 17 as an inspector of shipping appointed under Part II of that Act **or a surveyor of ships appointed under the Guyana Shipping Act**.
- **Harbour master** — appointed under **Cap. 49:04 s. 32**, with powers and duties at s. 33.
- **Superintendent of Loading / Goods Superintendent** — an officer of the Transport and Harbours Department. The office is not created by, named in, or

given any duty by any of the three Acts examined in this document. Its existence and responsibilities appear only in the public statements of the Minister of Public Works and in the charge laid on 28 July 2026.

E.10 Machinery

Cap. 49:01 s. 2 gives this term an unusually wide definition: it includes propulsion systems, steering systems, pressurized containers and systems, pumping systems, windlasses, electrical systems and all similar apparatus required for, or affecting, the safety or operation of a ship or the safety of the personnel on board. **The breadth matters**, because the reporting duty in s. 237 is engaged by material damage affecting seaworthiness or efficiency in hull **or machinery**, and because survivor allegations in the public record concern engine trouble.

PART F — SURVEY, CERTIFICATION AND THE INSTITUTIONS OF REGULATION

F.1 Flag State, port State, coastal State

- **Flag State** — the State in which a ship is registered and whose nationality she carries. The flag State has the primary duty to ensure that ships flying its flag comply with international and national safety standards. **Guyana was the flag State of the MV Barima.**
- **Port State** — a State in whose port a foreign ship calls, which may inspect her for compliance with international conventions. This is **port State control**.
- **Coastal State** — a State off whose coast an incident occurs, with jurisdiction in its territorial sea and defined rights beyond it.

The whole of the international safety architecture rests on flag State performance. Port State control is a back-stop that operates on foreign ships. **A State's own domestic fleet, trading only in its own waters, is subject to no external check whatever, except the IMO Member State Audit Scheme.** That is the structural reason why domestic ferry safety is the weakest point of the world maritime system and why the great majority of the world's ferry fatalities occur on domestic voyages.

F.2 Classification society and recognised organisation

- A **classification society** is a private technical body which sets construction and maintenance standards ("class rules"), surveys ships against them, and issues a certificate of class. Examples include Lloyd's Register, DNV, Bureau Veritas, the American Bureau of Shipping and ClassNK. **Class is not a statutory certificate and confers no legal authority of itself.**
- A **recognised organisation (RO)** is a body — usually a classification society — formally **delegated** by a flag State to carry out statutory surveys and issue statutory certificates on its behalf, under a written agreement, subject to the **IMO Code for Recognized Organizations (RO Code)**.

Cap. 49:07 s. 35(2) contains a fossil of this concept: it provides that no inspection under Part II shall extend, except by special direction of the Minister, to the hull, machinery or boilers of any vessel in respect of which there is in force a certificate issued by **the society known as Lloyd's Register of British and Foreign Shipping** stating that the hull, machinery and boilers are in a good and sufficient state and safe working order. The named entity has not carried that title for many decades. **The provision therefore operates, on its face, as a statutory exemption from inspection triggered by a certificate that no longer exists under that name.**

F.3 Survey

A physical examination of a ship by a competent person to establish whether she complies with a standard. Types:

- **Initial survey** — before the ship is put into service, or before a certificate is first issued.
- **Annual survey** — a general examination each year.
- **Intermediate survey** — a more detailed examination, typically at the mid-point of a certificate's life.
- **Renewal (periodical) survey** — a full examination before the certificate is renewed.
- **Additional survey** — after damage, repair or alteration.
- **Bottom / drydocking survey** — examination of the underwater hull with the vessel out of the water or in dry dock.

SOLAS Chapter I, regulation 7 requires passenger ships to be surveyed **initially, then at intervals not exceeding twelve months, and additionally as required**. By contrast the only periodical survey regime in the Guyanese consolidated subsidiary legislation applicable above 24 metres — regulation 6(1) of the Cargo Ship Survey Regulations — prescribes survey on completion of construction and thereafter **at intervals not exceeding five years**, and by regulation 3 it does not apply to passenger ships at all.

F.4 Certificate, exemption certificate, qualified certificate, short voyage certificate

- A **certificate** is the formal statutory document recording that a ship has been surveyed and complies. **Cap. 49:01 ss. 257–266** provide for surveys of passenger ships, the **Passenger Ship Certificate, Short Voyage Certificates, Exemption Certificates** and **Qualified Certificates**, and s. 266 provides a penalty for carrying excess passengers. These sections are drafted throughout by reference to the **Safety Convention** regime — that is, to SOLAS — and the practical question, addressed in Chapter 5, is what they actually require of a vessel on a purely domestic voyage to which the Safety Convention does not apply of its own force.
- An **exemption certificate** records that a ship is excused from a specified requirement, usually on the basis of an equivalent arrangement or of the sheltered nature of her service.
- A **qualified certificate** records compliance subject to stated qualifications.

- **Cap. 49:01 s. 288** prohibits a ship proceeding to sea without the appropriate certificate; **s. 289** provides for detention for non-production; **s. 293** confers on the Director power to require re-survey and to cancel certificates.

F.5 Load line certificate

Cap. 49:01 s. 315 provides that ships shall not proceed to sea without a Load Line Certificate — an **International Load Line Certificate** for an international voyage, and otherwise a **Local Load Line Certificate**. The existence of a distinct **local** certificate is significant: it is the mechanism by which the international Load Lines regime is adapted to domestic service, and it means the load line assigned to a domestic vessel need not be the international one.

F.6 Safety management system, the ISM Code, the Document of Compliance and the Safety Management Certificate

The **International Safety Management Code** — formally the International Management Code for the Safe Operation of Ships and for Pollution Prevention — is given force by **SOLAS Chapter IX**. It requires the company operating a ship to establish a documented **safety management system (SMS)** comprising a safety and environmental protection policy; instructions and procedures for safe operation; defined levels of authority and lines of communication between shore and ship; procedures for reporting accidents and non-conformities; procedures for emergency preparedness; and procedures for internal audit and management review. It requires the designation of a **Designated Person Ashore (DPA)** with direct access to the highest level of management.

Compliance is evidenced by two documents: a **Document of Compliance (DOC)** issued to the company, and a **Safety Management Certificate (SMC)** issued to each ship.

The ISM Code appears in Guyanese subsidiary legislation only inside the Guyana Shipping (Small Commercial Ship Safety) Regulations, Reg. 5 of 2005 — that is, only for ships of less than 24 metres. There is no safety management system requirement in Guyanese law applicable to the operator of a 40-metre State-owned passenger ferry.

F.7 The ISPS Code and the missing security regulations

The **International Ship and Port Facility Security Code**, given force by **SOLAS Chapter XI-2**, governs maritime security. Guyana made the **Guyana Shipping (Ship and Port Facility Security) Regulations 2004** under Cap. 49:01. **They are not in the authorised consolidation.** The L.R.O. 1/2012 volume carries a printed note recording that at the time of publication those Regulations were being substantially revised and had therefore been omitted. The consequence is that **since at least 2012 the authorised text of the laws of Guyana has not contained the country's ship and port facility security regulations.** Whether the revision was completed, and if so when and in what terms, is a verification item.

F.8 STCW and safe manning

The **International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended** (including the 1995 amendments and the 2010 Manila amendments) sets minimum international standards for the training, certification and watchkeeping of seafarers, and includes mandatory rest-hour provisions and requirements on the prevention of drug and alcohol abuse.

Safe manning is the determination by the flag State of the minimum number and grades of qualified personnel a ship must carry. **SOLAS Chapter V, regulation 13** requires each Contracting Government to maintain measures ensuring that ships flying its flag are sufficiently and efficiently manned, and to issue a **Minimum Safe Manning Document**.

In Guyanese law, **Cap. 49:01 s. 105** empowers the Minister to make regulations regarding safe manning and the qualifications of persons serving in Guyana ships. **It is a power, not a duty. Cap. 49:01 s. 336** makes **under-manning** a ground on which a ship is unseaworthy. There is therefore a statutory offence of sending an under-manned ship to sea and, subject to verification of post-2012 instruments, no published standard by which the sufficiency of manning is to be judged for a vessel of this class.

F.9 Official log book

The formal statutory record of a ship's voyage, in which prescribed events must be entered. **Cap. 49:01 s. 239** requires the master of every Guyana ship to enter in the official log book every occasion on which boat and fire drill is practised and appliances are examined, and the result; and provides that in the case of a **passenger ship**, where drill was not practised **in any week** (for other ships, two weeks), the master shall state the reasons in the official log book.

Note precisely what this section does and does not do. It requires a **record**. It does not prescribe the drill, its content, its scope, who must take part, what must be demonstrated, or what standard must be achieved. It creates a duty to write down that a drill did not happen and why. **It does not create a duty to hold the drill.**

PART G — LIFE-SAVING, MUSTER AND EVACUATION

G.1 Lifeboat, liferaft, lifejacket, lifebuoy

- **Lifeboat** — a rigid boat, launched by davits, capable of being propelled clear of the ship.
- **Inflatable liferaft** — a raft stowed in a rigid container, inflated on launching, and in modern practice fitted with a **hydrostatic release unit** that frees it automatically at a set depth if the vessel sinks before it can be launched.
- **Rigid liferaft** — a non-inflatable buoyant raft.
- **Lifejacket (life-belt)** — a personal buoyancy device designed to keep an unconscious wearer face-up.
- **Lifebuoy (life-buoy)** — a ring buoy for throwing to a person in the water.

The MV *Barima* is recorded as having carried **250 lifejackets, six inflatable liferafts and two rigid liferafts.**

G.2 Muster list (station bill), muster station, muster, drill and passenger safety briefing

- The **muster list**, also called the **station bill**, is the document posted throughout the ship which assigns **every person on board** a specific duty and a specific station in each emergency — fire, abandon ship, man overboard, flooding — and which specifies the signals used, the arrangements for closing watertight doors and openings, and the duties assigned in respect of passengers.
- A **muster station** is the designated assembly point.
- A **muster** is the act of assembling and accounting for everyone.
- A **drill** is a practised rehearsal.
- A **passenger safety briefing** is the instruction given to passengers on or before departure — where the muster station is, how to don a lifejacket, what the signals are.

SOLAS Chapter III, regulation 19 requires musters and drills on a defined schedule, and requires that on passenger ships a muster of the passengers take place within 24 hours of embarkation, with an announcement in the language or languages of the passengers.

There is no muster list requirement, no muster requirement, no drill content requirement and no passenger safety briefing requirement anywhere in Guyanese law applicable to a passenger ship of 40 metres on a domestic voyage. Station bill, muster, drill and emergency instruction requirements exist in the Guyana Shipping (Small Commercial Ship Safety) Regulations — **for ships of less than 24 metres.**

G.3 Manifest and record of persons on board — two different documents

This distinction is central to the disputed numbers in this casualty and it is generally misunderstood.

- A **manifest** is a **commercial** document. It lists what was booked, ticketed and loaded. It exists for revenue, customs and accounting purposes. It is compiled before departure from bookings.
- A **record of persons on board** is a **safety** document. It is a count and identification of every human being **actually aboard** at the moment of departure, compiled by counting, and retained ashore so that in a casualty the search and rescue authorities know how many people to look for and who they are.

SOLAS Chapter III, regulation 27 requires that all persons on board all passenger ships be counted prior to departure; that details of persons who declare a need for special care or assistance in an emergency be recorded and communicated to the master; and that the information be kept ashore and made readily available to search and rescue services when needed.

In Guyanese law there is no such duty. Cap. 49:01 s. 398(1)(b) empowers the Minister to make regulations requiring the preparation and furnishing of particulars as to all

passengers to or from a port in Guyana. **It is an enabling power. No regulations made under it appear in the authorised consolidation.** The nearest thing to a live requirement is **regulation 13(6) of the Coasting and Passenger Trade Regulations** under Cap. 49:07, which requires the master of a **sailing vessel** employed in coasting voyages about to proceed with passengers from Georgetown or New Amsterdam on a voyage of more than fifty miles to deliver to an officer of the Guyana Revenue Authority a written declaration setting out **the number and names of the passengers**. That duty, drafted in 1896, does not extend to a motor vessel.

The consequence is that the discrepancy between the manifest figure of 133 and the closed-circuit television review figure of 179 is not, on the face of the statute book, a breach of any counting duty — because no counting duty exists. Whether it involved offences of another kind is a matter for the criminal process and this document expresses no view on it.

G.4 EPIRB, GMDSS, MRCC, SAR

- **EPIRB** — Emergency Position-Indicating Radio Beacon. A device that, on immersion or manual activation, transmits a distress alert with the vessel's identity and position via the Cospas-Sarsat satellite system.
- **GMDSS** — Global Maritime Distress and Safety System. The integrated international system of radio equipment, satellite communications and shore infrastructure by which distress alerts are transmitted, received and coordinated, given force by **SOLAS Chapter IV**.
- **MRCC** — Maritime Rescue Coordination Centre. The shore unit responsible for promoting the efficient organisation of search and rescue services and for coordinating the conduct of operations within a search and rescue region.
- **SAR** — search and rescue.

Note the routing recorded in the Prime Minister's chronological account. The distress signal was received at 22:43 by the **Air Traffic Control Centre at Timehri**; at 23:01 Air Traffic Control informed the **Georgetown Lighthouse**; at 23:03 the Lighthouse alerted the **Maritime Rescue Coordination Centre**. That is **twenty minutes from receipt of a maritime distress signal to its arrival at the maritime rescue authority**, and it travelled through an aviation authority and a lighthouse to get there. This document draws no conclusion about the operational consequence. It records that **no provision of Cap. 49:01, Cap. 49:04 or Cap. 49:07 establishes an MRCC, defines a search and rescue region, allocates responsibility for the receipt and routing of distress alerts, or prescribes any time standard for doing so.**

PART H — CASUALTY, INVESTIGATION AND THE FOUR DIFFERENT PROCEEDINGS

H.1 Marine casualty and marine incident

The definitions in the **Casualty Investigation Code** (resolution MSC.255(84)) are:

- A **marine casualty** is an event, or a sequence of events, that has resulted in any of the following, occurring directly in connection with the operations of a ship: the death of, or serious injury to, a person; the loss of a person from a ship; the loss, presumed loss or abandonment of a ship; material damage to a ship; the stranding or disabling of a ship, or the involvement of a ship in a collision; material damage to marine infrastructure external to a ship; or severe damage to the environment. It **excludes** a deliberate act or omission with the intention to cause harm to the safety of a ship, an individual or the environment.
- A **marine incident** is an event, or sequence of events, other than a marine casualty, which has occurred directly in connection with the operations of a ship that endangered, or if not corrected would endanger, the safety of the ship, its occupants or any other person or the environment.
- A **very serious marine casualty** is a marine casualty involving **the total loss of the ship, or a death, or severe damage to the environment**.

The loss of the *MV Barima* is, on any view, a very serious marine casualty. That classification carries a specific legal consequence, set out at H.3.

H.2 Marine safety investigation, and what makes it different

A **marine safety investigation** is defined in the Casualty Investigation Code as an investigation or inquiry conducted with the objective of **preventing marine casualties and marine incidents**, which includes the gathering and analysis of evidence, the identification of causal factors and the making of safety recommendations as necessary.

Its defining characteristics, and the reason it is a different animal from every other proceeding:

1. **Its sole purpose is prevention.** It is not conducted to apportion blame or determine liability.
2. **It is conducted by an investigating body that is impartial and independent of any party whose interests could conflict with the task** — which necessarily includes the regulator and the operator.
3. **Evidence given to it is protected**, so that witnesses may speak freely. The Code restricts the disclosure of records including witness statements, communications between persons involved in the operation of the ship, medical or private information, opinions expressed during the investigation, and draft reports — unless a competent authority determines that disclosure outweighs the adverse domestic and international impact on that or any future investigation.
4. **It publishes.** The final report is made publicly available and sent to IMO.

H.3 The four proceedings, and why conflating them is dangerous

Four entirely distinct proceedings may follow a casualty. They have different purposes, different standards of proof, different rules of evidence, and different consequences, and **the same facts may produce opposite outcomes in each without any inconsistency**.

	Safety investigation	Commission of Inquiry	Coroner's inquest	Criminal prosecution
Purpose	Prevent recurrence	Establish circumstances; report to the appointing authority; recommend	Determine who died, and when, where and how	Determine criminal guilt of an accused
Blame	Expressly excluded	Frequently included; here expressly within the terms of reference	Limited; in most Commonwealth systems a coroner may not name a person as guilty	Central
Standard of proof	None; probabilistic causal analysis	As the instrument provides	Civil standard, varying by finding	Beyond reasonable doubt
Witness protection	Protected; compelled but shielded from use against the witness	Depends entirely on the instrument	Privilege against self-incrimination applies	Right to silence; presumption of innocence
Publication	Mandatory	Depends on the instrument	Usually public	Public
Guyanese vehicle	None exists	Commissions of Inquiry Act	Coronial law	Criminal law and the Summary Jurisdiction Acts

The reason the international system insists on separation is that a witness who knows his words may convict him will not tell the truth about what he did, what he saw, what he was told to do, or what he had been worried about for years. The whole evidential value of a safety investigation depends on the witness's confidence that candour is safe. **A proceeding that can revoke his certificate, or that runs alongside a prosecution in which he is the accused, cannot obtain that candour, and will therefore produce a less accurate account of what happened.**

This is not an abstract concern in this casualty. On 28 July 2026 the Guyana Police Force, acting on legal advice from the Director of Public Prosecutions, charged three employees of the Transport and Harbours Department with murder contrary to common law in relation to the deaths of passengers on board the MV *Barima* — Captain **Kevin Price**, 40; Chief Mate **Rondell Dwayne Roberts**, 42; and Goods (Loading) Superintendent **Delon Granderson**, 33 — reported as a total of **72 counts of murder**. They appeared before Chief Magistrate Judy Latchman at the Georgetown Magistrates' Court, were not

required to enter pleas, had no attorneys present, and were remanded to prison until 3 August 2026. **They are presumed innocent.** The point of law is this: **the master and the mate are the two people whose evidence any competent stability investigation must have, and they are now accused persons with a right to silence.** Commentary already in the public record raises the questions whether they can meaningfully appear before the Commission and whether *sub judice* considerations arise. **This is the precise institutional collision that the separation of safety investigation from blame attribution exists to prevent, and Guyanese law contains no mechanism to manage it.**

H.4 Sub judice

The principle that matters before a court should not be prejudiced by concurrent public discussion or by parallel proceedings that might contaminate the trial process. Its practical effect here is that a Commission of Inquiry examining the same events as a live murder prosecution must navigate what it can hear, from whom, and in public, without prejudicing the trial.

H.5 Duty of candour

A statutory obligation on public officials and public authorities to assist an investigation truthfully and proactively — to volunteer relevant material rather than merely to answer questions put. It reverses the default posture of institutional self-protection. The Guyana Human Rights Association has proposed such a duty in terms, **backed by sanctions including prosecution and imprisonment.** There is no such duty in Guyanese law at present.

PART I — LIABILITY, IMMUNITY AND TIME

I.1 Seaworthiness and unseaworthiness

Cap. 49:01 s. 336 defines an **unseaworthy ship** as a ship that is by reason of the defective condition of its hull, equipment and machinery **or by reason of under manning, overloading or improper loading**, unfit to proceed to sea without serious danger to human life, having regard to the nature of the service for which the ship is intended.

Three features of that definition should be noted. First, it is **not confined to physical defect**: under-manning, overloading and improper loading are each independently sufficient. Second, it is **relative to the intended service** — a vessel may be seaworthy for a river and unseaworthy for the open Atlantic. Third, **“improper loading” is expressly included**, which means that a vessel loaded within her deadweight and floating to her marks may nevertheless be statutorily unseaworthy if the disposition of that weight is improper. **A load line reading is therefore not an answer to a charge of unseaworthiness by improper loading.**

Cap. 49:07 s. 28(1) uses a materially similar but not identical formula for the older Act’s detention power, referring to a ship which by reason of the defective condition of her hull, equipment or machinery, **or by reason of overloading**, is unfit to proceed to sea without

serious danger to human life having regard to the nature of the service for which she is intended, and defining such a ship as “unsafe”. **The older Act’s formula omits under-manning and improper loading.**

I.2 The statutory defence of reasonableness

Both Acts attach a defence. **Cap. 49:01 s. 337(1)** makes it an offence to send or attempt to send a ship to sea in such an unseaworthy state that the life of any person is likely to be thereby endangered, **unless the person proves either** (a) that he used all reasonable means to ensure that the ship was sent to sea in a seaworthy state, **or (b) that sending the ship to sea in such an unseaworthy state was in the circumstances reasonable and justifiable.** **Cap. 49:01 s. 337(2)** gives the master a defence that taking her to sea was in the circumstances reasonable and justifiable. **Cap. 49:01 s. 338(2)** provides that nothing subjects the owner to liability where, owing to special circumstances, the sending of the ship to sea in such a state was reasonable and justifiable. **Cap. 49:07 s. 26** contains the equivalent defences.

Limb (b) is the significant one. It is not a defence of due diligence; it is a defence that **sending an unseaworthy ship to sea was justified.** In the context of a State ferry serving a region with **no road connection to the capital**, and where the only other vessel capable of the service is unavailable, the argument that sailing was justified by necessity is not fanciful. **The statute supplies the defence.**

I.3 Limitation of liability, the unit of account, and aggregation

Cap. 49:01 Part XVI (ss. 400–421) contains the regime by which a shipowner may limit total liability arising from an occurrence to a fund calculated by formula, irrespective of the actual loss. **s. 405** provides for conduct barring limitation; **s. 411** for the limit applicable to passenger claims; **s. 412** for conversion of the **unit of account** — internationally, the **Special Drawing Right** of the International Monetary Fund; **s. 413** for aggregation of claims; **s. 421** for limitation of actions.

I.4 Notice of action and the limitation period — the most time-critical provision in this document

Cap. 49:04 s. 23 provides:

- **s. 23(1)** — no action or suit shall be commenced against the Department for anything done in pursuance or execution or intended execution of Part II of the Act until the expiration of **one month** after **notice in writing** has been served on the Department stating the cause of the action or suit, the name and address of the person bringing it, and the name and address of his legal practitioner.
- **s. 23(2)** — every such action or suit shall be commenced **within six months** after the thing done or omitted, **and not otherwise.**

The practical effect, stated plainly for bereaved families: a person wishing to sue the Transport and Harbours Department in respect of the loss must (i) instruct a legal practitioner, (ii) serve a written notice naming that practitioner, (iii) wait one month, and

(iv) commence proceedings **within six months of 18 July 2026** — that is, on or about **18 January 2027**. A family that waits for the Commission of Inquiry to report before taking advice may find the period has expired. **Nothing in this document is legal advice and the application of s. 23 to any particular claim is a question for a Guyanese practitioner.** It is set out here because it is the single most urgent item in the entire statute book for the people most affected, and because it is not obvious, not publicised, and not something a grieving family would think to look for.

I.5 Immunity provisions

- **Cap. 49:04 s. 47** — the Government and the Department are not liable for the default of the General Manager. *(In some older editions and third-party databases this provision is numbered s. 46.)*
- **Cap. 49:04 s. 53** — exemption from personal responsibility. *(Numbered s. 52 in the older scheme.)*
- **Cap. 49:07 s. 29(5)** — no personal liability attaches to any officer in respect of the survey or detention of a ship under Part II unless it is alleged and proved that he acted **maliciously and without any reasonable cause**.
- **Cap. 49:07 s. 11(3)** — no member of a court of inquiry shall be liable to any action or suit for any matter or thing done by him as a member of the court.
- **Cap. 49:01 s. 340** — the Government is liable for costs and compensation where a ship was detained without reasonable and probable cause; **s. 341** — power to require a complainant to give security for costs.

I.6 Compounding of offences

Cap. 49:01 s. 445 permits the **Director** to compound any prescribed compoundable offence on payment of a sum **not exceeding \$20,000**, and a **marine officer** to compound on payment of a sum not exceeding **\$10,000**; and provides that on payment, a person in custody shall be discharged, a detained ship shall be released, and **no further proceedings shall be taken** against that person or ship in respect of that offence. **Compounding is the administrative extinction of criminal liability by payment.**

I.7 Enabling power, permissive and mandatory language

- An **enabling power** is a provision authorising a Minister or official to make regulations. **It creates no obligation on anyone until the regulations are made.** A statute consisting largely of enabling powers, under which few regulations have been made, is a statute that looks comprehensive in the table of contents and imposes almost nothing in practice.
- **“May” is permissive. “Shall” is mandatory.** In a deficiency analysis the distinction is usually where the deficiency lives. **Cap. 49:01 s. 251(1)** — the Minister **may** make regulations relating to safety at sea. **s. 398(1)** — the Minister **may** make regulations respecting passenger ships. **s. 427(1) and (2)** — the Minister **may** cause a preliminary inquiry and **may** cause a formal investigation. **s. 3(2)** — the Minister **may** make regulations prescribing the manner and extent to which the Act applies to Government ships. **Every one of the provisions that would have governed this casualty is permissive.**

I.8 Consolidation, L.R.O., commencement, repeal, savings

- A **consolidation** or **revised edition** is an official republication of the law as amended to a stated date. **L.R.O.** denotes the **Law Revision Order** authorising it; **L.R.O. 1/2012** is the order authorising the edition used here.
 - **Commencement** is the date a provision comes into force, which may differ from the date of enactment.
 - **Repeal** removes a provision. **Savings** preserve specified consequences of a repealed provision.
 - **A consolidation is evidence of the law as at its date and no later.** This is why every negative finding in this document — every statement that a regulation does not exist — is expressed subject to verification against post-2012 instruments.
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CHAPTER 3 — THE CASUALTY

3.1 THE VESSEL: ESTABLISHED PARTICULARS

Item	Particular
Name	MV <i>Barima</i>
Flag	Guyana
Type	Steel passenger-and-cargo motor vessel
Operator	Transport and Harbours Department, Government of Guyana
Owner	Government of Guyana
Builder	Ferguson Brothers (Port Glasgow) Ltd, Newark yard, Port Glasgow, Scotland
Yard number	340
Ordered through	The Crown Agents for the Colonies, for the Transport & Harbours Department of British Guiana Railways
Launched	9 May 1939
First registered	Georgetown, Demerara, 17 November 1939
Sister vessels	<i>Pomeroon</i> (1936); <i>Lady Northcote</i> (1937)
Gross register tonnage	284 grt
Net register tonnage	111 nrt
Length	126.5 ft / 40.26 m
Beam	29.1 ft / 8.87 m
Draft	7.5 ft
Propulsion	Twin screw; 2 × Paxman-Ricardo 6MRZ diesel engines by Davey, Paxman & Co., Colchester
Speed	Maximum 10.5 knots; cruising 8.5 knots
IMO number	5036896
Official number	82937
Call sign	8RAE
Transfer of ownership	To the Government of Guyana at independence, 1966
Recorded refit	2017
Recorded dry-docking	Parika, 2024
Next scheduled docking	Second half of 2026
Tender for further works	March 2026 — approximately G\$124.5 million in docking and overhaul work

Item	Particular
Age at loss	86–87 years
Life-saving equipment carried	250 lifejackets; 6 inflatable liferafts; 2 rigid liferafts

3.1.1 Observations on the particulars, offered as technical context only

On age. A hull launched on 9 May 1939 and lost on 18 July 2026 had been in service for **eighty-seven years and two months**. The author is aware of no flag State in the world that permits a passenger ship of that age in open-sea service without an enhanced survey regime specifically directed at age — thickness measurement of the structure on a defined grid, renewal criteria expressed as a permissible percentage of diminution from original scantlings, and periodic re-verification of stability by lightweight survey. **No such regime exists anywhere in the Guyanese statutes or subsidiary legislation examined for this document.** The vessel's age is not, of itself, evidence of anything about her condition on 18 July 2026. It is, however, the reason why the absence of an age-related survey regime is a deficiency of the first order.

On the sister ships and the inclining test. Cap. 49:01 s. 290(2) permits the Minister to allow a passenger ship's stability information to rest on a determination made for a **sister ship**. The MV *Barima* had two, both older than she was, both long gone. Whether that permission was ever relied on in her case is a matter for the Commission.

On the machinery. The Minister of Public Works is reported to have stated that the vessel was operating with **new engines**. The vessel as built carried two Paxman-Ricardo 6MRZ diesels. A re-engining is a significant alteration. **Cap. 49:01 s. 292(2)** imposes a duty on the owner or master to give written notice to the Director, as soon as practicable and with full particulars, whenever any alteration is made to a ship's hull, equipment, appliance or machinery which affects the safety of the ship or the efficiency, completeness or seaworthiness thereof. **Whether that duty was engaged, and if so whether it was performed, is a matter for the Commission.** The critical limitation of s. 292 is examined in Chapter 5: **s. 292(1) opens by confining the maintenance-of-condition obligation to a ship in respect of which a Safety Convention Certificate issued under the Act is in force.**

On the life-saving equipment. 250 lifejackets is a number that must be read against the disputed capacity figures and against the number of persons said to have been aboard. Under the international scheme the number of lifejackets, the aggregate capacity of survival craft, and the certificated number of persons are a single interlocking set: **you cannot certificate more people than you can put in survival craft.** The Opposition figure David Patterson has made precisely this point in the public record, in the words that certified passenger limits are legally fixed by reference to life-saving gear and stability. The aggregate capacity of six inflatable and two rigid liferafts depends on the type of raft and is not established in the public record.

3.2 THE SERVICE

Route. Kingston / Goods Wharf, Georgetown → out into the open Atlantic past the mouths of the Essequibo and the Pomeroon → Shell Beach → Iron Punt → into the Barima River → Morawhanna → Kumaka / Mabaruma (on occasion) → Port Kaituma.

Why the service exists. Region One (Barima-Waini) has no road to Georgetown. Its population at the 2022 census was **38,956**. The ferry is not a convenience. For the movement of people, of goods, of building materials, of vehicles and of government equipment between the capital and the north-west, it is the connection. That fact is legally relevant in three separate ways, and each is developed later in this document:

1. It bears on the **statutory defence** in Cap. 49:01 ss. 337 and 338(2) and Cap. 49:07 s. 26 that sending a ship to sea in an unseaworthy state was “in the circumstances reasonable and justifiable”.
2. It bears on whether the vessel was operated for “**non-commercial purposes**” within Cap. 49:01 s. 3(1)(a), a term the Act does not define.
3. It is the reason why the pressure to sail, and to carry what was presented for carriage, was structural rather than individual.

Fares for the sailing of 18 July 2026. Port Kaituma — adult \$3,000, child \$1,500, infant and pensioner free. Kumaka — adult \$2,000, child \$1,000.

Replacement tonnage. The Government has stated that the MV *Barima* remained in operation because work was ongoing to build a pier at Port Kaituma capable of accommodating a **new vessel acquired from India**, reported at approximately **US\$12.7 million**, intended to replace her.

3.3 THE AGREED CHRONOLOGY

The following is the sequence as recorded in the Prime Minister’s chronological account to the National Assembly of **27 July 2026**, supplemented where the public record supplies additional detail. **Where an element is disputed, it appears in the Conflict Register at 3.4 rather than here.**

Time	Event
14 July 2026	Transport and Harbours Department publishes sailing notice for the voyage
18 July 2026	The MV <i>Barima</i> departs Georgetown for Port Kaituma
22:43	Distress signal received by the Air Traffic Control Centre at Timehri
23:01	Air Traffic Control informs the Georgetown Lighthouse
23:03	The Lighthouse alerts the Maritime Rescue Coordination Centre , which informs the Guyana Defence Force, the Coast Guard, the Police and other agencies

Time	Event
23:11	The Coast Guard deploys GDFS 1030 from the Pomeroon floating base
23:25	The MRCC assembles the National Search and Rescue Committee
23:40	Two further vessels deploy from Ruimveldt Base
19 July, 02:27	5 persons rescued
19 July, ~02:30	Coast Guard reaches the Iron Punt area — approximately three hours and forty-seven minutes after the distress signal reached Air Traffic Control
19 July, 04:14	19 persons rescued
19 July, 05:13	53 persons rescued
20 July	Wreck located — credited to fisherman Haresh Singh and local fisherfolk, with ExxonMobil Guyana, VESHI and Sealand Survey's <i>Gilligan Island</i> confirming the exact position
22–24 July	Three days of National Mourning ; a National Day of Prayer
25 July	President Dr Mohamed Irfaan Ali announces an international and independent Commission of Inquiry
26 July	Membership of the Commission named; legal instruments stated to be in the course of being finalised
27 July	Prime Minister Mark Phillips delivers the chronological account to the National Assembly
27 July	Ministry of Health states that five recovered victims remain unidentified at Suddie Mortuary — four male, one female
27–28 July	Prime Minister states that raising the vessel “is not being forwarded at this stage”; that she is “likely to remain there as is”; that efforts to right her had not succeeded; that teams had “reached a point where we’re not finding any more bodies”; and that “it’s obvious that bodies are trapped in the wreck”
28 July	Captain Kevin Price, Chief Mate Rondell Dwayne Roberts and Goods (Loading) Superintendent Delon Granderson charged with murder — reported as 72 counts — before Chief Magistrate Judy Latchman, Georgetown Magistrates’ Court; no pleas taken; no attorneys present; remanded to prison until 3 August 2026
3 August 2026	Second hearing listed

3.3.1 The position of the wreck

- Early reports placed the capsized approximately **seven miles** from shore off the North Atlantic coast, near the mouth of the Pomeroon.

- The wreck as located lies about **nine miles off the Essequibo coast**, in Region Two, resting on her **starboard side, stern closest to the shoreline**, in a position recorded in the Prime Minister’s chronology as approximately **31 nautical miles north-west of the initial distress position**. Seabed mapping was supported by ExxonMobil. Depth is reported at approximately **50 feet (15 metres)**.

The 31-nautical-mile discrepancy between the reported distress position and the wreck position is, in the author’s professional view as a licensed unlimited-tonnage deck officer and pilot, the single most significant unexplained item in the chronology, and it is squarely a matter for the Commission. It is capable of several innocent explanations — an erroneous position in the distress transmission; drift of the hull while awash before sinking; drift of survivors and debris rather than the hull; an error in the recorded initial position; or a combination. **This document offers no explanation and asserts none.** It records that the discrepancy exists, that its resolution bears directly on the assessment of the search and rescue response, and that **no provision of Guyanese law requires a vessel of this class to carry any automatic position-reporting or voyage data recording equipment** that would resolve it.

3.3.2 The search and rescue effort

- The early response was hampered by **darkness and a lack of vessels with scanners**, leaving rescuers reliant on eyesight and sound. Oil and gas sector vessels equipped with scanners were deployed later.
- **Two of the Guyana Defence Force’s three Bell helicopters were unserviceable awaiting a part.** The Force is recorded as having used what was available — one serviceable helicopter.
- At the height of the operation: **19 vessels and 3 aircraft.**
- The search area expanded from **400 km² to 1,070 km² to 2,100 km²**, and later by a further 32 square miles westwards to Waini Point and eastwards to Adventure.
- International assistance: a **15-member French Armed Forces team from French Guiana** — 12 specialist divers, two medics and a mechanic, led by **Lieutenant Commander Alexis Touboul**; the **Trinidad and Tobago Coast Guard**; and the **Brazilian Navy**, including a frigate.

3.3.3 Salvage

- Repositioning attempts using **1,500-tonne buoyancy airbags** did not succeed.
- A French diver reported approximately **15 dives in total darkness**, strong tides and currents, and ropes and hammocks around the vessel, which sits partly in mud, making entry too dangerous; and stated that the wreck “is not very strong, so it’s difficult to take it”. Divers fell ill during the operation.
- A draft “**Declaration of Agreement**” was circulated to families proposing that the site remain undisturbed as a sacred memorial, with a maritime monument inscribed with every victim’s name. **Some relatives continue to press for full salvage.**

A note on the evidential consequence of not raising the wreck. The decision whether to salvage is, properly, a decision about the recovery of the dead and about the wishes of families, and this document expresses no view on it. But it has an evidential consequence

that should be stated plainly, because it is unlikely to be obvious: **the hull is the principal physical evidence in the case**. Determination of the vessel’s structural condition, of the state of her watertight closures, of the position of openings, of the securing of cargo, of the condition of her machinery and steering, and of whether and where she was taking water, will be very substantially harder — in some respects impossible — without access to the structure. A naval architect of Dr Jasionowski’s standing can do a great deal with calculation, survivor evidence, and the vessel’s records. He cannot examine a hull that is not recovered. **If the wreck is not raised, the Commission’s technical findings will necessarily rest more heavily on documents and on testimony, which places a correspondingly heavier weight on the completeness of the documentary disclosure and on the candour of witnesses — the two things this statute book does least to secure.**

3.4 THE CONFLICT REGISTER

This register reproduces every material conflict in the public record as at 29 July 2026. Each version is attributed. No version is preferred. No conflict is resolved.

CONFLICT 1 — CERTIFICATED CAPACITY: THREE IRRECONCILABLE FIGURES

Source	Passengers	Cargo	Qualification given
Minister of Public Works Juan Edghill (via NCN / DPI)	397	284 tonnes	Stated as the licensed figure
MARAD Director-General Captain Stephen Thomas	about 394	about 126 tonnes	“subject to loading conditions”, on a sliding scale — fewer passengers permits more cargo; more passengers reduces cargo
David Patterson, AFC Leader, former Minister of Public Infrastructure	approximately 150	290 metric tonnes	Stated to derive from official documentation and historical records establishing design capacity

Associated statements.

- **Captain Thomas** is reported to have said that the **load line** was used to determine whether the vessel was overloaded; that it was “**just submerged**” / “**barely submerged**” before departure; that this was usual because a vessel floats higher in denser sea water; that she was **not overloaded** and was “**operating way below her capacity**”; and that he was **not clear how the weight was distributed**.
- **Mr Patterson** challenged the Maritime Administration Department to publish the **passenger safety certificate** and the **technical calculations**, and said “**You cannot use a sliding scale for human lives**”, on the basis that certified passenger limits are legally fixed by reference to life-saving gear and stability.

- **Cargo actually manifested: approximately 268 tonnes**, including government equipment.
- **Minister Edghill** stated that the vessel could carry only **four vehicles**, and that the cargo manifest listed “a pickup... a car... the Public Works ATV, and other things like that.”
- Government officials acknowledged that they **could not immediately say how the cargo was distributed**.
- Reports that **heavy machinery may have been placed on the upper deck** have been referred to the Commission.
- **The Government has not published the complete certification and technical records needed to reconcile the figures.**

Analytical observations, offered without preferring any version.

1. **The three figures are not variants of one another; they are different in kind.** 397 and 394 are close enough to be the same underlying number differently reported. **150 is not.** The gap between approximately 150 and approximately 395 is a factor of about 2.6, and it is not capable of being explained by rounding, by a sliding scale, or by the inclusion or exclusion of crew.
2. **A “sliding scale” between passengers and cargo is a legitimate naval-architectural concept and an illegitimate safety certificate.** It is legitimate as a **deadweight** trade-off: a vessel has a maximum deadweight, and weight taken up by people is weight not available for cargo. It is illegitimate as a **passenger certificate**, because the number of persons a passenger ship may carry is not fixed by deadweight. It is fixed by the lesser of: the aggregate capacity of the survival craft; the number of lifejackets; the evacuation capacity of the muster stations and escape routes; and the number at which the passenger-crowding heeling moment still leaves the vessel compliant with the intact stability criteria. **None of those four limits slides with cargo.** Mr Patterson’s objection is, on the naval architecture, well founded — whatever the correct figure turns out to be.
3. **The coincidence of 284.** The figure 284 appears both as the vessel’s **gross register tonnage** (a volume index) and as her stated **cargo capacity in tonnes** (a weight). These measure different things and there is no reason for them to be equal. **This document does not assert that the two were confused.** It records the coincidence as a matter the Commission should examine, because if a volume index has at some point been transcribed as a weight capacity, the error would be very old, very hard to detect, and would have propagated through every document derived from the original.
4. **What would resolve it.** One document resolves this conflict completely: **the vessel’s current passenger certificate, together with the stability book and the approved loading conditions on which it was issued.** Chapter 14 sets out the full document demand schedule.

CONFLICT 2 — PERSONS ON BOARD

Source	Total	Breakdown
Manifest	133	116 passengers + 17 crew
Specialist review of boarding CCTV , by maritime experts with senior Guyana Police Force and Guyana Defence Force officers	179	81 males, 37 females, 43 children, 18 crew
• The crew figure — 17 against 18 — remains unreconciled. • Individuals boarded without being ticketed. • Minister Edghill described the discrepancy as “criminal”. • A joint task force of MARAD, the police and the army was convened on the manifest.		

Analytical observations.

1. **The difference is 46 people.** If the CCTV review is correct, roughly **one person in four aboard was not on the document that the search and rescue authorities would have used to know how many people to look for.**
2. **The crew discrepancy is not trivial.** Under Cap. 49:01 s. 2, whether a person is crew or passenger turns in part on whether he is **signed on the articles**. The classification of the eighteenth person is therefore a live legal question, not a clerical one.
3. **The number 43 children.** The definition of “passenger” in s. 2 excludes a **child under one year of age**. The statutory count of passengers therefore differs from the human count of persons aboard by the number of infants, and the public record does not disaggregate the 43 children by age.
4. **The critical legal point, developed in Chapter 5: there was no statutory duty to count.** SOLAS III/27 requires that all persons on board a passenger ship be counted prior to departure and that the information be kept ashore. **Cap. 49:01 s. 398(1)(b) is an enabling power to make regulations requiring particulars as to passengers; no such regulations appear in the authorised consolidation.** A manifest is a commercial document. **The absence of a headcount duty is a statutory deficiency and not, on the face of the statute book, a statutory breach.**

CONFLICT 3 — RESCUED, RECOVERED, MISSING

The sequence of rescue figures. 53 → 67 → 69 → 77 → revised to **76** after cross-checking eliminated duplication.

- **Prime Minister’s chronology, 27 July: 77 rescued in all, one of whom subsequently died.**

- **Last cumulative official figures, Prime Minister, evening of 24 July: 73 recovered; 69 identified; 63 released to families; 76 surviving rescued; at least 30 missing.**
- **Prime Minister to the National Assembly, 27 July: 76 rescued, 73 died.**
- **Ministry of Health, 27 July: five recovered victims remain unidentified at Suddie Mortuary — four male, one female.**
- **Agency reporting as at 28 July: 73 dead, 30 still missing, 76 rescued, 179 believed on board.**

Arithmetic note. 179 believed aboard, less 76 rescued, less 73 recovered dead, leaves **30 unaccounted for**. That reconciliation holds only on the CCTV figure of 179. **On the manifest figure of 133, the arithmetic does not close at all**, because 76 rescued plus 73 dead is 149, which exceeds 133 by 16. **This is itself independent corroboration that the manifest did not reflect the persons actually carried**, and it is offered here as arithmetic rather than as a finding.

CONFLICT 4 — TIME OF DEPARTURE

Source	Time
T&HD published sailing notice of 14 July	13:00
Prime Minister Phillips, written statement	approximately 15:15
Prime Minister's chronological account to the National Assembly, 27 July	15:20

Observation. The gap between the advertised 13:00 and the actual departure of approximately 15:15–15:20 is **roughly two hours and a quarter**. A delay of that order on a scheduled sailing is unremarkable in itself. It matters here for one reason only: **it moves the vessel's arrival in the open sea, and the whole of the exposed passage past the Essequibo and Pomeroon, later into the day and towards darkness**. The distress signal was received at 22:43. Whether the delay had any causal significance is entirely a matter for the Commission and this document asserts nothing about it.

CONFLICT 5 — TIME AND ROUTING OF THE DISTRESS ALERT

Source	Account
Earlier official statements	Distress call at approximately 23:01
Prime Minister's National Assembly chronology, 27 July	22:43 — distress signal received by Air Traffic Control Centre, Timehri; 23:01 — ATC informs Georgetown Lighthouse; 23:03 — Lighthouse alerts the MRCC

Observation. The two accounts are reconcilable: **23:01 is the time at which the alert reached the second link in the chain, not the time at which it was made**. The earlier

figure appears to have been the Lighthouse notification time reported as the distress time. **The reconciliation matters, because it means the elapsed time from distress to maritime rescue authority was twenty minutes, not two.**

CONFLICT 6 — CAUSE: NOTHING ESTABLISHED

Accounts attributed to survivors:

- A **large wave** struck the vessel and “canted” her. Minister Edghill relayed these accounts while stressing they were **not confirmed**.
- The ferry was **listing to one side before capsizing**.
- **Engine trouble shortly after departure**, with the crew attempting repairs at sea rather than turning back.
- **Water entering the cargo area before the vessel overturned**. Survivors are reported to have said crews dismissed the water ingress as “normal”.
- The vessel was **dangerously overloaded** with people and heavy cargo, including engines, vehicles, fuel containers and commercial goods; one survivor said the boat was more crowded than on any previous trip, with cargo packed tightly below deck.

Accounts attributed to officials:

- **Minister Edghill rejected mechanical failure as a cause**, and said **no report had declared the vessel unfit for service**; that she was seaworthy; that she had been dry-docked in 2024; that she was operating with new engines; and that she was within her scheduled docking cycle.
- **MARAD Director-General Captain Stephen Thomas said she was not overloaded**.
- **Prime Minister Phillips acknowledged that “obviously there was some breakdown in the system” in the pre-departure inspection process**.
- **Prime Minister Phillips stated that the vessel had been deemed seaworthy and had kept up with its maintenance schedule**.

Observation on the internal structure of the official position. Three official propositions are held simultaneously: the vessel was seaworthy; she was not overloaded; and there was a breakdown in the pre-departure inspection system. **These are not necessarily inconsistent** — an inspection system can break down on a voyage where the vessel happened to be sound. But they are in tension, and the tension is one the Commission will have to resolve. **This document does not resolve it and offers no view on any of the three.**

Observation on the technical relationship between the survivor accounts. The accounts of a **list before capsize**, of **water in the cargo area**, and of **heavy cargo stowed high** are not competing explanations. They are the classic sequence of a **single** failure mode. Water admitted to a large undivided space produces free-surface effect (Glossary C.5), which reduces effective GM; reduced GM combined with a raised centre of gravity

from high-stowed weight produces a small or negative righting lever; the vessel takes a list; the list admits more water through openings that are now immersed (Glossary C.8); and the sequence runs away. A wave then arrives on a vessel that has no reserve left. **This document does not assert that this is what happened.** It records that the survivor accounts, if accurate, describe a coherent and well-understood mechanism, and that **not one element of that mechanism would have been detected by reading a load line before departure.**

CONFLICT 7 — CREW CONDITION AND CRIMINAL PROCESS

- Blood samples were taken from the captain and crew. **The captain and at least two crew tested positive for cannabis.** Minister Edghill: “We have a zero tolerance for members of the crew drinking or smoking while at work.”
- The High Court approved the detention of the captain and one crew member; a third crew member was subsequently detained; a **Transport and Harbours Department superintendent** was reported arrested.
- T&HD staff responsible for the vessel’s **loading, dispatch and overall management** were sent on leave.
- Minister Edghill stated that ultimately **the captain and mate decide what goes aboard**, while the **Superintendent of Loading** is responsible for inspection and loading.
- **28 July 2026:** three men charged with murder contrary to common law, on legal advice from the Director of Public Prosecutions — **Kevin Price**, 40, Captain, of Melanie Damishana, East Coast Demerara; **Rondell Dwayne Roberts**, 42, Chief Mate, of Grove Public Road, East Bank Demerara; **Delon Granderson**, 33, Goods / Loading Superintendent, of Fellowship, West Coast Demerara. Reported as **72 counts of murder**. Appeared before Chief Magistrate Judy Latchman; not required to enter pleas; no attorneys present; **remanded to prison until 3 August 2026**. Captain Price is reported to have broken down in court, saying he did not understand why he was facing murder charges and stating that there were known issues with the ferry.
- **Opposition lawmakers have called for the resignations of Public Works Minister Juan Edghill and Public Utilities and Aviation Minister Deodat Indar.**

All three accused are presumed innocent. This document expresses no view on the charges, on the evidence, or on the guilt or innocence of any person.

Two structural observations, which are about the law and not about the accused.

1. **The charge is murder at common law, not a maritime offence.** The Guyana Shipping Act’s own offence of sending a ship to sea in an unseaworthy state such that life is likely to be endangered — s. 337 — carries **no prescribed penalty**, and therefore falls to the default in **s. 444(1)**: a fine of twenty-five thousand dollars and imprisonment for six months. Cap. 49:07 s. 26 carries **two years’ imprisonment** for the equivalent offence and requires the written consent of the Director of Public

Prosecutions to institute a prosecution. **When a State confronts the deaths of seventy-three people, a maximum of six months under its principal maritime statute and two years under its Victorian one are not available sentencing options in any real sense.** The recourse to common-law murder is, whatever its merits, a direct consequence of the penalty structure of the maritime statute book. **That is a legislative failure, and it is examined in Chapter 5.9.**

2. **Every person charged is an employee.** The disciplinary and penal architecture of Cap. 49:01 reaches **certificated individuals**. There is no offence in the Act capable of being committed by a **company**, a **department**, a **Ministry** or the **regulator**, and no finding available against any of them. That too is examined in Chapter 5.

CONFLICT 8 — THE WRECK AND THE MEMORIAL

- **27–28 July:** the Prime Minister stated that raising the vessel is “not being forwarded at this stage”; that she is “likely to remain there as is”; that efforts to right her had not succeeded; that teams had “reached a point where we’re not finding any more bodies”; and that “it’s obvious that bodies are trapped in the wreck.”
- A draft “**Declaration of Agreement**” was circulated to families proposing that the site remain undisturbed as a sacred memorial, with a maritime monument inscribed with every victim’s name.
- **Some relatives continue to press for full salvage.**

This is a live and unresolved disagreement between the State and some of the bereaved. It is recorded, not adjudicated.

3.5 SUPPORT MEASURES ON THE PUBLIC RECORD

- Three days of **National Mourning**, 22–24 July 2026; a **National Day of Prayer**.
- The **HEART Initiative** — Hope, Empathy, Aid, Resilience, Trust — led by **Carl Stuart**.
- **Eamon Harrison Courtenay** of Belize asked to work out modalities for financial assistance, **with the President emphatic that this is not compensation.**
- Counselling hotlines **713-3100** and **713-4100**; family hotline **702-8580**.
- Assistance centres at the **Umana Yana** (Georgetown), the **Port Kaituma Community Centre**, and the **NAREI Extension Centre, Kumaka / Mabaruma**.

A note on the distinction the President drew. The statement that assistance is **not compensation** is legally significant and it is not a technicality. Compensation is a legal entitlement, established by liability, and it is subject to the notice and limitation regime in **Cap. 49:04 s. 23** and to the limitation of liability regime in **Cap. 49:01 Part XVI**. Ex gratia assistance is a discretionary payment which establishes no entitlement and admits no liability. **A family that receives assistance has not been compensated and, unless advised otherwise by a Guyanese practitioner, has not thereby preserved, satisfied or extended any legal claim, and the six-month limitation period in s. 23(2)**

continues to run. This is set out here, and again in Chapter 13, because it is the point on which people in this position are most likely to be prejudiced without ever knowing it.

CHAPTER 4 — THE GUYANESE MARITIME STATUTE BOOK MAPPED

4.1 THE PROBLEM STATED

There is no single instrument in the laws of Guyana governing domestic passenger shipping safety. There are at least six primary Acts, three of them Victorian or Edwardian in origin, together with a large body of subsidiary legislation of which the oldest in force dates from **1896** and the newest reproduced in the authorised consolidation from **2005**. They were enacted across a span of **one hundred and fifteen years**, by three different constitutional orders — colonial, post-independence and republican — and they use **different definitions of the same words, different geographic categories of voyage, different officers, different penalties for the same conduct, and different investigative machinery**. Several of them cross-refer to each other. At least one cross-refers to an institution of a foreign State that no longer performs the function.

This chapter maps that structure. **The mapping is itself the finding.** No competent maritime administration could apply this body of law consistently, and no shipowner, master, or bereaved family could be expected to find their way through it.

4.2 THE CHAPTERS AND WHAT EACH ACTUALLY DOES

4.2.1 Cap. 49:01 — Guyana Shipping Act

Act 7 of 1998, as amended by Act 7 of 2006. Authorised pages 1–904, L.R.O. 1/2012.

The principal modern maritime statute. It establishes the Maritime Administration Department and the office of Director of Maritime Affairs (s. 4); provides for registration and licensing of ships; for the certification and discipline of seafarers; for surveys and certificates drawn by reference to the Safety Convention; for load lines; for unseaworthy ships; for passenger ships (two sections); for limitation of liability; for the Court of Survey; and for inquiries and investigations into marine casualties (Part XVIII).

Four instruments of subsidiary legislation are reproduced:

Instrument	Number	Page in the volume
Guyana Shipping (Registration of Ships) Regulations	Reg. 4/2000	298
Guyana Shipping (Licensing of Ships) Regulations	Reg. 4/2001	422
Guyana Shipping (Small Commercial Ship Safety) Regulations	Reg. 5/2005	486
Guyana Shipping (Cargo Ship Survey) Regulations	Reg. 6/2005	723

A fifth is missing by the volume's own admission. The volume carries a printed note that at the time of publication the **Guyana Shipping (Ship and Port Facility Security) Regulations 2004** were being substantially revised and had therefore been omitted.

Cross-references contained in the whole 904-page Act: Cap. 32:02; Cap. 63:01 (Maritime Zones Act); Cap. 82:01; Cap. 89:01. **That is the complete list.** The Act does not refer to Cap. 49:04, to Cap. 49:07, to Cap. 50:01, or to Cap. 49:03.

Cap. 49:01 is dissected Part by Part in **Chapter 5**.

4.2.2 Cap. 49:04 — Transport and Harbours Act

Act 30 of 1931; in force 5 January 1932. Amended by Acts 1/1932, 25/1932, 38/1933, 19/1935, 22/1936, 16/1941, 37/1944, 26/1946, 39/1947, 24/1951, 27/1953, 17/1962, 27/1965, 16/1970, 4/1972, 25/1977, 7/1998, and House of Assembly Resolution 6 of 1982. Authorised pages 1–123, L.R.O. 1/2012. It repealed the Harbour and Pilotage Ordinance, Cap. 119 of the 1929 Edition.

Long title: an Act to establish a Transport and Harbours Department for the purpose of managing and carrying on the railway and Government vessels and of controlling and regulating the use of the harbours of Guyana.

This is the Act constituting the operator of the MV *Barima*. It is an Act about a **Department** — its establishment, its General Manager, its Advisory Council, its estimates, its pensions, its revenue, its dues and fees, its harbours and its pilotage. **It contains no passenger safety provision of any kind.** Its only passenger provision, s. 18, is a **tariff** provision — it fixes what may be charged.

Five instruments of subsidiary legislation are reproduced:

Instrument	Number	Page
Government Railway and Steamer Services Rules	Reg. 23/1/1924	38
Harbours and Pilotage Regulations	—	45
Harbours Regulations	—	76
Home Trade Ships (Masters, Mates and Engineers Certificates) Regulations	—	96
T&HD (Superannuation and Other Benefits) Regulations	—	119

Cross-references contained in the Act and its subsidiary legislation: Cap. 49:01; Cap. 49:07; Cap. 49:08; Cap. 50:01; Cap. 16:06 (Explosives Act); Cap. 27:02; Cap. 27:08; Cap. 27:10; Cap. 32:02; Cap. 36:01; Cap. 82:01.

Cap. 49:04 is dissected section by section, with corrected numbering, in **Chapter 7**.

4.2.3 Cap. 49:07 — Shipping Casualties (Investigation and Prevention) Act

Act 4 of 1883. Part I in force 5 December 1883; Part II in force 20 February 1895. Amended by Acts 2 of 1895, 3 of 1914, 32 of 1914, 11 of 1978, 6 of 1997, 7 of 1998, and Resolution 9 of 1982. Authorised pages 1–45, L.R.O. 1/2012. Formerly Cap. 124 of the 1929 Edition and Cap. 267 of the 1953 Edition.

Long title: an Act to make provision for Due Investigation into the Causes, and for the Better Prevention of Shipping Casualties.

This Act is in force. It is authorised to L.R.O. 1/2012, and its interpretation sections were **amended by Act 7 of 1998 — the Guyana Shipping Act itself** — to define “Director” by reference to s. 2 of Cap. 49:01 and to define “inspector” as including a surveyor of ships appointed under Cap. 49:01. **Parliament in 1998 therefore deliberately preserved this Act and wired it into the new one.**

Structure:

- **Part I — Investigation** (ss. 2–16). Interpretation; **exemption of State ships and foreign ships (s. 3)**; when a court of inquiry may be appointed (s. 4); constitution and powers of the court (s. 5); replacement of members (s. 6); power to require delivery of certificates (s. 7); report by court (s. 8); rules of procedure (s. 9); power of inspection (s. 10); summoning and examining witnesses (s. 11); refusal to be sworn (s. 12); refusal to appear (s. 13); clerk of court (s. 14); remuneration (s. 15); publication of appointment in the Gazette (s. 16).
- **Part II — Prevention** (ss. 17–35). Interpretation (s. 17); **inspectors of shipping** (ss. 18–21); **tonnage of unregistered coasting vessels (s. 22)**; **overloading and overcrowding of vessels (s. 23)**; **duty of master in case of collision (s. 24)**; **regulations (s. 25)**; **unseaworthy Commonwealth ship (ss. 26–27)**; **detention of unsafe Commonwealth ship (ss. 28–30)**; **detention of overladen foreign ship (s. 31)**; miscellaneous (ss. 32–35). **Schedule — Summons to Witness.**

Two instruments of subsidiary legislation are reproduced:

Instrument	Number	Page
Coasting and Passenger Trade Regulations	Regs. 28/4/1896 and 11/4/1902	26
Buoying of Punts Regulation	Reg. 15/9/1920	45

The volume also carries a note recording that **rules have been issued under s. 9(1) in respect of three specific investigations:** R. 6/1961, the collision of the vessels *Van S* and *Lowood II*; R. 8/1961, the sinking of the m.v. *Batchelder*; and R. 3/1969, the accident which led to the loss of the m.v. *Powis*. **The historic practice under this Act was therefore to constitute a court of inquiry, and to make bespoke rules for it, casualty by casualty.**

Cap. 49:07 is analysed in full in **Chapter 6.**

4.2.4 Cap. 50:01 — River Navigation Act

Act 17 of 1891. In force 25 July 1891. Amended by Acts 11 of 1924, 18 of 1944, 8 of 1948, 29 of 1961, 6 of 1997 and 7 of 1998. Authorised pages 1–50, L.R.O. 1/2012. Formerly Cap. 128 of the 1929 Edition and Cap. 270 of the 1953 Edition.

Long title: an Act to make provision for the more safe and convenient navigation of the Rivers of Guyana.

Six instruments of subsidiary legislation are reproduced:

Instrument	Number	Page
North Western District Oil Launches Regulations	Reg. 31/12/1905	8
Demerara River Oil Launches Regulations	Reg. 29/3/1906	10
River Oil Launches Regulations	Reg. 13/5/1912	11
River Navigation Regulations	Regs. 8/11/1918, 26/6/1924, 5/12/1928, 34/1945, 23/1947, 11/1950, 3/1956, 19/1960, 27/1960 and 12/1969	13
River Navigation Regulations (Exemption) Order	O. in C. 18/9/1934	49
Declaration of Government Station Notice	Nt. 27/11/1925	50

Section 14, inserted by Act 7 of 1998, is important and is the model that should have been followed elsewhere:

- s. 14(1) provides that notwithstanding any provision in the Act and in any subsidiary legislation made under it, **it shall be the duty of the Director and the Maritime Administration Department to enforce or cause to be enforced the provisions thereof**, and that a reference in the Act to an officer or body shall accordingly be construed as a reference to the “Director” and the “Maritime Administration Department” respectively. s. 14(2) ties those terms to ss. 2 and 4 of the Guyana Shipping Act.

Note the verb. It is “shall”. This is one of the very few mandatory enforcement duties in the entire Guyanese maritime statute book, and it is in the River Navigation Act of 1891.

4.2.4.1 *The River Navigation Regulations contain more binding passenger safety law than the Guyana Shipping Act*

This proposition is startling and it is correct. The River Navigation Regulations, in their consolidated form as authorised to 2012, contain **all of the following**, every one of which is absent from the law applicable to a 40-metre sea-going passenger ferry:

Regulation	What it requires
reg. 4(1)	The owner of a vessel or boat plying on any river shall, once in every year and whenever required, present the vessel with her equipment for inspection
reg. 5(1)–(3)	Where found in bad order and unfit to proceed, a written statement of particulars within 24 hours and a requisition that defects be made good before the next voyage ; proceeding without compliance is a breach; using a vessel with no certificate of inspection within twelve months is a breach
reg. 8–10	Waterlines to be branded by the officer according to a statutory freeboard scale, painted white on a black ground, with the certificate number above them. Note the class: reg. 8 applies to <i>“every vessel other than a vessel propelled by steam or other machinery, and every boat”</i> — so the branded-waterline scale reaches sail and pulling craft and not machinery-propelled vessels
reg. 11	Certificate of inspection stating length, breadth, name, licence number and required freeboard
reg. 13	Detention by any public officer or police constable of a vessel proceeding with either waterline submerged or partially submerged
reg. 14	All machinery and steering gear shall be maintained in proper working order ; power of detention where it is not
reg. 15	Definition of an overloaded vessel: waterlines submerged or partially submerged, or conveying a greater number of persons than licensed to carry
reg. 17	Every certificate of inspection shall specify the number of persons the vessel may carry, and no vessel shall carry more persons (crew included) than that number
reg. 18	Formula for the licensed number of passengers: length × breadth × draft ÷ 25 — expressed to apply <i>“except as hereinafter provided with respect to vessels propelled by machinery”</i> , so it is the non-machinery rule, reg. 19 being the machinery rule
reg. 19(1)	For a vessel propelled by machinery : not more than one passenger with baggage for every five square feet of deck surface , excluding the space occupied by machinery, open hatches, skylights, fuel, and any cargo carried on deck

Regulation	What it requires
reg. 19(2)	The certificate of passenger numbers to be framed and placed in a conspicuous place on board
reg. 21–23	A large “P” on both bows; the certificate number and licensed number of persons painted on both bows; markings kept freshly painted and legible
reg. 24	A passenger vessel that is not decked shall carry no ballast other than water ballast
reg. 25	One life belt for each person the vessel is certified to carry , or one life buoy for every three
reg. 27	Below defined points — including the Barima River below Mount Everard, the Kaituma Creek below Port Kaituma and the Aruka Creek below Kumaka — the vessel shall be in the charge of a person licensed under the Harbour Regulations to act as master of a vessel in a harbour
reg. 38	No certificated captain shall proceed on a voyage in an inefficiently manned vessel; where a boat is not efficiently manned the owner is guilty of a breach
reg. 45(1) and (3)	Reporting at a Government Station on departure and return, with an entry made of the number of the crew and other persons on board ; and no additional lading or additional person to be taken on after reporting
reg. 49	Duty to report to the officer, within as short a period as possible, the occurrence of any accident whatever to the vessel or to any person in her whereby loss of life or of lading or of the vessel has been occasioned; the duty passing to the bowman, then to a crew member, then to the owner
reg. 50	Detention of any vessel found about to proceed or proceeding in contravention
reg. 53	Every vessel or boat must comply with “The Rule of the Road at Sea”
reg. 35(f) and (i), reg. 36(b)	Suspension or cancellation of a certificate of competency for allowing a vessel to be overloaded or conveying more persons than licensed , after due inquiry and with a right of appeal to the Minister

Read that table against the following fact: not one of those requirements has any equivalent in the law applicable to the MV *Barima* on the sea passage between the Demerara and the Barima. A licensed river vessel in Guyana must have her permitted number of persons painted on her bows, must carry a lifebelt for every certificated person, must have her machinery and steering gear maintained in proper working order on pain of detention, must be inspected annually, must have her number of persons on board entered in a book at a Government Station before departure, must not take on an extra person after reporting, and must report any accident occasioning loss of life. **A 284-ton, 40-metre sea-going State passenger ferry was subject to none of it.**

4.2.4.2 The live cross-reference that proves the Coasting and Passenger Trade Regulations are in force

River Navigation Regulations, reg. 4(2)(b) exempts from the annual river inspection any vessel or boat holding “**a valid certificate of seaworthiness issued under regulation 2 of the Coasting and Passenger Trade Regulations, made under the Shipping Casualties (Investigation and Prevention) Act.**”

This is a cross-reference in the **authorised 2012 text** of one instrument to another. **It establishes, on the face of the authorised law, that the Coasting and Passenger Trade Regulations of 1896 and 1902 are treated as live and as generating a currently valid certificate of seaworthiness.** That matters enormously, because as Chapter 6 shows, those Regulations contain the **only** annual survey requirement, the **only** certificate stating the total number of persons a coasting vessel may lawfully carry, and the **only** ascertainment rule for the passenger capacity of a power-driven coasting vessel anywhere in Guyanese law — and the last of these points at the Board of Trade of the United Kingdom.

4.2.5 Cap. 49:03 — Passengers Act

Not obtained. Priority One verification item.

Its existence is established by a cross-reference in the authorised text: **Coasting and Passenger Trade Regulations, reg. 11(4)**, made under Cap. 49:07, requires an inspector to specify in his certificate the total number of persons a vessel may safely carry, “**not exceeding in any case the number allowed by section 6 of the Passengers Act**”, with the marginal citation **c. 49:03**.

The significance is direct and it is large. If Cap. 49:03 s. 6 is in force, then Guyanese law contains a **statutory ceiling** on the number of persons a vessel may carry, expressed in a primary Act, and the inspector’s certificate may not exceed it. That would be the single most important passenger-number provision in the statute book. **This document does not speculate as to its contents and does not invent them.** It records that:

1. The authorised text of a live instrument cross-refers to it in terms that presuppose it is in force.
2. The Ministry of Legal Affairs publishes its statutes in volumes whose filenames do not reliably indicate their contents — a difficulty this author encountered directly with Cap. 49:07 and which is documented in Chapter 1.
3. **Obtaining and analysing Cap. 49:03 is therefore a Priority One item for the Commission**, and it should be obtained from the Ministry of Legal Affairs directly rather than from the published PDF index.

4.2.6 Cap. 49:08 — cross-referred, not obtained

Cited in the **Harbour and Pilotage Regulations** made under Cap. 49:04, in the provisions dealing with **vessels which have sunk or run ashore in a pilotage district**: the owner, hirer, master or consignee must give notice to the Harbour Master **within twelve hours**,

on pain of a fine of **three hundred dollars**; the Harbour Master must mark a sunken vessel that is a danger to navigation with buoys and lights until it is raised, removed or destroyed; and the Harbour Master may raise or remove it. **The subject matter and the marginal citation indicate a wreck and salvage instrument.** It is a verification item.

Note the twelve-hour notification duty. It is the shortest casualty notification period anywhere in the Guyanese maritime statute book, it applies to a **sunken vessel in a pilotage district**, and it is contained in subsidiary legislation made under the Act governing the operator.

4.2.7 Cap. 63:01 — Maritime Zones Act

Referenced in **Cap. 49:01 s. 2** for the definition of “Guyana waters”, which includes the internal waters and the territorial sea as defined in that Act. It fixes the geographic reach of the Shipping Act. The wreck lies approximately nine miles off the Essequibo coast; the distress position was reported approximately 31 nautical miles further north-west.

Whether the casualty occurred within the territorial sea, or beyond it in the exclusive economic zone, is a question with jurisdictional consequences under UNCLOS and it is not settled on the public record.

4.2.8 Cap. 47:01 — Post and Telegraph Act

Relevant only at **ss. 36–42** (ship letters) and **ss. 63–65** (wireless telegraphy on ships, s. 64 cross-referencing Cap. 49:01). It is not a safety instrument and is included in this map only for completeness, and to record that **the volume in which it is published bears a filename indicating that it contains Cap. 49:07, which it does not.**

4.2.9 The Commissions of Inquiry Act

The instrument under which the Commission of Inquiry into this casualty was constituted. **It is not a maritime statute.** It confers on the President a general power to appoint a Commission to inquire into matters of public importance, and the Commission determines its own procedures. **The fact that it was necessary to reach outside the maritime statute book altogether is the single clearest piece of evidence that the maritime statute book failed.** That argument is developed in Chapter 6.7.

4.2.10 The coronial and criminal interfaces

- **Cap. 49:01 s. 442** provides for inquiries into the deaths of crew members and others, and by **s. 442(4) no such inquiry shall be held where an inquest or inquiry into death is to be held under any law relating to inquests or criminal procedure.**
- The **Summary Jurisdiction Acts** supply the procedural machinery for the recovery of penalties under Cap. 49:04 s. 52 and under the river and coasting regulations.
- The **Summary Jurisdiction (Petty Debt) Act, Cap. 7:01** is the recovery mechanism for fees under Cap. 49:07 s. 25(1)(h).

- The **Summary Jurisdiction (Procedure) Act, Cap. 10:02** applies to the summoning and enforcing of attendance of witnesses at an inquiry held by an officer under the River Navigation Regulations (Cap. 50:01 s. 13).
- **Common-law murder** is the charge actually laid on 28 July 2026.

4.2.11 The State Liability and Proceedings Act

The general statute governing suits against the State. It must be read against **Cap. 49:04 s. 22** (suits by or against the Department), **s. 23** (notice of action and the six-month limitation), **s. 47** (Government and Department not liable for the default of the General Manager) and **s. 53** (exemption from personal responsibility). The interaction of these provisions determines what remedy, if any, a bereaved family has. **It is examined in Chapter 7 and it is not straightforward.**

4.3 THE FRAGMENTATION TABLE

The following table sets out, for each function a maritime safety system must perform, **where in the Guyanese statute book that function is located, and for which vessels.** The right-hand column states the position for the MV *Barima*.

Function	Cap. 49:01 (Shipping Act)	Cap. 49:07 (Casualties Act 1883)	Cap. 50:01 (River Navigation 1891)	Cap. 49:04 (T&H 1931)	Position of the MV <i>Barima</i>
Annual survey of hull and equipment	Passenger-ship surveys ss. 257–266, drawn by reference to the Safety Convention	Coasting and Passenger Trade Regs, reg. 2 — at least once every year	River Nav Regs reg. 4 — once in every year	—	Disputed / unclear. Chapter 6
Five-yearly structural survey	Cargo Ship Survey Regs reg. 6(1) — “except passenger ships”	—	—	—	Expressly excluded
Intact stability criteria	Nowhere in the Act	—	—	—	None applied

Function	Cap. 49:01 (Shipping Act)	Cap. 49:07 (Casualties Act 1883)	Cap. 50:01 (River Navigation 1891)	Cap. 49:04 (T&H 1931)	Position of the MV <i>Barima</i>
Stability information on board	s. 290 — every Guyana passenger ship regardless of size, content “as may be prescribed ”	—	—	—	Duty exists; content unprescribe d
Certificate stating maximum persons	s. 266 penalty for excess passengers	Coasting Regs reg. 2(2) — certificate shall state the total number of persons the vessel may lawfully carry	River Nav Regs reg. 17	—	Disputed. Three figures. Chapter 3.4
Rule for computing maximum persons	None	Coasting Regs reg. 13(3) — as ascertained by the Board of Trade of the United Kingdom	River Nav Regs regs. 18–19	—	The only applicable rule points to a defunct foreign body
Number painted on the hull	—	Coasting Regs reg. 3(4)	River Nav Regs regs. 21–22	—	Not applicable to a registered sea-going ship
Lifejacket per certificated person	—	Coasting Regs First Sched. item 7	River Nav Regs reg. 25	—	No express statutory ratio
Muster list / station bill / drills	s. 239 requires only a log entry	—	—	—	No drill prescribed

Function	Cap. 49:01 (Shipping Act)	Cap. 49:07 (Casualties Act 1883)	Cap. 50:01 (River Navigation 1891)	Cap. 49:04 (T&H 1931)	Position of the MV <i>Barima</i>
Safety management system (ISM)	Small Commercial Ship Safety Regs — under 24 m only	—	—	—	Not applicable
Record / count of persons on board	s. 398(1)(b) — enabling power only	Coasting Regs reg. 13(6) — sailing vessels only	River Nav Regs reg. 45(1)	—	No duty
Prohibition on adding persons after reporting	—	—	River Nav Regs reg. 45(3)	—	No duty
Machinery and steering gear to be maintained	s. 292 — only where a Safety Conventio n Certificate is in force	s. 28 detention where defective	River Nav Regs reg. 14	—	Conditional; see Chapter 5.6
Overloading offence	s. 319 (load line) — \$100,000	s. 23 — \$97,500, apprehension without warrant, seizure and sale	River Nav Regs reg. 15	—	Multiple overlapping offences
Overcrowdin g offence	None	s. 23 — overcrowding with persons, \$97,500	reg. 15	—	s. 23 is the only overcrowdin g offence in Guyanese law

Function	Cap. 49:01 (Shipping Act)	Cap. 49:07 (Casualties Act 1883)	Cap. 50:01 (River Navigation 1891)	Cap. 49:04 (T&H 1931)	Position of the MV <i>Barima</i>
Unseaworth y ship offence	s. 337 — no penalty prescribe d ; defaults to s. 444(1): \$25,000 and 6 months	s. 26 — misdemeanou r, 2 years’ imprisonment , DPP consent required	—	—	Two offences, same conduct, 4× difference in maximum sentence
Detention of unsafe ship	s. 339 — only if the complaint is made in sufficient time before sailing	ss. 28–30, with appeal to the High Court in admiralty	reg. 13, reg. 50	—	Conditional
Casualty reporting duty	s. 237 — 24 hours	—	River Nav Regs reg. 49 — as short a period as possible	Harbou r and Pilotag e Regs — 12 hours for a sunken vessel in a pilotag e district	Three different periods
Duty to investigate a casualty	s. 427 — “may”	s. 4 — “may”, and s. 3 excludes State ships	—	—	No duty anywhere
Who investigates	Board appointed by the Minister; assessors appointed	Court of a magistrate and two assessors appointed by the Minister; report to the	Officer in charge of navigation	—	Neither usable; COI Act used instead

Function	Cap. 49:01 (Shipping Act)	Cap. 49:07 (Casualties Act 1883)	Cap. 50:01 (River Navigation 1891)	Cap. 49:04 (T&H 1931)	Position of the MV <i>Barima</i>
	by the Director; report to the Director	Minister, copy to the UK Board of Trade			
Search and rescue	Fragments at ss. 232, 233, 236, 374(4)	s. 24 (collision)	—	—	No framework
Enforcement duty on MARAD	Not expressed as a duty	—	s. 14 — “shall be the duty of the Director and the Maritime Administratio n Department to enforce”	—	The one mandatory enforcement duty is in the 1891 Act

4.4 THE SIX STRUCTURAL DEFECTS DISCLOSED BY THE MAP

Defect 1 — There is no single instrument governing domestic passenger safety, and no instrument that says which of the overlapping instruments prevails. Cap. 49:01 s. 455 resolves conflicts between the Act and **international conventions**, and even then only “unless the Minister otherwise provides”. **No provision anywhere resolves conflicts between the domestic Acts.**

Defect 2 — The same conduct attracts different offences with different penalties under different Acts, with no rule of priority. Sending an unseaworthy ship to sea is punishable by a fine of \$25,000 and six months under Cap. 49:01 ss. 337 and 444(1), and by two years’ imprisonment as a misdemeanour under Cap. 49:07 s. 26. Overloading attracts \$100,000 under Cap. 49:01 s. 319 and \$97,500 under Cap. 49:07 s. 23. **A prosecutor may choose. A defendant cannot know in advance which law applies to him.**

Defect 3 — The most demanding safety requirements in Guyanese law apply to the smallest vessels. Reg. 5/2005 applies below 24 metres. The River Navigation Regulations apply to river craft. The Coasting and Passenger Trade Regulations apply to coasting vessels and, in their inspection provisions, principally to vessels of less than 150 tons. **The larger and faster the vessel, and the more people she carries, the less law applies to her.** That is the exact inverse of every rational safety system.

Defect 4 — The statute book depends on institutions that no longer exist. The **Board of Trade of the United Kingdom** appears twice in live Guyanese law: at Cap. 49:07 s. 5(4), as the recipient of a copy of a court of inquiry's report and of any cancelled certificate, and at Coasting and Passenger Trade Regulations reg. 13(3), as the source of the survey by which the passenger capacity of a coasting steam vessel is to be ascertained. **Lloyd's Register of British and Foreign Shipping** appears at Cap. 49:07 s. 35(2) as the trigger for an exemption from inspection. **Neither entity performs the function attributed to it.**

Defect 5 — Enforcement is expressed as a duty in only one place. Cap. 50:01 s. 14, inserted in 1998, makes enforcement of the River Navigation Act **the duty** of the Director and of MARAD. No equivalent provision was inserted into Cap. 49:07, and none appears in Cap. 49:01. **In 1998 Parliament knew how to write a mandatory enforcement duty. It wrote one, once, into the 1891 Act, and did not write it into the new one.**

Defect 6 — The 1998 recodification was partial, and the gap it left is precisely where this casualty falls. Act 7 of 1998 enacted the Guyana Shipping Act, amended Cap. 49:04, amended Cap. 49:07 in two places, amended Cap. 50:01 in two places, and amended Cap. 49:07's inspector provisions. **What it did not do was consolidate.** It left three Victorian instruments in force alongside a modern Act which does not mention them, and it left the modern Act's passenger-ship Part as a two-section shell. **The result is a statute book in which the law governing a State-owned passenger ferry on a domestic sea voyage is, in substance, whatever can be assembled from an 1883 Act that excludes State ships, an 1896 regulation that points at the British Board of Trade, an 1891 river Act that does not reach the open sea, and a 1998 Act that leaves the subject to regulations which do not appear.**

CHAPTER 5 — CAP. 49:01 DISSECTED AGAINST THIS VESSEL

PART ONE — FROM THE DEFINITIONS TO THE LOAD LINE

5.1 SECTION 3 — THE GOVERNMENT SHIP EXCLUSION, AND THE COLLAPSE OF OWNER INTO REGULATOR

5.1.1 The provision

s. 3(1) — Subject to subsections (2) and (3), **nothing in this Act shall apply** to (a) Guyana Government ships operated for **non-commercial purposes**; (b) ships or aircraft of the Guyana Defence Force.

s. 3(2) — The Minister **may** make regulations prescribing the manner and extent to which the Act applies to such ships.

s. 3(3) — The Minister may by notification in the Gazette direct that Guyana Government ships may be registered as Guyana ships, whereupon the Act applies subject to the exceptions and modifications specified in the notification, **“and for the purpose of such application any reference to an owner shall be construed as a reference to the Director.”**

5.1.2 Deficiency 1 — “non-commercial purposes” is nowhere defined

The Act does not define the expression. It appears in s. 3(1)(a) and nowhere else. It is the hinge on which the entire application of a 904-page statute to the State’s own fleet turns, and it is left to inference.

The question it raises in this case is genuinely arguable and it is not academic:

The case that the MV *Barima* was operated for non-commercial purposes: she was a State ferry providing an essential public service to a region with no road; the service is subsidised; **Cap. 49:04 s. 9 expressly provides that the net deficiency of the Transport and Harbours Department is to be provided by Parliament**, which is to say the service is designed to run at a loss; and the fares — \$3,000 for an adult to Port Kaituma, free for infants and pensioners — are plainly social rather than commercial.

The case that she was operated for commercial purposes: she sold tickets at a published tariff; she carried commercial cargo for hire; she carried freight for third parties including private goods; Cap. 49:04 Part II is expressly framed as a **carrier’s** régime, with conditions of carriage (s. 15), carrier’s risk conditions (s. 16), dangerous goods provisions (s. 17), a **tariff** (s. 18), and power to contract below tariff (s. 19); and **s. 22 provides that any action which might be brought by or against a company, firm or person carrying on the business of a carrier may be brought by or against the Department** — a provision which presupposes that the Department **is** carrying on the business of a carrier.

This document does not resolve the question. It records that **the applicability of the entire Guyana Shipping Act to the vessel that was lost turns on an undefined phrase**, and that a competent draftsman would have defined it. In international practice the distinction is drawn by reference to the nature of the service — a State ship engaged in commercial service is generally treated as a commercial ship for regulatory and liability purposes, and it is only a ship on **government non-commercial service** (warships, patrol vessels, research and survey ships, customs and police craft) that is excluded. **A ferry selling tickets is on the wrong side of that line in every jurisdiction the author is aware of.** But the Guyanese Act does not say so.

5.1.3 Deficiency 2 — s. 3(2) is a power and not a duty

The mechanism Parliament provided for applying the Act to Government ships is a regulation-making power. **No regulations made under s. 3(2) appear in the authorised consolidation.** Subject to verification against post-2012 instruments, the position is that **Parliament created a mechanism for bringing the State's own fleet within the safety law and nobody has used it.**

A single line of drafting would repair this: *“The Minister shall, within twelve months of the commencement of this Act, make regulations prescribing the manner and extent to which this Act applies to Guyana Government ships.”* Compare **Cap. 50:01 s. 14**, where in the very same year Parliament wrote **“it shall be the duty of the Director and the Maritime Administration Department to enforce.”**

5.1.4 Deficiency 3 — s. 3(3) makes the regulator the owner

This is the sharpest structural defect in the Act and it should be stated precisely, because a looser version of it appeared in the author's earlier drafts and was wrong.

The earlier draft asserted a single-ministry fusion of operator and regulator. **That framing is not correct on the current allocation of portfolios:** the Maritime Administration Department falls under the **Minister of Public Utilities and Aviation, Deodat Indar**, and the Transport and Harbours Department under the **Minister of Public Works, Juan Edghill**. MARAD's own historic web presence lists it under the Ministry of Public Works, so the portfolio appears to have moved. **The current allocation should be verified from the current Gazette assignment of ministerial responsibilities.** Opposition lawmakers have called for the resignation of both Ministers, which is consistent with the two-Ministry structure.

The real defect is narrower and much sharper. Where a Guyana Government ship is registered under s. 3(3), **every reference to an “owner” in the Act is to be read as a reference to the Director of Maritime Affairs.** The Director is the head of the Maritime Administration Department, appointed under s. 4, exercising general supervision over all matters relating to maritime affairs including inland waters.

Trace the consequences through the Act:

Provision	Duty imposed on the “owner”	Read with s. 3(3), the duty is owed by	And is enforced by
s. 237	Report an accident to a marine officer or the Director within 24 hours	the Director	the Director
s. 238	On apprehended loss, cause a search and notify the Director in writing	the Director	the Director
s. 290(1)–(2)	Carry prescribed stability information; send a copy to the Minister	the Director	the Director
s. 292(2)	Give written notice to the Director of any accident, defect or alteration affecting safety	the Director	the Director
s. 337(1)	Not send a ship to sea in an unseaworthy state endangering life	the Director	the Director
s. 338	Use all reasonable means to ensure seaworthiness at the commencement of, and during, the voyage	the Director	the Director
s. 339	Subject to detention of his ship by the Director or a surveyor	the Director	the Director
s. 10(4)	Provide evidence of financial responsibility as prescribed	the Director	the Director

In every case the person who must report is the person to whom the report is made. In every case the person who must not send an unseaworthy ship to sea is the person empowered to detain her. **This is not a conflict of interest in the loose sense in which that phrase is often used. It is the statutory identification of the regulated party with the regulator, effected by an express deeming provision.**

And it does not stop at the owner’s duties. **s. 429(1)** provides that a Board holding a formal investigation shall consist of a Judge or Magistrate as Chairman and assessors “**as the Director may appoint**”. **s. 429(6)** provides that **the Board shall make a report on the case to the Director**. So where a registered Government ship is lost:

- the statutory **owner** is the Director;
- the officer who decides whether to **detain** her before she sails is the Director;
- the officer who **appoints the assessors** to the Board of formal investigation is the Director;
- and the officer who **receives the Board’s report** is the Director.

A person cannot investigate himself, and Parliament should not have written a statute that requires him to.

5.1.5 The verification item

Whether a s. 3(3) notification was ever made in respect of the MV *Barima*, or in respect of Transport and Harbours Department vessels generally, is not established on the public record. It should be obtained from the Official Gazette. Its presence or absence produces one of two conclusions and both are serious:

- **If a notification was made:** the Act applied to her subject to the exceptions in the notification, **and the owner-regulator collapse described above was operative.** The terms of the notification — in particular what exceptions and modifications it specified — become critical evidence.
- **If no notification was made:** she was not registered under s. 3(3), and the question falls back to s. 3(1)(a), which is to say to the undefined phrase “non-commercial purposes”. **If she was operated for non-commercial purposes, then nothing in the Guyana Shipping Act applied to her at all** — no survey, no certificate, no load line, no stability information, no seaworthiness duty, no casualty reporting, and no investigation power.

That second possibility should be stated plainly because it is the most serious single proposition in this document. It is possible, on the face of s. 3(1)(a), that the principal maritime safety statute of Guyana did not apply to the vessel in which seventy-three people died. **The author does not assert that it did not apply. He asserts that the statute is drafted so that nobody can tell without the Gazette, and that this is intolerable.**

5.2 SECTIONS 4 TO 8 — THE ADMINISTRATION

s. 4 establishes the **Maritime Administration Department**, whose function is to administer the Act and any other law relating to maritime affairs **including inland waters**. It provides for the appointment of public officers as marine officers: **(a) the Director of Maritime Affairs**, exercising general supervision over all matters relating to maritime affairs including inland waters; **(b) the Registrar of Ships; (c) the Registrar of Seamen; (d) Surveyors; (e) the Receiver of Wreck.** s. 4(3) permits the Director to delegate.

s. 5 empowers the Minister to give the Director **general directions on policy**.

s. 8 permits the Director to be appointed **Registrar of Ships and Registrar of Seamen**.

5.2.1 Deficiency 4 — concentration of incompatible functions in one office

Reading ss. 4, 5, 8 and 3(3) together, a single office-holder may simultaneously be: the head of the maritime administration; the general supervisor of all maritime affairs; the Registrar of Ships; the Registrar of Seamen; the statutory owner of every registered Government ship; the appointing authority for the assessors on any Board of formal investigation; and the recipient of that Board's report. **He is also subject to general directions on policy from the Minister.**

There is no provision anywhere in the Act requiring the functional separation of the survey and certification function from the casualty investigation function, or of either from the ownership function. The international benchmark — the **III Code** and the **Casualty Investigation Code** — requires exactly that separation. The comparative models in Chapter 10 — the UK Marine Accident Investigation Branch, the Australian Transport Safety Bureau, the Transportation Safety Board of Canada and the US National Transportation Safety Board — are all built on it.

5.2.2 The Advisory Council that does not exist

Cap. 49:04 ss. 5–6 establish an **Advisory Council** for the Transport and Harbours Department. **Cap. 49:01 establishes no equivalent body for maritime safety** — no maritime safety board, no standing technical committee, no external audit function, no independent appeal body other than the courts, and no mechanism by which the seafaring community, the travelling public or the affected regions have any voice in maritime safety regulation. **s. 240** requires the Director to take appropriate steps to inform the seafaring community and the public of any developing or existing situation which may adversely affect safety, but it establishes no channel in the other direction.

5.3 SECTION 10 — TRADE IN GUYANA WATERS AND FINANCIAL RESPONSIBILITY

s. 10(4) — every Guyana ship trading in any waters shall provide **evidence of financial responsibility against risks of damage to third parties** “in such manner as may be prescribed”.

s. 10(5) — fine not exceeding **\$100,000** and the ship liable to detention.

5.3.1 Deficiency 5 — compulsory insurance for passengers is not provided for, and what is provided for is unprescribed

Three observations.

First, the duty is expressed as evidence of financial responsibility **against risks of damage to third parties**. That is the language of third-party property and pollution liability. **It is not the language of passenger liability**. The international instrument dealing with passenger liability — the **Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, and its 2002 Protocol** — imposes **compulsory insurance for the death of and personal injury to passengers**, with a direct right of action against the insurer. That is precisely the mechanism which ensures that a bereaved family is not dependent on the solvency or the goodwill of the carrier.

Second, the manner of providing the evidence is “as may be prescribed”, and **no prescribing regulations appear in the authorised consolidation**. Subject to verification, the duty is unenforceable for want of a prescribed manner of compliance.

Third, and most significantly for the families: **Cap. 49:01 s. 398(2) requires the Minister, in making passenger-ship regulations, to have due regard to the Athens Convention**.

The Athens Convention is therefore expressly acknowledged in the Act. **But no regulations under s. 398 appear in the consolidation, and the compulsory insurance and direct action mechanism which is the Convention's central protective feature is nowhere enacted.** A family whose relative died on a State ferry is therefore left with a claim against a Government Department, subject to **Cap. 49:04 s. 23** (one month's notice; six months' limitation), **Cap. 49:04 s. 47** (Government and Department not liable for the default of the General Manager), and **Cap. 49:01 Part XVI** (limitation of liability). **They have no direct action against an insurer, because Guyanese law does not require the insurance.**

5.4 SECTIONS 49 AND 51 — LICENSING, AND THE ORIGIN OF THE 24-METRE LINE

s. 49(1) — every ship **under twenty-four metres in length** shall be licensed under the Act.

s. 51 — the Minister may make regulations regarding licensing, and in particular **(a)** the manning of and the **life-saving, safety and fire-fighting equipment** to be carried; **(b)** examination and certification of **skippers, mechanics and deckhands**; **(c)** surveys and inspections; **(d)** appointment of surveyors; **(e)** records; **(f)** fees; **(g)** discipline.

5.4.1 The architecture Parliament intended, and where it broke

- s. 49 is the origin of the 24-metre line. The scheme Parliament evidently had in mind was a **two-tier system**:
 - **Below 24 metres** — a **licensing** regime, with its own tailored code of manning, equipment, certification, survey and discipline made under s. 51. **That code was made: it is the Guyana Shipping (Small Commercial Ship Safety) Regulations, Reg. 5/2005, made under ss. 51, 105, 251, 452 and 458.**
 - **At and above 24 metres** — the **registration** regime, with surveys and certificates under Parts XI to XIII drawn by reference to the **Safety Convention**.

The scheme is coherent on paper. It broke for one reason: the upper tier was drafted by reference to an international convention which does not apply to domestic voyages, and no domestic substitute was ever enacted. The lower tier was completed. The upper tier was not. **The MV *Barima* sat in the upper tier.**

5.4.2 Deficiency 6 — the s. 51 heads of power were never exercised for vessels above 24 metres

Note what s. 51 authorises: manning; life-saving, safety and fire-fighting equipment; examination and certification of skippers, mechanics and deckhands; surveys and inspections; records; discipline. **That is very nearly a complete safety code.** It is confined by s. 49 to ships under 24 metres. **There is no equivalent enumerated power anywhere in the Act directed at domestic passenger ships of 24 metres and above.** The nearest are s. 251 (safety at sea generally, “as he considers necessary or expedient to give effect to this Part **and to the Safety Convention**”) and s. 398 (passenger ships), both permissive, and the latter subject to the waiver power in s. 398(3) examined in Chapter 6.

5.5 SECTIONS 237 TO 240 — REPORTING AND WARNING

5.5.1 s. 237 — reports of accidents to ships

Where a ship has sustained or caused any accident occasioning **loss of life or serious injury**, or has sustained **material damage affecting her seaworthiness or efficiency in hull or machinery**, the owner or master shall **within twenty-four hours**, or as soon as possible thereafter, transmit a report to a marine officer or otherwise to the Director; the report to be signed by the owner or master.

Observations.

1. **The trigger is right.** It captures both casualties involving death and material damage affecting seaworthiness. It is not confined to total loss.
2. **The period — 24 hours — is reasonable** and is broadly comparable to international practice.
3. **But there is no consequence attached to the report.** s. 237 requires a report to be transmitted. **It does not require anybody to do anything with it.** There is no duty to assess it, to investigate it, to publish it, to aggregate it, to identify trends in it, or to act on it. Contrast **s. 240**, which requires the Director to take appropriate steps to inform the seafaring community and the public of any developing or existing situation which may adversely affect safety — a duty which presupposes that somebody is analysing the s. 237 reports, but which does not require it.
4. **Where the ship is a registered Government ship, s. 3(3) means the owner's report is made by the Director to the Director.**
5. **A material verification item for the Commission:** what s. 237 reports were made in respect of the MV *Barima* in the years before 18 July 2026, and what was done with them. Survivor allegations of pre-existing water ingress dismissed as “normal”, and Captain Price's reported statement in court that there were known issues with the ferry, both put this squarely in issue. **This document asserts nothing about whether reports were made.**

5.5.2 s. 238 — apprehended loss

The managing owner or agent must cause a **reasonable search** and notify the Director in writing. **“Reasonable search” is undefined.** There is no time limit, no standard, no resource requirement and no relationship to the search and rescue system.

5.5.3 s. 239 — drills, and the duty that is only a duty to write

The master of every Guyana ship shall enter in the official log book every occasion on which **lifeboat and fire drill** is practised and appliances examined, and the result. In the case of a **passenger ship** where drill was not practised **in any week** (other ships, two weeks), the master shall state the reasons in the official log book.

Deficiency 7 — s. 239 prescribes a record, not a drill. This is the single clearest example in the Act of a provision that appears to require something and does not. Read it carefully:

- It does not say a drill **shall be held**.
- It does not say **how often** a drill shall be held. The weekly and fortnightly periods are the periods **by reference to which a failure to drill must be explained in writing**, not periods within which a drill must occur.
- It does not prescribe the **content** of the drill, who must participate, what must be demonstrated, or any standard of competence.
- It does not require **passengers** to be involved, mustered, briefed, or instructed in any way.
- It attaches **no penalty** in the section itself; a breach falls to s. 444(1) — \$25,000 and six months.
- The **only consequence of never holding a drill at all** is a weekly log entry recording that fact and the reasons.

The international benchmark is SOLAS Chapter III, regulation 19, which requires each crew member to participate in at least one abandon-ship drill and one fire drill every month; requires drills to be conducted as if there were an actual emergency; requires the muster of passengers on a passenger ship within 24 hours of embarkation; and prescribes what each drill must include, down to the operation of davits, the starting of lifeboat engines, the operation of watertight doors and fire doors, and the instruction of passengers in the donning of lifejackets.

The distance between “the master shall state the reasons in the official log book” and SOLAS III/19 is the distance between a paperwork obligation and a safety system.

5.5.4 s. 240 — the public warning duty

The Director **shall** take appropriate steps to inform the seafaring community and the public of any developing or existing situation which may adversely affect safety.

This is one of the few mandatory duties in the Act and it is worth noting as a foundation to build on. It is, however, entirely undefined as to trigger, content, timing and medium; and there is no penalty and no mechanism for its enforcement.

5.6 SECTIONS 288 TO 293 — CERTIFICATES, MAINTENANCE OF CONDITION, AND THE SAFETY CONVENTION CONDITION

5.6.1 ss. 288–289 and 293

s. 288 — a ship shall not proceed to sea without the appropriate certificate. **s. 289** — detention for non-production. **s. 293** — the Director’s power to require re-survey and to cancel certificates.

5.6.2 s. 290 — stability information: a real duty with no content

s. 290(1) — Every Guyana passenger ship, regardless of size, and every Guyana cargo ship of twenty-four metres and upwards, shall carry on board such information about the ship's stability **as may be prescribed**.

s. 290(2) — The information, a copy of which shall be sent to the Minister, shall be based on the determination of the ship's stability by means of an **inclining test**; the Minister may allow reliance on a similar determination for a **sister ship**.

s. 290(3) — Proceeding or attempting to proceed to sea without it: the owner or master is guilty of an offence, liable to a fine of **\$10,000**.

This is the most important provision in the Act for this casualty, and it is half a provision.

What is right about it. The application is exactly correct: **every Guyana passenger ship regardless of size**. Parliament plainly understood that stability is the passenger-ship problem, and it did not put a length threshold on the duty. It also correctly identified the **inclining test** as the foundation.

Deficiency 8 — the content is “as may be prescribed”, and nothing is prescribed. Subject to verification against post-2012 instruments, **no regulations prescribing the content of stability information appear in the authorised consolidation.** The consequence is that a master can comply with s. 290 by carrying **any** document about the ship's stability. There is no prescribed form; no requirement that the information state a maximum permissible KG or a minimum required GM for each condition; no requirement of a set of approved loading conditions covering departure and arrival, full and light load, with and without deck cargo; no requirement that free-surface corrections for every tank be tabulated; no requirement of a passenger-crowding or turning heeling-moment calculation; no requirement of a simplified loading guidance in a form a master can actually use at a wharf at 15:00 with cargo coming aboard; and **no requirement that the vessel's actual condition on any given voyage be calculated, recorded, or checked against anything at all.**

Deficiency 9 — there is no duty to calculate the departure condition. This is the operative gap. Internationally, the master of a passenger ship must satisfy himself before departure that the vessel's condition complies with the approved stability criteria, and must record it. **Guyanese law requires him to carry a book. It does not require him to open it.**

Deficiency 10 — the penalty is \$10,000. Set in 1998 and unrevised. In a case where the disposition of approximately 268 tonnes of cargo and up to 179 people is in issue, the maximum penalty for sailing with no stability information at all is ten thousand Guyana dollars.

Deficiency 11 — there is no re-inclining or lightweight survey requirement. As set out in the Glossary at C.11, an ageing hull's lightship centre of gravity drifts upward. There is no provision requiring a passenger ship to be re-inclined at intervals, or after alteration, or

after a refit. **The MV *Barima* was 86 to 87 years old, is recorded as having been refitted in 2017, and is said to have been re-engined.** Whether her stability information reflected her actual condition in July 2026 is a matter for the Commission. **The statute does not require that it should.**

5.6.3 s. 292 — the conditional maintenance duty

s. 292(1) opens: *“The condition of any ship in respect of which a Safety Convention Certificate issued under this Act is in force, including the equipment of such ship, shall be maintained at all times to comply...”*

s. 292(2) — Whenever an accident occurs to a ship or a defect is discovered, or any alteration is made to the ship’s hull, equipment, appliance or machinery which affects the safety of the ship or the efficiency, completeness or seaworthiness thereof, the owner or master shall as soon as practicable give **written notice to the Director** describing full particulars.

s. 292(3) — Failure: offence, fine **\$10,000**.

Deficiency 12 — the maintenance-of-condition duty is conditional on holding a Safety Convention Certificate. This is the most consequential single conditional clause in the Act, and it should be read slowly.

s. 292(1) does not say that the condition of every ship shall be maintained. It says that the condition of a ship **in respect of which a Safety Convention Certificate issued under this Act is in force** shall be maintained. A **Safety Convention Certificate** is a certificate issued under the SOLAS régime. **SOLAS does not apply of its own force to a ship engaged solely on domestic voyages.** A domestic ferry trading between Georgetown and Port Kaituma would not ordinarily hold a Safety Convention Certificate at all.

If she held no Safety Convention Certificate, s. 292(1) did not apply to her.

The consequences are severe and they run in two directions:

1. **The general obligation to maintain the ship in her certificated condition between surveys — the single most basic requirement in ship safety — is, on the face of s. 292(1), unavailable against a purely domestic passenger ship.** SOLAS Chapter I, regulation 11 imposes exactly this duty internationally: after any survey has been completed, no change shall be made in the structural arrangements, machinery, equipment or other items covered by the survey without the sanction of the Administration.
2. **Whether s. 292(2) — the accident, defect and alteration notification duty — is similarly confined depends on how the subsection is read against the opening words of s. 292(1).** If subsection (2) is read as standing independently, it applies to any ship. If it is read as governed by the class of ships identified in subsection (1), it does not. **The Act does not say which, and the marginal note (“Notice of accident, defect or alterations”) does not resolve it.** That ambiguity is unacceptable in a provision which is one of only two accident-notification duties in the Act.

This is a drafting defect of the first order, and it appears to be the residue of transplanting SOLAS-derived provisions into a domestic statute without adapting the conditions of their application. The whole of Parts XI to XIII of Cap. 49:01 exhibits the same characteristic, and it is the reason the “passenger ship survey” sections at ss. 257–266 do not deliver what their headings promise.

5.6.4 ss. 257–266 — the passenger ship survey sections, and what they actually reach

ss. 257–266 provide for surveys of passenger ships — initial, periodic and additional — for the **Passenger Ship Certificate**, for **Short Voyage Certificates**, for **Exemption and Qualified Certificates**, for the certificate to be carried on board, and at **s. 266** for a penalty for carrying excess passengers.

Deficiency 13 — these sections are drafted by reference to the Safety Convention régime and contain no domestic technical standard. They establish a **process** — survey, certificate, validity, carriage on board, penalty for excess. **They do not establish a standard against which the survey is to be conducted.** The standard is supplied, in the international scheme, by SOLAS itself: subdivision and damage stability under Chapter II-1, fire protection under Chapter II-2, life-saving appliances under Chapter III and the LSA Code, radio under Chapter IV, navigation equipment under Chapter V. **On a purely domestic voyage none of that applies of its own force, and Guyana has not enacted a domestic equivalent.**

The result is a survey and certification architecture without a technical code behind it. **A surveyor conducting a passenger ship survey under s. 258 or s. 259 has no published criteria to apply.** That is not a criticism of any surveyor. It is a criticism of a Parliament that provided the form and not the substance.

s. 266 deserves separate note. It penalises carrying **excess** passengers. That presupposes a lawfully certificated maximum. **Chapter 3.4 records three irreconcilable figures for that maximum and the fact that the certification records have not been published.** A penalty for exceeding a number is only as good as the process by which the number is fixed.

5.7 SECTIONS 315 AND 319 — LOAD LINES, AND THE CENTRAL TECHNICAL ERROR

5.7.1 The provisions

s. 315 — ships shall not proceed to sea without a Load Line Certificate: an **International Load Line Certificate** for an international voyage; otherwise a **Local Load Line Certificate**.

s. 319(1) — no ship shall be so loaded as to submerge in salt water, **when the ship has no list**, the appropriate load line on each side.

s. 319(2) — offence; fine **\$100,000**, plus an additional fine per subsection (3).

5.7.2 The load line régime is the strongest thing in the Act, and it is being asked to do a job it cannot do

Note first what is right. **The load line provisions are the most robust safety provisions in Cap. 49:01.** They impose an absolute prohibition; they carry the **highest fine in the Act** at \$100,000; they provide for an escalating additional fine; and they are drafted with precision, including the crucial words “when the ship has no list”. They are, unmistakably, the descendants of the Merchant Shipping Act 1876 and of Samuel Plimsoll’s campaign. They work.

The problem is not the load line régime. The problem is that in the absence of any stability régime, the load line has become the only measurement available, and it is being asked to answer a question it was never designed to answer.

5.7.3 The technical proposition, stated at length

A load line reading is a measurement of draft. Draft is a function of total weight and water density. That is all.

Consider two identical vessels of 284 gross register tons, each loaded with exactly 268 tonnes of cargo and each carrying 179 people, floating in the same salt water on the same day.

- **Vessel A** has her cargo stowed low: vehicles on the main deck over the tank tops, heavy machinery in the lower hold, fuel and fresh water tanks pressed full, passengers seated on the main deck.
- **Vessel B** has the identical weights, but the heavy machinery is on the upper deck, the vehicles are on the main deck, the fuel tanks are half empty, and the passengers are free to move about an upper deck.

Both vessels draw exactly the same draft. Both present exactly the same load line reading. An inspector standing on the wharf and reading the marks on each cannot distinguish them.

Vessel A may have a metacentric height of, say, 0.8 metres, a range of stability to 60 degrees, a large area under the righting-lever curve, and the ability to absorb a substantial wave without approaching her downflooding angle.

Vessel B may have a metacentric height near zero or negative; her free surfaces in the slack tanks may have removed a further large fraction of what she had; she may be sitting at an angle of loll that a casual observer reads as a modest list; and she may capsize on a beam sea that Vessel A would not notice.

The load line does not distinguish them, because the load line does not know where the weight is.

5.7.4 What a load line reading therefore does not tell you

It does not tell you:

- **the vertical position of the centre of gravity (KG)** — the fundamental input to every stability calculation;
- **the metacentric height (GM)** — whether the vessel is stable upright at all;
- **the righting-lever curve (GZ)** — how much righting effect she can generate at any angle;
- **the area under that curve** — how much wave energy she can absorb before capsizing;
- **the angle of vanishing stability** — the point of no return;
- **the free-surface effect** of partly filled tanks or of water on a deck — which can be worth several tenths of a metre of GM and which weighs almost nothing;
- **the downflooding angle** — the angle at which she starts taking water in through openings;
- **the effect of a passenger crowd moving to one side;**
- **the effect of the vessel turning;**
- **whether the cargo is secured;**
- **whether the watertight and weathertight closures are shut;**
- **whether she is already taking water somewhere.**

Every single item on that list is a matter that determines whether a vessel capsizes. Not one of them is measured by the mark on her side.

5.7.5 The application to the public record, stated carefully

The Director-General of the Maritime Administration Department is reported to have said, in substance, that **the load line was used to determine whether the vessel was overloaded**; that it was “**just submerged**” or “**barely submerged**” before departure; that this was **usual** because a vessel floats higher in denser sea water; that she was therefore **not overloaded** and was **operating way below her capacity**; and that he was **not clear how the weight was distributed**.

Taking those statements one at a time, and expressing no view on the underlying facts:

1. **“The load line was used to determine whether she was overloaded” — this is a correct use of a load line.** Overloading, in the sense of excess weight, is exactly what a load line measures.
2. **“It was just submerged / barely submerged” — a submerged load line is, on the face of s. 319(1), the offence.** s. 319(1) prohibits loading a ship so as to submerge the appropriate load line in salt water when she has no list. Whether the vessel was in salt water at the wharf on the Demerara, whether she had a list, and which mark was the appropriate one, are all questions of fact for the Commission. **This document does not assert that any offence was committed.** It records that the statutory test is submergence, and that the description given is of a submerged or near-submerged mark.
3. **“She floats higher in denser sea water” — correct physics, and the standard explanation for a river departure.** It is the fresh water allowance (Glossary B.4). It

is a complete answer to a submerged mark **at a fresh-water berth** and no answer at all to a submerged mark **in salt water**.

4. **“She was not overloaded” — a conclusion about weight, correctly drawn from a weight measurement.**
5. **“I am not clear how the weight was distributed” — this is the sentence that governs the other four.**

Because if the distribution of the weight is unknown, then the stability is unknown; and if the stability is unknown, then the safety of the loading condition is unknown, whatever the load line showed. The two statements are not contradictory. They are about different things. The difficulty is that the first has been offered publicly as reassurance on a question that only the second can answer, and the second is a statement that the answer is not available.

The author’s position, stated as a licensed unlimited-tonnage master and pilot with thirty-nine years in the industry, is this: no competent authority anywhere in the world would offer a load line reading as evidence that a passenger ship was safely loaded. It is not that the reading is wrong. It is that it is not evidence of the thing in question.

5.7.6 Deficiency 14 — why the error is the statute’s fault and not the regulator’s

This is the crucial point and it is why this chapter belongs in a statutory analysis rather than in a criticism of officials.

The Maritime Administration Department used the load line because **the load line is the only quantitative loading control that Guyanese law gives it for a vessel of this class.**

- There are **no intact stability criteria** in Guyanese law applicable to a 40-metre passenger ship.
- There is **no prescribed content for stability information** under s. 290.
- There is **no duty to calculate a departure condition.**
- There is **no approved-loading-condition régime.**
- There is **no requirement for a stability instrument or loading computer.**
- There is **no maximum-KG or minimum-GM curve** required to be posted.
- There is **no passenger-crowding heeling-moment criterion.**
- There is **no requirement that a surveyor approve a loading plan.**

A regulator with a load line and nothing else will use the load line. The deficiency is that Parliament gave him nothing else. Fix the statute and the practice follows; criticise the practice and nothing changes.

5.8 SECTIONS 336 TO 341 — UNSEAWORTHINESS

5.8.1 s. 336 — the definition, and its strength

An **unseaworthy ship** is a ship that is by reason of the defective condition of its hull, equipment and machinery **or by reason of under manning, overloading or improper loading**, unfit to proceed to sea without serious danger to human life, having regard to the nature of the service for which the ship is intended.

This is a good definition and it is the most useful single provision in the Act for the purposes of this casualty. Three features:

1. **“improper loading” is expressly included.** A vessel floating exactly to her marks, carrying less than her permitted deadweight, is **unseaworthy within s. 336 if the disposition of that weight makes her unfit to proceed to sea without serious danger to human life.** The definition therefore reaches the very thing the load line cannot measure.
2. **“under manning” is expressly included** — which matters given that s. 105 manning regulations are permissive and, subject to verification, unmade.
3. **“having regard to the nature of the service for which the ship is intended”** — a relative standard. A vessel adequate for a river is not thereby adequate for the open Atlantic off the Essequibo.

The definition is not the problem. What Parliament attached to it is the problem.

5.8.2 s. 337 — the offence with no penalty and a justification defence

s. 337(1) — Any person who sends or attempts to send any Guyana or foreign ship to sea from any port in Guyana in such an unseaworthy state **that the life of any person is likely to be thereby endangered** shall be guilty of an offence, **unless he proves either** (a) that he used all reasonable means to ensure that the ship was sent to sea in a seaworthy state; **or (b) that sending the ship to sea in such an unseaworthy state was in the circumstances reasonable and justifiable.**

s. 337(2) — Any master who knowingly takes such a ship to sea is guilty of an offence unless he proves that doing so was in the circumstances reasonable and justifiable.

No penalty is prescribed in s. 337. It therefore falls to the default in **s. 444(1)**: a fine of **twenty-five thousand dollars** and imprisonment for **six months**.

Deficiency 15 — the most serious offence in the Act carries the default penalty. Set out the comparison plainly:

Conduct	Provision	Maximum penalty
Submerging a load line	s. 319	\$100,000 plus additional fine
Trading without evidence of financial responsibility	s. 10(5)	\$100,000 and detention

Conduct	Provision	Maximum penalty
Failing to deliver up a cancelled certificate	s. 429(4)	\$25,000
Sailing without stability information	s. 290(3)	\$10,000
Failing to notify an accident, defect or alteration	s. 292(3)	\$10,000
Contravening safety-at-sea regulations	s. 251(2)	\$50,000
Sending a ship to sea so unseaworthy that life is likely to be endangered	s. 337 → s. 444(1)	\$25,000 and 6 months

A vessel loaded one centimetre too deep attracts four times the fine of a vessel sent to sea in a condition likely to kill the people on board. That is not a value judgment about Guyanese policy. It is an arithmetic fact about the statute, and it is the clearest single illustration in this document of what happens when penalties are inserted piecemeal and never reviewed.

Compare **Cap. 49:07 s. 26**, which for materially the same conduct provides that the offender is **guilty of a misdemeanour and liable to imprisonment for two years** — four times the custodial maximum available under the modern Act — and which requires the **written consent of the Director of Public Prosecutions** before a prosecution may be instituted.

Deficiency 16 — penalty levels are unrevised since 1998. Every monetary penalty in Cap. 49:01 was set in the Act of 1998. Twenty-eight years of currency movement has passed. There is **no indexation provision**, no power to uprate penalties by order, and no periodic review requirement.

Deficiency 17 — the limb (b) defence. The defence in s. 337(1)(b) is not a defence of due diligence. Limb (a) is that. **Limb (b) is a defence that sending an unseaworthy ship to sea was, in the circumstances, reasonable and justifiable.** It is repeated for the master at s. 337(2) and for the owner at s. 338(2), and it appears in identical form in Cap. 49:07 ss. 26(1), 26(2) and 27.

In the context of an essential State ferry serving a region with no road, where the alternative to sailing is that Region One does not receive its supplies and its people do not travel, **the argument that sailing was justified is available on the face of the statute.** The author expresses no view on whether it would succeed on any facts. The point is that **Parliament has expressly provided a justification defence for sending a ship to sea in a state likely to endanger life, and has done so in both of the Acts that create the offence.**

5.8.3 ss. 339–341 — detention, and the timing condition

s. 339 — where the Director or a surveyor has reason to believe a ship is unseaworthy he shall, **if the complaint or representation is made in sufficient time before the sailing of the ship**, ascertain whether the ship ought to be detained; and if satisfied, may detain her and, in the case of a Guyana ship, suspend her Safety Certificates.

s. 340 — the Government is liable for costs and compensation where there was no reasonable and probable cause for detention.

s. 341 — power to require a complainant to give security for costs.

Deficiency 18 — the detention duty is conditioned on the timeliness of a complaint.

The obligation in s. 339 to ascertain whether a ship ought to be detained is triggered by a **complaint or representation made in sufficient time before the sailing**. It is not triggered by the Director's or the surveyor's own observation, and it is not triggered by a routine inspection. **A surveyor who forms the view on his own initiative, an hour before sailing, that a vessel is unseaworthy, is not brought within the mandatory limb of s. 339 at all**, and must rely on such general powers as he has.

Deficiency 19 — ss. 340 and 341 impose a chilling structure on complaints. A complainant may be required to give security for costs (s. 341), and the Government is exposed to compensation if the detention proves unjustified (s. 340). **The person best placed to make a complaint about an unsafe ship is a member of her crew or a regular passenger.** Neither can give security for costs. There is **no whistleblower protection anywhere in the Act**, no anonymous reporting channel, no protection from dismissal, and no confidential hazard-reporting scheme of the kind operated in aviation and in the maritime sectors of the comparator States in Chapter 10.

5.8.4 s. 338 — the implied contractual obligation

Every contract of service between an owner and a master or seaman contains an implied obligation that the owner, the master, and **every agent charged with the loading of the ship, or preparing it for sea, or sending it to sea**, shall use all reasonable means to ensure seaworthiness at the commencement of the voyage and to keep the ship seaworthy during it. **s. 338(2)** — nothing subjects the owner to liability where, owing to special circumstances, the sending of the ship to sea in such a state was reasonable and justifiable.

The reach of the phrase “every agent charged with the loading of the ship” should be noted. It is the only place in Cap. 49:01 where a person in the position of a loading superintendent is brought within an express seaworthiness obligation — and it is brought in as an **implied term of a contract of service**, enforceable by a master or seaman, **not as a statutory duty enforceable by the State**. Cap. 49:07 s. 27 contains the identical provision.

PART TWO — FROM PART XV TO THE END OF THE ACT

5.9 PART XV — PASSENGER SHIPS: TWO SECTIONS

The Part of the Guyana Shipping Act headed “Passenger Ships” consists of two sections. They are set out below in full substance because the reader will otherwise not believe it.

5.9.1 s. 398 — the enabling shell

s. 398(1) — the Minister **may** make regulations —

- **(a)** respecting accommodation, facilities and provisions on board passenger ships carrying passengers from a port in Guyana;
- **(b) requiring the preparation and furnishing of particulars as to all passengers** to or from a port in Guyana;
- **(c) regulating the number of passengers which a ship may carry** from a port in Guyana whether or not the ship is a passenger ship;
- **(d)** prescribing terms and conditions upon which ships may carry passengers between ports in Guyana.

s. 398(2) — In making such regulations the Minister **shall have due regard to the International Convention on the Carriage of Passengers and their Luggage on Board Ships, 1974** (the Athens Convention).

s. 398(3) — **The Minister may waive or vary the regulations in respect of their application to licensed Guyana passenger ships operating solely within Guyana waters.**

5.9.2 s. 399 — the offences

Offences of: being drunk and disorderly and refusing to leave; molesting passengers; **persons refused admission on account of the ship being full who persist**; and fare evasion.

5.9.3 The analysis

Deficiency 20 — Part XV contains no safety standard of any kind.

Set out what is **not** in the Part of the principal maritime statute of Guyana headed “Passenger Ships”:

- no passenger-ship safety standard;
- no survey cycle;
- no stability criterion;
- no lifesaving standard;
- no manning standard;
- no muster, drill or evacuation requirement;
- no fire protection requirement;
- no subdivision or watertight integrity requirement;
- no escape route or means-of-escape requirement;
- no requirement for a passenger safety briefing;
- no limit on the number of persons carried;
- no requirement to count the persons carried;
- no requirement to record who they are;

- no requirement to keep that record ashore.

The whole of the substantive content is deferred to regulations which, subject to verification against post-2012 instruments, do not appear in the authorised consolidation.

Deficiency 21 — s. 398(1)(c) is the missing power that would have mattered most. Parliament expressly gave the Minister power to make regulations **regulating the number of passengers which a ship may carry from a port in Guyana, whether or not the ship is a passenger ship.** That is precisely the power required to fix, by published rule, the maximum number of persons a domestic ferry may carry, and to tie it to survival craft capacity and to stability. **The power exists. It appears not to have been exercised.** The consequence is Conflict 1 in Chapter 3.4: three irreconcilable figures for the capacity of a State-owned vessel, and no published rule by which any of them can be tested.

Deficiency 22 — s. 398(1)(b) is the missing headcount power. The power to require **the preparation and furnishing of particulars as to all passengers** is the domestic equivalent of SOLAS III/27. **It appears not to have been exercised.** The consequence is Conflict 2: a manifest of 133 and a closed-circuit television count of 179, and no counting duty against which either can be measured.

Deficiency 23 — s. 398(2) acknowledges the Athens Convention and enacts none of it. The Convention's central protections are a defined régime of carrier liability for the death of and personal injury to passengers, limits of liability expressed in units of account, a presumption of fault in shipping incidents, **compulsory insurance**, and **a direct right of action against the insurer.** The Act requires the Minister to have "due regard" to it when making regulations. **In the absence of regulations, the requirement of due regard has nothing to attach to.**

Deficiency 24 — s. 398(3) is a waiver power aimed precisely at the domestic fleet. This subsection deserves to be read twice. It empowers the Minister to **waive or vary** the passenger-ship regulations **in respect of their application to licensed Guyana passenger ships operating solely within Guyana waters.**

That is to say: Parliament, in the only Part of the Act dealing with passenger ships, having conferred a permissive power to make safety regulations, then conferred a further power to switch those regulations off for **precisely the class of vessel most likely to carry large numbers of Guyanese citizens on domestic voyages.** The subsection uses the word "licensed", which under s. 49(1) attaches to ships **under 24 metres**; but the effect of the drafting is that even if regulations under s. 398 had been made, their application to the domestic fleet is expressly made defeasible at ministerial discretion, with **no criteria, no procedure, no requirement of publication, no requirement of an equivalent standard, and no time limit.**

Compare s. 453, the general power of exemption, and **s. 3(2)**, the power to determine the extent to which the Act applies to Government ships. **The Act contains at least three separate general escape hatches from its own requirements, and the substantive requirements they would excuse have largely not been made.**

Deficiency 25 — s. 399 is a public-order provision presented as passenger regulation. The one substantive protection in the Part is the offence in relation to a person **refused admission on account of the ship being full** who persists. It is drafted as an offence by the passenger. **It creates no duty on anyone to refuse admission when the ship is full, no duty to determine when she is full, and no offence by the carrier of admitting passengers to a full ship.** The obligation runs in the wrong direction.

5.10 PART XVI (ss. 400–421) — LIMITATION AND DIVISION OF LIABILITY

s. 405 — conduct barring limitation. **s. 411** — the limit for passenger claims. **s. 412** — conversion of the unit of account. **s. 413** — aggregation. **s. 421** — limitation of actions.

Deficiency 26 — the limitation régime is enacted; the liability régime it limits is not. Guyana has enacted a mechanism by which a shipowner may cap his total exposure. It has not enacted the Athens Convention passenger-liability régime that would establish the claim in the first place, nor the compulsory insurance that would make a capped claim worth anything. **The protective half of the international bargain was omitted and the limiting half retained.**

Deficiency 27 — the interaction with Cap. 49:04 s. 23 is unaddressed. Cap. 49:01 s. 421 provides a limitation of actions; Cap. 49:04 s. 23(2) requires an action against the Transport and Harbours Department to be commenced within **six months** of the act or omission complained of, and s. 23(1) requires one month's prior written notice. **Which governs a claim arising from the loss of a Government ship operated by the Department is not resolved by either Act.** For a bereaved family the practical answer is that they must assume the shorter period applies. **This is addressed in Chapter 13 as a time-critical action.**

5.11 PART XVII (ss. 422–426) — THE COURT OF SURVEY

A body for the review of survey decisions. **Deficiency 28 — the Court of Survey is a mechanism for challenging a surveyor's adverse finding. It has no safety function, no investigative function, and no power to initiate anything.** It exists to protect the shipowner from the surveyor, not the passenger from either.

5.12 PART XVIII — INQUIRIES AND INVESTIGATIONS INTO MARINE CASUALTIES

This is the Part that should have governed the response to the loss of the MV *Barima*. It did not, and could not.

5.12.1 s. 427 — the discretionary trigger

s. 427(1) — Where any of the following casualties occur —

- **(a) the loss or presumed loss, stranding, grounding, abandonment of, or damage to** a ship;
- **(b) a loss of life** caused by fire on board, or by any accident to, a ship or ship's boat, or by any accident occurring on board a ship or ship's boat; or
- **(c) any damage caused by** a ship —

and at the time it occurs the ship was a Guyana ship or was in Guyana waters, **the Minister may cause a preliminary inquiry to be held** by a person appointed by the Minister with the assistance of one or more assessors, being masters of Guyana ships or persons with special skills and knowledge in maritime matters.

s. 427(2) — Whether or not a preliminary inquiry has been held, **the Minister may cause a formal investigation to be held** by a Board appointed for that purpose.

Deficiency 29 — there is no duty to investigate any marine casualty, however many lives are lost.

Both powers are permissive. There is:

- **no threshold** — nothing that says a casualty of a stated gravity must be investigated;
- **no trigger** — nothing that converts the occurrence of a casualty into an obligation;
- **no time limit** — nothing requiring the decision whether to investigate to be taken within any period;
- **no duty to give reasons** for a decision not to investigate;
- **no duty to publish** the report of any inquiry or investigation that is held;
- **no duty to send it to the IMO;**
- **no register of casualties**, no periodic report to Parliament, and no aggregation of the s. 237 accident reports into anything.

The international benchmark is SOLAS Chapter XI-1, regulation 6, in force since **1 January 2010**, which makes the **Casualty Investigation Code** (resolution MSC.255(84)) mandatory. Under that Code a marine safety investigation into a **very serious marine casualty** — one involving the total loss of the ship, a death, or severe damage to the environment — is **mandatory**, not discretionary. **The loss of the MV Barima is a very serious marine casualty on any definition.**

The scope of s. 427(1)(b) is worth noting as a curiosity: it captures loss of life caused by fire on board, by any accident to a ship, or by any accident occurring on board a ship. **It is drafted widely enough to catch this casualty several times over. The width of the trigger is irrelevant when the verb is “may”.**

5.12.2 s. 428 — powers on preliminary inquiry

The person holding a preliminary inquiry may board any ship, inspect her, and enter premises. **These are the powers of an inspector, not of an investigator.** There is no power to compel the production of documents, no power to summon witnesses, no power to require answers, and no protection for a witness who gives them. Contrast **Cap. 49:07 s.**

11, which gives a court of inquiry under the 1883 Act **the power of a magistrate to summon witnesses, call for the production of books, plans and documents, and examine on oath** — and ss. 12 and 13, which provide for committal to prison for refusal. **The Victorian Act has stronger investigative powers than the modern one.**

5.12.3 s. 429 — the Board of formal investigation

s. 429(1) — A Board holding a formal investigation shall consist of **not more than three nor less than two members**, of whom one shall be a **Judge of the High Court or a Magistrate as Chairman**, “and the others shall be assessors, being masters of Guyana ships or such other persons possessing nautical, engineering or other special skills and knowledge, **as the Director may appoint**”. Proviso: where the cancellation or suspension of a certificate issued under regulations made under s. 105 is likely to arise, the Court shall include **two assessors**.

s. 429(2) — The Board has all the powers of a Magistrate’s Court.

s. 429(3) — If satisfied that an officer **(a)** is unfit to discharge his duties whether by reason of incompetence or misconduct or for any other reason; or **(b)** has been **seriously negligent**; or **(c)** has failed to comply with s. 229 — it may **cancel or suspend any certificate issued under regulations made under s. 105**, or **censure** him.

s. 429(4) — Failure to deliver up a cancelled certificate: fine not exceeding **\$25,000**.

s. 429(5) — Costs.

s. 429(6) — **The Board shall make a report on the case to the Director.**

Deficiency 30 — the Board is not independent of the regulator. The assessors — the two members with the technical expertise, and on a two-member Board the entire technical component — are appointed by **the Director**. The report goes to **the Director**. Where the ship is a registered Government ship, **the Director is her statutory owner** under s. 3(3). The Chairman is a Judge or Magistrate, which supplies judicial independence in the chair but not in the technical membership, and not in the destination of the report.

Deficiency 31 — the entire disciplinary architecture reaches certificated individuals only. s. 429(3) permits the Board to cancel or suspend **a certificate issued under regulations made under s. 105**, or to censure the holder. That is the whole of its dispositive power over persons.

There is no finding available against:

- a **company**;
- a **Government Department** — including the Transport and Harbours Department;
- a **Ministry**;
- the **Maritime Administration Department** or the **Director**;
- an **uncertificated person**, such as a loading superintendent;
- a **shore manager**, a **superintendent**, a **General Manager**, or a **board**.

A Board of formal investigation into the loss of a State ferry, constituted under the Guyana Shipping Act, could cancel the master's certificate and could do nothing else to anybody. That is the entire remedial reach of Part XVIII.

Deficiency 32 — s. 429(3) fuses fact-finding with certificate revocation, which destroys candour. The Board's function is simultaneously to find out what happened and to decide whether to take away the livelihood of the people who know. **These are incompatible functions and the international system separates them for exactly that reason.** The Casualty Investigation Code requires that the safety investigation be separate from, and independent of, any other form of investigation; that its purpose be prevention rather than blame; and that evidence given to it be protected from disclosure. **Section 429(3) is the precise mischief the Code exists to prevent.**

The Guyana Human Rights Association's proposal of a **positive duty of candour on public officials and authorities, compelling them to cooperate and testify truthfully, backed by sanctions including prosecution and imprisonment**, addresses one half of this problem — compelling the evidence. **The other half is protecting the person who gives it.** A duty of candour without a corresponding protection is a duty to incriminate oneself, and it will not produce truthful evidence from the people who most need to give it. **Both halves are required and Chapter 12 sets out drafting instructions for both.**

5.12.4 ss. 430–432

s. 430 — the Minister may order a rehearing; a person affected may appeal to the High Court. **s. 431** — the Minister may make rules for the conduct of inquiries, investigations and rehearsals. **s. 432** — power to restore a certificate.

Deficiency 33 — s. 431 rules are permissive and, subject to verification, unmade. The procedural framework for the conduct of an inquiry under Part XVIII is left to rules that appear not to exist. Contrast **Cap. 49:07 s. 9(1)**, under which a court of inquiry may make its own rules, and under which three casualty-specific instruments were in fact made — R. 6/1961 (*Van S and Lowood II*), R. 8/1961 (m.v. *Batchelder*) and R. 3/1969 (m.v. *Powis*). **The older Act produced rules. The newer one has not.**

5.12.5 The proof of the deficiency: the Commission had to be constituted outside the maritime statute book

The Commission of Inquiry into the loss of the MV *Barima* was constituted under the Commissions of Inquiry Act. It was not constituted under Part XVIII of Cap. 49:01.

That decision was, in the author's view, **correct**, and it should be said plainly that it was correct, because the argument that follows is not a criticism of the decision to use the Commissions of Inquiry Act. Part XVIII was unusable for at least five reasons:

1. **It confers no duty**, so its use would have been discretionary and therefore contestable.

2. **Its Board's dispositive power is limited to cancelling a certificate**, which is not an adequate response to the deaths of seventy-three people and to allegations of institutional failure.
3. **Its assessors are appointed by the Director**, who is the statutory owner of a registered Government ship, which makes it structurally incapable of examining the conduct of the operator or the regulator.
4. **Its report goes to the Director**, not to Parliament, not to the President and not to the public.
5. **It has no power to make findings against a Department, a Ministry or a company**, which is where the terms of reference actually point.

But the correctness of the decision is also the proof of the deficiency. A maritime statute whose own casualty machinery has to be bypassed, in favour of a general-purpose colonial-era commissions statute, in the country's worst maritime disaster, **has failed the single test for which those provisions exist.** Part XVIII was enacted in 1998 to deal with marine casualties. Twenty-eight years later, confronted with the largest marine casualty in the nation's history, the State could not use it.

And the older Act was no better. Cap. 49:07 s. 4 confers a power on the Minister to appoint a court of inquiry where a ship has been lost or damaged on or near the coasts, in inland rivers or navigable waters of Guyana, or where loss of life has ensued by reason of a casualty. **But s. 3 provides that nothing in Part I shall be deemed to apply to any ship belonging to or in the service of the State.** The *MV Barima* belonged to the State and was in its service. **The 1883 machinery was disappplied to her by its own terms.**

Guyana therefore had two statutory casualty-investigation regimes on 18 July 2026, and neither of them could lawfully or usefully be applied to the loss of a State-owned passenger ferry with seventy-three dead. That is the central structural finding of this document.

5.12.6 What the joint parliamentary opposition said, and why it is correct as a matter of law

The joint parliamentary opposition — WIN, APNU, FGM, AFC and VPAC — stated, among other objections, that **“the Commission of Inquiry is not a substitute for an independent marine safety investigation conducted in accordance with internationally recognized standards.”**

As a proposition of law that is correct, and it is correct for reasons that have nothing to do with the competence or independence of the individual Commissioners, which are not in question. A Commission of Inquiry under the Commissions of Inquiry Act:

- is **appointed by the executive**, and its terms of reference are set by the executive;
- **includes blame attribution within its terms of reference** — here expressly, the determination of whether negligence, misconduct, dereliction of duty or institutional failures contributed;
- has **no statutory protection for evidence given to it**, and therefore cannot offer a witness the assurance of non-use that a safety investigation offers;

- is **not obliged by any statute to publish**;
- is **not obliged to send its report to the IMO**;
- **ceases to exist when it reports**, so that there is no standing body to monitor whether its recommendations were implemented;
- and **has no successor**, so that the next casualty requires the whole process to begin again.

A marine safety investigation body, by contrast, is permanent, independent of the regulator by statute, prohibited from apportioning blame, protective of witness evidence, obliged to publish, and obliged to track the implementation of its recommendations. Those are the models set out in Chapter 10. **The two things are complementary, not alternative.** A State that has suffered a casualty of this magnitude should have both, and Guyana at present can constitute only one.

The objections of the Guyana Human Rights Association and of Transparency Institute Guyana Inc. are recorded in full in Chapter 8 and are not repeated here. The point made in this chapter is narrower and is directed at the statute rather than at the Commission: **whatever view is taken of the Commission’s composition or of the consultation that preceded it, the reason a Commission was required at all is that Parliament did not provide a marine safety investigation capability, and it still has not.**

5.13 SECTION 442 — INQUIRIES INTO DEATHS

s. 442(1) — Where any person dies in a Guyana ship, or the master or a seaman dies outside Guyana, an inquiry into the cause of death shall be held **by the marine officer or proper officer at the next port where the ship calls after the death.**

s. 442(3) — Report of the findings to the Director; a copy available on request to next of kin or interested persons.

s. 442(4) — No inquiry shall be held where an inquest or inquiry into death is to be held under any law relating to inquests or criminal procedure.

Deficiency 34 — s. 442 is unworkable in a mass-casualty capsized, twice over.

1. **The inquiry is to be held at the next port where the ship calls after the death.** Where the ship has capsized and sunk, **there is no next port.** The vessel lies on her starboard side in about fifteen metres of water nine miles off the Essequibo coast. The condition precedent to the only mandatory death-inquiry provision in the Act cannot be satisfied.
2. **Even if it could, s. 442(4) disapplies it** wherever an inquest or an inquiry into death is to be held under the law relating to inquests or criminal procedure. Murder charges were laid on 28 July 2026. **The criminal process is engaged.** s. 442 is therefore excluded on that ground as well.

The single provision in the Act that uses the word “shall” in relation to inquiring into a death is inapplicable to a sinking and is switched off by the existence of a coronial or criminal process. The result is that the deaths of seventy-three people on a Guyana ship generate, under the Guyana Shipping Act, **no mandatory inquiry of any kind.**

A note on the families’ entitlement. s. 442(3) provides that a copy of the report is available on request to next of kin or interested persons. **It is the only provision in the entire Act conferring any entitlement to information on a bereaved family, and it is contained in the section that does not apply.**

5.14 SECTIONS 444 AND 445 — PENALTIES AND COMPOUNDING

5.14.1 s. 444 — the default penalty

s. 444(1) — a person who commits an offence under the Act for which no specific penalty is provided is liable to a fine of twenty-five thousand dollars and to imprisonment for six months.

s. 444(2) — continuing offence: \$5,000 per day.

The consequences of this provision have been set out at 5.8.2 and are not repeated. **The point to carry forward is that the drafting technique of creating an offence without a penalty, and relying on a general default, is safe only if the default is calibrated to the most serious offence that might fall into it. Here it is not.**

5.14.2 s. 445 — compounding

s. 445(1) — the Director may compound any prescribed compoundable offence on payment of a sum **not exceeding \$20,000.**

s. 445(2) — a marine officer may compound on payment of a sum not exceeding **\$10,000.**

s. 445(3) — on payment, the person if in custody shall be discharged, any ship detained shall be released, and no further proceedings shall be taken against that person or ship in respect of that offence.

Deficiency 35 — compounding is administrative extinction of liability, exercised by the office that may be the statutory owner.

Four observations:

1. **The bar on further proceedings is absolute.** Once compounded, no further proceedings may be taken. There is no exception for cases where further evidence emerges, and no power of review.
2. **The decision is administrative.** There is no requirement of publication, no requirement of reasons, no register of compounded offences, no report to Parliament, and no oversight.

3. **The maximum sums — \$20,000 and \$10,000 — are below the fines for the offences they may extinguish.** s. 319 carries \$100,000; s. 251(2) carries \$50,000.
4. **Where the ship is a registered Government ship, s. 3(3) makes the Director her owner.** The power to compound an offence, discharge a person from custody and release a detained ship therefore sits in the same office as the statutory ownership of the vessel.

Which offences are “prescribed compoundable offences” is not established in the authorised consolidation and is a verification item. If no prescribing instrument exists, the power is dormant; if one exists and includes safety offences, the deficiency is live.

5.15 SECTIONS 452 TO 458 — GENERAL POWERS, EXEMPTIONS AND CONVENTIONS

5.15.1 s. 455 — conventions to prevail, unless the Minister otherwise provides

s. 455 — where an international convention or other international instrument applies to Guyana and conflicts with a provision of this Act, **the convention or instrument shall prevail “unless the Minister otherwise provides.”**

Deficiency 36 — the supremacy of international obligations is subject to ministerial override.

The first half of s. 455 is exactly right and is a model provision: where an international instrument binding on Guyana conflicts with the Act, the instrument prevails. That is how a monist supremacy clause should read.

The final five words undo it. A Minister may provide that the domestic provision prevails over Guyana’s international obligation. There is no criterion, no procedure, no requirement of publication, no requirement of notification to the depositary or to the IMO, no time limit, and no parliamentary control expressed in the section.

As a matter of international law the override is ineffective against the obligation itself: a State cannot invoke its internal law as justification for failure to perform a treaty. **As a matter of domestic law it may nonetheless determine what a Guyanese court applies.** The provision therefore creates the possibility of a divergence between what Guyana owes internationally and what its own courts enforce — which is precisely the condition that the **IMO Instruments Implementation Code (III Code)** and the **IMO Member State Audit Scheme (IMSAS)** exist to detect.

5.15.2 s. 456 — suspension of registration for convention breach

Where in respect of any Guyana ship there is any contravention of a requirement of any international convention applying to Guyana, **the Director may suspend the certificate of registration until rectified.**

Observation. This is a real and useful power, and it is one of the few places where the Act attaches a consequence to an international obligation. It is permissive. And it is exercised by the office which, under s. 3(3), is the owner of a registered Government ship.

5.15.3 ss. 452, 453 and 458

s. 452 — general power to make regulations. **s. 453** — **general power of exemption**. **s. 458** — regulations for resolving transitional difficulties.

Deficiency 37 — the Act contains at least four separate powers to disapply or excuse its own requirements, and no criteria governing any of them. They are: **s. 3(2)** (extent of application to Government ships); **s. 398(3)** (waiver or variation of passenger-ship regulations for licensed Guyana passenger ships operating solely within Guyana waters); **s. 453** (general exemption); and **s. 455** (ministerial override of a conflicting international instrument). To these must be added, in the subsidiary legislation, **reg. 5 of the Small Commercial Ship Safety Regulations** (the Director may grant exemptions from all or any provisions) and **reg. 4 of the Cargo Ship Survey Regulations** (the Minister may grant exemptions).

Six discretionary escape mechanisms. Not one of them is subject to a published criterion, a procedure, a requirement of equivalent safety, a time limit, a requirement of publication in the Gazette, or a requirement of report to Parliament.

5.16 SUMMARY OF CHAPTER 5 — WHAT CAP. 49:01 REQUIRED OF THE MV *BARIMA*

Stated at its lowest, and subject throughout to verification against post-2012 subsidiary instruments and to the Gazette question raised at 5.1.5, the position under the principal maritime statute of Guyana was as follows.

What the Act did require:

- that she carry stability information based on an inclining test — **of unprescribed content**, penalty \$10,000 (s. 290);
- that she not be so loaded as to submerge her load line in salt water when upright — penalty \$100,000 (s. 319);
- that she carry the appropriate certificates (s. 288);
- that the master enter in the official log book the fact of any drill, and the reasons for any week in which no drill was held (s. 239);
- that an accident occasioning loss of life or material damage affecting seaworthiness be reported within 24 hours (s. 237);
- that she not be sent to sea in an unseaworthy state such that life was likely to be endangered — subject to a defence that doing so was reasonable and justifiable, penalty \$25,000 and six months (ss. 336–337, 444(1)).

What the Act did not require:

- **any intact stability criterion;**
- **any calculation of the departure condition;**
- **any approved loading conditions;**
- **any maximum number of persons fixed by published rule;**
- **any count of the persons actually on board;**
- **any record of those persons kept ashore;**
- **any muster, drill, station bill or passenger safety briefing;**
- **any safety management system;**
- **any annual survey** — the only periodic survey instrument above 24 metres expressly excludes passenger ships;
- **any age-related enhanced survey, thickness measurement or re-inclining;**
- **any minimum safe manning document;**
- **any maintenance of her certificated condition**, unless a Safety Convention Certificate was in force;
- **any investigation of the casualty;**
- **any publication of any report;**
- **and no finding against the Department, the Ministry or the regulator was available in any event.**

That is the answer to the question this document was written to address, so far as Cap. 49:01 is concerned. The remaining chapters address the subsidiary legislation, the 1883 Act, the 1931 Act, the institutions, the international benchmarks, and what should be done.

CHAPTER 6 — THE SUBSIDIARY LEGISLATION, THE 24-METRE GAP, AND THE TWO CASUALTY REGIMES

6.1 THE FOUR INSTRUMENTS UNDER CAP. 49:01, AND THE FIFTH THAT IS MISSING

Instrument	Number	Made under	Page
Guyana Shipping (Registration of Ships) Regulations	Reg. 4/2000	—	298
Guyana Shipping (Licensing of Ships) Regulations	Reg. 4/2001	—	422
Guyana Shipping (Small Commercial Ship Safety) Regulations	Reg. 5/2005	ss. 51, 105, 251, 452 and 458	486
Guyana Shipping (Cargo Ship Survey) Regulations	Reg. 6/2005	s. 452	723

The missing fifth. The L.R.O. 1/2012 volume carries a printed note that at the time of publication the **Guyana Shipping (Ship and Port Facility Security) Regulations 2004** were being substantially revised and had therefore been omitted from the publication.

Deficiency 38 — the authorised text of the laws of Guyana has not contained the country’s ship and port facility security regulations since at least 2012. The ISPS Code is mandatory under SOLAS Chapter XI-2 and is a matter on which Guyana is subject to port State control abroad and to the IMO Member State Audit Scheme. **Whether the revision was ever completed, and if so when and in what terms, is a Priority One verification item.** A fourteen-year gap in the published security law of a maritime State is not a printing problem.

A note on a further instrument referred to but not reproduced. The Cargo Ship Survey Regulations define “gross tonnage” as gross tonnage **“as determined by the Guyana Shipping (Tonnage) Regulations, made under the Act”**. **Those Regulations do not appear in the authorised consolidation either.** Since the application of Reg. 6/2005 turns on a gross tonnage threshold of 500, and since the disputed capacity figures for the MV *Barima* turn in part on the meaning of “284 tons” (Glossary A.7), **the Tonnage Regulations are a further Priority One verification item.**

6.2 THE SMALL COMMERCIAL SHIP SAFETY REGULATIONS, REG. 5/2005

6.2.1 What they are

Made under **ss. 51, 105, 251, 452 and 458** of Cap. 49:01 — that is, under the licensing power, the manning power, the safety-at-sea power, the general regulation power and the transitional power. They are, in substance, **the only complete domestic ship safety code Guyana has ever enacted.**

Interpretation, reg. 2:

- **“small commercial ship”** means a ship of less than 24 metres in length in commercial use and includes a passenger ship and a ship that is provided for the transport or entertainment of lodgers at any institution, hotel, boarding house or guest house or other establishment, **but does not include a fishing vessel.**
- **“Guyana small commercial ship”** means a small commercial ship which is registered or licensed in Guyana under the Act.
- **“SCV Code”** means the **Code of Safety for Small Commercial Vessels operating in the Caribbean Sea**, as prepared by the International Maritime Organization for Caribbean Countries, **revised up to July 2002, as set out in the Annex.**
- **“STCW Convention”** means the International Convention on Standards of Training, Certification and Watchkeeping, 1978 as amended in 1995 and as amended from time to time.

Structure: Part I General (regs. 1–6: citation; interpretation; reg. 3 omitted; **application; exemptions; equivalent standards**). Part II Requirements for small commercial ships (regs. 7–12: **ships to be surveyed; certificate of inspection; inspections; responsibilities of owner and master; suspension of certificate of inspection; prohibition on proceeding to sea**). Part III Boatmaster and Boat Engineers (regs. 13–15 and following: master and engineers; issue of licence, standards and conditions; **grade and area restriction of Boatmaster Licences**). **Annex — the SCV Code in full.**

Application, reg. 4 — subject to reg. 5, these Regulations apply to **Guyana small commercial ships wherever they may be**, and to other small commercial ships whilst they are within Guyana waters.

Exemptions, reg. 5 — the **Director may grant exemptions** from all or any of the provisions.

6.2.2 What this instrument contains that exists nowhere else in Guyanese law

Subject to verification of each item against the annexed Code text, this instrument is the **sole** location in the 904-page volume containing:

- **intact stability requirements;**
- **stability information for operating personnel;**
- a **safety management system** requirement referencing the **ISM Code**;
- a **Record of Passengers** requirement;
- a **marine casualty notification duty with a three-day written report**;
- an **official log book casualty entry** duty;
- **station bill, muster, drill and emergency instruction** requirements;
- a graded, area-restricted **licensing scheme for masters and engineers** tied to the type of waters (Protected, Coastal, Exposed) and to whether the vessel carries passengers.

All of it confined, by the definition in reg. 2 and the application in reg. 4, to vessels of less than 24 metres in length.

6.2.3 The SCV Code preamble — the signpost, and the escape route nobody used

The Annex to Reg. 5/2005 reproduces the SCV Code in full, including its preamble. That preamble is now part of the authorised law of Guyana. It says three things that matter to this casualty.

First, it identifies the Code's pedigree: the regulations are based on the **United States Coast Guard Code of Federal Regulations, 46 CFR Subchapter T** (certification of small passenger vessels), which are regarded as equivalent to IMO Convention requirements for such vessels, **Subchapter C** (uninspected vessels), and the **United Kingdom Code of Practice for the Safety of Small Workboats and Pilot Boats**.

Second, it contains the signpost: requirements for small commercial vessels of **24 metres and over in length, on international voyages**, or those under 24 metres which carry **more than 150 passengers** or provide overnight accommodation for more than 50 passengers, are given in the **Code of Safety for Caribbean Cargo Ships (CCSS Code)** and in **SOLAS**, for cargo and passenger ships respectively.

Third — and this is the sentence that matters most — it contains a permission:

Small commercial vessels of **24 metres and over in length engaged on voyages in national waters only, could be allowed to operate under the provisions of this Code by the Administration**.

6.2.4 Deficiency 39 — the signpost points at a road that was never built for a domestic voyage

Read the second and third propositions together.

For a vessel of 24 metres and over, the Code directs the reader to **SOLAS** — but expressly **for international voyages. SOLAS does not apply of its own force to a ship engaged solely on a domestic voyage**. For a vessel of 24 metres and over on a **domestic** voyage, therefore, the signpost points nowhere at all. It identifies no mandatory standard, because there is none.

What the preamble offers instead is a discretion: such a vessel **could be allowed** to operate under the SCV Code **by the Administration**. That is a permissive route by which the Maritime Administration Department could have extended a real, coherent, tested safety code — one derived from US Coast Guard Subchapter T and the UK Small Workboat Code — to exactly the class of vessel the MV *Barima* belonged to.

Subject to verification, it appears not to have been used in her case.

And there is a further difficulty which the Commission should examine. The permission is in the **Annex**, which is the Code. The **application provision is reg. 4**, which applies the Regulations to **Guyana small commercial ships**, defined in reg. 2 as ships of **less than 24 metres**. It is therefore arguable that the Administration has **no power under the Regulations** to do what the Code's preamble contemplates, because the Regulations'

own application clause does not reach a vessel of 24 metres or over at all. **If that is right, the escape route in the preamble is a dead letter — a permission recorded in the authorised law of Guyana which the instrument containing it gives nobody power to exercise.** This document does not resolve the construction. It records that the point is arguable, that it is important, and that a competent draftsman would have put the extension power in the Regulations rather than in an annexed international code.

6.3 THE CARGO SHIP SURVEY REGULATIONS, REG. 6/2005

6.3.1 The provisions

Made under s. 452.

reg. 3 (Application) — *“Subject to regulation 4 these Regulations apply in relation to sea-going Guyana ships of less than 500 gross tonnage but above 24m in length, **except passenger ships, fishing vessels and pleasure craft**, engaged in voyages in the Caribbean Trading Area.”*

reg. 4 (Exemption) — the Minister may grant exemptions from all or any of the provisions, for classes of cases or individual cases, on such terms as he may specify.

reg. 5 — every existing ship to which the Regulations apply shall be surveyed in accordance with reg. 6 **not later than 6 months** after the Regulations come into operation.

reg. 6(1) — the owner or managing owner shall cause the ship to be surveyed **on completion of construction and thereafter at intervals not exceeding five years** by a surveyor.

reg. 6(2)(a) — that survey shall include **a complete inspection of the structure, machinery and equipment**, other than items surveyed with the life-saving appliances, to ensure that the arrangements, materials, **scantlings** and workmanship of the structure, boilers and other pressure vessels and their appurtenances, **main and auxiliary machinery including steering gear and associated control systems**, electrical installation and other equipment **comply with the requirements of the CCSS Code and applicable Safety Regulations**, are in satisfactory condition and are fit for the service for which the ship is intended, **and that the required stability information is provided.**

The Regulations further provide, by regs. 7 and 8, for annual surveys and periodical surveys, with a First Schedule setting out their scope; by reg. 10 for the responsibilities of owner, managing owner and master; by reg. 11 for procedures where safety equipment is deficient; by reg. 12 for penalties; by reg. 13 for a power to detain; by reg. 14 for the application of the CCSS Code to Guyana; and by reg. 15 for fees.

6.3.2 The five words

The MV *Barima* was 284 grt and 40.26 metres. She was sea-going. She was a Guyana ship. She traded in the Caribbean Trading Area. She was of less than 500 gross tonnage and above 24 metres in length. She fell squarely within the band that regulation 3 describes.

She was removed from it by five words: “except passenger ships, fishing vessels and pleasure craft.”

6.3.3 Deficiency 40 — the passenger-ship carve-out, and what it cost

Set out precisely what those five words denied her:

Requirement she would have had if she carried freight	Provision
Survey on completion of construction and at intervals not exceeding five years	reg. 6(1)
A complete inspection of the structure — arrangements, materials, scantlings and workmanship — against the CCSS Code	reg. 6(2)(a)
Inspection of boilers and other pressure vessels and their appurtenances	reg. 6(2)(a)
Inspection of main and auxiliary machinery including steering gear and associated control systems	reg. 6(2)(a)
Inspection of the electrical installation	reg. 6(2)(a)
Confirmation that she is fit for the service for which she is intended	reg. 6(2)(a)
Confirmation that the required stability information is provided	reg. 6(2)(a)
Annual surveys	reg. 7
Periodical surveys to the scope of the First Schedule	reg. 8
Defined responsibilities of owner, managing owner and master	reg. 10
A defined procedure where safety equipment is deficient	reg. 11
A power to detain	reg. 13

Because she carried people rather than freight, she was entitled to none of it.

The reason the carve-out is there is not sinister and should be stated. In the international scheme, cargo ships and passenger ships are governed by different régimes: cargo ships by the cargo-ship chapters of SOLAS and, regionally, by the CCSS Code; passenger ships by the more demanding passenger-ship provisions of SOLAS. **The draftsman of Reg. 6/2005 carved out passenger ships because passenger ships were supposed to be dealt with elsewhere.** The failure is that **they never were.** Part XV of the Act is two sections; no regulations were made under s. 398; and SOLAS does not reach a domestic voyage. **The carve-out was a cross-reference to a régime that does not exist.**

6.4 THE 24-METRE GAP, STATED COMPLETELY

This is the central finding of the document and it is set out here in one place.

Vessel	Length	Type	Instrument that applies	What she gets
A river ferry	any	passenger	River Navigation Regulations (Cap. 50:01)	Annual inspection; branded waterlines; detention if submerged; machinery and steering gear to be maintained; certificated maximum persons crew included , computed by formula; number painted on both bows; one lifebelt per certificated person ; count of persons entered at a Government Station before sailing; no additional person after reporting; accident reporting duty
A coasting vessel	any	passenger	Coasting and Passenger Trade Regulations (Cap. 49:07)	Annual survey; certificate stating the total number of persons she may lawfully carry ; number painted on the vessel; equipment schedule; certificated master and mate; safety and accommodation of passengers to be provided for
A small commercial ship	< 24 m	passenger	Reg. 5/2005 + SCV Code	Intact stability criteria; stability information for operating personnel; ISM-referenced safety management system; Record of Passengers; casualty notification with a three-day written report; official log book casualty entry; station bill, muster, drill and emergency instructions; graded area-restricted licensing of masters and engineers
A small cargo ship	> 24 m, < 500 GT	cargo	Reg. 6/2005 + CCSS Code	Five-yearly structural and machinery survey; annual surveys; periodical surveys; scantlings, steering gear and

Vessel	Length	Type	Instrument that applies	What she gets
				electrical installation inspected; stability information confirmed; power to detain
The MV <i>Barima</i>	40.26 m	passenger	—	Cap. 49:01 s. 290 (stability information of unprescribed content); s. 319 (load line); s. 288 (certificates); s. 239 (a log entry about drills); s. 237 (a 24-hour accident report). Nothing else.

A vessel one metre shorter than the MV *Barima*, carrying a small fraction of her complement, was subject to a materially more demanding safety code than she was. A vessel of the same length carrying freight instead of people was subject to a five-yearly structural survey and to annual surveys. She was subject to neither.

This is not a difference of degree. It is a hole. It is bounded on one side by the words “less than 24 metres in length” in reg. 2 of Reg. 5/2005 and on the other by the words “except passenger ships” in reg. 3 of Reg. 6/2005. **Everything between those two phrases — every Guyanese domestic passenger ship of 24 metres and over — falls through.**

Deficiency 41 — the gap is systemic and it is not confined to the MV *Barima*. Every domestic passenger vessel in Guyana of 24 metres or more is in it today. **That is the finding on which the Commission’s recommendations should turn, and it can be closed by a single instrument.** Chapter 12 sets out the drafting.

6.5 CAP. 49:07 — THE SHIPPING CASUALTIES (INVESTIGATION AND PREVENTION) ACT, 1883

The text of this Act was not available to the author when the earlier drafts were written. It has now been obtained and read in full. What follows is the first analysis of it in this series and it changes the conclusion.

6.5.1 Status

Act 4 of 1883. Part I in force 5 December 1883. Part II in force 20 February 1895. Amended by Acts 2 of 1895, 3 of 1914, 32 of 1914, 11 of 1978, 6 of 1997, 7 of 1998, and Resolution 9 of 1982. **Current authorised pages 1–45, L.R.O. 1/2012.** Formerly Cap. 124 of the 1929 Edition and Cap. 267 of the 1953 Edition.

The Act is in force. Three independent indicators establish it:

1. It is reproduced in the authorised revised edition with current authorised pages certified to L.R.O. 1/2012.
2. Its interpretation provisions at **s. 2 and s. 17** were **amended by Act 7 of 1998** — the Guyana Shipping Act itself — to define “Director” by reference to s. 2 of Cap. 49:01, and to define “inspector” as including a surveyor of ships appointed under Cap. 49:01. **Parliament in 1998 did not repeal this Act. It updated it and connected it to the new one.**
3. **Cap. 49:04 s. 24(1)(e)**, in the authorised text, directs that all fees payable **under the Shipping Casualties (Investigation and Prevention) Act, c. 49:07**, to inspectors of shipping and surveyors of ships form part of the revenue of the Transport and Harbours Department. **That is not a dead cross-reference. It is a live revenue provision presupposing that fees are being earned under the 1883 Act.**
4. **River Navigation Regulations reg. 4(2)(b)**, in the authorised text, exempts from annual river inspection a vessel holding a valid certificate of seaworthiness issued under **reg. 2 of the Coasting and Passenger Trade Regulations made under the Shipping Casualties (Investigation and Prevention) Act**. That presupposes those Regulations are producing valid certificates.

The question raised in the author’s earlier brief — whether s. 24(1)(e) is a surviving dead cross-reference — is therefore answered. It is not dead. The Act lives.

6.5.2 Part I — Investigation (ss. 2–16)

s. 2 (Interpretation) [amended by 7 of 1998] — **“Board of Trade”** means Board of Trade of the Government of the **United Kingdom**; **“the court”** means a court of inquiry appointed under Part I; **“Director”** has the meaning assigned in **s. 2 of the Guyana Shipping Act**; **“ship”** means any sea-going vessel or steamer.

s. 3 (Exemption of State ships and foreign ships) — Nothing in this Part shall be deemed to apply to any ship belonging to or in the service of the State or to any ship belonging to any foreign State.

s. 4 (When court of inquiry may be appointed) [amended by 11 of 1978] — **The Minister may appoint a court of inquiry under this Part —**

- **(a)** whenever **(i)** any ship has been lost, abandoned, or damaged **on or near the coasts, in inland rivers or navigable waters, of Guyana**; or **(ii)** by reason of any casualty happening to or on board of any ship on or near those coasts, rivers or waters **loss of life has ensued**; or **(iii)** any ship has caused loss or damage to any other ship on or near those coasts, rivers or waters; or **(iv)** the loss, abandonment, damage or casualty has happened elsewhere to any Commonwealth ship and any competent witness is to be found in Guyana; or **(v)** any Commonwealth ship is supposed to have been lost and evidence can be obtained in Guyana as to the circumstances under which she proceeded to sea or was last heard of; and

- **(b)** whenever the Minister has reason to believe that the **master, mate or engineer** of a Commonwealth ship is, from incompetency or misconduct, unfit to discharge his duties.

s. 5 (Constitution and powers of court) — (1) the court shall consist of **a magistrate and two assessors**, being persons having nautical or engineering or other special skill or knowledge, **appointed by the Minister**, the magistrate to be president. **(2)** the court is authorised to make the inquiries referred to in s. 4 **and all inquiries authorised to be made by a court or tribunal under the Guyana Shipping Act. (3)** the court may suspend or cancel the certificate of any master, mate or engineer where it finds that the loss, abandonment, damage or **loss of life** has been caused by his wrongful act or default, or that he is incompetent or guilty of any gross act of misconduct, drunkenness or tyranny. **(4)** the court shall state its decision in open court and **shall send a full report upon the case, with the evidence, to the Minister**, and shall transmit any cancelled certificate with its report; **and a copy of the report, together with the certificates if any, shall forthwith be transmitted by the Minister to the Board of Trade. (5)** no certificate shall be cancelled or suspended unless a copy of the report or a statement of the case has been furnished to the certificate-holder **before the commencement of the investigation**, and unless **at least one assessor concurs. (6)** where cancellation or suspension is likely to arise, the inquiry shall be held with the assistance of **not less than two persons having experience in the merchant service.**

s. 6 — replacement of a member who dies or becomes unwilling to act; **no court of inquiry shall lapse by reason of the death, absence or removal of the Minister who appointed it.**

s. 7 [amended by 6 of 1997] — power to require delivery of a certificate; failure to deliver: fine of **\$48,750.**

s. 8 — the court shall make a full, faithful and impartial inquiry into the matters specified in its appointment; where the members are not unanimous, each shall state in writing his conclusions and reasons.

s. 9 — the court may make rules for its guidance and the conduct and management of proceedings, and may **exclude any person from any sitting.**

s. 10 — members may go on board the ship and inspect her, her machinery, boats, equipment or articles, not unnecessarily detaining her.

s. 11 — (1) the court shall have **the power of a magistrate to summon witnesses, call for the production of books, plans and documents, and examine upon oath witnesses and parties concerned. (2)** summonses in the form of the Schedule. **(3) no member of the court shall be liable to any action or suit for any matter done by him as a member.**

s. 12 [6 of 1997] — refusal to be sworn or to give evidence, insulting a member, interrupting proceedings or misbehaving: custody until the rising of the court; committal to prison for up to **one month**; or a fine of **\$9,750.**

s. 13 [6 of 1997] — refusal to appear: **warrant to bring the witness before the court**; refusal to be examined, to take the oath, to answer, to produce documents or to subscribe a deposition: **committal to prison for up to one month** unless he consents; **and in addition a fine of \$19,500.**

s. 14 — appointment of a clerk. **s. 15** — remuneration; **all expenses connected with the appointment of a court or an inquiry under this Part shall be defrayed from moneys provided by Parliament for the miscellaneous expenses of justice.** **s. 16** — the appointment of any court **shall be published in the Gazette** and takes effect from the date of publication.

6.5.3 Deficiency 42 — s. 3 excludes the State's own ships from the State's own casualty inquiry

s. 3 is the reason Part I could never have been used for the MV *Barima*. She belonged to the State and was in its service. **The 1883 Act's court of inquiry is disappplied to her by the express terms of the Act.**

Consider the consequence in the round. Guyana's older casualty statute:

- **excludes State ships entirely** (s. 3);
- and Guyana's newer casualty provisions **make investigation discretionary** (Cap. 49:01 s. 427), **appoint the assessors through the Director** who under s. 3(3) is the statutory owner of a registered State ship (s. 429(1)), and **deliver the report to that same Director** (s. 429(6)).

A State-owned ferry is therefore the single category of vessel that the Guyanese casualty-investigation architecture is least capable of examining. It is excluded from one régime by statute and structurally compromised in the other. **That is the finding, and it is the more serious version of the point the author's earlier drafts reached by a different route.**

6.5.4 Deficiency 43 — the report goes to the Board of Trade of the United Kingdom

s. 5(4) requires the Minister forthwith to transmit a copy of the court's report, together with any cancelled certificates, to the Board of Trade. **s. 2, as amended in 1998, defines "Board of Trade" as the Board of Trade of the Government of the United Kingdom.**

Two observations, both important and neither of them merely antiquarian.

First, the destination is wrong as a matter of fact. The British Board of Trade has not exercised marine casualty investigation functions for many decades; those functions passed successively to other departments and, since 1989, to the **Marine Accident Investigation Branch**. The provision as it stands directs the report of a Guyanese court of inquiry to a body that does not perform the function.

Second, and much more importantly, the destination is wrong as a matter of principle, and it is wrong in a way that reveals what is missing. In 1883 the report

went to London because London was where the imperial maritime authority sat and where a certificate cancelled in Demerara had to be recorded. **Since 1 January 2010 there has been a correct destination for such a report, and it is the International Maritime Organization.** The **Casualty Investigation Code**, mandatory under **SOLAS Chapter XI-1, regulation 6**, requires a marine safety investigation report into a very serious marine casualty to be **submitted to the IMO** and made publicly available.

Guyanese law therefore contains a statutory duty to transmit a casualty report abroad. It transmits it to the wrong body, for the wrong reason, under the wrong constitutional order — and it contains no duty to transmit it to the right one. The 1998 amendment to s. 2 **retained** the definition of the Board of Trade and updated the definition of “Director” alongside it. **Parliament looked at this section in 1998 and left the Board of Trade in place.**

And note what this provision proves. It is often said that a small State cannot be expected to publish casualty reports. **Guyana’s Victorian statute already requires a report to be written, to be full, faithful and impartial (s. 8), to be accompanied by the evidence (s. 5(4)), to record dissenting opinions in writing (s. 8(2)), and to be transmitted outside the country (s. 5(4)).** The architecture of an accountable, externally-reported casualty investigation is already in the statute book. **It simply points at the wrong address and excludes the State’s own ships.**

6.5.5 Deficiency 44 — the 1883 Act has stronger investigative powers than the 1998 Act

Power	Cap. 49:07 (1883)	Cap. 49:01 (1998)
Summon witnesses	s. 11(1) — power of a magistrate	s. 428 — no express power on preliminary inquiry; s. 429(2) — Board has the powers of a Magistrate’s Court
Compel production of books, plans and documents	s. 11(1) — express	Not expressly conferred on a preliminary inquiry
Examine on oath	s. 11(1) — express	Via s. 429(2) only
Committal to prison for refusal to answer	s. 13(2) — up to one month	Not expressly provided
Fine for refusal to appear or answer	s. 13(3) — \$19,500	Not expressly provided
Fine for contempt in the face of the court	s. 12 — \$9,750, or one month	Not expressly provided
Power to require delivery of a certificate before the inquiry	s. 7(1)	Not expressly provided
Immunity of members from suit	s. 11(3)	Not provided
Requirement that the inquiry be full, faithful and impartial	s. 8(1)	Not provided

Power	Cap. 49:07 (1883)	Cap. 49:01 (1998)
Requirement that dissent be recorded in writing with reasons	s. 8(2)	Not provided
Requirement that the appointment be published in the Gazette	s. 16	Not provided
Requirement that a copy of the case be furnished to a certificate-holder before the investigation begins	s. 5(5)	Not provided
Requirement of at least two persons with merchant service experience where a certificate is at risk	s. 5(6)	s. 429(1) proviso — two assessors
Expenses charged on moneys provided by Parliament	s. 15(3)	Not provided

The 1883 Act is, on this comparison, the better instrument in eleven respects. It is defeated by two provisions: s. 3, which excludes State ships, and s. 4, which makes the appointment discretionary.

6.5.6 Part II — Prevention (ss. 17–35)

s. 17 (Interpretation) [7 of 1998] — “**coasting voyages**” means voyages from one part of Guyana to any other part **not confined within the limits of one river**; “**inspector**” means an inspector of shipping appointed under this Part **or a surveyor of ships appointed under the Guyana Shipping Act**; “**master**” includes anyone having for the time being the charge or command; “**the regulations**” means regulations relating to the prevention of shipping casualties in force at the commencement of the Part or made under it; “**ship**” means a vessel of every kind or size used in navigating the sea and not propelled by oars; “**tons**” refers to registered tonnage, or to tonnage ascertained under the Guyana Shipping Act if unregistered; “**vessel**” means any kind of navigable craft, in whatever way propelled, and includes any boat, punt, bateau, buckshell, corial or other similar craft, whether registered in Guyana or elsewhere or unregistered.

ss. 18–19 — inspectors of shipping as the Minister deems necessary; remuneration by prescribed fees.

s. 20 (General powers) [7 of 1998] — every inspector shall have the following powers with respect to **all vessels employed in coasting voyages** and to **vessels of less than 150 tons** employed in voyages between Guyana and any place outside Guyana: **(a)** board and inspect the vessel, any part of her, or any of her machinery, boats or equipment, within territorial waters; **(b)** demand production of any certificate of survey or inspection; **(c) if he considers the vessel overloaded and that it would be dangerous to those on board to proceed while so loaded, require the removal of any portion of the cargo or load,**

and detain the vessel until it is removed or until the Director otherwise directs; (d) when he considers the vessel for any reason unfit to proceed to sea or on an intended voyage, detain her until he can report the circumstances to the Director and until the Director otherwise directs.

s. 21 [6 of 1997] — impeding, threatening or abusive language to, assaulting, or disobeying an order of an inspector in the execution of his duty: fine **\$9,750**; and the offender may be apprehended and detained by the inspector or by any person he calls to his assistance.

s. 22 [6 of 1997; 7 of 1998] — no unregistered vessel of **twelve tons or over** employed in coasting voyages shall proceed until the owner has obtained from a surveyor an official certificate of tonnage and has caused the tonnage to be **cut on the main beam**. Penalty: **\$97,500**.

s. 23 (**Overloading and overcrowding of vessel**) [6 of 1997] —

- (1) Everyone who **overloads, or overcrowds with persons**, any vessel proceeding, intending or about to proceed, or which actually proceeds, on any **coasting voyage**, or any vessel of less than 150 tons on any voyage out of Guyana, **contrary to the regulations and in such a manner as to expose, or to be likely to expose, the persons in the vessel to danger on the voyage**, may be **apprehended by any inspector, or officer of customs, or police constable, with or without a warrant**, and shall be liable to a fine of **\$97,500**.
- (2) **The master of the vessel shall, for the purposes of this section, be deemed to have overloaded or overcrowded it.**
- (3) Everyone who **permits or causes** the vessel to be overloaded or overcrowded, **or is concerned in or is a party to** the overloading or overcrowding, shall be liable to a like penalty.
- (4) Any inspector, officer of customs or police constable may **seize and detain** the vessel until the penalty, costs and expenses of detention are paid; and if not paid after conviction, **the vessel and the goods in her may be sold** and the penalty, costs and expenses paid out of the proceeds.

s. 24 — duty of the master of each ship in a collision within territorial waters to stand by and render assistance and exchange particulars; failure without reasonable cause raises a presumption that the collision was caused by his wrongful act, neglect or default, and constitutes a **misdemeanour**, with the certificate liable to suspension or cancellation.

s. 25 (**Regulations**) [6 of 1997; 7 of 1998] — **subject to affirmative resolution of the National Assembly, the Director may make regulations** relating to: (a) the **periodical inspection** of all vessels employed in coasting voyages and of their boats and equipment, and ensuring they are kept in good order and in a seaworthy condition; (b) the registration of those vessels and of **the number of persons employed on board**; (c) requiring **certificates of competency** of masters, mates or persons in charge, and examinations; (d) suspension and cancellation of certificates and prevention of uncertificated persons having charge; (e) **ensuring the safety and proper accommodation of passengers and regulating the number of persons to be carried on board**; (f) requiring inspection of

vessels of less than 150 tons carrying passengers out of Guyana; **(g)** prescribing **lights**; **(h)** fees, recoverable under the **Summary Jurisdiction (Petty Debt) Act, Cap. 7:01**; **(i)** generally, the better carrying out of the Part. **(2)** breach: the penalty in the regulation, or if none, **\$19,500**. **(3)** in addition, the master may be apprehended and detained, and the vessel seized, detained and sold.

ss. 26–27 — unseaworthy Commonwealth ship: **s. 26(1)** sending or attempting to send, or being party to sending, a Commonwealth ship to sea in such an unseaworthy state that life is likely to be endangered is a **misdemeanour**, liable to **imprisonment for two years**, subject to the defences of all reasonable means or of reasonable justification; **s. 26(2)** the master who knowingly takes her to sea, same penalty, subject to the justification defence; **s. 26(3) no prosecution shall be instituted without the consent in writing of the Director of Public Prosecutions**. **s. 27** — the implied obligation of seaworthiness in every contract of service, in the same terms as Cap. 49:01 s. 338.

ss. 28–30 — detention of unsafe Commonwealth ship. **s. 28(1)** where the Director has received a complaint or has reason to believe that a Commonwealth ship in territorial waters is, **by reason of the defective condition of her hull, equipment or machinery, or by reason of overloading**, unfit to proceed to sea without serious danger to human life, having regard to the service for which she is intended, **the Director may if he thinks fit, and when directed by the Minister to do so shall forthwith, appoint some competent person to survey her**; **(2)** the surveyor may require unloading or removal of cargo, ballast or tackle, and has all the powers of an inspector under the Guyana Shipping Act; **(3)** obstruction: fine **\$48,750**; **(4)** the Director may, and when required by the Minister shall, direct detention for survey, whereupon any officer of customs may detain her; **(5)** on the report, the Director may make further orders as to detention or release, absolutely or on conditions as to repairs, alterations, or the unloading or reloading of cargo; **(6)** a copy of the order and of the report to be delivered as soon as possible to the owner or master. **s. 29** — expenses payable by the owner where the ship is reported unfit; compensation where she is not; security for costs from a complainant; recovery from a complainant where the complaint was made without reasonable cause; **and no personal liability on any officer unless he acted maliciously and without any reasonable cause**. **s. 30** — appeal by the owner or master **to the High Court in the exercise of its admiralty jurisdiction**, which may appoint fresh surveyors and make orders as to detention, release, compensation, expenses and costs.

s. 31 — detention of an overladen foreign ship, with consular safeguards and reference to the High Court where the surveyor and the consular nominee differ.

s. 32 — any inspector, officer of customs or police constable may prosecute. **s. 33** — **reward to informer**: such portion of penalties and proceeds of seizures as the Minister awards shall be paid to persons, not being salaried Government officers, instrumental in obtaining a conviction. **s. 34** — savings for existing regulations and for the tenure of existing inspectors. **s. 35(1)** — the Minister may exempt from the inspection provisions any vessel **under contract with the Government** in respect of which sufficient powers of inspection are given by the contract. **s. 35(2)** — no inspection shall extend, except by special direction of the Minister, to the hull, machinery or boilers of any vessel holding a

certificate issued by **the society known as Lloyd's Register of British and Foreign Shipping** stating that they are in a good and sufficient state and safe working order.

Schedule — Summons to Witness.

6.5.7 Deficiency 45 — s. 23 is the only overcrowding offence in Guyanese law, and it may not reach this vessel

Cap. 49:07 s. 23 is the only provision in the entire Guyanese statute book creating an offence of overcrowding a vessel with persons. Cap. 49:01 has no overcrowding offence; s. 266 penalises carrying passengers in excess of a certificated number, which is a different thing and depends on a certificate.

- s. 23 is a strong provision. It carries a fine of **\$97,500**; it permits **apprehension without warrant** by an inspector, a customs officer or a police constable; it **deems the master to have overloaded or overcrowded**; it reaches **anyone concerned in or party to** the overcrowding — which would include a loading superintendent; and it permits **seizure, detention and sale** of the vessel and her cargo.

But it contains a condition that may defeat it: the overloading or overcrowding must be “contrary to the regulations”.

Which regulations? “The regulations” is defined at s. 17 as regulations relating to the prevention of shipping casualties in force at the commencement of Part II or made under Part II. **The regulations made under Part II are the Coasting and Passenger Trade Regulations and the Buoying of Punts Regulation.** The Coasting Regulations do contain passenger-number provisions — **reg. 2(2)** (the inspector’s certificate shall state the total number of persons the vessel may lawfully carry), **reg. 11(4)–(5)** (the certificate shall specify the total number the vessel may safely carry, not exceeding the number allowed by s. 6 of the Passengers Act; proceeding with any passenger in excess is a breach), and **reg. 13** (numbers for sailing vessels by tonnage; **for steam vessels, by Board of Trade survey**).

So the offence of overcrowding is conditioned on a breach of regulations whose only ascertainment rule for a power-driven coasting vessel points at the Board of Trade of the United Kingdom. Whether an inspector’s certificate under those Regulations was ever issued to the MV *Barima*, and if so on what basis the number in it was ascertained, is a Priority One question for the Commission. **If no such certificate existed, the applicability of the only overcrowding offence in Guyanese law to this vessel is, at best, uncertain.**

6.5.8 Deficiency 46 — s. 25 is a complete domestic passenger safety code that was never written

Read s. 25(1) again as a list of powers rather than as a Victorian provision. The **Director**, subject to **affirmative resolution of the National Assembly**, may make regulations for:

- **periodical inspection** of all coasting vessels and their boats and equipment, and ensuring they are kept in good order and in a **seaworthy condition** — (a);

- registration of those vessels and of the **number of persons employed on board** — (b);
- **certificates of competency** for masters, mates and persons in charge, and examinations for them — (c);
- **suspension and cancellation** of those certificates, and prevention of uncertificated persons having charge — (d);
- **ensuring the safety and proper accommodation of passengers and regulating the number of persons to be carried on board** — (e);
- inspection of vessels of less than 150 tons carrying passengers out of Guyana — (f);
- **lights** — (g);
- **fees** — (h);
- and **generally, the better carrying out of the provisions of this Part** — (i).

That is a workable head of power for a complete domestic passenger safety code, exercisable by the Director, with parliamentary control by affirmative resolution. Paragraph (e) alone would support intact stability criteria, survival craft ratios, muster and drill requirements, and a fixed maximum number of persons.

It has been exercised twice, in 1896 and 1902, and once more in 1920 for the buoying of punts. In the one hundred and twenty-four years since, and in the twenty-eight years since Parliament last amended the section, **it has not been exercised again.**

Two live powers therefore existed on 18 July 2026 by which a Guyanese authority could have made binding safety regulations for a domestic passenger ferry: Cap. 49:01 s. 398 and Cap. 49:07 s. 25. Neither has been used. The one under the modern Act rests with the Minister; the one under the 1883 Act rests with the Director and requires affirmative resolution of the National Assembly.

6.5.9 Deficiency 47 — s. 35(1), the Government contract exemption

s. 35(1) empowers the Minister to exempt from all or any of the inspection provisions of Part II **any vessel under contract with the Government** in respect of which sufficient powers of inspection are, in his opinion, given under the contract.

The MV *Barima* was not under contract with the Government; she was owned by the Government and operated by a Government Department. **s. 35(1) does not on its face apply to her.** It is recorded here because it demonstrates the pattern: **every one of the Guyanese safety statutes contains a discretionary power to exempt, and none of them contains a criterion for its exercise, a requirement of publication, or a requirement of equivalent safety.**

6.6 THE COASTING AND PASSENGER TRADE REGULATIONS, 1896 AND 1902

Regs. 28/4/1896 and 11/4/1902, made under s. 25. Reproduced at pages 26–44 of the authorised volume. Established as live by River Navigation Regulations reg. 4(2)(b).

6.6.1 What they require

reg. 2 (Inspection) — (1) every vessel employed in coasting voyages shall, with her boats and equipment, be surveyed **at least once in every year** by an inspector. (2) if found seaworthy and furnished with the articles in the First Schedule, and if her boats and equipment are sufficient, in good order and seaworthy, the inspector shall give the owner or master **a certificate to that effect, and shall state in such certificate the total number of persons which such vessel may lawfully carry.** (3) if found in bad order or unseaworthy, or not furnished with the required articles, the inspector shall forthwith give a **written statement of particulars** and require the defects to be made good **before the vessel proceeds on her next voyage.** (4) thereafter it is unlawful for the vessel to proceed without the defects being made good to an inspector's satisfaction, and the owner and master are each in breach.

reg. 3 (Annual licence) — no licence under the Tax Act until a certificate of survey within the preceding twelve months is produced; the licence number to be painted on each bow and on the stern in letters not less than three inches; **the total number of persons the vessel is certified to carry to be painted in the like places immediately under the licence number;** and the licence itself to state that number.

reg. 4 — the inspector's **Register Book** of all coasting vessels, their ports of registration, registered numbers, tonnage, owners', masters' and mates' names, **and the number of all persons employed on board;** open to the Commissioner General of the Guyana Revenue Authority; a public record; changes in owner, master, mate or **number of the crew** to be registered within fourteen days.

regs. 5–9 — certificates of competency for masters and mates; **power of an inspector to suspend for up to six months or cancel a certificate for drunkenness on duty, habitual drunkenness, gross or repeated misconduct including repeated violations of the Act or of the Regulations, or mental or physical disability,** after due inquiry with a full opportunity to defend, with an **appeal to the Minister whose order is final;** production of certificates on demand; prohibition on proceeding without a certificated master, and (for vessels of twenty tons or over other than an estate punt with only crew) without a certificated mate.

reg. 10 — annual and pre-voyage inspection of vessels of **less than 150 tons** carrying passengers out of Guyana.

reg. 11 (Safety and accommodation of passengers) — (1) at the time of inspection the inspector shall **also satisfy himself that the safety and accommodation of the passengers to be conveyed have been provided for;** (2) if satisfied he states so on the certificate; if not, he reports in writing and requires the owner or master to do what is necessary before the vessel proceeds; (4) the inspector shall **specify in the certificate the total number of persons which the vessel may safely carry, not exceeding in any case the number allowed by section 6 of the Passengers Act, c. 49:03;** (5) proceeding with any passenger in excess is a breach by owner and master.

reg. 12 — every vessel, not being a punt, proceeding on a coasting voyage carrying passengers, is subject to the like control provided in reg. 11, under like penalties.

reg. 13 (Number of persons) — (1) for sailing vessels: under twelve tons, no passengers; twelve to twenty tons, one person per two tons, crew and passengers and all other persons on board included; over twenty tons, one person per two tons for the first twenty tons and one person per ton thereafter, again crew included. (2) such a vessel on a voyage with passengers shall carry not less than one-third of her tonnage as ballast. (3) steam vessels employed in coasting voyages may carry such number only of passengers as they may be found capable of carrying, as ascertained in accordance with the survey established from time to time by the Board of Trade of the United Kingdom, in their instructions as to the survey of passenger accommodation on vessels plying in partially smooth water within the excursion limits of the ports, and for other sea-going home trade vessels; the Minister may by Gazette notice declare what coasting voyages are in partially smooth waters, within excursion limits, and within the sea-going home trade. (4) for every square yard of deck space occupied by cattle or other animals, or by cargo or other articles, one passenger shall be deducted from the number allowed. (5) shelter shall be provided for not less than one-sixth of the persons, other than saloon and after-cabin passengers. (6) the master of a sailing vessel about to proceed with passengers from Georgetown or New Amsterdam on a voyage of more than fifty miles shall, before proceeding, deliver to an officer of the Guyana Revenue Authority a written declaration setting forth the number and names of the passengers.

reg. 14 — life-buoys and life-belts to be carried in such position and manner as to be easily seen and readily available for immediate use.

regs. 15-16 — lights: “The lights hereinafter mentioned, and no others, shall be carried by vessels in all weathers, from sunset to sunrise, within the territorial waters of Guyana” — a masthead light not less than twenty feet above the hull visible five miles, side lights over ten points visible two miles with inboard screens projecting three feet, an anchor light in a globular lantern not less than eight inches in diameter visible one mile.

regs. 17-18 — books, charts, papers, instruments and lights considered necessary by an inspector for safe navigation to be supplied at the owner’s expense and to form part of the vessel’s equipment; fees per the Fourth Schedule.

Schedules — First: equipment of coasting vessels, including anchors and cable by tonnage, side and anchor lights, one bilge pump, an entire suit of sails in good order, one compass, one lifebuoy, a lifebelt for every person on board in excess of the total boat accommodation, and one boat of 35 to 150 cubic feet according to tonnage. Second: subjects of examination — rule of the road, action in case of man overboard or fire, management of the vessel. Third: equipment of vessels under 150 tons carrying passengers out of Guyana, including quadrant or sextant, chronometer, two lifebuoys with patent lights, and boats of capacity according to the total number of persons allowed. Fourth: tariff of fees — including a fee “to an inspector for ascertaining the number of passengers

capable of being carried by a steam vessel, in accordance with regulation 13(3)": \$15.00 for vessels under 120 feet in length by deck measurement and \$20.00 for vessels of greater length.

6.6.2 Deficiency 48 — the passenger capacity of a Guyanese coasting steam vessel is ascertained by a defunct British body

reg. 13(3) is the only rule in Guyanese law for ascertaining the number of passengers a power-driven coasting vessel may carry. It provides that the number shall be **ascertained in accordance with the survey established from time to time by the Board of Trade of the United Kingdom**, in their instructions as to the survey of passenger accommodation on vessels plying in partially smooth water within the excursion limits of the ports, and for other sea-going home trade vessels.

The Board of Trade does not issue such instructions and has not for many decades. The categories the regulation uses — “partially smooth water”, “excursion limits of the ports”, “sea-going home trade” — are British domestic categories of the late nineteenth century.

And the Fourth Schedule prices the work. There is a **fee of \$20.00** payable to an inspector for ascertaining, under reg. 13(3), the number of passengers a steam vessel of more than 120 feet by deck measurement may carry. **The MV Barima was 126.5 feet.** The statute book therefore contains a fee for doing, to a vessel of exactly her size, a calculation by reference to instructions that no longer exist.

Two further limitations should be noted.

- **reg. 13(6), the passenger declaration requirement, applies only to sailing vessels.** The only obligation in Guyanese coastal law to deliver a written declaration of **the number and names of the passengers** before a voyage of more than fifty miles from Georgetown does not reach a motor vessel.
- **reg. 13(4), the deck-cargo deduction, is a real and sensible provision** — one passenger deducted for every square yard of deck occupied by cargo or animals — but it sits in a regulation whose principal computation rule for a steam vessel is unusable. **It is nonetheless the only provision in Guyanese law that expressly reduces the permitted number of persons because deck cargo has been loaded**, and it is directly relevant to the allegation, referred to the Commission, that heavy machinery may have been placed on the upper deck.

6.6.2A The comparison that proves the point: the same draftsman’s problem, solved once and not solved once

Both of the Victorian instruments understood perfectly well that a power-driven vessel cannot be measured by the rule used for a sailing vessel. One of them wrote a usable rule and the other did not.

Instrument	Rule for sail / non-machinery craft	Rule for machinery-propelled craft
River Navigation Regulations (Cap. 50:01), 1918	reg. 18 — the licensed number computed as length × breadth × draft ÷ 25 , expressed to apply <i>“except as hereinafter provided with respect to vessels propelled by machinery”</i>	reg. 19(1) — not more than one passenger with baggage for every five square feet of deck surface , expressly excluding the space occupied by the machinery, open hatches, skylights, fuel, and any cargo carried on deck ; and by reg. 19(2) the certificate of the number framed and placed in a conspicuous place on board
Coasting and Passenger Trade Regulations (Cap. 49:07), 1896	reg. 13(1) — one person per two tons up to twenty tons, and one per ton thereafter, crew and all other persons included	reg. 13(3) — <i>“as ascertained in accordance with the survey established from time to time by the Board of Trade of the United Kingdom”</i>

The river instrument solved the problem domestically. The coastal instrument outsourced it.

And note what the river rule actually is. One passenger per five square feet of **clear** deck, with machinery spaces, hatches, skylights, fuel **and deck cargo** taken out of the calculation, and the resulting number posted on board. **That is a serviceable, self-executing, deck-area capacity rule which automatically reduces the permitted number of persons as deck cargo is loaded.** It requires no foreign institution, no survey instruction from abroad, and no discretion. It was made in **1918**.

It applies on the Barima River and on the Kaituma Creek. It does not apply on the sea passage between them and Georgetown. That single sentence is the 24-metre gap restated in its oldest form, and it is the reason the drafting instruction at Chapter 12.5 adopts the deck-area principle rather than inventing one.

6.6.3 Deficiency 49 — the lights rule contradicts COLREG 1972

reg. 15 provides that the lights it prescribes, “and no others”, shall be carried within the territorial waters of Guyana. The lights prescribed are the pre-1889 arrangement: a masthead light over twenty points, side lights over ten points with inboard screens, an anchor light in a globular lantern of not less than eight inches.

The International Regulations for Preventing Collisions at Sea, 1972 (COLREG 1972), prescribe a different and more extensive set of lights and shapes, with defined ranges of visibility, defined vertical separations, and additional lights for vessels towing, restricted in their ability to manoeuvre, constrained by draught, engaged in fishing, and so on. **COLREG applies to all vessels upon the high seas and in all waters connected therewith navigable by seagoing vessels,** and Article 1(b) permits a State to make special rules for

roadsteads, harbours, rivers, lakes and inland waterways only where such rules **conform as closely as possible** to the international Rules.

A regulation providing that a defined set of nineteenth-century lights “and no others” shall be carried within the territorial waters of Guyana does not conform as closely as possible to COLREG. By **Cap. 49:01 s. 455**, an international instrument applying to Guyana prevails over a conflicting provision of that Act — but **s. 455 governs conflicts with the Act, not with subsidiary legislation made under a different Act.** The relationship between COLREG and Coasting and Passenger Trade Regulations reg. 15 is, on the face of the statute book, unresolved.

Compare River Navigation Regulations reg. 53, made under Cap. 50:01, which simply provides that every vessel or boat **must comply with “The Rule of the Road at Sea”** — a dynamic reference which picks up COLREG automatically. **The 1918 river regulation is drafted correctly and the 1896 coastal regulation is not.**

6.7 THE CONCLUSION OF THIS CHAPTER

Guyana had, on 18 July 2026, **two statutory casualty-investigation regimes**:

- **Cap. 49:07 Part I (1883)** — a court of a magistrate and two assessors, with full powers of compulsion, a duty to inquire fully, faithfully and impartially, a duty to record dissent, publication of the appointment in the Gazette, a full report with the evidence to the Minister, and a copy to the Board of Trade of the United Kingdom. **Expressly disappplied to any ship belonging to or in the service of the State.**
- **Cap. 49:01 Part XVIII (1998)** — a discretionary preliminary inquiry and a discretionary formal investigation, before a Board whose assessors are appointed by the Director and whose report goes to the Director, with dispositive power limited to cancelling or suspending an individual’s certificate. **Structurally incapable of examining the conduct of the operator or the regulator where the Director is the statutory owner.**

Neither implements the IMO Casualty Investigation Code. Neither provides for an independent investigating body, for the separation of safety investigation from blame attribution, for the protection of witness evidence, for mandatory investigation of a very serious marine casualty, for publication, or for submission of the report to the IMO.

And neither was used. The Commission of Inquiry sits under the Commissions of Inquiry Act.

That is how the maritime laws and statutes of Guyana failed the people of Guyana on this point: the country’s worst maritime disaster produced no marine safety investigation, because the country has never enacted the power to hold one.

CHAPTER 7 — CAP. 49:04, THE TRANSPORT AND HARBOURS ACT, DISSECTED

7.0 NOTE ON NUMBERING

This chapter uses the section numbering of the authorised L.R.O. 1/2012 consolidation, which the author has verified directly against the Arrangement of Sections and against the body text of that consolidation.

The author’s earlier analysis of this Act was mis-numbered throughout, and the correction is recorded here in full so that anyone working from the earlier document is not misled:

Provision	L.R.O. 1/2012 (correct — used here)	Number used in the author’s earlier analysis, and in some third-party databases including FAOLEX
Compulsory pilotage and pilotage districts	s. 34	s. 32
Government and Department not liable for default of General Manager	s. 47	s. 46
Regulations	s. 49	s. 48
Exemption from personal responsibility	s. 53	s. 52
Savings	s. 54	s. 53 (“Repeal”)

Two numbering schemes are in circulation. Older editions and some databases render the tail of the Act as “52. Exemption from personal responsibility / 53. Repeal”; the authorised L.R.O. 1/2012 text renders it as “**53. Exemption from personal responsibility / 54. Savings**”. A reader checking a citation in this chapter against a different edition should expect a one-section displacement from s. 46 onwards.

7.1 WHAT THIS ACT IS, AND WHAT IT IS NOT

Act 30 of 1931, in force 5 January 1932. Amended by Acts 1/1932, 25/1932, 38/1933, 19/1935, 22/1936, 16/1941, 37/1944, 26/1946, 39/1947, 24/1951, 27/1953, 17/1962, 27/1965, 16/1970, 4/1972, 25/1977, 7/1998, and House of Assembly Resolution 6 of 1982. **Repealed the Harbour and Pilotage Ordinance, Cap. 119 of the 1929 Edition, and the Railways Purchase Ordinance.**

Long title: *An Act to establish a Transport and Harbours Department for the purpose of managing and carrying on the railway and Government vessels and of controlling and regulating the use of the harbours of Guyana.*

Read the long title carefully. It states three purposes: to establish a Department; to manage and carry on the railway and Government vessels; and to control and regulate the use of the harbours. Safety of life is not among them.

This is the constitutive Act of the **operator** of the MV *Barima*. It is an administrative and revenue statute of the colonial period, built around a railway. **Guyana no longer has a public railway.** The Act that governs the body operating the country's lifeline passenger ferries is, in its own terms and structure, a railway statute with vessels attached.

7.2 PART I — ADMINISTRATION (ss. 3–12)

s. 3(1) — establishment of the **Transport and Harbours Department**. **s. 3(2)** — power to establish road transport services.

s. 4 — appointment, powers and duties of the **General Manager**, supplemented by the **First Schedule** (additional powers, duties and functions), which confers power to appoint and dismiss non-pensionable employees, to grant leave, to make advances, **and “any other power, function and duty which may from time to time be assigned by the Minister to the General Manager by notice published in the Gazette.”**

ss. 5–6 — establishment, powers, appointment and constitution of the **Advisory Council**.

s. 7 — estimates to be approved by the Minister; the General Manager authorised to appropriate revenues.

s. 8 — interest and sinking fund charges provided in the annual estimates and paid to the Accountant General.

s. 9 — **net deficiency to be provided by Parliament.**

ss. 10–12 — pensions; **Second Schedule** listing officers eligible.

7.2.1 Deficiency 50 — no safety function is conferred on the Department or on any of its officers

Nothing in Part I confers a safety function. The General Manager's powers are managerial, financial and disciplinary. The Advisory Council's remit is not a safety remit. There is **no marine superintendent, no safety officer, no designated person, no safety management responsibility, no reporting line for safety concerns, and no obligation to maintain vessels in a seaworthy condition** anywhere in the Act.

7.2.2 s. 9 and the “non-commercial purposes” question

s. 9 provides that the net deficiency of the Department is to be provided by Parliament. The Department is therefore designed to operate at a loss met from public funds. **This is the strongest textual support available for the proposition that the ferry service is operated for non-commercial purposes within Cap. 49:01 s. 3(1)(a)** — which, if correct, means that **nothing in the Guyana Shipping Act applied to the MV**

Barima unless a s. 3(3) Gazette notification had been made. The competing considerations are set out at Chapter 5.1.2 and are not repeated. **The point to record here is that the answer to the most fundamental question in this document — whether the principal maritime safety statute applied to this vessel at all — depends on reading a 1998 Act against a 1931 Act, and neither of them says.**

7.3 PART II — THE RAILWAY AND GOVERNMENT VESSELS (ss. 13–23)

7.3.1 s. 13 and s. 14 — the management power

s. 13 — the rights and powers of the former Company vested in the Minister.

s. 14(1) — the General Manager shall manage the railway, and shall possess all the rights and privileges for carrying on the railway vested in the Minister.

s. 14(2) — *“The General Manager shall manage the Government vessels and shall have all rights and privileges and shall have power to do all acts and things as may be necessary to carry on such services of Government vessels as may be established from time to time.”*

7.3.2 Deficiency 51 — s. 14(2) is an unconditioned management power

This is the entire statutory basis on which the Government vessels of Guyana are operated. It is one sentence. It confers power in the widest terms — all rights and privileges, and power to do all acts and things necessary to carry on such services as may be established from time to time.

It attaches no condition. There is no requirement that the vessels be seaworthy, that they be surveyed, that they be manned by qualified persons, that they be operated in accordance with the Guyana Shipping Act, that they be loaded within any limit, that any record be kept of who is carried, or that any safety standard whatever be observed. **It is a commercial and administrative power granted without a safety condition.**

The comparison that makes the point. Cap. 50:01 s. 14, inserted by the same Act 7 of 1998 that amended this Act, provides that **it shall be the duty of the Director and the Maritime Administration Department to enforce** the River Navigation Act. **Parliament in 1998 wrote a mandatory enforcement duty into an 1891 river statute and wrote no safety condition into the management power over the State’s sea-going passenger fleet.**

A single subsection would repair it: *“In managing the Government vessels the General Manager shall ensure that each vessel is at all times operated in compliance with the Guyana Shipping Act and any regulations made thereunder, and shall not permit any vessel to proceed to sea otherwise than in a seaworthy condition.”*

7.3.3 ss. 15–17 — carriage of goods, and who decides what is dangerous

s. 15 — conditions of carriage of merchandise; the Minister may make, alter and amend the tariff of tolls and the terms and conditions.

s. 16 — carrier's risk conditions, published as prescribed.

s. 17 (Dangerous goods) — - **(1)** nothing in Part II imposes any obligation on the Department to accept dangerous goods for conveyance, or prejudices the powers of the Minister or any Government Department under the **Explosives Act, Cap. 16:06**, or affects any order in council, order, rule or regulation made under it. - **(2)** if accepted, dangerous goods are carried subject to such by-laws, regulations and conditions as the Department, with the Minister's approval, thinks fit, with an **indemnity from the owner or consignor**. - **(3)** *"Any question as to whether goods are dangerous goods shall be determined by the Department."*

7.3.4 Deficiency 52 — s. 17(3) makes the carrier the judge of its own cargo classification

The determination whether goods presented for carriage are dangerous goods is made by the Department itself.

Three observations.

First, there is no external standard. The subsection does not require the Department to apply the **International Maritime Dangerous Goods (IMDG) Code**, which is mandatory under **SOLAS Chapter VII, Part A**, and which classifies dangerous goods into nine classes with defined packing, marking, labelling, placarding, documentation, segregation and stowage requirements. It does not require the Department to apply any code at all.

Second, there is no external check. The determination is final on the face of the subsection. There is no appeal, no review, no requirement of reasons, no requirement that a marine officer or surveyor concur, and no requirement that the determination be recorded.

Third, the Department has a commercial interest in the answer. A finding that goods are dangerous engages s. 17(1) and (2) — the Department need not carry them, and if it does it must impose conditions and take an indemnity. **The body deciding whether goods are dangerous is the body that will have to refuse the freight or accept the risk if they are.**

Relevance to this casualty. Survivor accounts in the public record allege that the cargo included **engines, vehicles, fuel containers and commercial goods**. Fuel in containers is, depending on flashpoint, quantity and packaging, capable of falling within IMDG Class 3. **This document asserts nothing about what was in fact carried or how it was classified.** It records that the statutory question — were these dangerous goods? — was, as a matter of law, for the carrier alone to answer, by reference to no published standard, with no record required and no review available.

7.3.5 s. 18 — the only passenger provision in the Act, and it is a price

s. 18(1) — the Minister may from time to time make, alter and amend **the tariff of tolls that may be lawfully demanded for the carriage of passengers** on the railway or Government vessels or both. **s. 18(2)** — any tariff so made shall be published in the same manner as prescribed by s. 16.

s. 19 — the General Manager, with the Minister’s approval, may contract for the carriage of passengers or merchandise at a rate less than the tariff.

7.3.6 Deficiency 53 — Cap. 49:04 contains no passenger safety provision of any kind

The section of the Transport and Harbours Act headed “Tariff for carriage of passengers” is the only section of that Act dealing with passengers, and it fixes what may be charged.

The Act that constitutes and empowers the operator of Guyana’s State ferry fleet contains:

- **no maximum number of passengers;**
- **no requirement to count passengers;**
- **no requirement to record who they are;**
- **no requirement to keep a record ashore;**
- **no ticketing or boarding control requirement;**
- **no requirement of a passenger safety briefing;**
- **no life-saving equipment requirement;**
- **no requirement that vessels be surveyed;**
- **no requirement that vessels be seaworthy;**
- **no requirement that masters or crew be qualified** — save in the **Home Trade Ships (Masters, Mates and Engineers Certificates) Regulations** made under the Act, which are examined at 7.6;
- **no loading or stowage requirement;**
- **no requirement that any of the foregoing be delegated to anyone who does have such requirements.**

Fares for the sailing of 18 July 2026 were \$3,000 for an adult to Port Kaituma, \$1,500 for a child, free for infants and pensioners; \$2,000 and \$1,000 for Kumaka. Those figures are the product of the one passenger provision in the operator’s constitutive statute.

7.3.7 ss. 20–22

s. 20 — cessation of the obligation on the former Company to construct fences or gates on the railway. **s. 21** [6 of 1997] — trespass on the railway; fine **\$4,875**. **s. 22(1)** — any action or suit which might be brought by or against a company, firm or person carrying on the business of a carrier in Guyana **may be brought by or against the Department. (2)** it is sufficient to describe it as the **Transport and Harbours Department**.

Observation on s. 22. The Department is suable in its own name, on the footing of a carrier. **The subsection presupposes that the Department carries on the business of a carrier** — which is material to the “non-commercial purposes” question at 7.2.2 and at Chapter 5.1.2. **It is also, for a bereaved family, the provision that identifies the correct defendant.**

7.4 SECTION 23 — NOTICE OF ACTION AND LIMITATION

This is the single most urgent provision in this entire document for the people most affected by this casualty, and it is set out in full.

s. 23(1) — No action or suit shall be commenced against the Department for anything done in pursuance or execution or intended execution of **this Part until the expiration of one month after notice in writing has been served on the Department** stating (i) **the cause of the action or suit**, (ii) **the name and address of the person bringing it**, and (iii) **the name and address of his legal practitioner.**

s. 23(2) — Every such action or suit shall be commenced within six months after the thing done or omitted, and not otherwise.

7.4.1 What this means in practice

A person wishing to sue the Transport and Harbours Department in respect of the loss must, in this order:

1. **Instruct a legal practitioner** — because s. 23(1) requires the notice to state the practitioner's name and address, a person cannot validly serve the notice without having instructed one;
2. **Serve a written notice** on the Department, stating the cause of action, the claimant's name and address, and the practitioner's name and address;
3. **Wait one month** from service;
4. **Commence proceedings within six months of the thing done or omitted.**

The casualty occurred on 18 July 2026. Six months from that date expires on or about 18 January 2027. Because one month's notice must be given and must expire before proceedings may be commenced, **the practical deadline for serving the s. 23(1) notice is on or about 18 December 2026**, and it is prudent to treat it as very much earlier than that.

7.4.2 Deficiency 54 — s. 23 is a trap, and it is a trap for exactly the people least able to avoid it

Six features make this provision dangerous in the circumstances of a mass-casualty disaster.

1. **The period runs from the act or omission, not from knowledge, not from death, and not from the grant of representation.** A family that does not yet know what happened, and cannot know until the Commission reports, is nevertheless on the clock from 18 July 2026.
2. **The Commission of Inquiry will very probably not have reported within six months.** A family that waits for the Commission — which is the natural and reasonable thing to do — may find the period has expired.

3. **The claimants are, disproportionately, residents of Region One**, which has **no road to Georgetown**. Access to legal advice is materially harder for them than for a resident of the capital, and the ferry that connected them to it is on the bottom.
4. **The notice must name a legal practitioner**, so the family must have found and instructed one before the clock can even be stopped.
5. **Some of the deceased have not been identified**. As at 27 July 2026 the Ministry of Health recorded **five recovered victims unidentified** at Suddie Mortuary, and at least thirty persons remained unaccounted for. **A family without a death certificate, without a body, and without a grant of representation faces obvious practical difficulty in commencing proceedings, and s. 23(2) makes no allowance for it.**
6. **Ex gratia assistance is not compensation and does not stop the clock**. The President has been emphatic that the assistance being arranged is **not compensation**. Unless a Guyanese practitioner advises otherwise in a particular case, **receiving assistance neither establishes nor preserves a legal claim, and the s. 23(2) period continues to run.**

Nothing in this document is legal advice, and the application of s. 23 to any particular claim — including whether the claim arises under Part II at all, how s. 23 interacts with Cap. 49:01 s. 421 and Part XVI, and whether any extension is available — is a question for a legal practitioner admitted in Guyana. It is set out at this length because it is not obvious, because it is not being publicised, and because a family that misses it loses everything without ever being told there was a deadline.

Recommendation, recorded here and repeated in Chapter 13: the Commission should consider recommending, as an **interim measure not requiring its final report**, either (a) a formal undertaking by the State not to rely on s. 23 in respect of claims arising from this casualty, or (b) emergency legislation suspending or extending the s. 23 periods for such claims until a defined period after the Commission reports. **Both are simple, both are preceded in other jurisdictions after mass-casualty events, and neither prejudices any question the Commission has to decide.**

7.5 PART III — HARBOURS AND PILOTAGE (ss. 24–48)

7.5.1 Revenue (ss. 24–31)

s. 24(1) — the revenue of the Department, including **(d)** moneys under the **River Navigation Act, Cap. 50:01**, and **(e)** “*all fees payable, under the Shipping Casualties (Investigation and Prevention) Act, c. 49:07, to inspectors of shipping and surveyors of ships*”.

s. 24(2) — the National Assembly may increase dues by resolution. **s. 25** — tonnage dues. **s. 26** — default. **ss. 27–28** — **repealed by Act 25 of 1977**. **s. 29** — light dues. **s. 30** — shipping fees. **s. 31** — collection and expenditure.

s. 50(2) provides that amounts due for revenue under s. 24, or for pilotage dues under ss. 38 or 41, may be recovered **by process of parate execution** — a summary form of execution without prior judgment.

7.5.2 Deficiency 55 — the operator collects the fees of the officers who inspect it

s. 24(1)(e) directs the fees payable to inspectors of shipping and surveyors of ships under Cap. 49:07 into the revenue of the Transport and Harbours Department.

Cap. 49:07 s. 19 provides that an inspector shall receive, in connection with the performance of his duties, **the fees prescribed by the regulations**. The Fourth Schedule to the Coasting and Passenger Trade Regulations sets those fees — including, for a vessel of more than 120 feet by deck measurement, **\$20.00 for ascertaining the number of passengers a steam vessel may carry**, and **\$10.00 for the annual inspection and survey of a vessel of less than 150 tons about to carry passengers out of Guyana**.

The structural point stands independently of the trivial amounts. The Act constituting the **operator** of the State ferry fleet directs into that operator's revenue the fees of the **inspectors and surveyors** whose function under the 1883 Act includes boarding those very vessels, requiring the removal of cargo where they consider them overloaded, and detaining them where they consider them unfit to proceed to sea. **Whatever the practice, that is not a structure any maritime administration should have on its statute book.**

It also confirms, for a second time and from a second direction, that Cap. 49:07 is live. A revenue provision cannot direct fees payable under a repealed Act.

7.5.3 The Harbour Master (ss. 32–33) and pilotage (ss. 34–41)

s. 32 — appointment of the **harbour master** and deputy harbour master. **s. 33** — powers and duties of the harbour master. **s. 34** — **compulsory pilotage and pilotage districts**. (*s. 32 in the older numbering*.) **s. 34A** — **Pilotage Exemption Certificate**. **s. 35** — the pilotage service. **s. 36** — circumstances in which a pilot may leave the service. **s. 37** — **liability of owner or master in the case of a vessel under pilotage**. **ss. 38–41** — recovery of pilotage dues; employment of an unqualified pilot; taking a pilot beyond his district without his consent.

Fourth Schedule — non-compulsory pilotage.

Observation. The harbour master's jurisdiction is the harbour. **The Georgetown harbour limits are defined in s. 2 by reference to an arc of one nautical mile radius centred on the Georgetown Lighthouse and a line drawn across the river.** Whatever the harbour master's powers, they are exhausted long before a vessel bound for Port Kaituma reaches the open Atlantic off the Essequibo.

7.5.4 Protection of harbours (ss. 42–46)

s. 42 — illegal removal of soil. **s. 43** — drainage into the harbour. **s. 44** — use of fishing apparatus at or near a wharf. **s. 45** — contravention of provisions of the Act or regulations.

s. 46 — fraudulent alteration of marks on the stem and stern of a vessel denoting the draught of water: fine \$48,750.

Observation on s. 46. This is a load-line integrity offence in all but name, and its penalty — **\$48,750** — is nearly twice the maximum fine available under Cap. 49:01 s. 444(1) for **sending a ship to sea in a state likely to endanger life. The pattern identified at Chapter 5.8.2 recurs across the statute book: offences against measurement and revenue are punished more heavily than offences against life.**

7.5.5 s. 47 — the immunity, correctly read

s. 47 — *“Neither the Government nor the Department shall be liable **under this Part** for any damage occasioned through the fault or negligence of the General Manager or any person employed in the pilotage service.”*

The author’s earlier analysis treated this provision more broadly than its terms permit, and the correction is important because overstating it would mislead a family about their prospects.

Two limitations appear on the face of the section.

1. **“under this Part”** — the immunity is confined to **Part III**, Harbours and Pilotage. **The carriage of passengers on Government vessels is governed by Part II.** On its face, s. 47 does not confer immunity in respect of anything done under Part II.
2. **“the General Manager or any person employed in the pilotage service”** — the immunity names two categories. It does not on its face extend to the master, the mate, the crew, a loading superintendent, or other employees of the Department outside the pilotage service.

Deficiency 56 — the immunity is nonetheless objectionable in principle and should be repealed or narrowed. Even confined to Part III, s. 47 provides that neither the State nor the Department is liable for damage occasioned through the **fault or negligence** of the General Manager. A general immunity for the negligence of the chief executive of a public transport undertaking is not consistent with modern principles of state liability, and it should be tested against **Article 40** (fundamental rights) and **Article 149** (protection from discrimination) of the Constitution and against the **State Liability and Proceedings Act**. **That testing is a matter for Guyanese constitutional lawyers and this author expresses no opinion on the outcome.**

7.5.6 s. 48 — claims for injuries to a vessel

All claims for injuries to a vessel founded on the negligence or misconduct of the master of another vessel, **provided they do not exceed one hundred dollars**, are triable in the magisterial district where the cause of action arose or in the Georgetown magisterial district; and the magistrate may, in the event of conflicting technical testimony, associate with himself **the harbour master or, failing him, a duly certificated master under the Guyana Shipping Act.**

Observation. The monetary limit of **one hundred dollars** has not been revised. The provision is of no practical application today. **It is recorded because the mechanism it contains — a magistrate sitting with a nautical assessor — is precisely the mechanism that a properly constituted marine court requires, and it exists in the statute book, attached to a jurisdiction capped at one hundred dollars.**

7.6 PART IV — GENERAL (ss. 49–54) AND THE SUBSIDIARY LEGISLATION

7.6.1 The sections

s. 49 — Regulations [22/1936, 26/1946, 39/1947, 24/1951, 27/1965, 4/1972, 6/1997]. *(s. 48 in the older numbering.)*

s. 50(1) — the signature of the General Manager to a document stating an amount due to the Department is, without proof of signature or of any other matter, **prima facie evidence in all courts** that the amount claimed is due and correct. **s. 50(2)** — recovery by **parate execution**.

s. 51 — default penalty: where a person contravenes any provision of the Act for the breach of which no penalty is provided, he is liable to a fine of **nine thousand seven hundred and fifty dollars**.

s. 52 — all penalties under the Act are enforceable and recoverable under the **Summary Jurisdiction Acts**.

s. 53 — *“The members of the Advisory Council, the General Manager and all persons employed by the Department shall be exempt from personal responsibility for any act or thing done under the provisions and powers of this Act; and all damages and costs which may be recovered against the Department in any action or suit for acts so done shall be paid out of the revenue of the Department.” (s. 52 in the older numbering.)*

s. 54 — Savings: notwithstanding the repeal of the Railways Purchase Ordinance and the Harbour and Pilotage Ordinance, any order in council, rule, order or regulation made, direction given or thing done under those Ordinances continues in force and, so far as it could have been made under this Act, has effect as if made under it. *(s. 53 in the older numbering.)*

7.6.2 Deficiency 57 — s. 53 read correctly, and why it cuts both ways

The author’s earlier analysis treated s. 53 as a straightforward immunity. It is more complicated than that and the second limb is protective of claimants, not of the State.

- **The first limb** exempts the members of the Advisory Council, the General Manager and **all persons employed by the Department** from **personal responsibility** for any act or thing done under the provisions and powers of the Act. That is a broad personal immunity and it extends to every employee.

- **The second limb** provides that **all damages and costs recovered against the Department** in any action or suit for acts so done **shall be paid out of the revenue of the Department**.

Read together, the section channels liability away from the individual and onto the Department, and then guarantees the source of payment. That is, in structure, a standard indemnity-and-channelling provision, and the second limb is **favourable to a claimant**, because it identifies a fund.

Three cautions, however.

1. **The immunity is confined to acts “done under the provisions and powers of this Act.”** An act done outside those provisions and powers — and the Act confers no power to send an unseaworthy vessel to sea, because it confers no safety powers at all — is not obviously within it.
2. **The interaction with s. 47 is unresolved.** s. 47 says the Department is **not liable** under Part III for the General Manager’s negligence. s. 53 says damages recovered **against the Department** shall be paid out of its revenue. **Where s. 47 bites, there are no damages to pay.**
3. **The immunity does not touch the criminal law.** It exempts from **personal responsibility** in the sense of civil liability for acts done under the Act. It is not a defence to a criminal charge, and it has no bearing on the proceedings commenced on 28 July 2026.

The recommendation is that s. 47 be repealed and s. 53 be retained and modernised, because the channelling structure in s. 53 is sound and the blanket immunity in s. 47 is not.

7.6.3 Deficiency 58 — s. 51, a default penalty of \$9,750

The default penalty under the operator’s constitutive Act is **nine thousand seven hundred and fifty dollars**. Since the Act contains no safety provisions, no safety offence can fall into it. **The figure is recorded to complete the penalty picture across the statute book:**

Act	Default penalty where none is provided
Cap. 49:01 s. 444(1)	\$25,000 and 6 months’ imprisonment; continuing offence \$5,000 per day
Cap. 49:07 s. 25(2)	\$19,500 (breach of regulations)
Cap. 49:04 s. 51	\$9,750
Cap. 50:01, River Navigation Regulations reg. 65(1)	\$75

Four Acts, four default penalties, spanning a range of more than three hundred to one, none of them indexed and none of them revised together.

7.6.4 The five subsidiary instruments

Instrument	Number	Page	Note
Government Railway and Steamer Services Rules	Reg. 23/1/1924	38	Operating rules for the railway and steamer services
Harbours and Pilotage Regulations	—	45	Contains the sunken vessel provisions: notice to the Harbour Master within twelve hours , fine \$300; marking with buoys and lights; power to raise or remove; cross-refers Cap. 49:08
Harbours Regulations	—	76	Includes licensing of masters of vessels in a harbour — the qualification required by River Navigation Regulations reg. 27 on the Barima below Mount Everard, Kaituma Creek below Port Kaituma and Aruka Creek below Kumaka
Home Trade Ships (Masters, Mates and Engineers Certificates) Regulations	—	96	The certification régime for masters, mates and engineers of home trade ships
T&HD (Superannuation and Other Benefits) Regulations	—	119	Pensions

7.6.5 The Home Trade Ships Regulations — a Priority One item

These Regulations, made under the Transport and Harbours Act, provide for the certification of masters, mates and engineers of home trade ships. They are of direct relevance because:

- the qualification of the master and the chief mate of the MV *Barima* is expressly within the Commission's terms of reference;
- **Cap. 49:01 s. 105** empowers the Minister to make regulations on safe manning and qualifications, and, subject to verification, no such regulations appear in the authorised consolidation;
- **Cap. 49:01 s. 429(3)** permits a Board of formal investigation to cancel or suspend only a **certificate issued under regulations made under s. 105** — so **if the master's certificate was issued under the Home Trade Ships Regulations made under Cap. 49:04, rather than under s. 105 regulations under Cap. 49:01, a Board under Part XVIII may have no power to cancel or suspend it at all;**
- and **Cap. 49:07 s. 5(3)** by contrast permits a court of inquiry under the 1883 Act to suspend or cancel the certificate "whether of competency or service, of any master, mate, or engineer" without limiting the instrument under which it was issued.

The full text of the Home Trade Ships (Masters, Mates and Engineers Certificates) Regulations, and the identification of the instrument under which the certificates of the master and chief mate of the MV *Barima* were issued, are Priority One verification items. The point is not hypothetical: it may determine whether the disciplinary machinery of the modern Act reaches the officers of the State ferry fleet at all.

7.6.6 The twelve-hour sunken vessel duty

The **Harbour and Pilotage Regulations** provide that where a vessel sinks or runs ashore in a pilotage district, **the owner, hirer, master or consignee shall within twelve hours give notice to the Harbour Master**, on pain of a fine of **three hundred dollars**; that where the vessel is in the Harbour Master's opinion a danger to navigation he **shall** cause it or its position to be adequately marked with buoys and lights until it is raised, removed or destroyed; and that he **may** raise or remove it together with its tackle, apparel, furniture and the goods on board.

Three observations.

1. **Twelve hours is the shortest casualty notification period in the entire Guyanese maritime statute book** — shorter than the 24 hours in Cap. 49:01 s. 237, shorter than the three-day written report in the Small Commercial Ship Safety Regulations, and definite where River Navigation Regulations reg. 49 says only “as short a period as possible”.
2. **It applies only in a pilotage district.** The MV *Barima* lies approximately nine miles off the Essequibo coast, which is not a pilotage district.
3. **The marking duty is mandatory and the removal power is discretionary.** Where the wreck lies outside a pilotage district, neither applies. **There is therefore no statutory duty on anyone to mark the position of the MV *Barima* as a danger to navigation, and no statutory power in the Harbour Master to remove her.** Whether any other power exists — under Cap. 49:08, under the Receiver of Wreck provisions of Cap. 49:01, or otherwise — is a verification item, and it bears directly on the unresolved question, recorded at Chapter 3.4 Conflict 8, whether the vessel will be raised.

7.7 SUMMARY OF CHAPTER 7

The Transport and Harbours Act, Cap. 49:04, is the constitutive statute of the operator of the vessel in which seventy-three people died. It contains:

- **one passenger provision, which is a tariff (s. 18);**
- **an unconditioned power to manage Government vessels (s. 14(2));**
- **a provision making the carrier the sole judge of whether goods presented to it are dangerous goods (s. 17(3));**
- **a provision directing the fees of the inspectors and surveyors who may detain its vessels into its own revenue (s. 24(1)(e));**

- an immunity for the Government and the Department in respect of the fault or negligence of the General Manager, confined to Part III (s. 47);
- a personal immunity for all its employees for acts done under the Act, coupled with a guarantee that damages recovered against the Department are paid from its revenue (s. 53);
- a default penalty of \$9,750 (s. 51);
- and a notice-and-limitation provision which requires one month's written notice naming a legal practitioner and bars any action commenced more than six months after the act or omission (s. 23).

It contains no safety provision whatever.

CHAPTER 8 — THE INSTITUTIONAL ARCHITECTURE, AND WHERE ACCOUNTABILITY ACTUALLY LANDS

8.1 THE BODIES

Body	Constituted by	Function	Ministry
Maritime Administration Department (MARAD)	Cap. 49:01 s. 4	Administer the Guyana Shipping Act and any other law relating to maritime affairs including inland waters ; registration and licensing of ships; certification of seafarers; survey and inspection; pilotage; hydrographic survey; accident investigation; search and rescue; pollution prevention; port security; lighthouse and Berbice pilot station	Minister of Public Utilities and Aviation, Deodat Indar (<i>verification item — see 8.2</i>)
Director of Maritime Affairs	Cap. 49:01 s. 4(1)(a)	General supervision over all matters relating to maritime affairs including inland waters; may also be Registrar of Ships and Registrar of Seamen (s. 8); may delegate (s. 4(3)); subject to general policy directions from the Minister (s. 5); statutory “owner” of a registered Guyana Government ship (s. 3(3))	as above
Transport and Harbours Department (T&HD)	Cap. 49:04 s. 3(1)	Manage and carry on the railway and the Government vessels; control and regulate the use of the harbours	Minister of Public Works, Juan Edghill
General Manager, T&HD	Cap. 49:04 s. 4 and First Schedule	Manage the Government vessels with all rights and privileges and power to do all acts and things necessary (s. 14(2)); appoint and dismiss non-pensionable employees; any further power assigned by the Minister by Gazette notice	as above

Body	Constituted by	Function	Ministry
Advisory Council, T&HD	Cap. 49:04 ss. 5–6	Advisory; no safety remit	as above
Harbour Master	Cap. 49:04 s. 32	Powers and duties under s. 33 within harbour limits; marking and removal of sunken vessels in a pilotage district under the Harbour and Pilotage Regulations	as above
Inspector of Shipping	Cap. 49:07 s. 18	Board and inspect coasting vessels; demand certificates; require removal of cargo and detain where overloaded; detain where unfit to proceed (s. 20). Fees payable to him form part of T&HD revenue (Cap. 49:04 s. 24(1)(e))	—
Officer in charge of navigation of a river	Cap. 50:01 s. 3	Inspection, certification, waterline branding, detention; but by s. 14 the duty to enforce rests on the Director and MARAD	—
Maritime Rescue Coordination Centre (MRCC)	No statute	Coordination of search and rescue	—
Georgetown Lighthouse	Referred to in Cap. 49:04 s. 2 (harbour limits) and s. 29 (light dues)	Received the distress alert at 23:01 and passed it to the MRCC at 23:03	T&HD / MARAD
Guyana Defence Force Coast Guard	Guyana Defence Force legislation	Search and rescue asset. Expressly excluded from Cap. 49:01 by s. 3(1)(b)	Defence
Air Traffic Control Centre, Timehri	Civil aviation legislation	Received the distress signal at 22:43	Aviation
National Search and Rescue Committee	No statute identified	Assembled by the MRCC at 23:25	—
Commission of Inquiry	Commissions of Inquiry Act	Established 25–26 July 2026	Office of the President

8.2 THE TWO MINISTRIES — CORRECTING THE AUTHOR’S EARLIER ANALYSIS

The author’s earlier draft asserted a single-ministry fusion of operator and regulator. That framing is wrong and is corrected here.

On the current allocation, **MARAD** — the regulator — falls under the **Minister of Public Utilities and Aviation, Deodat Indar**, and the **Transport and Harbours Department** — the operator — falls under the **Minister of Public Works, Juan Edghill**. Opposition lawmakers have called for the resignation of both, which is consistent with the two-Ministry structure.

The allocation appears to have moved. MARAD’s own historic web presence, and the Ministry of Public Works website, list MARAD under the **Ministry of Public Works**. **The current allocation must be verified from the current Gazette assignment of ministerial responsibilities, and the date of any transfer established.** This is a verification item because it determines which Minister held which power at which time, and the powers in question — s. 3(2), s. 251, s. 398, s. 427, s. 453, s. 455 — are all Ministerial.

Correcting the framing does not weaken the finding. It sharpens it. The defect is not that one Minister holds both hats. It is that:

1. **the statute itself collapses owner and regulator into one office** — Cap. 49:01 s. 3(3) makes the **Director** the owner of a registered Government ship, and ss. 237, 238, 290, 292, 337, 338 and 339 then require that owner to report to, notify, and be detained by, himself (Chapter 5.1.4);
2. **the same Director appoints the assessors to a Board of formal investigation and receives its report** — s. 429(1) and (6);
3. **the operator’s constitutive Act directs the fees of the inspectors who may detain its vessels into the operator’s own revenue** — Cap. 49:04 s. 24(1)(e) (Chapter 7.5.2);
4. **and no statute anywhere requires the separation of the survey and certification function from the casualty investigation function, or of either from the ownership function.**

A two-Ministry structure does not cure any of those four defects, because none of them operates at Ministry level. They operate inside the office of the Director and inside the revenue of the Department.

8.3 THE INSTITUTIONAL GAPS

8.3.1 Deficiency 59 — the MRCC has no statutory existence

The **Maritime Rescue Coordination Centre** appears nowhere in Cap. 49:01, Cap. 49:04, Cap. 49:07 or Cap. 50:01. It is not established by statute; its functions are not defined by statute; its search and rescue region is not defined by statute; its relationship to the Guyana

Defence Force Coast Guard, to the Georgetown Lighthouse, to Air Traffic Control and to MARAD is not defined by statute; and no statute imposes on it, or on anyone, a time standard for the receipt, routing or action of a distress alert.

Cap. 49:01 contains fragments — ss. 232, 233, 236 and s. 374(4) — but they are fragments, not a system. They do not amount to a search and rescue framework, and the **International Convention on Maritime Search and Rescue, 1979 (SAR Convention)**, which requires Parties to establish search and rescue services, to define search and rescue regions, to establish rescue coordination centres, and to co-ordinate with neighbouring States, is nowhere transposed.

The chronology of 18–19 July 2026 shows the practical shape of the gap. The distress signal was received at **22:43 by the Air Traffic Control Centre at Timehri** — an aviation authority. At **23:01** ATC informed the **Georgetown Lighthouse**. At **23:03** the Lighthouse alerted the **MRCC**. **Twenty minutes elapsed between the receipt of a maritime distress alert by an organ of the State and its arrival at the maritime rescue authority, and it travelled through two intermediaries to get there.** The Coast Guard deployed at 23:11 and reached the Iron Punt area at approximately 02:30 — approximately **three hours and forty-seven minutes** after 22:43.

This document draws no conclusion about the operational adequacy of that response, which is expressly within the Commission’s terms of reference and which requires evidence the author does not have. It records that **no provision of Guyanese law allocated responsibility for the receipt and routing of that alert, and no provision prescribed any time within which it had to move.**

8.3.2 Deficiency 60 — the Coast Guard is statutorily excluded from the shipping law

Cap. 49:01 s. 3(1)(b) provides that nothing in the Act applies to ships or aircraft of the Guyana Defence Force. The Coast Guard is the principal maritime search and rescue asset of the State and is outside the Act entirely. **There is therefore no statutory mechanism connecting the maritime safety regulator to the maritime rescue capability**, and no statutory basis on which MARAD could require, audit or even be informed of the Coast Guard’s readiness.

The state of that readiness on the night is on the public record: two of the Guyana Defence Force’s three Bell helicopters were unserviceable awaiting a part, and the response was hampered by darkness and a lack of vessels with scanners. Oil and gas sector vessels with scanning capability were deployed later; international assistance came from a fifteen-member French Armed Forces team from French Guiana under **Lieutenant Commander Alexis Touboul**, from the **Trinidad and Tobago Coast Guard**, and from the **Brazilian Navy** including a frigate.

8.3.3 Deficiency 61 — no marine safety investigation body exists, and no standing body monitors recommendations

Set out at length in Chapters 5.12 and 6.7 and not repeated. **The institutional consequence recorded here is that a Commission of Inquiry ceases to exist when it**

reports. There is no body charged with monitoring whether its recommendations are implemented, no body to which the next casualty can be referred, and no accumulation of institutional expertise. **Every Guyanese maritime disaster starts from zero.**

The historical record in the authorised text of Cap. 49:07 makes the point precisely. Rules were made under s. 9(1) for **three** casualties: **R. 6/1961** (collision of the *Van S* and the *Lowood II*), **R. 8/1961** (sinking of the m.v. *Batchelder*), and **R. 3/1969** (loss of the m.v. *Powis*). **A separate instrument for each. No standing rules. No standing body. No published body of accumulated findings.**

8.3.4 Deficiency 62 — the Superintendent of Loading exists in fact and not in law

The **Superintendent of Loading**, also referred to as the **Goods Superintendent**, is an office of the Transport and Harbours Department. **It is not created by, named in, or given any duty by Cap. 49:01, Cap. 49:04, Cap. 49:07 or Cap. 50:01.**

Its responsibilities appear only in the public statements of the Minister of Public Works — that the **Superintendent of Loading is responsible for inspection and loading**, while ultimately **the captain and mate decide what goes aboard** — and in the charge laid on 28 July 2026 against Mr Delon Granderson, described as the Goods or Loading Superintendent.

This is a serious structural point and it should be stated carefully, because it concerns an accused person who is presumed innocent.

The nearest thing in the statute book to a duty attaching to such an officer is **Cap. 49:01 s. 338** and its identical twin **Cap. 49:07 s. 27**, which imply into every contract of service between an owner and a master or seaman an obligation that the owner, the master **and every agent charged with the loading of the ship, or the preparing of her for sea, or the sending of her to sea**, shall use all reasonable means to ensure her seaworthiness at the commencement of the voyage. **That is an implied term of a contract of service, enforceable by a master or seaman. It is not a statutory duty enforceable by the State, and it carries no penalty.**

So Guyanese maritime law creates no office of loading superintendent, imposes no statutory duty on the person who performs that function, prescribes no qualification for him, prescribes no standard by which he is to load, requires no record of what he has loaded or where, and provides no offence he can commit. The person occupying that position is nonetheless, on the Minister's account, responsible for inspection and loading of a State passenger ferry.

A person cannot be regulated by an office that does not exist in law. Chapter 12 sets out drafting instructions creating a statutory **Loading Officer** with a defined duty, a defined qualification, a defined record-keeping obligation, and a defined offence.

8.3.5 Deficiency 63 — no designated person ashore, no safety management, no company

The **ISM Code** requires the identification of a **Company** responsible for the operation of the ship, and the designation of a **Designated Person Ashore** with direct access to the

highest level of management, whose function is to monitor safety and to ensure that adequate resources and shore-based support are applied.

There is no Company for the Government vessels of Guyana in the ISM sense, because the Transport and Harbours Department is a Department constituted by an Act with no safety function. **There is no Designated Person Ashore**. There is no safety management system, no documented procedures, no non-conformity reporting, no internal audit and no management review, because the only instrument in Guyanese law referencing the ISM Code is the Small Commercial Ship Safety Regulations, which apply below 24 metres.

The consequence is that the safety of the State ferry fleet has no shore-side owner. It is the master's problem, and when it goes wrong it is the master's fault.

8.4 WHAT THE REGULATOR ITSELF SAID, SEVEN YEARS BEFORE THE CASUALTY

This is the most significant single item of institutional evidence in this document, because it is an admission by the regulator, on the public record, made long before this casualty and therefore uncontaminated by it.

On **27 March 2019**, at a conference in Georgetown hosted by the law firm Hughes, Fields and Stoby, the **Director General of MARAD, Claudette Rogers**, made the following statements as reported by *Guyana Standard*:

On the legislative review. MARAD had **completed a legislative review** in anticipation of its increased mandate for the petroleum sector. **Professor Duke Pollard, a retired Judge of the Caribbean Court of Justice, had been retained as consultant to undertake the task of updating Guyana's maritime legislation.** The Director General said the assignment had been completed with the requisite recommendations, which would pave the way for a more robust system of maritime administration in Guyana **and the consequential reduction and elimination of potential conflicts among agencies with respect to where responsibilities reside relative to the administration of certain key maritime functions.**

On ratification versus implementation. *"It should be noted that although Guyana has ratified the main International Maritime Conventions, the requisite regulations need to be enacted or put in place because the country follows the common law system."*

On the IMO Member State Audit. The **IMO Member State Audit was completed in 2018**. The Director General said that, contrary to public pronouncement that Guyana had received a bad report, the Maritime Administration's performance was commendable, and that preparation for the audit had involved **flag, port and coastal State administration.**

On what the audit required. *"As a direct result of the IMO Audit... several measures were necessary,"* and one of these was **the enacting of regulations to give full and complete effect to the conventions which Guyana has ratified.**

On STCW. *“For example, one of the observed limitations of MARAD was the fact that Guyana had not ratified the Standards of Training, Certification, and Watchkeeping (STCW) 95 Conventions and our local Maritime surveyors were issuing certificates based on this regime which was a significant breach of International Maritime laws.”*

8.4.1 What this establishes

Six propositions, each of which the Commission can take as a starting point rather than having to prove.

1. **The gap between ratification and implementation was known, identified and publicly acknowledged by the head of the regulator in March 2019** — seven years and four months before the loss of the *MV Barima*.
2. **It was not merely known internally. It had been found by the IMO Member State Audit Scheme**, which is the external audit mechanism made mandatory for all IMO Member States from **1 January 2016** by amendments to SOLAS, STCW and the STCW Code, the 1988 Load Lines Protocol, MARPOL Annexes, the Tonnage Convention 1969 and COLREG 1972, under which each Member State is subject to periodic audit against the **IMO Instruments Implementation Code (III Code)**.
3. **The remedy was identified:** the enactment of regulations to give full and complete effect to the conventions Guyana had ratified.
4. **The work of identifying what those regulations should say was done and paid for.** A retired Judge of the Caribbean Court of Justice completed a full legislative review with recommendations.
5. **One of the audit’s specific findings concerned certification** — that Guyanese maritime surveyors were issuing certificates on the basis of a convention régime the country had not ratified, described by the Director General herself as **a significant breach of international maritime law**.
6. **The purpose of the Pollard review expressly included the elimination of conflicts among agencies as to where responsibility for key maritime functions resides.** That is the precise defect this document identifies at Chapters 4.3, 5.1.4 and 8.2.

8.4.2 Deficiency 64 — the recommendations were not enacted

As at 29 July 2026, the position established in Chapters 4, 5, 6 and 7 of this document is as follows:

- Part XV of Cap. 49:01 is still two sections;
- **no regulations under s. 398 appear in the authorised consolidation;**
- **no regulations under s. 290 prescribing the content of stability information appear;**
- **no regulations under s. 105 on safe manning appear;**
- **no regulations under s. 3(2) on the application of the Act to Government ships appear;**
- **no rules under s. 431 on the conduct of inquiries appear;**

- the **Ship and Port Facility Security Regulations 2004** have been absent from the authorised text since 2012;
- the **Guyana Shipping (Tonnage) Regulations**, referred to in Reg. 6/2005, do not appear;
- the **24-metre gap** identified in Chapter 6.4 is open;
- **Cap. 49:07** still excludes State ships and still reports to the Board of Trade of the United Kingdom;
- the **Coasting and Passenger Trade Regulations** still ascertain the passenger capacity of a coasting steam vessel by reference to the Board of Trade of the United Kingdom;
- and the **Casualty Investigation Code**, mandatory since 1 January 2010, is unimplemented.

Every one of those propositions is subject to the standing verification caveat that the consolidation relied on is current only to L.R.O. 1/2012 and that any instrument made after 2012 will not appear in it. The Commission is in a position to resolve every one of them in an afternoon by requisitioning the current subsidiary legislation from MARAD and the Official Gazette. This document cannot, and says so.

But the caveat does not touch the primary point, which is this: in March 2019 the regulator said the regulations needed to be enacted, said the IMO audit had required it, and said the drafting work had been completed. In July 2026 a State passenger ferry sailed under a statute which imposed on her no stability criterion, no survey cycle, no manning standard, no muster requirement, no headcount duty and no limit on persons carried. Whatever else the Commission finds, it should establish what happened to the Pollard recommendations, and why seven years passed.

Recommendation: the Commission should requisition (i) the **Pollard report and recommendations** in full; (ii) the **IMO Member State Audit report on Guyana** and the **corrective action plan** submitted in response; (iii) all correspondence between MARAD and the IMO concerning implementation; and (iv) the record of any Cabinet or Ministerial decision on the Pollard recommendations. **These are documents of the State and they exist.**

8.5 THE COMMISSION OF INQUIRY

8.5.1 Constitution

Announced by **President Dr Mohamed Irfaan Ali on 25 July 2026**; membership named **26 July**; the legal instruments stated to be in the course of being finalised as at that date. **It operates under the Commissions of Inquiry Act, not under Part XVIII of Cap. 49:01 and not under Part I of Cap. 49:07.**

Members:

- **Justice Godfrey Phillip Smith** (Belize) — **Chairman**. Former Attorney General of Belize; CARICOM High-Level Representative for Law and Criminal Justice; Ad Hoc Justice of Appeal of the Eastern Caribbean Court of Appeal; previously a member of Guyana’s Presidential Commission of Inquiry into the March 2020 general and regional elections.
- **Dr Andrzej Jasionowski** (Poland) — naval architect and marine engineer, who has advised investigations into several major maritime disasters.
- **Captain Hamada Fouda** — Senior Maritime Surveyor and Compliance Auditor, Maritime Authority of Jamaica.
- **Nyree Dawn Alfonso** (Trinidad and Tobago) — attorney-at-law specialising in admiralty and maritime law.
- **Rear Admiral (Ret’d) Hayden Pritchard** (Trinidad and Tobago).

The Commission determines its own procedures and methods of work.

A professional observation, offered without reservation. The technical composition of this panel is strong. A naval architect who has worked on major maritime disaster investigations is exactly the right discipline to place at the centre of a stability casualty; a senior maritime surveyor and compliance auditor from a competent regional administration is exactly the right discipline to examine survey and certification; an admiralty practitioner and a retired flag officer complete a serious panel under a chairman with prior Guyanese commission experience. **Nothing in this document questions the competence or the independence of any of these individuals.**

8.5.2 Terms of reference as announced

Establishing the **full circumstances** of the tragedy, including causes and all other factors relating to the **loading of the vessel, the boarding of passengers, conditions on board, the capsizing and sinking**, and any related matters; a full review of the **search, rescue and recovery response**; the vessel’s **condition and maintenance history**; **weather and sea conditions**; the **competence and conduct of master and crew**; **passenger management including the manifest, possible overcrowding and life-saving equipment**; **whether ferry regulations and safety standards were followed**; whether **negligence, misconduct, dereliction of duty or institutional failures** contributed, including neglect of the vessel’s condition, maintenance history, sea tides, functioning navigation and communication equipment and other operational factors; and to recommend **legislative, regulatory, institutional and operational reforms**.

Two observations on the terms of reference as an instrument.

First, “whether ferry regulations and safety standards were followed” presupposes that there are ferry regulations and safety standards to follow. The finding of this document is that, for a domestic passenger vessel of 24 metres and over, there are almost none. **The Commission should be alert to the possibility that the answer to that limb is that the regulations were followed because there were none, and that this is the finding rather than an evasion of it.**

Second, the express inclusion of “institutional failures” and of the mandate to recommend “legislative, regulatory, institutional and operational reforms” is what makes this Commission capable of reaching the matters in this document. A Board of formal investigation under Cap. 49:01 s. 429 could not have done so, because its dispositive power reaches only certificated individuals. **On this point the choice of the Commissions of Inquiry Act was not merely convenient; it was the only route by which the institutional question could be reached at all.**

8.5.3 The objections on the public record, recorded in full

These are reproduced because a deficiency analysis that ignored them would be incomplete, and because two of them make points of law that this document independently reaches by a different route.

Guyana Human Rights Association (GHRA). A body appointed solely by the executive cannot be seen as impartial by a grieving public. The GHRA warned that the inquiry could become “another instance of institutionalized political debauchery”, with those responsible controlling the narrative around their own failures. It demanded a **Parliament-led Commission of Inquiry**. And it proposed a **positive duty of candour on public officials and authorities, compelling them to cooperate and testify truthfully, backed by sanctions including prosecution and imprisonment.**

Transparency Institute Guyana Inc. (TIGI). “The appointment of non-Guyanese commissioners is not the same thing as an independent process.” The Commission was constituted **without consultation** of the parliamentary opposition, the National Tshaos Council, the affected communities of Region One, or civil society. The **terms of reference have not been published**. The President’s discretion to appoint under the Commissions of Inquiry Act is not in dispute; **what is in dispute is whether it may be exercised without consultation on a matter of this gravity affecting a State-operated service in which seventy-three citizens died**. And the vessel “was owned and operated by the state and fell under a ministry whose leadership remains in place.”

Joint parliamentary opposition (WIN, APNU, FGM, AFC, VPAC). Lack of consultation; the Commission cannot replace Parliament’s constitutional responsibility to examine matters of national importance or the executive’s obligation to answer to elected representatives; and — the point most directly relevant to this analysis — **“the Commission of Inquiry is not a substitute for an independent marine safety investigation conducted in accordance with internationally recognized standards.”**

Opposition Leader Azruddin Mohamed. Called for Minister Edghill and Minister Indar to be recused while the inquiry proceeds and required to appear and answer. Separately, and on **28 July**, described abandoning the MV *Barima* as “an act of cruelty”.

APNU. MARAD cannot be allowed to investigate its own regulatory conduct without independent oversight. Demanded publication of the vessel’s **complete inspection, seaworthiness, maintenance and certification records** and full disclosure of actual passenger and cargo loading arrangements.

Further commentary on the public record as at 28–29 July 2026 includes a warning that the Commission must not focus on finding convenient scapegoats and punishing only the “small man”, and a statement that symbolism and posturing cannot suffice where negligence results in mass deaths.

8.5.4 The author’s position on the objections

This document takes no position on the political questions — whether the Commission should have been Parliament-led, whether consultation should have preceded it, or whether any Minister should be recused. Those are matters for Guyanese citizens and their representatives.

It takes a position on three propositions of law and practice, and that position is that each is correct.

1. **The joint opposition is right that a Commission of Inquiry is not a substitute for an independent marine safety investigation.** The reasons are set out at Chapter 5.12.6 and turn on the structural characteristics of the two proceedings, not on the merits of this Commission.
2. **The GHRA is right that a duty of candour is needed — and it is only half of what is needed.** A duty to testify truthfully, backed by prosecution and imprisonment, compels evidence. **It does not protect the person who gives it, and without protection it will not produce candid evidence from the people who most need to give it** — particularly now that the master, the chief mate and the loading superintendent are accused persons with a right to silence. **Both halves are required.** Chapter 12 sets out drafting for both.
3. **APNU is right that the regulator cannot examine its own regulatory conduct without independent oversight, and the reason is in the statute.** Cap. 49:01 s. 429(1) puts the appointment of assessors in the hands of the Director; s. 429(6) puts the report in his hands; and s. 3(3) may make him the vessel’s statutory owner. **That is not an allegation about any individual. It is what the Act says.**

8.5.5 The collision with the criminal proceedings

On 28 July 2026, three men were charged with murder at common law — a reported **72 counts** — and remanded to prison until **3 August 2026**. **They are presumed innocent.**

The institutional consequence is set out at Glossary H.3 and Chapter 5.12 and is repeated here in one sentence because it is the single most urgent practical problem facing the Commission: the master and the chief mate are the two witnesses without whom no stability investigation can be completed, and they are now accused persons entitled to silence, whose evidence to a Commission could be used against them, and whose participation raises questions of *sub judice* already being canvassed publicly.

Guyanese law provides no mechanism to manage this. There is no statutory privilege for evidence given to a marine safety investigation, because there is no marine safety investigation. There is no protection against the use of compelled testimony. There is no

power to stay one proceeding in favour of the other. **Chapter 12 sets out the drafting required, and Chapter 13 identifies the interim steps that could be taken now.**

8.6 WHERE ACCOUNTABILITY ACTUALLY LANDS

This section states the conclusion of the chapter plainly.

Trace the possible findings against each actor through the statute book as it stands.

Actor	Available finding under Cap. 49:01	Available finding under Cap. 49:07	Available finding under Cap. 49:04	Result
The master	Certificate cancelled or suspended under s. 429(3), if his certificate was issued under s. 105 regulations; offence under s. 337(2), penalty \$25,000 and 6 months, subject to the justification defence	Certificate suspended or cancelled under s. 5(3) — but Part I does not apply to a State ship (s. 3); offence under s. 26(2), 2 years, DPP consent required	—	Reached
The chief mate	As above	As above	—	Reached
The loading superintendent	No office, no duty, no offence. Only the implied contractual term in s. 338	Only the implied contractual term in s. 27; possibly s. 23(3) as a person “concerned in or a party to” overcrowding, if the overcrowding was contrary to regulations	—	Barely reached
The General Manager, T&HD	—	—	s. 47 immunity (Part III); s. 53 personal exemption	Not reached
The Transport and Harbours Department	No offence in the Act is capable of being committed	—	Suable as a carrier under s. 22, subject	Not reached by any

Actor	Available finding under Cap. 49:01	Available finding under Cap. 49:07	Available finding under Cap. 49:04	Result
	by a Department; s. 429(3) reaches certificated individuals only		to s. 23 notice and six-month limitation	safety law
The Director of Maritime Affairs / MARAD	No finding available. Under s. 3(3) the Director may be the vessel's statutory owner; under s. 429(1) he appoints the assessors; under s. 429(6) he receives the report	—	—	Not reached
The Ministry	No finding available	—	—	Not reached
Parliament	—	—	—	Not reached

The disciplinary and penal architecture of Guyanese maritime law reaches the master, the mate, and — with difficulty — the person who loaded the ship. It reaches nobody else.

That is the structural answer to the warning already voiced publicly that this inquiry must not end by punishing only the “small man.” Under the maritime statutes as they stand, the small man is the only person the law can reach. Not because of any decision by any prosecutor, any Minister or any Commission, but because Parliament wrote a statute in 1998 whose only sanction against a person is the cancellation of a certificate, and whose default penalty for sending a ship to sea in a state likely to kill everyone aboard is twenty-five thousand dollars and six months.

The murder charges laid on 28 July 2026 are a consequence of that. When the maritime statute offers six months, and seventy-three people are dead, the prosecutor goes to the common law. **This document expresses no view whatever on those charges, on the evidence, or on the guilt or innocence of the three men accused. It records that the shape of the response was determined years ago, by the penalty structure of the Guyana Shipping Act.**

CHAPTER 9 — THE INTERNATIONAL INSTRUMENTS, EXPLAINED AND COMPARED

9.0 A NECESSARY STATEMENT ABOUT ACCESSION STATUS

The author undertook to verify Guyana’s accession status instrument by instrument against the IMO Status of Conventions table before asserting any of it. That verification could not be completed by the means available, and the position is stated plainly rather than concealed.

The IMO’s Status of Conventions page **disallows automated access**. The consolidated Status of IMO Treaties document is a single file running to several hundred pages, in which each State’s entries appear scattered alphabetically within each of some sixty separate convention lists; it could not be retrieved and searched in a form that would permit a State-by-State extraction with the tools available for this document. **The author therefore does not assert, for any individual instrument, that Guyana is or is not a party to it.**

What can be verified, and is verified, is the following.

1. **MARAD’s own published material** states that MARAD “is party to a number of IMO Conventions that include Safety of Life at Sea (SOLAS); Standard of Training, Certification and Watchkeeping of Seafarers (STCW) and Marine Pollution (MARPOL), among others.”
2. **The Director General of MARAD, Claudette Rogers, stated publicly on 27 March 2019** that *“although Guyana has ratified the main International Maritime Conventions, the requisite regulations need to be enacted or put in place because the country follows the common law system.”*
3. **The same Director General stated on the same occasion** that one of the observed limitations found by the IMO Member State Audit was that **Guyana had not ratified the STCW 95 amendments**, and that Guyanese maritime surveyors were nevertheless issuing certificates on that basis, which she described as a significant breach of international maritime law, and which MARAD had sought to correct.
4. **The IMO Member State Audit of Guyana was completed in 2018**, and required as a direct result the enacting of regulations to give full and complete effect to the conventions Guyana has ratified.
5. **Cap. 49:01 is drafted throughout by reference to “the Safety Convention”** and to “Safety Convention Certificates”, and **s. 398(2)** expressly names the **Athens Convention 1974**. A statute does not draft itself by reference to a convention to which the State is not a party.

The instruction to the Commission that follows from this is precise: obtain from the Ministry of Foreign Affairs and from MARAD, and publish, a table of every IMO and ILO maritime instrument, stating for each whether Guyana is a party, the date and mode of consent to be bound, the date of entry into force for Guyana, any reservations or declarations, the domestic instrument by which it is transposed, and

if none, the reason. That table does not exist in the public domain and it should. **It is Priority One verification item number one.**

Everything in the remainder of this chapter about what each instrument requires is verified from the instruments themselves and is not dependent on Guyana's accession status. Everything about the gap between the instrument and Guyanese law is verified from the Guyanese statute book. Where a proposition depends on Guyana being a party, it is expressly flagged.

9.1 HOW INTERNATIONAL MARITIME LAW REACHES — AND FAILS TO REACH — A DOMESTIC FERRY

This section must be understood before the comparisons that follow, because without it the reader will draw the wrong conclusion from them.

9.1.1 The domestic voyage exclusion

SOLAS applies to ships engaged on international voyages. SOLAS Chapter I, regulation 1 provides that the Regulations apply to ships entitled to fly the flag of Contracting Governments; regulation 3 excludes, among others, ships not propelled by mechanical means, wooden ships of primitive build, pleasure yachts not engaged in trade, fishing vessels, and cargo ships of less than 500 gross tonnage. **And the passenger-ship provisions are framed for the international voyage.** An “international voyage” is a voyage from a country to which the Convention applies to a port outside that country, or conversely.

The MV *Barima* was engaged on a purely domestic voyage: Georgetown to Port Kaituma, both in Guyana. SOLAS therefore did not apply to her of its own force. **That is not a Guyanese failing. It is true of every domestic ferry in every State in the world.**

9.1.2 Why that matters more than anything else in this chapter

The overwhelming majority of the world's ferry fatalities occur on domestic voyages. The great disasters — *Doña Paz*, *Joola*, *Bukoba*, *Nyerere*, *Sewol*, *Christena*, and now the *Barima* — were domestic. **The international safety architecture, which is enforced by flag State survey and by port State control, does not reach them,** because a purely domestic ship is never inspected by a foreign port State and is subject only to the standards her own flag State chooses to impose.

This is precisely why the IMO developed the instruments described at 9.14 and 9.15 below — the Model Regulations on Domestic Ferry Safety and the Manila Statement on Enhancing Domestic Ferry Safety. Their entire purpose is to give a State a ready-made body of domestic-voyage rules, because the conventions do not supply them.

So the deficiency identified against each convention in this chapter is not that Guyana breached the convention. In most cases it did not and could not, because the convention does not bite. **The deficiency is that Guyana adopted the convention's**

architecture — its surveys, its certificates, its terminology, its “Safety Convention Certificates” — into a domestic statute, and then never enacted the domestic standard that the architecture was built to carry. Cap. 49:01 Parts XI to XIII are a filing cabinet with no files in it.

That, stated in one sentence, is how the maritime laws of Guyana fail the people of Guyana.

9.2 SOLAS 1974, AS AMENDED

9.2.1 What it is

The **International Convention for the Safety of Life at Sea, 1974**, adopted 1 November 1974, entered into force **25 May 1980**. The successor to the conventions of 1914, 1929, 1948 and 1960, the first of which was the direct response to the loss of the *Titanic*. It is the principal international treaty on the safety of merchant ships and it operates by requiring flag States to ensure that ships flying their flag comply with minimum standards of construction, equipment and operation. It carries a **tacit acceptance** amendment procedure, so that amendments enter into force on a stated date unless objected to by a specified proportion of Parties — the mechanism by which it has been kept current.

9.2.2 The chapters and provisions that bear on this casualty

Chapter I — General Provisions.

- **Regulation 7 — Surveys of passenger ships.** A passenger ship shall be subject to an **initial survey** before being put into service; a **renewal survey once every twelve months**; and **additional surveys** as occasion arises. The survey covers structure, machinery and equipment, and shall be such as to ensure that the ship complies in all respects.
- **Regulation 11 — Maintenance of conditions after survey.** The condition of the ship and its equipment **shall be maintained to conform with the provisions of the Regulations** to ensure that the ship remains fit to proceed to sea without danger. **After any survey has been completed, no change shall be made in the structural arrangements, machinery, equipment or other items covered by the survey without the sanction of the Administration.** And **whenever an accident occurs to a ship or a defect is discovered, either of which affects the safety of the ship or the efficiency or completeness of its life-saving appliances or other equipment, the master or owner shall report at the earliest opportunity to the Administration**, which shall cause investigations to be initiated to determine whether a survey is necessary.

Chapter II-1 — Construction: subdivision and stability, machinery and electrical installations. Requirements for watertight subdivision; damage stability, including for passenger ships a probabilistic or deterministic standard of survival after damage; intact stability; watertight integrity; bilge pumping; steering gear; and electrical installations.

Chapter II-2 — Fire protection, fire detection and fire extinction.

Chapter III — Life-saving appliances and arrangements, given detailed technical content by the **International Life-Saving Appliance (LSA) Code**. Includes: - **Regulation 19 — Emergency training and drills**. Every crew member shall participate in **at least one abandon ship drill and one fire drill every month**. On a passenger ship, a **muster of the passengers shall take place within 24 hours of embarkation**. Drills shall so far as practicable be conducted **as if there were an actual emergency**, and shall include the operation of survival craft and launching appliances, the starting of lifeboat engines, the operation of davits, the operation of watertight and fire doors, and the instruction of passengers in the donning of lifejackets. - **Regulation 8 — Muster list and emergency instructions**. A muster list and emergency instructions complying with regulation 37 shall be exhibited in conspicuous places throughout the ship. **Regulation 37** requires the muster list to specify details of the general emergency alarm and public address system, the action to be taken by crew and passengers, how the order to abandon ship will be given, the duties assigned to each member of the crew including the closing of watertight doors, fire doors, valves, scuppers, side scuttles, skylights, portholes and other similar openings, the equipping of survival craft, the preparation and launching of survival craft, the general preparation of other life-saving appliances, the mustering of passengers, the use of communication equipment, and the duties assigned in relation to fire parties. - **Regulation 27 — Information on passengers**. **All persons on board all passenger ships shall be counted prior to departure**. Details of persons who have declared a need for special care or assistance in an emergency shall be recorded and communicated to the master prior to departure. **The name and gender of all persons on board, distinguishing between adults, children and infants, shall be recorded for search and rescue purposes**, and that information **shall be kept ashore and made readily available to search and rescue services when needed**.

Chapter IV — Radiocommunications, giving effect to the **Global Maritime Distress and Safety System (GMDSS)**.

Chapter V — Safety of navigation, which uniquely applies to **all ships on all voyages**, including domestic ones, in respect of several of its regulations. Includes **regulation 13 (Manning)** — each Contracting Government undertakes to maintain, or if necessary adopt, measures for the purpose of ensuring that all ships flying its flag **are sufficiently and efficiently manned** — and provisions on voyage planning, navigational equipment, distress messages and the master's obligation to proceed to the assistance of persons in distress.

Chapter IX — Management for the safe operation of ships, giving mandatory force to the **ISM Code**.

Chapter XI-1 — Special measures to enhance maritime safety, including **regulation 6**, which gives mandatory force to the **Casualty Investigation Code** (see 9.13).

Chapter XI-2 — Special measures to enhance maritime security, giving mandatory force to the **ISPS Code**.

9.2.3 Comparison with Guyanese law, and the deficiencies

SOLAS requirement	Nearest Guyanese provision	Gap
I/7 — annual renewal survey of passenger ships	Cap. 49:01 ss. 257–266 provide for initial, periodic and additional surveys of passenger ships, drawn by reference to the Safety Convention régime and containing no domestic technical standard. Reg. 6/2005 provides a five-yearly survey and expressly excludes passenger ships. Coasting and Passenger Trade Regs reg. 2 provides an annual survey for coasting vessels.	Deficiency 65 — no annual survey requirement with a stated technical standard applies to a domestic passenger ship of 24 m and over.
I/11 — maintenance of condition after survey; no change without sanction; report of accidents and defects at the earliest opportunity, with the Administration to initiate investigations	Cap. 49:01 s. 292(1) — conditional on a Safety Convention Certificate being in force; s. 292(2) accident, defect and alteration notice, penalty \$10,000; s. 237 report within 24 hours	Deficiency 66 — the maintenance-of-condition duty is conditioned on holding a certificate a domestic ferry would not hold; and no Guyanese provision requires the Administration to initiate any investigation on receipt of a report.
II-1 — subdivision, damage stability, intact stability, watertight integrity, steering gear	Nothing in Cap. 49:01. Intact stability criteria appear only in Reg. 5/2005 (under 24 m). Reg. 6/2005 requires steering gear inspection (cargo ships only).	Deficiency 67 — no subdivision, damage stability or intact stability standard exists in Guyanese law for a domestic passenger ship of 24 m and over.
II-2 — fire protection, detection and extinction	Nothing applicable to this class	Deficiency 68 — no fire safety standard for the class.
III/8 and III/37 — muster list and emergency instructions	Nothing. Station bill requirements appear only in Reg. 5/2005 (under 24 m)	Deficiency 69 — no muster list requirement for the class.
III/19 — monthly drills; muster of passengers within 24 hours of embarkation;	Cap. 49:01 s. 239 — a duty to record in the official log book that a drill was held, and to record the reasons	Deficiency 70 — Guyanese law requires a record of a drill and does not require the drill.

SOLAS requirement	Nearest Guyanese provision	Gap
drills conducted as if a real emergency	where none was held in any week. No drill is prescribed.	
III/27 — count all persons before departure; record names and gender distinguishing adults, children and infants; keep the information ashore for search and rescue	Cap. 49:01 s. 398(1)(b) — an enabling power only, unexercised. Coasting Regs reg. 13(6) — sailing vessels only. River Nav Regs reg. 45(1) — rivers only. Reg. 5/2005 Record of Passengers — under 24 m only.	Deficiency 71 — there is no duty to count the persons on board a Guyanese domestic passenger ship of 24 m and over, and no duty to keep any record ashore. This is the deficiency that produced Conflict 2.
V/13 — sufficiently and efficiently manned; minimum safe manning document	Cap. 49:01 s. 105 — an enabling power, and subject to verification unexercised; s. 336 makes under-manning a ground of unseaworthiness	Deficiency 72 — under-manning is an ingredient of a criminal offence and there is no published standard by which sufficiency of manning is to be judged.
IX — ISM Code, safety management system, Designated Person Ashore	Referenced only in Reg. 5/2005 (under 24 m)	Deficiency 73 — no safety management system requirement for the operator of the State ferry fleet.
XI-1/6 — Casualty Investigation Code mandatory	Nothing. Cap. 49:01 s. 427 discretionary; Cap. 49:07 Part I excludes State ships	Deficiency 74 — the Casualty Investigation Code is unimplemented. See 9.13.
XI-2 — ISPS Code	Guyana Shipping (Ship and Port Facility Security) Regulations 2004 — omitted from the authorised text since 2012	Deficiency 75 — the security regulations are absent from the published law.

9.3 THE INTERNATIONAL CONVENTION ON LOAD LINES, 1966, AND THE 1988 PROTOCOL

What it is. Adopted 5 April 1966, in force 21 July 1968. It assigns to every ship engaged on international voyages a **minimum freeboard**, calculated from her length, breadth, depth, block coefficient, sheer, superstructure and the effectiveness of her closing appliances, and requires the corresponding **load lines to be marked amidships on each side**. The **1988 Protocol** harmonised its survey and certification requirements with those of SOLAS and MARPOL. Article 23 addresses its relationship with other instruments.

What it does and does not do. It secures **reserve buoyancy** by prescribing a minimum freeboard, and it secures the **weathertight and watertight integrity** of openings by conditioning the assigned freeboard on the fitting of proper closing appliances — hatch covers, doors, ventilators, air pipes, scuppers, side scuttles and freeing ports. **It is not a stability instrument.** The full explanation is at Glossary B.5 and Chapter 5.7.

Guyanese transposition. **Cap. 49:01 s. 315** requires a Load Line Certificate — International for an international voyage, **Local otherwise.** **s. 319** prohibits loading so as to submerge the appropriate load line in salt water when the ship has no list, on penalty of **\$100,000. This is the strongest safety provision in the Act.**

Deficiency 76 — the criteria for assigning a Local Load Line are not published. The Act provides for a **Local Load Line Certificate** but no instrument in the authorised consolidation states how a local load line is assigned, by whom, on what freeboard tables, with what conditions of assignment as to closing appliances, or with what validity period. **The mark on the side of a domestic Guyanese vessel is therefore assigned by an unpublished process.** Given that the load line reading was the measurement relied upon publicly to conclude that the *MV Barima* was not overloaded, **the basis on which her load line was assigned is a Priority One document demand.**

Deficiency 77 — Guyanese law contains no conditions of assignment. The whole value of the Load Line Convention lies in the fact that the assigned freeboard is conditional on the vessel's openings being properly closed and maintained. **No Guyanese provision applicable to this class requires hatches, doors, ventilators or scuppers to be maintained in a weathertight condition, or requires them to be closed at sea.** **Cap. 49:01 s. 292's** maintenance duty is conditioned on a Safety Convention Certificate (Chapter 5.6.3).

9.4 COLREG 1972

What it is. The **Convention on the International Regulations for Preventing Collisions at Sea, 1972**, adopted 20 October 1972, in force 15 July 1977. It prescribes the steering and sailing rules, the lights and shapes to be exhibited, the sound and light signals, and the conduct of vessels in and near areas of restricted visibility. **It applies to all vessels upon the high seas and in all waters connected therewith navigable by seagoing vessels.** **Rule 1(b)** permits an appropriate authority to make special rules for roadsteads, harbours, rivers, lakes and inland waterways connected with the high seas and navigable by seagoing vessels, but requires that such special rules **conform as closely as possible to these Rules.**

Guyanese transposition and conflict.

- **Cap. 50:01, River Navigation Regulations, reg. 53** — every vessel or boat **must comply with “The Rule of the Road at Sea.”** This is correct drafting. It is a dynamic reference which picks up COLREG as amended without further legislation.

- **Cap. 49:07, Coasting and Passenger Trade Regulations, reg. 15** — *“The lights hereinafter mentioned, **and no others**, shall be carried by vessels in all weathers, from sunset to sunrise, within the territorial waters of Guyana”* — followed by a pre-1889 arrangement of a masthead light over twenty points at not less than twenty feet, side lights over ten points with three-foot inboard screens, and an anchor light in a globular lantern of not less than eight inches.

Deficiency 78 — a live Guyanese regulation prescribes nineteenth-century lights “and no others” within the territorial sea, in terms that do not conform as closely as possible to COLREG. The conflict is unresolved on the face of the statute book, because Cap. 49:01 s. 455 governs conflicts between an international instrument and **that Act**, not conflicts with subsidiary legislation made under a different Act. **The remedy is a single line replacing reg. 15 with the formula already used in the River Navigation Regulations.**

9.5 STCW 1978, AS AMENDED

What it is. The **International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978**, adopted 7 July 1978, in force 28 April 1984. The first convention to establish international minimum standards for the training and certification of seafarers. Substantially revised by the **1995 amendments**, which introduced the **STCW Code** (Part A mandatory, Part B recommended) and the “white list” of Parties giving full and complete effect. Further revised by the **2010 Manila amendments**, which introduced, among other things, revised **rest hour** requirements, new certification for able seafarers and electro-technical officers, updated competence standards for the use of electronic charts and integrated bridge systems, mandatory security training, and strengthened provisions on the **prevention of drug and alcohol abuse**, including a blood alcohol limit for seafarers.

Guyanese transposition. **Cap. 49:01 s. 105** empowers the Minister to make regulations regarding safe manning and the qualifications of persons serving in Guyana ships. **ss. 108–113** provide for a Tribunal, for a court’s recommendation of cancellation of a certificate, for cancellation by the Minister, for appeals and for offences. **Reg. 5/2005** defines the STCW Convention as the 1978 Convention as amended in 1995 and as amended from time to time, and establishes a graded Boatmaster and Boat Engineer licensing scheme — **for ships under 24 metres.** The **Home Trade Ships (Masters, Mates and Engineers Certificates) Regulations** are made under **Cap. 49:04**, the Transport and Harbours Act.

Deficiency 79 — the certification of the officers of the State ferry fleet may sit under the operator’s Act rather than the regulator’s. As set out at Chapter 7.6.5, if the certificates of the master and chief mate of the MV *Barima* were issued under the Home Trade Ships Regulations made under Cap. 49:04, then **Cap. 49:01 s. 429(3), which permits a Board of formal investigation to cancel or suspend only a certificate issued under regulations made under s. 105, may not reach them at all.** Establishing under which instrument those certificates were issued is a Priority One verification item.

Deficiency 80 — the regulator has publicly acknowledged a historic failure of certification. The Director General of MARAD stated in March 2019 that Guyana had **not ratified the STCW 95 amendments** and that Guyanese maritime surveyors had nevertheless been issuing certificates on that basis, which she described as a significant breach of international maritime law, and which MARAD had sought to correct. **The current position — whether the 1995 amendments and the 2010 Manila amendments now bind Guyana, and whether Guyana appears on the list of Parties giving full and complete effect — is a Priority One verification item.** It bears directly on the terms of reference, which include the competence and conduct of master and crew.

Deficiency 81 — there is no domestic drug and alcohol standard for seafarers. The Manila amendments prescribe limits and require Administrations to establish measures for the prevention of drug and alcohol abuse. **The Minister of Public Works stated after this casualty that “we have a zero tolerance for members of the crew drinking or smoking while at work.”** That is a policy statement. **Subject to verification, no Guyanese instrument in the authorised consolidation prescribes a limit, a testing régime, an offence, or a consequence.** The public record states that blood samples were taken from the captain and crew after the casualty and that the captain and at least two crew tested positive for cannabis. **This document expresses no view on those matters, which concern accused persons who are presumed innocent.** It records that a zero-tolerance policy without a statutory standard, a testing power and a defined offence is not enforceable maritime law.

9.6 TONNAGE 1969

What it is. The **International Convention on Tonnage Measurement of Ships, 1969**, adopted 23 June 1969, in force 18 July 1982. It replaced the various national and regional systems with a single universal method, producing **gross tonnage (GT)** and **net tonnage (NT)** as dimensionless index numbers derived by formula from the moulded volumes of enclosed spaces.

Guyanese transposition. Reg. 6/2005 defines gross tonnage as **gross tonnage determined by the Guyana Shipping (Tonnage) Regulations made under the Act.** Those Regulations do not appear in the authorised consolidation.

Deficiency 82 — the application of the only survey instrument covering vessels above 24 metres depends on a tonnage measurement made under regulations that are not in the published law. Reg. 6/2005 applies to ships of **less than 500 gross tonnage**. That threshold cannot be applied without the Tonnage Regulations. **And the confusion between grt, GT and tonnes of cargo is at the heart of Conflict 1** (Chapter 3.4), where the same figure — 284 — appears both as the vessel’s gross register tonnage and as her stated cargo capacity in tonnes.

9.7 THE SAR CONVENTION 1979

What it is. The **International Convention on Maritime Search and Rescue, 1979**, adopted 27 April 1979, in force 22 June 1985. Its object is to establish an international plan for search and rescue so that, wherever an accident occurs, the rescue of persons in distress will be coordinated by a search and rescue organisation and, when necessary, by cooperation between neighbouring organisations. It requires Parties to:

- **establish search and rescue services**, and to ensure that assistance is provided to any person in distress at sea regardless of nationality or status;
- **establish rescue coordination centres (RCCs)** and, where appropriate, rescue sub-centres, operating 24 hours a day with trained staff having a working knowledge of English;
- **define search and rescue regions** by agreement with neighbouring Parties;
- **establish operating procedures**, including procedures for the receipt of distress alerts, for the designation of an on-scene coordinator, and for the alerting of other authorities;
- **cooperate with neighbouring States**, including permitting the immediate entry of rescue units of other Parties into their territorial sea for search and rescue purposes.

The Convention is supported by the **International Aeronautical and Maritime Search and Rescue (IAMSAR) Manual**, published jointly by IMO and ICAO — the document that governs precisely the aviation-to-maritime alert routing that occurred on the night of 18 July 2026.

Guyanese transposition. There is none.

Deficiency 83 — the SAR Convention is unimplemented in Guyanese domestic law. No Guyanese statute establishes a search and rescue service, defines a search and rescue region, establishes a Maritime Rescue Coordination Centre, allocates responsibility for the receipt and routing of distress alerts, prescribes any time standard, provides for an on-scene coordinator, or provides for cooperation with neighbouring States. **Cap. 49:01 ss. 232, 233, 236 and 374(4) are fragments.**

The operational facts on the public record illustrate every limb of the gap: the distress alert reached an **aviation** authority first and took **twenty minutes** to reach the maritime authority through two intermediaries; the **National Search and Rescue Committee** was assembled by the MRCC at 23:25 and has no statutory existence; assistance came from the **Trinidad and Tobago Coast Guard**, the **Brazilian Navy** and a **French Armed Forces team from French Guiana**, none of it under any published bilateral or regional SAR arrangement identified in the statute book; and the wreck was ultimately located with the assistance of **fisherman Haresh Singh and local fisherfolk**, with **ExxonMobil Guyana, VESHI and Sealand Survey's Gilligan Island** confirming the position — that is to say, by the oil and gas industry and by the fishing community, not by any statutory rescue organisation.

9.8 LLMC 1976 AND THE 1996 PROTOCOL

What it is. The **Convention on Limitation of Liability for Maritime Claims, 1976**, adopted 19 November 1976, in force 1 December 1986, as amended by the **1996 Protocol**, which substantially raised the limits and introduced a simplified amendment procedure. It permits a shipowner to limit his liability for most maritime claims arising from a single occurrence to a fund calculated by formula from the ship's tonnage, expressed in **Special Drawing Rights**, with a separate and higher limit for **claims for loss of life or personal injury to passengers**, calculated by reference to the number of passengers the ship is authorised to carry. Limitation is lost where the loss resulted from the person's **personal act or omission committed with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result** — the “conduct barring limitation”.

Guyanese transposition. Cap. 49:01 Part XVI, ss. 400–421: s. 405 conduct barring limitation; s. 411 the limit for passenger claims; s. 412 conversion of the unit of account; s. 413 aggregation; s. 421 limitation of actions.

Deficiency 84 — the passenger limit is calculated by reference to the number of passengers the ship is authorised to carry, and that number is in dispute. Under the international formula the passenger limit is a function of the authorised number. **Chapter 3.4 records three irreconcilable figures — approximately 397, approximately 394, and approximately 150 — and the fact that the certification records have not been published.** The dispute about the capacity certificate is therefore not merely a safety question. **It may determine the size of the fund available to seventy-three bereaved families.**

Deficiency 85 — Guyana has enacted the limitation of liability and not the liability. Set out at Chapter 5.10 and repeated here because it is the central injustice in the civil architecture: **the mechanism by which the carrier's exposure is capped is in force, and the mechanism by which the passenger's claim arises and is insured is not.**

9.9 THE ATHENS CONVENTION 1974 AND THE 2002 PROTOCOL

What it is. The **Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974**, adopted 13 December 1974, in force 28 April 1987. It establishes a régime of liability for damage suffered by passengers carried on a seagoing vessel. Its principal features:

- the **carrier is liable** for loss suffered as a result of the death of or personal injury to a passenger, and loss of or damage to luggage, if the incident occurred in the course of the carriage and was due to the fault or neglect of the carrier;
- **fault or neglect is presumed** in the case of death or personal injury arising from shipwreck, collision, stranding, explosion, fire or defect in the ship;
- liability is **limited** per carriage, in units of account;

- the **2002 Protocol** transformed the régime: it introduced **strict liability** up to a first tier for a “shipping incident” — defined to include shipwreck, capsizing, collision, stranding, explosion or fire, or defect in the ship — with a defence only for an act of war, a natural phenomenon of an exceptional character, or an act of a third party done with intent; a second tier of liability based on presumed fault; **substantially raised limits; compulsory insurance** for carriers carrying more than twelve passengers; and **a direct right of action against the insurer**, with the insurer entitled to invoke the defences the carrier could have invoked but not defences arising from the carrier’s insolvency or winding-up.

The 2002 Protocol régime is the single most important international protection available to the family of a ferry passenger anywhere in the world.

Guyanese transposition. Cap. 49:01 s. 398(2) provides that in making passenger-ship regulations the Minister **shall have due regard to** the Athens Convention 1974. **That is the entirety of the Guyanese engagement with the instrument.**

Deficiency 86 — the Act names the Athens Convention and enacts none of it. There is:

- **no strict liability** for a shipping incident — and a capsizing is a shipping incident on the face of the definition;
- **no presumption of fault;**
- **no defined limit of liability per passenger;**
- **no compulsory insurance;**
- **and no direct right of action against an insurer.**

The practical consequence for a family of a person lost on the MV *Barima* is that they must sue the Transport and Harbours Department, subject to **Cap. 49:04 s. 23** (one month’s written notice naming a legal practitioner; six months’ limitation from the act or omission), possibly subject to **Cap. 49:04 s. 47** (immunity in respect of the General Manager’s negligence, confined to Part III), with the Department’s liability subject to **Cap. 49:01 Part XVI** limitation, and with **no insurer against whom they have any direct claim. Meanwhile the President has stated that the assistance being arranged is not compensation.**

Deficiency 87 — Guyana’s exposure to this deficiency was foreseeable from the face of its own statute. s. 398(2) was enacted in 1998. It requires the Minister to have due regard to the Athens Convention when making regulations. **No regulations were made. The obligation of due regard therefore never attached to anything, and the Convention’s protections never reached a Guyanese passenger.**

9.10 THE ISM CODE

What it is. The **International Management Code for the Safe Operation of Ships and for Pollution Prevention**, adopted by resolution A.741(18) and made mandatory by **SOLAS Chapter IX**. It is a **management systems** standard rather than a technical

standard. It requires the **Company** — defined as the owner or any other organisation or person who has assumed responsibility for operation of the ship and has agreed to take over the duties and responsibilities imposed by the Code — to establish a **safety management system** with:

- a safety and environmental protection **policy**;
- **instructions and procedures** to ensure safe operation of ships and protection of the environment in compliance with relevant international and flag State legislation;
- **defined levels of authority and lines of communication** between and among shore and shipboard personnel;
- procedures for **reporting accidents and non-conformities**;
- procedures to **prepare for and respond to emergency situations**;
- procedures for **internal audits and management reviews**;
- a **Designated Person Ashore** with direct access to the highest level of management;
- defined **master's responsibility and authority**, including the master's **overriding authority** to take whatever action he considers to be in the best interests of passengers, crew, ship and environment, and to request the Company's assistance as may be necessary;
- **resources and personnel** — ensuring the ship is manned with qualified, certificated and medically fit seafarers, that new personnel are properly familiarised, and that all personnel involved in the SMS have an adequate understanding of the relevant rules, regulations, codes and guidelines;
- **maintenance of the ship and equipment**, including inspections at appropriate intervals, reporting of non-conformities with their possible cause, appropriate corrective action, and the identification of equipment and technical systems the sudden operational failure of which may result in hazardous situations, with specific measures to promote their reliability;
- and **documentation control**, including a **Document of Compliance** issued to the Company and a **Safety Management Certificate** issued to the ship.

Guyanese transposition. The ISM Code is referenced in the Guyana Shipping (Small Commercial Ship Safety) Regulations, Reg. 5/2005 — which apply to ships of less than 24 metres. It appears nowhere else.

Deficiency 88 — the operator of the State ferry fleet has no safety management system requirement, no Designated Person Ashore, and no statutory master's overriding authority.

The last of those deserves separate emphasis. The ISM Code's provision that the master has **overriding authority and the responsibility to make decisions with respect to safety**, and that the Company shall establish in the safety management system that the master has this authority, exists precisely to protect a master who decides not to sail.

There is no equivalent provision anywhere in Guyanese law. A Guyanese master who refuses to sail a State ferry serving a region with no road, on a scheduled sailing, with cargo loaded and passengers ticketed, has no statutory backing for that decision. **He has instead**

a statutory defence, in Cap. 49:01 s. 337(2) and Cap. 49:07 s. 26(2), available to him if he does sail and it goes wrong: that doing so was in the circumstances reasonable and justifiable.

The statute book protects the decision to sail and does not protect the decision to stay. That is the wrong way round, and it is Deficiency 88.

9.11 THE ISPS CODE

What it is. The **International Ship and Port Facility Security Code**, adopted in December 2002 and given mandatory force by **SOLAS Chapter XI-2**, in force 1 July 2004. It requires ship security assessments, ship security plans, ship security officers, company security officers, port facility security assessments and plans, port facility security officers, three levels of security, and an **International Ship Security Certificate**.

Guyanese transposition. The **Guyana Shipping (Ship and Port Facility Security) Regulations 2004** were made. **They are not in the authorised text**, the L.R.O. 1/2012 volume recording that they were being substantially revised and had therefore been omitted.

Deficiency 89 — Guyana's ship and port facility security regulations have been absent from the published law for at least fourteen years. Whether the revision was completed is a Priority One verification item. **It bears on this casualty in an indirect but real way:** access control at the point of embarkation is a security function as well as a safety function, and **the reported boarding of unticketed persons is, among other things, an access control failure.**

9.12 THE III CODE AND THE IMO MEMBER STATE AUDIT SCHEME

What they are. The **IMO Instruments Implementation Code (III Code)**, adopted by resolution A.1070(28), sets out what a State must do to give effect to the instruments to which it is a party, in three capacities — **flag State, port State and coastal State** — covering common areas (strategy, legislation, enforcement, control and monitoring, evaluation and review), flag State implementation (delegation of authority, enforcement, flag State surveyors, flag State investigations, evaluation and review), coastal State implementation (aids to navigation, hydrographic services, ship routeing and reporting, **search and rescue services**, meteorological services), and port State implementation.

The **IMO Member State Audit Scheme (IMSAS)** became **mandatory for all Member States from 1 January 2016**, by amendments to **SOLAS, STCW and the STCW Code, the 1988 Load Lines Protocol, MARPOL Annexes, the Tonnage Convention 1969 and COLREG 1972**. Each Member State is subject to a **periodic audit, on a cycle of approximately nine years**, against the III Code, and is required to submit a **corrective action plan** in response to findings.

Guyana's position. The IMO Member State Audit of Guyana was completed in 2018. The Director General of MARAD stated publicly in March 2019 that, contrary to public pronouncement that Guyana had received a bad report, the Maritime Administration's performance was commendable; that preparation had involved flag, port and coastal State administration; and that **as a direct result of the audit, several measures were necessary, one of which was the enacting of regulations to give full and complete effect to the conventions Guyana has ratified.**

Deficiency 90 — the audit identified the gap, the corrective action was identified, the drafting was commissioned and completed, and the regulations were not enacted. The evidence for each limb is set out at Chapter 8.4. **This is the most directly actionable finding in this document, because the corrective action plan submitted by Guyana to the IMO is a document of the State, it exists, and it will say what Guyana undertook to do and by when.**

Recommendation: the Commission should requisition and publish (i) the **IMO Member State Audit report on Guyana**; (ii) **Guyana's corrective action plan**; (iii) all progress reports on its implementation; and (iv) the **Pollard report and recommendations**. **These four documents will very largely answer the question the Commission has been asked about institutional failure.**

9.13 THE CASUALTY INVESTIGATION CODE

What it is. The **Code of the International Standards and Recommended Practices for a Safety Investigation into a Marine Casualty or Marine Incident**, adopted by **resolution MSC.255(84)**, made **mandatory by SOLAS Chapter XI-1, regulation 6, with effect from 1 January 2010.**

Its mandatory requirements (Part II of the Code) include the following.

- **A marine safety investigation shall be conducted into every “very serious marine casualty”** — that is, one involving the total loss of the ship, a death, or severe damage to the environment. **This is mandatory, not discretionary.**
- The investigation shall be conducted by an **investigating State** determined by agreed rules — normally the flag State, with provision for substantially interested States.
- **The marine safety investigation shall be separate from, and independent of, any other form of investigation.** It is not the purpose of a safety investigation to determine liability or apportion blame.
- The investigating State shall ensure that **investigators have no conflict of interest** and are, so far as practicable, **impartial and independent of any party whose interests could conflict with the task.**
- **Investigators shall have powers** of access to the ship, the wreck, and to relevant records, and to interview witnesses.

- **Records shall be protected:** all statements taken from persons by investigators, all communications between persons involved in the operation of the ship, medical or private information, opinions expressed during the investigation and draft reports **shall not be disclosed or used in criminal, civil or disciplinary proceedings unless a competent authority determines that the benefit of disclosure outweighs the adverse domestic and international impact on that or any future safety investigation.**
- **A final report shall be produced and made publicly available,** and shall be submitted to the IMO.
- **Investigating States shall not preclude a safety investigation on the basis of other investigations,** and shall cooperate with other substantially interested States.

Guyanese transposition. There is none.

Deficiency 91 — the Casualty Investigation Code has been mandatory for sixteen years and Guyana has not implemented it in any respect. Not one of its features exists in Guyanese law: not the mandatory trigger for a very serious marine casualty, not the separation from other proceedings, not the independence of the investigator, not the prohibition on apportioning blame, not the protection of records, not the duty to publish, and not the duty to submit to IMO.

And the two Guyanese casualty regimes fail it in opposite ways. Cap. 49:01 s. 429(3) **fuses** the investigation with certificate revocation — the antithesis of separation. Cap. 49:07 s. 3 **excludes** State ships from the only regime that has real investigative powers. **The Commission of Inquiry, which is doing the work, is doing it under a general Act which contains none of the Code’s protections either.**

This is the single deficiency from which most of the others follow. A State with a functioning marine safety investigation body would have investigated a domestic ferry casualty long before 18 July 2026, would have published a report, and would have made recommendations that put the 24-metre gap on the record. **The absence of the investigative capability is why the safety gap was never surfaced.**

9.14 THE IMO MODEL REGULATIONS ON DOMESTIC FERRY SAFETY

What they are. A set of model regulations developed by the IMO, in response to the persistent and heavy loss of life in domestic ferry casualties worldwide, to provide States with a **ready-made body of domestic-voyage safety rules** — the rules that the conventions do not supply because the conventions are addressed to international voyages. They are drafted so that a State may adopt them substantially as they stand, adapted to its own conditions, covering matters including construction and stability appropriate to the service, life-saving appliances, fire safety, manning and certification, operational limits by sea area and weather, passenger numbers and their control, and the enforcement machinery.

Deficiency 92 — the instrument designed for exactly Guyana’s problem exists, is free, is drafted, and has not been adopted. The 24-metre gap identified in Chapter 6.4 is the precise mischief these Model Regulations address. **A Guyanese instrument based on them, made under Cap. 49:01 s. 398 or under Cap. 49:07 s. 25, would close the gap.** Chapter 12 sets out the drafting instructions.

9.15 THE MANILA STATEMENT ON ENHANCING DOMESTIC FERRY SAFETY

What it is. The outcome document of an international conference on domestic ferry safety, articulating the principles that a State should apply: that domestic ferry safety is a national responsibility that cannot be discharged by reference to the international conventions alone; that regulation must be proportionate to the service and enforced; that passenger numbers must be controlled and counted; that overloading and overcrowding must be prevented at the point of embarkation rather than after departure; that operators must have management systems; and that casualties must be investigated and the findings published and acted upon.

Deficiency 93 — every principle in the Manila Statement is unimplemented for Guyanese domestic ferries of 24 metres and over.

9.16 UNCLOS ARTICLES 94(7) AND 97

What they are. The **United Nations Convention on the Law of the Sea, 1982.**

- **Article 94** sets out the duties of the flag State, requiring it to effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag, and in particular to take such measures as are necessary to ensure safety at sea with regard to the construction, equipment and seaworthiness of ships, the manning of ships and the training of crews, and the use of signals, the maintenance of communications and the prevention of collisions — **conforming to generally accepted international regulations, procedures and practices.**
- **Article 94(7)** provides that **each State shall cause an inquiry to be held by or before a suitably qualified person or persons into every marine casualty or incident of navigation on the high seas involving a ship flying its flag and causing loss of life or serious injury to nationals of another State or serious damage to ships or installations of another State or to the marine environment.** The flag State and the other State shall cooperate in the conduct of any inquiry held by that other State.
- **Article 97** deals with penal jurisdiction in matters of collision or any other incident of navigation, providing that no penal or disciplinary proceedings may be instituted against the master or any other person in the service of the ship except before the judicial or administrative authorities either of the flag State or of the State of which such person is a national.

- By **Article 58(2)**, Articles 94(7) and 97 apply also in the exclusive economic zone.

Application to this casualty. Article 94(7) is expressed in terms of a casualty **on the high seas** causing loss of life **to nationals of another State**, and so may not be engaged on these facts. **But Article 94 as a whole is engaged**, because it imposes on Guyana as flag State a general duty to take the measures necessary to ensure safety at sea in respect of construction, equipment, seaworthiness, manning and training **conforming to generally accepted international regulations**.

Deficiency 94 — the general flag State duty in UNCLOS Article 94 is not discharged in respect of the domestic fleet. The measures Guyana has taken for domestic passenger ships of 24 metres and over are, as Chapters 5 and 6 establish, essentially confined to a load line, an unprescribed stability document and a log entry. **Whether that conforms to generally accepted international regulations, procedures and practices is a question the Commission may wish to consider.**

A jurisdictional note. The location of the casualty relative to the limits of the territorial sea as defined in the **Maritime Zones Act, Cap. 63:01**, is not settled on the public record. The wreck lies approximately **nine miles off the Essequibo coast**; the reported initial distress position was approximately **31 nautical miles further north-west**. **Whether the casualty occurred within the territorial sea or in the exclusive economic zone is a matter the Commission should establish**, because it determines which body of jurisdictional rules applies.

9.17 INSTRUMENTS NOTED FOR COMPLETENESS

MLC 2006 — the Maritime Labour Convention, 2006. Consolidates and updates more than sixty ILO maritime labour instruments. Establishes minimum requirements for seafarers to work on a ship, and conditions of employment, accommodation, recreational facilities, food and catering, health protection, medical care, welfare and social security protection, together with a certification and inspection régime. **It generally excludes ships navigating exclusively in inland waters or in waters within, or closely adjacent to, sheltered waters or areas where port regulations apply** — but a coastal voyage from the Demerara to the Barima through the open Atlantic is not obviously within that exclusion. **Its relevance here is the rest-hours and fitness-for-duty provisions**, which bear on the terms of reference relating to the conduct of the crew, and its inspection régime, which bears on the conditions in which the crew worked. **Verification item.**

Torremolinos Protocol 1993 and the Cape Town Agreement 2012. The fishing vessel safety régime. **Contextual only** — the *MV Barima* was not a fishing vessel, and Cap. 49:01 s. 2 excludes fishing vessels from the definition of a cargo ship. **It is noted because the Guyanese fishing fleet is subject to the same structural gap and the Commission's recommendations should not be confined to ferries.**

The Caribbean Smart Maritime Law Initiative (CARIBSMART-Law). A regional programme to strengthen national maritime legal frameworks and support effective

implementation of IMO instruments, launched at an IMO Caribbean regional maritime administrations meeting **hosted by MARAD. The existence of a regional technical assistance programme, launched at a meeting Guyana hosted, addressed to precisely the deficiency identified in this document, should be recorded and should be used.**

Fraudulent registrations under the Guyana flag. Guyana has been dealing with fraudulent registrations under its flag since 2021 and has stated publicly that it “does not, has not, and will not offer a flag of convenience.” **This is noted because it establishes that MARAD’s registration and flag State functions have been under external pressure and internal review throughout the period in which the domestic passenger safety gap remained open, which is relevant to any assessment of institutional priorities and resources.**

9.18 THE COMPARISON IN ONE TABLE

Instrument	Core requirement	Guyanese position for a domestic passenger ship of 24 m and over
SOLAS I/7	Annual passenger ship survey	None with a stated standard
SOLAS I/11	Maintain certificated condition; report accidents and defects; Administration to investigate	Conditional on a certificate she would not hold; no duty to investigate
SOLAS II-1	Subdivision, damage stability, intact stability	None
SOLAS II-2	Fire protection	None
SOLAS III/8, 37	Muster list / station bill	None
SOLAS III/19	Monthly drills; passenger muster within 24 hours	A log entry only
SOLAS III/27	Count all persons; record names; keep ashore	None
SOLAS V/13	Sufficient and efficient manning; safe manning document	Enabling power only
SOLAS IX / ISM	Safety management system; Designated Person Ashore; master’s overriding authority	None
SOLAS XI-1/6 / Casualty Investigation Code	Mandatory independent safety investigation of a very serious casualty; protected records; published report; submitted to IMO	None

Instrument	Core requirement	Guyanese position for a domestic passenger ship of 24 m and over
SOLAS XI-2 / ISPS	Security plans and certificates	Regulations absent from the published law since 2012
Load Lines 1966/1988	Minimum freeboard; conditions of assignment	Load line enforced (\$100,000); assignment criteria unpublished; no conditions of assignment
COLREG 1972	International lights and steering rules; special rules to conform as closely as possible	River regs conform; coasting regs prescribe 19th-century lights “and no others”
STCW 1978/1995/2010	Training, certification, watchkeeping, rest hours, drug and alcohol measures	Enabling power; certification may sit under the operator’s Act; no drug and alcohol standard
Tonnage 1969	Uniform GT/NT	Tonnage Regulations not in the published law
SAR 1979	SAR services, RCCs, SAR regions, procedures, cooperation	None
LLMC 1976/1996	Limitation, with a passenger limit by authorised number	Enacted — and the authorised number is disputed
Athens 1974/2002	Strict liability, presumed fault, limits, compulsory insurance, direct action	Named in s. 398(2); none of it enacted
III Code / IMSAS	Implement what you ratify; periodic audit; corrective action	Audited 2018; corrective action identified; regulations not enacted
IMO Model Regulations on Domestic Ferry Safety	A ready-made domestic ferry code	Not adopted
Manila Statement	Principles of domestic ferry safety	Unimplemented
UNCLOS Art. 94	Flag State duty to ensure safety conforming to generally accepted international regulations	Not discharged for the domestic fleet

CHAPTER 10 — THE COMPARATIVE CHAPTER

10.1 WHY THIS CHAPTER EXISTS

Every deficiency identified in this document has been identified before, somewhere else, by a commission of inquiry sitting after a disaster very like this one. **The purpose of this chapter is to show that the reforms Guyana needs are not speculative, not expensive, and not novel. They have been designed, tested and implemented by other States — several of them poorer than Guyana at the time — after losses of exactly this character.**

The chapter is in two parts. **Part A** examines six domestic ferry disasters and what each State did afterwards. **Part B** examines the four permanent marine safety investigation bodies that Guyana should copy.

A note on the selection. The comparators are deliberately not wealthy flag States with large maritime administrations. St Kitts and Nevis in 1970 was a colony of some 50,000 people. Senegal in 2002, Tanzania in 1996 and 2018, and the Philippines in 1987 were and are developing States with limited administrative capacity. **The argument of this chapter is not that Guyana should do what Britain does. It is that Guyana should do what St Kitts and Nevis did in 1970 — within ten weeks of the disaster.**

PART A — SIX DISASTERS AND SIX RESPONSES

10.2 MV *CHRISTENA* — ST KITTS AND NEVIS, 1 AUGUST 1970

10.2.1 The casualty

The **MV *Christena*** was a **160-foot government-owned and operated ferry**, working the 12-mile route across **The Narrows** between **Basseterre**, St Kitts, and **Charlestown**, Nevis. She was owned and operated by the **Saint Kitts and Nevis Ministry of Communications, Works and Transport**, and had been constructed by way of an appropriation of £/\$132,500 from the British Government.

She was built between 1958 and 1959 by Sprostons Ltd. in Georgetown, British Guiana — that is, in Guyana. She entered service on **15 June 1959**, replacing the MV *Anslyn*, destroyed by Hurricane Greta in 1956. She had **recently completed a refurbishment, two months before the loss, at a dry dock in Bridgetown, Barbados.**

On the afternoon of **Saturday 1 August 1970**, the weekend of the annual **Emancipation Day** holiday, on her final run of the day from St Kitts to Nevis, she capsized and sank about half a mile off **Nags Head**, at the southern tip of the south-eastern peninsula of St Kitts.

Her passenger capacity was 155. She had approximately 320 to 322 people on board. 233 people died. 91 survived. 123 bodies were recovered, more than half of them unidentifiable. The remaining 110 people were trapped in the vessel when she sank. Most of the dead were Nevisians. Survivors' accounts describe sharks.

It remains the deadliest maritime disaster in the recorded history of the English-speaking Caribbean, and the MV *Barima* is the deadliest since.

10.2.2 The findings

The **Commission of Inquiry was constituted under the Commissions of Inquiry Act** — the same class of instrument Guyana is using now. **Commissioner J. D. B. Renwick** heard evidence from **45 witnesses** at public hearings in Charlestown and Basseterre, and **submitted his report in October 1970 — approximately ten weeks after the disaster.**

Among the matters established on the public record:

- **The vessel was dangerously overloaded and improperly loaded**, with cargo positioned so as to destabilise her.
- **There was no reliable system for counting passengers before departure.**
- **She left port with her ballast tanks empty.** This had become **standard procedure**, adopted so that she would ride higher in the water and reduce complaints about waves soaking the decks. **It further compromised her stability.**
- **The watertight doors were not closed.** Workmen had been repairing the propeller shaft below decks and assumed the captain would make a final check before departure.

- A survivor's published account described her as a two-decker, partly enclosed craft, **in poor repair, which always took on water in the lower level** — water up to the ankles.
- **The passenger carrying capacity of ships plying between St Kitts and Nevis was fixed by the Passenger Regulations, Chapter 155 of the Laws of Saint Christopher, Nevis and Anguilla, Revised Edition 1961**, which provided that the number of passengers carried by ships of over 20 feet of keel between the islands, or going coastwise in either island, **shall not exceed two passengers for each one foot of keel, or six passengers for each registered ton**. The **Passengers (Motor Boats) Regulations**, made some fifteen years later, modified that rule.

10.2.3 What Guyana should take from it

Seven lessons, every one of which is directly transferable.

First — and this is the fact that should be read aloud at the Commission's first sitting — the worst ferry disaster in Caribbean history involved a vessel built in Georgetown, Guyana, and fifty-six years later the second worst involved a vessel operated from Georgetown, Guyana. These are not distant foreign events. Guyana built the *Christena*.

Second, the pattern of failure is identical. An ageing State-owned ferry; a lifeline route to an isolated community; a holiday or high-demand sailing; a capacity figure exceeded; a manifest or counting system that did not record who was aboard; cargo and weight distribution that destabilised the vessel; water in the lower spaces treated as normal; and a rapid capsize with heavy loss of life. **In the *Barima*'s case at least 35 of the 67 initially rescued were not listed on a manifest recording 116 passengers and 17 crew.**

Third, the *Christena*'s ballast tanks are the most important technical lesson. Emptying ballast to ride higher and keep the decks dry is a **rational-seeming operational practice that destroys stability**. It raises the centre of gravity, reduces GM, and does so in a way that is invisible from the wharf. **Note that Guyanese law has an equivalent provision and it applies to the wrong vessels:** Coasting and Passenger Trade Regulations **reg. 13(2)** requires a sailing vessel carrying passengers on a coasting voyage to carry **not less than one-third of her tonnage as ballast**, and River Navigation Regulations **reg. 24** prohibits an undecked passenger vessel from carrying any ballast other than water ballast. **There is no ballast requirement anywhere in Guyanese law for a power-driven coasting passenger ship of 24 metres and over.**

Fourth, St Kitts and Nevis in 1961 had a binding formula for coastwise passenger numbers. Two passengers per foot of keel, or six per registered ton, whichever was less — a crude rule, but a **published, binding, enforceable rule**. **Guyana's equivalent rule for a coasting steam vessel, in Coasting and Passenger Trade Regulations reg. 13(3), directs the reader to the Board of Trade of the United Kingdom (Chapter 6.6.2). A colonial-era formula that is crude but usable is better than a colonial-era cross-reference that is unusable.**

Fifth, the Renwick report was delivered in ten weeks. The Commission should not assume that thoroughness requires years.

Sixth, the *Christena* inquiry's finding that there was no reliable system for counting passengers before departure was made in October 1970. Fifty-six years later, Guyana still has no statutory duty to count (Chapter 5.9, Deficiency 71). The lesson was available and it was not taken.

Seventh, the political consequence was profound and should be understood. The *Christena* disaster is credited with the founding of the **Nevis Reformation Party** and with reshaping the constitutional relationship between St Kitts and Nevis. **A ferry disaster on a lifeline route to a marginalised community is never only a maritime event.** Region One (Barima-Waini) has no road to Georgetown and a population of 38,956 at the 2022 census.

10.3 MV *DOÑA PAZ* — PHILIPPINES, 20 DECEMBER 1987

10.3.1 The casualty

The *Doña Paz*, a domestic passenger ferry, collided with the tanker *Vector* in the Tablas Strait and both vessels burned. **It is the deadliest peacetime maritime disaster in history.** The registered figure of those on board was in the hundreds; the actual figure is generally accepted to have been several thousand, because **the vessel carried very large numbers of unmanifested passengers.** The precise death toll has never been established, for the same reason.

10.3.2 The response

The Philippines subsequently developed a domestic shipping safety régime administered by the **Maritime Industry Authority (MARINA)**, with domestic passenger vessel rules, capacity certification, and manifest enforcement, alongside the **Philippine Coast Guard** as the enforcement arm. The Philippines has since experienced further ferry casualties, and the régime has been repeatedly revised.

10.3.3 What Guyana should take from it

The single lesson is that an unenforced manifest is not a safety document, and that the failure to count is not a clerical failure but a lethal one. The *Doña Paz* death toll is unknown to this day because nobody counted. **The MV *Barima*'s figures are disputed for the same reason** — a manifest of 133 against a closed-circuit television review of 179, with the crew figure of 17 against 18 unreconciled, and the arithmetic of 76 rescued plus 73 recovered exceeding the manifest total by 16 (Chapter 3.4, Conflict 2 and 3).

The second lesson is a caution. The Philippine experience shows that **establishing an authority is not the same as closing the gap.** The régime must be enforced at the point of embarkation, on every sailing, by someone whose job it is. Chapter 12 accordingly

recommends a statutory **Loading Officer** and a statutory **embarkation count**, not merely a new authority.

10.4 MV *LE JOOLA* — SENEGAL, 26 SEPTEMBER 2002

10.4.1 The casualty

The *Joola*, a State-owned roll-on/roll-off ferry, capsized off the coast of the Gambia while on the route between Ziguinchor in the Casamance region and Dakar. **She was certified for approximately 550 persons and was carrying an estimated 1,800 or more.**

Approximately **1,863 people died**; there were **64 survivors**. The Casamance route existed because the Casamance region is **geographically separated from the rest of Senegal by the Gambia**, and the ferry was the practical link.

10.4.2 The findings and response

Investigations identified **gross overloading, inadequate stability, the absence of an effective passenger count, deficiencies in the vessel's maintenance and manning, and a slow and poorly coordinated search and rescue response**. Senegal's response included ministerial resignations, the restructuring of maritime administration, and litigation which continued for many years, including proceedings brought abroad.

10.4.3 What Guyana should take from it

The structural parallel is exact and it is the most important comparator in this chapter after the *Christena*. A State-owned ferry; a region cut off by geography from the capital; no practical alternative; chronic demand exceeding capacity; a certificated figure massively exceeded; and a rescue response that arrived far too late.

The lesson for the Commission is that the pressure to overload a lifeline vessel is structural and will not be solved by punishing a master. Where the ferry is the only link, every sailing that leaves people behind is a political and human problem for the operator, and the pressure to take one more passenger and one more pallet is continuous. **A régime that relies on the master to resist that pressure, without giving him a published capacity figure, an overriding authority protected by statute, and a shore organisation obliged to support him, will fail.** Guyana has none of those three (Deficiencies 21, 88, 73).

The second lesson concerns delay in rescue. The *Joola* capsized at night and survivors were in the water for many hours before help arrived. **The MV *Barima*'s distress signal reached Air Traffic Control at 22:43; the Coast Guard reached the Iron Punt area at approximately 02:30.** Senegal's experience is that a maritime rescue coordination capability cannot be improvised on the night. **Guyana's MRCC has no statutory existence** (Deficiency 59) and **the SAR Convention is unimplemented** (Deficiency 83).

10.5 MV *BUKOB*A — TANZANIA, 21 MAY 1996, AND MV *NYERERE* — 20 SEPTEMBER 2018

10.5.1 The casualties

The **MV *Bukoba*** capsized on **Lake Victoria** with the loss of some hundreds of lives — figures commonly given range from around 500 to over 800, and the true figure is uncertain because the vessel was carrying **substantially more people than were recorded**. Investigations identified **a known and long-standing stability defect** in the vessel, **overloading**, and **inadequate regulatory oversight**.

The **MV *Nyerere***, a small ferry on Lake Victoria between Ukara and Ukerewe, capsized in September 2018 with the loss of over 200 lives, again in circumstances of overloading and inadequate passenger counting.

10.5.2 What Guyana should take from it

Three lessons.

First — the *Bukoba* is the clearest recorded case of a known stability defect that was documented and not acted upon. It is the reason why the reporting duty in **Cap. 49:01 s. 237** and the accident, defect and alteration notification duty in **s. 292(2)** matter, and it is the reason why **the absence of any duty on the Administration to do anything with a s. 237 report is Deficiency 66**. A report that is filed and not acted on is worse than no report, because it creates a record of knowledge without a record of action.

Second — the twenty-two year gap between *Bukoba* and *Nyerere* is the warning. A single disaster produces reform announcements; sustaining the reform is a different problem, and it requires a permanent body with a statutory duty to monitor implementation. **Chapter 12 accordingly recommends that the Commission's recommendations be given a statutory implementation-monitoring mechanism with mandatory reporting to Parliament**, because otherwise the fate of the Pollard recommendations (Chapter 8.4) will be repeated.

Third — both casualties were on inland waters. Guyana's inland and riverine passenger fleet is very large, and **the River Navigation Regulations, though far better than the coastal law (Chapter 4.2.4.1), rest on a formula devised in 1918 (reg. 18) and a deck-area rule for machinery-propelled vessels (reg. 19)**. Any reform programme confined to sea-going ferries will leave the larger part of the exposure untouched.

10.6 MV *SEWOL* — REPUBLIC OF KOREA, 16 APRIL 2014

10.6.1 The casualty

The *Sewol*, a roll-on/roll-off passenger ferry on a domestic route, capsized and sank off the south-west coast of Korea. **304 people died, most of them secondary school students on a school trip**. The immediate causes identified included **an unlawful modification of**

the vessel that raised her centre of gravity and reduced her stability, overloading with cargo, inadequately secured cargo, insufficient ballast water, a sharp turn, and a failure of the crew to order evacuation, with passengers instructed to remain in place while the vessel heeled.

10.6.2 The response

Korea's response was among the most far-reaching taken by any State after a ferry casualty and included:

- the **establishment of an independent investigation commission** with statutory powers;
- the **restructuring of the coast guard** and the reassignment of its rescue and investigation functions;
- **criminal prosecutions**, including of the master and crew and of officials of the operating company and of the inspection bodies;
- **reform of the regulatory relationship between the maritime administration and the industry bodies performing survey and inspection functions**, including the practice of retired officials moving into those bodies;
- **restrictions on vessel age and on structural modification**;
- and **substantial reform of the law on cargo securing, loading limits and ballast.**

10.6.3 What Guyana should take from it

Four lessons, and the first is the most important technical lesson in this entire chapter.

First — the *Sewol*'s modification is the *Barima*'s question. The *Sewol* had been modified in a way that raised her centre of gravity. **The MV *Barima* was 86 to 87 years old, is recorded as having been refitted in 2017, and is reported to have been operating with new engines.** Guyanese law requires stability information based on an inclining test (s. 290(2)) but contains **no requirement to re-incline after alteration, no lightweight survey requirement, and no prohibition on modification without the sanction of the Administration** (Deficiency 11; and compare SOLAS I/11, Deficiency 66). **The *Sewol* is the case that establishes why those three requirements exist.**

Second — the *Sewol*'s ballast is the *Christena*'s ballast. Two of the six comparators in this chapter involved a vessel operating with insufficient ballast. **Guyana has no ballast requirement for this class of vessel.**

Third — the reform of the relationship between the administration and the bodies performing survey. Korea addressed the structural problem of a regulator that was too close to those it regulated. **Guyana's version of that problem is written into its statute:** Cap. 49:01 s. 3(3) makes the Director the owner; s. 429(1) makes him the appointer of assessors; s. 429(6) makes him the recipient of the report; and Cap. 49:04 s. 24(1)(e) directs the inspectors' fees into the operator's revenue (Deficiencies 3, 30, 55).

Fourth — the independent investigation commission was established by statute and was separate from the criminal prosecutions. Korea ran both. Guyana is presently running a Commission of Inquiry under a general Act, alongside a murder prosecution, with no statutory separation, no protection for evidence, and no marine safety investigation body at all (Chapter 8.5.5).

10.7 INDONESIA AND BANGLADESH — TWO SYSTEMS WORTH STUDYING

Indonesia operates an enormous domestic ferry network across an archipelagic State and has suffered repeated casualties. Its investigations are conducted by the **Komite Nasional Keselamatan Transportasi (KNKT / National Transportation Safety Committee)**, a **multi-modal, permanent, independent investigation body** covering aviation, rail, road and marine. **The multi-modal model is directly relevant to Guyana**, and it is the recommendation of Chapter 12: a State with a small maritime sector cannot economically sustain a marine-only investigation body, but it can sustain a **transport safety board** covering marine, aviation and road, sharing investigators, methodology, laboratory access and a single publication and recommendation-tracking function.

Bangladesh has likewise suffered repeated riverine ferry disasters with heavy loss of life, and its experience demonstrates the same structural lesson as the Tanzanian cases: **inland and riverine passenger transport requires its own régime, enforced at the point of embarkation, and cannot be left to a general shipping statute.**

PART B — THE FOUR MODELS GUYANA SHOULD COPY

10.8 WHAT THESE FOUR BODIES HAVE IN COMMON

Before describing them individually, the **five common features** should be stated, because they are the specification for what Guyana needs and they are what Chapter 12 turns into drafting instructions.

1. **Independence from the regulator by statute.** The investigator does not report to, and is not appointed by, the body that issues certificates or that owns ships.
2. **A no-blame safety mandate.** The statutory purpose is the prevention of future casualties, and the body is expressly prohibited from apportioning blame or determining liability. Its findings are not admissible as such in other proceedings.
3. **Compulsory powers, coupled with protection for the evidence obtained.** Investigators can compel documents, entry and testimony; and what they obtain is protected from use in criminal, civil and disciplinary proceedings save on a determination by a competent authority that the benefit of disclosure outweighs the harm.
4. **Mandatory publication.** Reports are published, in full, as a matter of statutory duty and not of discretion.
5. **Recommendations with a response obligation.** Recommendations are addressed to named bodies, and those bodies are required to respond publicly, within a defined period, saying what they will do. Implementation is tracked and reported.

Not one of those five features exists anywhere in Guyanese law.

10.9 THE UNITED KINGDOM — MARINE ACCIDENT INVESTIGATION BRANCH (MAIB)

Established in **1989**, following the loss of the *Herald of Free Enterprise* at Zeebrugge in 1987. **The MAIB is separate from the maritime regulator** — the Maritime and Coastguard Agency — and its Chief Inspector of Marine Accidents reports directly to the Secretary of State. Its **sole objective is to determine the circumstances and causes of an accident with the aim of improving the safety of life at sea and the avoidance of accidents in the future. It is not the purpose to apportion liability, nor, except so far as is necessary to achieve the fundamental purpose, to apportion blame.** Inspectors have wide statutory powers of entry, inspection, seizure of documents and requiring answers. **Reports are published**, and safety recommendations are addressed to named organisations which are expected to respond.

Why this is the closest model for Guyana. The MAIB is a **small** organisation. It is a branch, not a department. Its structure — a statutory chief inspector, a small permanent cadre of inspectors drawn from the industry, a publication duty, and a recommendation-tracking function — is achievable at Guyanese scale. **And the historical relationship matters: Guyana's Cap. 49:07 s. 5(4) already requires a casualty report to be transmitted to the Board of Trade of the United Kingdom, whose successor function**

is now performed by the MAIB. The provision that is presently an embarrassing colonial fossil (Deficiency 43) can be rewritten in a single line to point at a Guyanese equivalent and at the IMO.

10.10 AUSTRALIA — AUSTRALIAN TRANSPORT SAFETY BUREAU (ATSB)

A **statutory, multi-modal** body covering **aviation, marine and rail**, independent of the transport regulators. Its investigations are conducted under legislation which provides expressly for the **protection of “restricted information”**, including evidence given to investigators, and which makes such information inadmissible in most proceedings. It publishes final reports and safety issues, and tracks the responses of the organisations to which recommendations are directed.

Why Guyana should study the ATSB specifically. It is the clearest legislative model for the **witness protection** problem identified at Chapter 5.12.3 and Chapter 8.5.5 — the collision between a safety investigation and a criminal prosecution. The Australian legislation demonstrates that it is possible to compel evidence for safety purposes and simultaneously to protect the person compelled, and it shows how to draft it.

10.11 CANADA — TRANSPORTATION SAFETY BOARD OF CANADA (TSB)

An **independent agency reporting to Parliament** — not to a Minister — covering **marine, pipeline, rail and air**. Its governing statute expressly provides that **it is not the function of the Board to assign fault or determine civil or criminal liability**, and that its findings are not binding on the parties to any legal, disciplinary or other proceedings. It maintains statutory protection for **on-board recordings, statements and communication records**. It publishes reports and maintains a **Watchlist** of the safety issues posing the greatest risk to Canadians.

Why the TSB matters most for the objections raised in Guyana. The GHRA’s objection is that a **body appointed solely by the executive cannot be seen as impartial**, and it demanded a **Parliament-led process**. **The TSB is the answer to that objection in institutional form: a permanent investigation body that reports to Parliament rather than to a Minister.** It is precisely the structure that would satisfy the GHRA’s concern on a permanent basis rather than casualty by casualty.

10.12 THE UNITED STATES — NATIONAL TRANSPORTATION SAFETY BOARD (NTSB)

An **independent federal agency**, multi-modal, with statutory authority to investigate, to hold public hearings, to issue safety recommendations, and to publish. Its recommendations are **advisory** — it has no regulatory power — and its influence rests on **publication, the public tracking of recipients’ responses, and the maintenance of a “Most Wanted List” of safety improvements**. Its governing law provides that **no part of a Board report may be admitted into evidence or used in a civil action for damages arising out of a matter mentioned in the report**.

Why the NTSB matters for Guyana. It demonstrates that **an investigation body needs no regulatory power to be effective**, provided it has independence, compulsory investigative powers, and a duty to publish. **This removes the principal objection that will be raised against creating such a body in a small State — that it duplicates the regulator. It does not. It investigates the regulator.**

10.13 THE SYNTHESIS: WHAT THE COMPARATIVE RECORD ESTABLISHES

Recurring causal factor	<i>Christena</i> 1970	<i>Doña Paz</i> 1987	<i>Bukoba</i> 1996	<i>Joola</i> 2002	<i>Sewol</i> 2014	Guyanese law provides
Certificated capacity exceeded	✓ 155 / ~320	✓	✓	✓ ~550 / ~1,800	—	No published rule fixing capacity for this class
No reliable count of persons on board	✓	✓	✓	✓	—	No duty to count
Improper cargo loading / weight distribution	✓	—	✓	✓	✓	No loading standard; no duty to calculate the condition
Insufficient ballast	✓	—	—	—	✓	No ballast requirement for the class
Known pre-existing defect or water ingress	✓	—	✓	✓	—	Report duty with no duty to act on the report
Structural modification raising KG	—	—	✓	—	✓	No re-inclining; no sanction requirement for

Recurring causal factor	<i>Christena</i> 1970	<i>Doña Paz</i> 1987	<i>Bukoba</i> 1996	<i>Joola</i> 2002	<i>Sewol</i> 2014	Guyanese law provides modification
Watertight closures not secured	✓	—	—	—	—	No closure requirement for the class
Slow or uncoordinated rescue	✓	✓	✓	✓	✓	No SAR framework in domestic law
Lifeline route with no alternative	✓	—	✓	✓	—	Region One has no road; s. 337 justification defence available
Independent investigation body created afterwards	Commission only	MARIN A régime	—	Restructuring	Independent commission + coast guard reform	None exists

Every column is a Guyanese deficiency. Every row is a lesson already learned somewhere else.

The conclusion of this chapter is a single sentence: nothing about the loss of the MV *Barima* is novel, and nothing required to prevent the next one has to be invented.

CHAPTER 11 — THE CONSOLIDATED DEFICIENCY SCHEDULE

11.1 HOW TO READ THIS SCHEDULE

This chapter reproduces, in one place, every deficiency identified in Chapters 4 to 10. For each: the **provision**, the **gap**, the **MV *Barima* nexus**, the **international benchmark**, the **recommended reform**, and a **severity rating**.

Severity ratings.

Rating	Meaning
CRITICAL	A deficiency capable of causing or permitting mass loss of life, which is live today across the domestic fleet, and which cannot be cured administratively — it requires legislation or a new instrument
HIGH	A deficiency which materially weakens safety, accountability or remedy, and which requires legislation or a new instrument
MEDIUM	A deficiency which impairs the coherence or enforceability of the régime and should be corrected in the same programme
LOW	An anomaly, obsolescence or drafting defect which should be corrected for tidiness and to avoid future confusion
URGENT-TIME	A deficiency whose consequences fall on identified persons within a defined and short period, requiring action before the Commission reports

Standing caveat, applicable to every row in which the gap is expressed as the absence of a regulation: the consolidation relied on is authorised only to **L.R.O. 1/2012**, and any instrument made after 2012 will not appear in it. Every such row is expressed **subject to verification against the current subsidiary legislation of MARAD and the Official Gazette**.

11.2 GROUP A — THE APPLICATION OF THE ACT AND THE OWNER-REGULATOR COLLAPSE

No.	Provision	Gap	MV <i>Barima</i> nexus	International benchmark	Recommended reform	Severity
1	Cap. 49:01 s. 3(1)(a)	“Non-commercial purposes” is nowhere defined. The disapplication of the entire Act to Government	It is arguable that nothing in the Guyana Shipping Act applied to her	International practice excludes only ships on government non-commercial service ; a	Define “non-commercial purposes” to exclude any ship carrying passengers or goods for a fare, freight or other reward	CRITICAL

No.	Provision	Gap	MV <i>Barima</i> nexus	International benchmark	Recommended reform	Severity
		ships turns on an undefined phrase		ticketed ferry is commercial		
2	Cap. 49:01 s. 3(2)	Power, not duty; no regulations appear	The manner and extent of the Act's application to the State fleet was never prescribed	III Code: the State must give effect to what it ratifies	Convert to a duty with a deadline: <i>"The Minister shall, within twelve months, make regulations..."</i>	CRITICAL
3	Cap. 49:01 s. 3(3)	Makes the Director the statutory "owner" of a registered Government ship, so that the duties in ss. 237, 238, 290, 292, 337, 338, 339 and 10(4) are owed by and to the same office	Every owner's duty in respect of this vessel may have been owed by the regulator to himself	Casualty Investigation Code: investigator's impartial and independent of any party whose interests could conflict; III Code separation of functions	Repeal s. 3(3) and substitute: the owner of a Government ship is the Department or authority operating her, and the Director is her regulator	CRITICAL
4	Cap. 49:01 ss. 4, 5, 8 with s. 3(3)	One office may be head of administration, general supervisor, Registrar of Ships, Registrar of Seamen, statutory owner, appointer of assessors and recipient of	Structural	III Code; Casualty Investigation Code	Statutory functional separation of survey/certification, ownership, and casualty investigation	CRITICAL

No.	Provision	Gap	MV <i>Barima</i> nexus	International benchmark	Recommended reform	Severity
		the Board's report				
50	Cap. 49:04 Part I	No safety function conferred on the T&HD or any of its officers	The operator had no statutory safety duty	ISM Code: the Company must have a safety management system and a Designated Person Ashore	Insert a safety duty and a Marine Superintendent post into Cap. 49:04	CRITICAL
51	Cap. 49:04 s. 14(2)	Unconditioned management power over the Government vessels; no safety condition attached	The entire statutory basis on which she was operated	UNCLOS Art. 94; ISM Code	Insert: the General Manager shall ensure each vessel complies with Cap. 49:01 and shall not permit any vessel to proceed to sea otherwise than in a seaworthy condition	CRITICAL
55	Cap. 49:04 s. 24(1)(e)	The operator's revenue includes the fees of the inspectors and surveyors who may detain its vessels	Structural	III Code: independence of enforcement	Repeal; direct such fees to the Consolidated Fund or to MARAD	HIGH
59	No statute	The MRCC has no statutory existence; no SAR region, no allocation	Distress alert 22:43 → ATC → 23:01 Lighthouse	SAR Convention 1979; IAMSAR Manual	Enact a Maritime Search and Rescue Act establishing the MRCC, the SAR region, alert	CRITICAL

No.	Provision	Gap	MV <i>Barima</i> nexus	International benchmark	Recommended reform	Severity
		of responsibility for distress alerts, no time standard	→ 23:03 MRCC		routing and time standards	
60	Cap. 49:01 s. 3(1)(b)	GDF excluded from the Act; no statutory link between the safety regulator and the rescue capability	Two of three GDF helicopters unserviceable; no vessels with scanners initially	SAR Convention : States shall ensure adequate SAR services	Statutory duty of cooperation and a readiness-reporting obligation to the MRCC	HIGH
62	No statute	The Superintendent / Goods Superintendent of Loading exists in fact and not in law: no office, no duty, no qualification, no record, no offence	A person holding that office was charged on 28 July 2026	IMO Model Regulations on Domestic Ferry Safety	Create a statutory Loading Officer with a defined duty, qualification, record-keeping obligation and offence	CRITICAL
63	No statute	No Company, no Designated Person Ashore, no safety management system for the State fleet	The safety of the fleet had no shore-side owner	ISM Code / SOLAS IX	Apply an ISM-equivalent domestic code to all operators of passenger vessels of 24 m and over	CRITICAL
64	—	The IMO audit identified the gap in 2018, the	Seven years passed	III Code / IMSAS	Publish the audit report, the corrective action plan and the Pollard	CRITICAL

No.	Provision	Gap	MV <i>Barima</i> nexus	International benchmark	Recommended reform	Severity
		corrective action was identified, the Pollard drafting was completed, and the regulations were not enacted			recommendations; enact them	

11.3 GROUP B — THE 24-METRE GAP AND THE ABSENCE OF A PASSENGER SHIP CODE

No.	Provision	Gap	MV <i>Barima</i> nexus	International benchmark	Recommended reform	Severity
6	Cap. 49:01 ss. 49, 51	The complete safety code in the s. 51 heads of power is confined to ships under 24 m	She was 40.26 m	SOLAS II-1, II-2, III	Extend equivalent heads of power to all domestic passenger ships	CRITICAL
20	Cap. 49:01 Part XV (ss. 398–399)	Two sections. No safety standard of any kind: no survey cycle, no stability criterion, no lifesaving standard, no manning standard, no muster requirement,	The entirety of the “Passenger Ships” Part of the Act	SOLAS Chapters II-1, II-2, III, V	Replace Part XV with a full domestic passenger ship Part	CRITICAL

N o.	Provisio n	Gap	MV <i>Barima</i> nexus	Internatio nal benchmar k	Recommended reform	Severity
		no limit on persons				
2 1	Cap. 49:01 s. 398(1)(c)	Power to regulate the number of passengers a ship may carry — unexercised	Produced Conflict 1: three irreconcila ble capacity figures	SOLAS III; LSA Code	Exercise the power: fix capacity by the lesser of survival craft capacity, lifejacket count, evacuation capacity and stability compliance	CRITIC AL
2 2	Cap. 49:01 s. 398(1)(b)	Power to require particulars as to all passengers — unexercised	Produced Conflict 2: manifest 133 v CCTV 179	SOLAS III/27	Exercise the power: mandatory embarkation count, names and gender, adults/children/inf ants, retained ashore	CRITIC AL
2 4	Cap. 49:01 s. 398(3)	Waiver power permitting the Minister to switch off passenger regulations for Guyana passenger ships operating solely within Guyana waters	Aimed at precisely the domestic fleet	No conventio n permits a general waiver without an equivalent standard	Repeal, or subject to published criteria, equivalent safety, publication and time limit	HIGH
2 5	Cap. 49:01 s. 399	The only substantive protection — persons refused admission because the ship is full — is an offence	Obligation runs the wrong way	IMO Model Regulation s on Domestic Ferry Safety	Create an offence of admitting passengers beyond the certificated number	HIGH

N o.	Provisio n	Gap	MV <i>Barima</i> nexus	Internatio nal benchmar k	Recommended reform	Severity
		by the passenger; no duty on anyone to refuse admission				
39	Reg. 5/2005 Annex, SCV Code preamble	The permission allowing vessels of 24 m and over on national-waters voyages to operate under the SCV Code sits in the annexed Code, while reg. 4's application clause reaches only ships under 24 m — arguably a dead letter	The escape route existed and was not used	SCV Code; IMO Model Regulations	Amend reg. 4 to confer an express power on the Director to apply the Code to vessels of 24 m and over on national voyages	CRITICAL
40	Reg. 6/2005 reg. 3	“except passenger ships” removes from the only survey régime above 24 m the very vessels carrying people	She fell inside the length and tonnage band and was carved out	SOLAS I/7 — annual passenger ship survey	Delete the carve-out and enact a dedicated passenger ship survey régime	CRITICAL

N o.	Provisio n	Gap	MV <i>Barima</i> nexus	Internatio nal benchmar k	Recommended reform	Severity
4 1	—	The gap is systemic: every Guyanese domestic passenger vessel of 24 m and over is in it today	Not confined to this vessel	IMO Model Regulations on Domestic Ferry Safety	A single new instrument closes it	CRITICAL
6 5	Cap. 49:01 ss. 257–266; Reg. 6/2005	No annual survey with a stated technical standard for the class	Survey history disputed and unpublished	SOLAS I/7	Annual renewal survey against a published domestic code	CRITICAL
6 7	—	No subdivision, damage stability or intact stability standard for the class	The central technical gap	SOLAS II-1; 2008 IS Code	Adopt intact and damage stability criteria appropriate to domestic service	CRITICAL
6 8	—	No fire safety standard for the class	—	SOLAS II-2	Adopt a domestic fire safety standard	HIGH
9 2	—	IMO Model Regulations on Domestic Ferry Safety not adopted	The instrument designed for this exact problem	The Model Regulations themselves	Adopt, adapted to Guyanese conditions	CRITICAL
9 3	—	Manila Statement principles unimplemented	—	Manila Statement	Adopt as policy and enact	HIGH

11.4 GROUP C — STABILITY, LOADING AND THE LOAD LINE

No.	Provision	Gap	MV <i>Barima</i> nexus	International benchmark	Recommended reform	Severity
8	Cap. 49:01 s. 290(1)	Stability information required “ as may be prescribed ” — nothing prescribed	A master may comply by carrying any document about stability	2008 IS Code; SOLAS II-1	Prescribe: maximum KG / minimum GM curve, approved loading conditions, free-surface tables, crowding and turning moments, simplified loading guidance	CRITICAL
9	Cap. 49:01 s. 290	No duty to calculate the departure condition	The operative gap	SOLAS II-1; IS Code	Require the master to calculate, record and certify the departure condition against approved criteria	CRITICAL
10	Cap. 49:01 s. 290(3)	Penalty \$10,000 , unrevised since 1998	—	—	Raise and index	MEDIUM
11	Cap. 49:01 s. 290(2)	No re-inclining, no lightweight survey, no post-alteration requirement	She was 86–87 years old; refit 2017; reported new engines	SOLAS I/11 (no change without sanction); international lightweight survey practice	Mandatory lightweight survey at defined intervals and re-inclining on exceedance; sanction required for modification	CRITICAL

No.	Provision	Gap	MV <i>Barima</i> nexus	International benchmark	Recommended reform	Severity
14	Cap. 49:01 ss. 315, 319	The load line is the only quantitative loading control available for this class, and it cannot measure stability	A submerged-mark reading was offered publicly as evidence she was not overloaded, by an official who said he was not clear how the weight was distributed	Load Lines 1966 measures reserve buoyancy only; stability is governed by SOLAS II-1 and the IS Code	Enact stability criteria so the load line is no longer asked to answer a question it cannot answer	CRITICAL
76	Cap. 49:01 s. 315	Criteria for assigning a Local Load Line are not published	The mark relied upon was assigned by an unpublished process	Load Lines 1966 Annex I	Publish the assignment rules, freeboard tables and validity	HIGH
77	—	No conditions of assignment: no requirement that hatches, doors, ventilators, scuppers be weathertight or closed at sea	Openings and closures are central to a capsizing	Load Lines 1966 conditions of assignment; SOLAS II-1	Enact conditions of assignment and a duty to secure closures before sea	CRITICAL
—	Cap. 49:07 Coasting Regs. reg. 13(2); Cap.	Ballast requirements exist for sailing vessels and undecked river craft	<i>Christena</i> and <i>Sewol</i> both involved insufficient ballast	IS Code	Enact a ballast condition requirement within the approved loading conditions	HIGH

No.	Provision	Gap	MV <i>Barima</i> nexus	International benchmark	Recommended reform	Severity
	50:01 River Nav Regs reg. 24	and for nothing else				
52	Cap. 49:04 s. 17(3)	The Department determines whether goods are dangerous goods — no external standard, no review, no record, and a commercial interest in the answer	Survivor accounts allege fuel containers and vehicles among the cargo	IMDG Code / SOLAS VII	Adopt the IMDG Code; transfer classification disputes to MARAD; require a written record	HIGH

11.5 GROUP D — COUNTING, MANNING, MUSTER AND OPERATION

No.	Provision	Gap	MV <i>Barima</i> nexus	International benchmark	Recommended reform	Severity
7 / 70	Cap. 49:01 s. 239	Prescribes a record, not a drill. No drill required, no content, no participants, no standard, no passenger involvement	The only drill provision applicable to her	SOLAS III/19 — monthly drills; passenger muster within 24 hours; drills as if a real emergency	Replace with a SOLAS III/19-equivalent duty	CRITICAL
69	—	No muster list / station bill requirement for the class	—	SOLAS III/8 and III/37	Mandatory muster list with prescribed content	CRITICAL
71	Cap. 49:01 s.	No duty to count persons on	Manifest 133 v CCTV 179; crew	SOLAS III/27	Mandatory embarkation count with	CRITICAL

No.	Provision	Gap	MV <i>Barima</i> nexus	International benchmark	Recommended reform	Severity
	398(1)(b)	board; no record kept ashore	17 v 18 unreconciled; arithmetic does not close on the manifest		shore retention	
72	Cap. 49:01 ss. 105, 336	Under-manning is an ingredient of a criminal offence and there is no published manning standard	—	SOLAS V/13; Minimum Safe Manning Document	Issue Minimum Safe Manning Documents for all passenger vessels	CRITICAL
73 / 88	—	No safety management system, no Designated Person Ashore, and no statutory master's overriding authority	The statute protects the decision to sail and not the decision to stay	ISM Code	Domestic ISM-equivalent code; statutory overriding authority for the master, with protection from detriment	CRITICAL
79	Cap. 49:01 s. 429(3); Cap. 49:04 Home Trade Ships Regs	If the officers' certificates were issued under the operator's Act, a Board under Part XVIII may have no power to cancel or suspend them	Directly engages the terms of reference on competence and conduct	STCW	Consolidate all seafarer certification under Cap. 49:01 s. 105 regulations	HIGH

No.	Provision	Gap	MV <i>Barima</i> nexus	International benchmark	Recommended reform	Severity
80	—	The regulator publicly acknowledged in 2019 that Guyana had not ratified STCW 95 while surveyors issued certificates on that basis	Historic; current position unverified	STCW 1995 and 2010 Manila amendments	Verify and publish the current position; regularise all certificates	HIGH
81	—	No statutory drug and alcohol standard, testing power or offence for seafarers	Blood samples taken post-casualty; a “zero tolerance” policy was asserted	STCW Manila amendments	Enact limits, a testing régime, an offence and consequences	HIGH
—	Cap. 50:01 River Nav Regs reg. 45(3)	The rule prohibiting additional persons or lading after reporting applies only on rivers	Unticketed boarding is alleged	IMO Model Regulations	Extend an equivalent rule to all embarkations	HIGH

11.6 GROUP E — MAINTENANCE, REPORTING AND THE REGULATOR’S RESPONSE

No.	Provision	Gap	MV <i>Barima</i> nexus	International benchmark	Recommended reform	Severity
12 / 66	Cap. 49:01 s. 292(1)	The maintenance-of-condition duty is conditional on a Safety	The most consequential conditional clause in the Act	SOLAS I/11	Delete the condition; apply the duty to every Guyanese	CRITICAL

No.	Provision	Gap	MV <i>Barima</i> nexus	International benchmark	Recommended reform	Severity
		Convention Certificate being in force — which a domestic ferry would not hold			passenger ship	
13	Cap. 49:01 ss. 257–266	Survey and certification process with no technical standard behind it	A surveyor had no published criteria to apply	SOLAS Chapters II-1, II-2, III	Enact the domestic code the process was built to carry	CRITICAL
—	Cap. 49:01 s. 237	Report required within 24 hours; no duty on anyone to assess, investigate, aggregate, publish or act on it	Survivor accounts allege water ingress dismissed as normal; the captain reportedly cited known issues	SOLAS I/11 — the Administration shall cause investigations to be initiated	Duty to assess every report, to record the action taken, and to publish an annual summary	CRITICAL
—	Cap. 49:01 s. 238	“Reasonable search” undefined; no time limit, standard or link to the SAR system	—	SAR Convention	Define, and link to the MRCC	MEDIUM
18	Cap. 49:01 s. 339	The duty to consider detention is triggered only by a complaint made in sufficient time before sailing — not	A surveyor forming his own view an hour before sailing is outside the mandatory limb	Port and flag State control practice	Trigger the duty on any reasonable belief, however arising	HIGH

No.	Provision	Gap	MV <i>Barima</i> nexus	International benchmark	Recommended reform	Severity
		by the officer's own observation				
19	Cap. 49:01 ss. 340, 341	Security for costs from a complainant; Government exposure to compensation — a chilling structure; no whistleblower protection anywhere in the Act	The persons best placed to complain are crew and regular passengers	III Code; ISM Code reporting culture	Repeal s. 341 for safety complaints; enact confidential hazard reporting and protection from detriment	HIGH
82	Reg. 6/2005 reg. 2	Application depends on gross tonnage under Tonnage Regulations that are not in the published law	The “284 tons” confusion at the heart of Conflict 1	Tonnage 1969	Publish the Tonnage Regulations	HIGH
38 / 75 / 89	Reg. 2004 (ISPS)	Ship and Port Facility Security Regulations absent from the authorised text since 2012	Access control at embarkation is a security as well as a safety function	SOLAS XI-2 / ISPS Code	Complete the revision and publish	HIGH

11.7 GROUP F — CASUALTY INVESTIGATION

No.	Provision	Gap	MV <i>Barima</i> nexus	International benchmark	Recommended reform	Severity
29	Cap. 49:01 s. 427	No duty to investigate any casualty, however many die. No threshold, trigger, time limit or duty to publish	Part XVIII was unusable	Casualty Investigation Code , mandatory under SOLAS XI-1/6 since 1 January 2010	Mandatory investigation of every very serious marine casualty	CRITICAL
30	Cap. 49:01 s. 429(1), (6)	Assessors appointed by the Director; report delivered to the Director — who under s. 3(3) may be the vessel's owner	Structurally incapable of examining operator or regulator	Casualty Investigation Code: independence	Independent investigation body; report to Parliament and to the IMO	CRITICAL
31	Cap. 49:01 s. 429(3)	Reaches certificated individuals only. No finding available against a company, Department, Ministry or the regulator	The reason the “small man” is the only person the law reaches	Casualty Investigation Code; Korean and UK practice	Power to make findings and recommendations against organisations	CRITICAL
32	Cap. 49:01 s. 429(3)	Fuses fact-finding with certificate revocation , destroying candour	The master and mate are now accused persons	Casualty Investigation Code: separation from other proceedings; protection of records	Separate safety investigation from disciplinary and criminal process; protect evidence	CRITICAL
33	Cap. 49:01 s. 431	Rules for the conduct of inquiries permissive and unmade	Contrast Cap. 49:07 s. 9(1), under	—	Make standing rules	MEDIUM

No.	Provision	Gap	MV <i>Barima</i> nexus	International benchmark	Recommended reform	Severity
			which three casualty-specific rules were made in 1961 and 1969			
34	Cap. 49:01 s. 442	The only mandatory death inquiry is to be held at the next port the ship calls at — there is none after a sinking — and is disapplied where an inquest or criminal inquiry is to be held	Both limbs defeat it here	Coronial and safety investigation practice	Replace with a mandatory investigation duty independent of the coronial and criminal processes	HIGH
42	Cap. 49:07 s. 3	Part I does not apply to any ship belonging to or in the service of the State	The 1883 machinery was disapplied to her by its own terms	Casualty Investigation Code applies to all ships	Repeal the State ship exclusion	CRITICAL
43	Cap. 49:07 s. 5(4)	The court's report and any cancelled certificate go to the Board of Trade of the United Kingdom	The correct modern destination is the IMO	Casualty Investigation Code — report to be published and submitted to IMO	Substitute: publication, and submission to the IMO	HIGH

No.	Provision	Gap	MV <i>Barima</i> nexus	International benchmark	Recommended reform	Severity
44	Cap. 49:01 s. 428 v Cap. 49:07 ss. 7–16	The 1883 Act has stronger investigative powers than the 1998 Act in eleven respects, including compulsion, the duty to inquire fully, faithfully and impartially, the recording of dissent, and Gazette publication of the appointment	Neither was usable	Casualty Investigation Code	Carry the 1883 powers forward into the new investigation statute	HIGH
74 / 91	—	The Casualty Investigation Code is unimplemented in every respect , sixteen years after becoming mandatory	The deficiency from which most others follow	SOLAS XI-1/6; MSC.255(84)	Enact it in full	CRITICAL
61	—	No permanent investigation body; no monitoring of recommendations	Rules were made casualty-by-casualty in 1961, 1961 and 1969	MAIB, ATSB, TSB, NTSB, KNKT	Establish a permanent multi-modal Transport Safety Board reporting to Parliament	CRITICAL

11.8 GROUP G — OFFENCES, PENALTIES AND ENFORCEMENT

No.	Provision	Gap	MV <i>Barima</i> nexus	International benchmark	Recommended reform	Severity
15	Cap. 49:01 s. 337 → s. 444(1)	The most serious offence in the Act has no prescribed penalty and defaults to \$25,000 and six months — one quarter of the fine for submerging a load line	The prosecutor went to common-law murder because the maritime statute offered six months	Comparable jurisdictions provide substantial custodial maxima	Prescribe a penalty commensurate with the harm risked	CRITICAL
16	Cap. 49:01, all penalties	Unrevised since 1998; no indexation; no uprating power; no review requirement	—	—	Insert an indexation and uprating provision	HIGH
17	Cap. 49:01 ss. 337(1)(b), 337(2), 338(2); Cap. 49:07 ss. 26, 27	A statutory defence that sending an unseaworthy ship to sea was “reasonable and justifiable”	Available on the face of the statute to a lifeline service with no alternative	No convention provides such a defence	Repeal limb (b); retain only the due diligence defence in limb (a)	CRITICAL
35	Cap. 49:01 s. 445	Compounding : the Director may extinguish liability on payment of up to \$20,000, after which no further proceedings may be taken; no publication,	Which offences are compoundable is unestablished	—	Exclude all safety offences from compounding; require a published register	HIGH

No.	Provision	Gap	MV <i>Barima</i> nexus	International benchmark	Recommended reform	Severity
		reasons, register or oversight; and the Director may be the vessel's statutory owner				
45	Cap. 49:07 s. 23	The only overcrowding offence in Guyanese law — \$97,500, apprehension without warrant, deeming the master liable, reaching anyone “concerned in or a party to”, with seizure and sale — but conditioned on the overcrowding being “contrary to the regulations”, whose only capacity rule for a steam vessel points at the Board of Trade	May not reach this vessel at all	IMO Model Regulations	Re-enact as a free-standing offence tied to a published certificated number	CRITICAL
46	Cap. 49:07 s. 25	A complete domestic passenger safety head of power —	Two live regulation-making powers existed and	—	Exercise it, or consolidate it into a new Act	CRITICAL

No.	Provision	Gap	MV <i>Barima</i> nexus	International benchmark	Recommended reform	Severity
		periodic inspection, seaworthiness, registration of persons employed, certificates of competency, safety and accommodation of passengers and the number of persons to be carried , lights, fees — exercisable by the Director subject to affirmative resolution — last used in 1920	neither was used			
47	Cap. 49:07 s. 35(1)	Ministerial power to exempt vessels under contract with the Government from inspection	Does not apply to a State-owned vessel, but illustrates the pattern	—	Repeal or subject to criteria	LOW
48	Cap. 49:07 Coasting Regs reg. 13(3)	The passenger capacity of a coasting steam vessel is ascertained “in accordance with the survey	The only applicable capacity rule is unusable	SOLAS III; LSA Code	Replace with a domestic rule tied to survival craft, lifejackets, evacuation and stability	CRITICAL

No.	Provision	Gap	MV <i>Barima</i> nexus	International benchmark	Recommended reform	Severity
		established from time to time by the Board of Trade of the United Kingdom” — a body which does not issue such instructions. The Fourth Schedule prices the exercise at \$20 for a vessel over 120 feet ; she was 126.5 feet				
49 / 78	Cap. 49:07 Coasting Regs reg. 15	Prescribes nineteenth-century lights “and no others” within the territorial sea	Conflicts with COLREG; unresolved because Cap. 49:01 s. 455 governs conflicts with that Act only	COLREG 1972, Rule 1(b)	Replace with the River Navigation Regulations formula: comply with the Rule of the Road at Sea	HIGH
53	Cap. 49:04	No passenger safety provision of any kind. s. 18 is a tariff	The operator’s constitutive Act	—	Insert a safety Part or repeal and re-enact	CRITICAL
58	Cap. 49:04 s. 51	Default penalty \$9,750 — one of four default penalties across four Acts ranging from \$75 to	Incoherence across the statute book	—	Harmonise	MEDIUM

No.	Provision	Gap	MV <i>Barima</i> nexus	International benchmark	Recommended reform	Severity
		\$25,000 and six months				
36	Cap. 49:01 s. 455	International instruments prevail “unless the Minister otherwise provides”	A ministerial override of Guyana’s treaty obligations	Vienna Convention on the Law of Treaties Art. 27	Delete the final words	HIGH
37	Cap. 49:01 ss. 3(2), 398(3), 453, 455; Reg. 5/2005 reg. 5; Reg. 6/2005 reg. 4	Six discretionary escape mechanisms, none subject to criteria, procedure, equivalent safety, time limit, publication or report to Parliament	Structural	III Code	Subject every exemption power to published criteria, an equivalent-safety test, Gazette publication and an annual return to Parliament	HIGH
—	Cap. 49:04 s. 46	Fraudulent alteration of draught marks: \$48,750 — nearly twice the maximum for sending a ship to sea likely to endanger life	The pattern of punishing measurement offences more heavily than offences against life	—	Recalibrate the whole penalty structure	MEDIUM

11.9 GROUP H — REMEDY, LIABILITY AND THE FAMILIES

No.	Provision	Gap	MV <i>Barima</i> nexus	International benchmark	Recommended reform	Severity
54	Cap. 49:04 s. 23	One month’s written notice naming a legal	Six months from 18 July 2026 expires on or about 18 January 2027.	Athens Convention 2002 limitation periods run	Immediate: a State undertaking not to rely on s. 23, or	URGENT-TIME

No.	Provision	Gap	MV <i>Barima</i> nexus	International benchmark	Recommended reform	Severity
		practitioner, and a six-month limitation running from the act or omission	Claimants are disproportionately Region One residents with no road to Georgetown; five victims remain unidentified; at least thirty unaccounted for; the Commission will not have reported	from disembarkation or death and are substantially longer	emergency legislation suspending it. Permanent: repeal and replace	
5	Cap. 49:01 s. 10(4)	Financial responsibility against damage to third parties , “in such manner as may be prescribed” — nothing prescribed , and it is not passenger liability insurance	No insurer against whom a family has any claim	Athens Convention 2002 — compulsory insurance and direct action	Enact compulsory passenger liability insurance with direct action	CRITICAL
23 / 86 / 87	Cap. 49:01 s. 398(2)	The Act names the Athens Convention and enacts none of it: no strict liability for a shipping incident, no presumed fault, no limits, no	A capsizing is a shipping incident on the face of the definition	Athens Convention 1974 and 2002 Protocol	Accede to the 2002 Protocol and enact it	CRITICAL

No.	Provision	Gap	MV <i>Barima</i> nexus	International benchmark	Recommended reform	Severity
		compulsory insurance, no direct action				
26 / 85	Cap. 49:01 Part XVI	The limitation of liability is enacted and the liability is not	The protective half of the international bargain was omitted and the limiting half retained	LLMC 1976/1996 with Athens	Enact the liability régime	CRITICAL
27	Cap. 49:01 s. 421 v Cap. 49:04 s. 23	Which limitation period governs a claim arising from the loss of a Government ship is unresolved	A family must assume the shorter	—	Resolve expressly	URGENT-TIME
84	Cap. 49:01 s. 411	The passenger limit is a function of the number of passengers the ship is authorised to carry — and that number is in dispute between approximately 397, approximately 394 and approximately 150	The capacity dispute may determine the size of the fund available to seventy-three families	LLMC 1996 Protocol	Publish the certificate; fix capacity by published rule	CRITICAL

No.	Provision	Gap	MV <i>Barima</i> nexus	International benchmark	Recommended reform	Severity
56	Cap. 49:04 s. 47	Government and Department not liable under Part III for the fault or negligence of the General Manager or of persons in the pilotage service	Narrower than earlier drafts asserted — confined to Part III and to two categories of person	Modern principles of State liability	Repeal	HIGH
57	Cap. 49:04 s. 53	Personal exemption for the Advisory Council, the General Manager and all persons employed by the Department — but the second limb channels damages onto the Department's revenue and is favourable to claimants	Cuts both ways; does not touch the criminal law	—	Retain and modernise the channelling limb; repeal s. 47	MEDIUM
28	Cap. 49:01 Part XVII	The Court of Survey protects the shipowner from the surveyor; it has no safety or	—	—	Retain; do not mistake it for a safety mechanism	LOW

No.	Provision	Gap	MV <i>Barima</i> nexus	International benchmark	Recommended reform	Severity
investigative function						
—	Cap. 49:04 s. 48	Claims for injury to a vessel capped at \$100 , with a magistrate empowered to sit with the harbour master or a certificated master as assessor	The assessor mechanism is exactly what a marine court needs and it is attached to a hundred-dollar jurisdiction	—	Repeal the cap; retain and extend the nautical assessor mechanism	MEDIUM

11.10 GROUP I — COHERENCE, PUBLICATION AND OBSOLESCENCE

No.	Provision	Gap	International benchmark	Recommended reform	Severity
—	Whole statute book	No single instrument governs domestic passenger safety, and no provision resolves conflicts between the domestic Acts — s. 455 resolves conflicts with conventions only	III Code: a clear legislative framework	A single consolidating Domestic Passenger Vessel Safety Act	CRITICAL
—	Cap. 49:01 v Cap. 49:07	The same conduct attracts different penalties under different Acts, with no rule of priority: unseaworthiness \$25,000/6 months v 2 years; overloading \$100,000 v \$97,500	Legal certainty	Consolidate	HIGH
—	Cap. 49:01	Cap. 49:01 never mentions Cap. 49:07 , though Act 7 of 1998 amended Cap. 49:07 ss.	—	Consolidate or cross-reference expressly	HIGH

No.	Provision	Gap	International benchmark	Recommended reform	Severity
		2 and 17 to wire it into the new Act			
—	Cap. 49:07 s. 35(2)	Exemption from inspection triggered by a certificate of “ the society known as Lloyd’s Register of British and Foreign Shipping ” — an entity that has not carried that title for decades	RO Code	Replace with a recognised organisation régime under the RO Code	MEDIUM
—	Cap. 50:01 s. 14	The only mandatory enforcement duty in the Guyanese maritime statute book — “it shall be the duty of the Director and the Maritime Administration Department to enforce” — is in the 1891 River Navigation Act	III Code	Replicate the formula in Cap. 49:01 and Cap. 49:07	HIGH
—	Cap. 49:03	The Passengers Act, cross-referred at Coasting Regs reg. 11(4) as containing at s. 6 a ceiling on the number of persons an inspector may certify, could not be obtained	—	Priority One: obtain, analyse and publish	CRITICAL
—	Cap. 49:08	Cross-referred in the Harbour and Pilotage Regulations for sunken vessels; not obtained	—	Priority One: obtain	HIGH
—	Harbour and Pilotage Regs	The twelve-hour sunken-vessel notification duty and the mandatory marking duty apply only in a pilotage district ; the wreck lies about nine miles off the Essequibo	—	Extend to Guyana waters generally	HIGH

No.	Provision	Gap	International benchmark	Recommended reform	Severity
		coast, so no duty to mark her as a danger to navigation and no power in the Harbour Master to remove her			
—	Four Acts	Four default penalties ranging from \$75 to \$25,000 and six months	—	Harmonise	MEDIUM
—	Cap. 63:01	Whether the casualty occurred within the territorial sea or in the EEZ is unsettled, and determines the applicable jurisdictional rules	UNCLOS Arts. 58(2), 94, 97	Establish and record	MEDIUM
94	—	The general flag State duty in UNCLOS Article 94 is not discharged for the domestic fleet	UNCLOS Art. 94	The whole reform programme	CRITICAL
83	—	SAR Convention 1979 unimplemented	SAR Convention; IAMSAR	Enact	CRITICAL
90	—	IMSAS corrective action not completed	III Code / IMSAS	Publish and complete	CRITICAL

11.11 THE COUNT

Severity	Number
CRITICAL	42
HIGH	29
MEDIUM	11
LOW	3
URGENT-TIME	2
Total identified deficiencies	87 numbered, plus 20 unnumbered structural items recorded in the schedule

11.12 THE TEN THAT MATTER MOST

If the Commission does nothing else, these ten close the exposure.

1. **Enact a domestic passenger vessel safety code for all vessels of 24 metres and over**, based on the IMO Model Regulations on Domestic Ferry Safety, covering stability, subdivision, fire, life-saving, manning, muster and drill, and survey. *(Deficiencies 6, 20, 39, 40, 41, 65, 67, 68, 92)*
 2. **Fix the maximum number of persons by published rule**, as the lesser of survival craft capacity, lifejacket count, evacuation capacity and stability compliance; mark it on the vessel; and make exceeding it an offence by the carrier. *(21, 25, 45, 48, 84)*
 3. **Require every person to be counted at embarkation, recorded by name and category, and the record held ashore.** *(22, 71)*
 4. **Prescribe the content of stability information under s. 290 and require the departure condition to be calculated, recorded and certified.** *(8, 9, 11, 14, 77)*
 5. **Establish an independent, permanent, multi-modal Transport Safety Board reporting to Parliament**, with compulsory powers, protected evidence, a no-blame mandate, mandatory investigation of every very serious marine casualty, mandatory publication, submission to the IMO, and recommendation tracking. *(29, 30, 31, 32, 42, 43, 44, 61, 74, 91)*
 6. **Repeal Cap. 49:01 s. 3(3)** so the regulator is no longer the owner, and **define “non-commercial purposes”** so the Act plainly applies to a ticketed State ferry. *(1, 2, 3, 4)*
 7. **Repeal the “reasonable and justifiable” defence** in Cap. 49:01 ss. 337 and 338(2) and Cap. 49:07 ss. 26 and 27, and **prescribe a penalty for s. 337 commensurate with the harm risked.** *(15, 17)*
 8. **Accede to and enact the Athens Convention 2002 Protocol** — strict liability for a shipping incident, compulsory insurance, and a direct right of action against the insurer. *(5, 23, 26, 85, 86, 87)*
 9. **Deal with Cap. 49:04 s. 23 now**, by undertaking or emergency legislation, before 18 January 2027. *(27, 54)*
 10. **Enact a Maritime Search and Rescue Act** establishing the MRCC, the search and rescue region, distress alert routing and response time standards. *(59, 60, 83)*
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CHAPTER 12 — THE REFORM PROGRAMME: DRAFTING INSTRUCTIONS

12.0 WHAT THIS CHAPTER IS

These are drafting instructions, not slogans. Each item states the instrument, the provision, the operative words proposed, and the deficiency it closes. The proposed words are offered as a **starting point for Guyanese parliamentary counsel**, who will render them in the house style of the Laws of Guyana. **The author is not admitted to practise law in Guyana or anywhere else, and nothing here is legal advice.**

The programme is in four instruments and it is deliberately sequenced so that the most urgent protection does not wait for the most complex reform.

Instrument	What it does	Timescale
Instrument 1 — Emergency measures	Protects the families' claims; closes the immediate operational exposure across the domestic fleet	Weeks. Before 18 January 2027
Instrument 2 — Domestic Passenger Vessel Safety Regulations	Closes the 24-metre gap	Months. Made under existing powers — no new Act required
Instrument 3 — Transport Safety Board Act	Creates the independent investigator	One parliamentary session
Instrument 4 — Merchant Shipping (Consolidation and Amendment) Act	Repairs the primary statutes and consolidates	Two parliamentary sessions

The critical drafting point, and it should be understood before anything else in this chapter: Instrument 2 requires no new Act. The powers already exist. **Cap. 49:01 s. 398(1)(a)–(d)** authorises regulations on accommodation and facilities, particulars as to all passengers, **the number of passengers a ship may carry**, and terms and conditions of carriage between ports in Guyana. **Cap. 49:01 s. 251** authorises regulations relating to safety at sea. **Cap. 49:01 s. 452** is a general regulation power. And **Cap. 49:07 s. 25(1)(a)–(i)**, exercisable **by the Director subject to affirmative resolution of the National Assembly**, authorises periodic inspection, seaworthiness, registration of persons employed on board, certificates of competency, **ensuring the safety and proper accommodation of passengers and regulating the number of persons to be carried**, lights and fees.

Guyana does not need to wait for Parliament to close the 24-metre gap. It needs a Minister to sign, or a Director to make regulations and the National Assembly to affirm them.

INSTRUMENT 1 — EMERGENCY MEASURES

12.1 Protection of claims arising from the loss of the MV *Barima*

Deficiencies closed: 27, 54. Severity: URGENT-TIME.

Option A — an undertaking, requiring no legislation. A formal, published undertaking by the Attorney General on behalf of the State and of the Transport and Harbours Department:

The State and the Transport and Harbours Department will not rely on section 23(1) or section 23(2) of the Transport and Harbours Act, Cap. 49:04, or on any other limitation or notice provision, in respect of any claim arising out of the loss of the MV Barima on 18 July 2026, provided such claim is commenced within twelve months after the date on which the Commission of Inquiry delivers its report.

Option B — emergency legislation, preferable because it binds and does not depend on continuing goodwill:

1. Notwithstanding section 23 of the Transport and Harbours Act and section 421 of the Guyana Shipping Act, and notwithstanding any other law relating to limitation, an action or suit in respect of the death of, or personal injury to, any person on board the MV *Barima* on 18 July 2026, or in respect of any loss or damage arising out of that casualty, may be commenced at any time before the expiration of **twelve months after the date on which the Commission of Inquiry into that casualty delivers its report**, and no notice under section 23(1) of the Transport and Harbours Act shall be required.

2. Where a person entitled to bring such an action has not obtained a grant of representation by reason of the fact that the death of the deceased has not been registered, or that the body has not been recovered or identified, the Court may, on application, **appoint a person to bring the action** pending the grant.

Why paragraph 2 is necessary. As at 27 July 2026 the Ministry of Health recorded **five recovered victims unidentified** at Suddie Mortuary and **at least thirty persons unaccounted for**. A family without a body, a death certificate or a grant of representation cannot commence an action, and the clock does not stop for them.

12.2 Immediate fleet-wide operational directions

Deficiencies closed (on an interim basis): 21, 22, 71, 77. Severity: CRITICAL.

A direction under **Cap. 49:01 s. 5** (general directions on policy to the Director), coupled with the exercise of **s. 240** (duty to inform the seafaring community and the public of a developing or existing situation which may adversely affect safety), requiring with immediate effect that in respect of every Guyanese passenger vessel of 24 metres and over:

1. **No vessel shall depart with more persons on board than the number stated in her current certificate**, and where the certificated number is disputed or unclear, **the lowest figure supported by any document shall apply** until determined.
2. **Every person embarking shall be counted**, the count reconciled against tickets before departure, and **a copy of the count retained ashore** by a named person before the vessel sails.
3. **No person shall board after the count is closed** without the count being reopened, retaken and re-recorded.
4. **No cargo shall be stowed on any deck above the main deck** without the written approval of a surveyor.
5. **All weathertight and watertight closures shall be secured before the vessel proceeds to sea**, and the fact recorded in the official log book.
6. **The master shall record in the official log book, before departure, his assessment of the vessel's loading condition**, and shall not proceed if in his judgment she is unfit; **and no adverse consequence shall attach to a master who so declines.**

Paragraph 6 is the interim substitute for the master's ISM overriding authority (Deficiency 88), and it is the single most valuable thing that can be done in a week.

12.3 Publication

Immediate publication of: **the MV *Barima*'s passenger certificate and the technical calculations behind it; the vessel's inspection, seaworthiness, maintenance and certification records; the IMO Member State Audit report and Guyana's corrective action plan; and the Pollard report and recommendations.** (*Deficiencies 64, 84, 90; and the demands of APNU and of Mr Patterson recorded at Chapter 3.4 and Chapter 8.5.3.*)

INSTRUMENT 2 — THE DOMESTIC PASSENGER VESSEL SAFETY REGULATIONS

Made under Cap. 49:01 ss. 251, 398 and 452, and, if the Director's power is preferred, under Cap. 49:07 s. 25 subject to affirmative resolution.

12.4 Application

These Regulations apply to every Guyanese passenger vessel of **twenty-four metres in length and over** engaged on a voyage between places in Guyana or within Guyana waters, and to every other such vessel while within Guyana waters; **and for the avoidance of doubt they apply to a Guyana Government ship notwithstanding section 3 of the Act.**

The final clause is essential. Without it, the regulations may be defeated by the undefined “non-commercial purposes” exclusion (Deficiency 1).

12.5 The certificated number of persons

Deficiencies closed: 21, 25, 45, 48, 84.

- (1)** No vessel shall carry a number of persons, **including the crew**, greater than the number specified in her Passenger Vessel Certificate.
- (2)** The number so specified shall be **the least of** — **(a)** the aggregate capacity of the survival craft carried; **(b)** the number of lifejackets carried of appropriate size, being not less than one for every person on board **plus infant and child lifejackets sufficient for the persons of those categories expected to be carried**; **(c)** the number that can be evacuated from the muster stations by the means of escape provided, calculated in accordance with the Schedule; **(d)** the greatest number for which the vessel complies with the intact stability criteria in regulation [stability], **including the passenger crowding and turning heeling moments**; and **(e)** where deck cargo is carried, the number reduced in accordance with paragraph (3).
- (3)** For every square metre of deck space occupied by cargo, vehicles or animals, the permitted number of persons shall be reduced by [x]; **and no space occupied by machinery, open hatches, skylights, fuel or deck cargo shall be counted as deck space available to persons.**
- (4)** The certificated number shall be **painted in legible characters not less than 75 millimetres in height on each side of the vessel**, and shall be displayed at the point of embarkation and in the passenger spaces.
- (5)** The **owner, the master and any person who permits or causes** the vessel to carry a greater number commits an offence and is liable to a fine of [] and to imprisonment for [].

Note that paragraph (3) is a modernisation of two existing Guyanese provisions, not an invention. Coasting and Passenger Trade Regulations **reg. 13(4)** deducts one

passenger for every square yard of deck occupied by cargo or animals; and River Navigation Regulations **reg. 19(1)**, made in 1918, permits **one passenger with baggage for every five square feet of deck surface, expressly excluding the space occupied by machinery, open hatches, skylights, fuel and any cargo carried on deck**, with the certificate of the resulting number **framed and displayed on board** under reg. 19(2). **Guyana has had a serviceable, self-executing, deck-area capacity rule for power-driven passenger vessels since 1918. It applies on the Barima River and on the Kaituma Creek and not on the sea passage between them and Georgetown** (Chapter 6.6.2A). **The rule already exists. It simply does not apply to this class of vessel.**

Note that paragraph (2) makes the number a function of four physical limits and one loading variable. It is not a sliding scale against cargo weight. That is the point Mr Patterson made in the public record — “you cannot use a sliding scale for human lives” — and it is correct as naval architecture (Chapter 3.4).

12.6 Counting and recording persons on board

Deficiencies closed: 22, 71. Benchmark: SOLAS III/27.

- (1) All persons on board shall be counted prior to departure.**
- (2) The name and gender of every person on board shall be recorded, distinguishing between adults, children and infants**, together with details of any person who has declared a need for special care or assistance in an emergency, and those details shall be **communicated to the master prior to departure**.
- (3) The record shall be kept ashore** by a person designated for that purpose and shall be **made readily available to search and rescue services when needed**.
- (4) After the count is closed, no further person shall board** unless the count is reopened, retaken and re-recorded.
- (5) The vessel shall not depart until the master has certified in the official log book** that paragraphs (1) to (3) have been complied with and that the number counted does not exceed the certificated number.

Paragraph (4) is taken from an existing Guyanese provision — River Navigation Regulations **reg. 45(3)**, which prohibits a captain taking on any additional lading or any additional person after reporting at a Government Station. **Again: the rule exists in Guyanese law and applies to the wrong vessels.**

12.7 Stability

Deficiencies closed: 8, 9, 11, 14, 67, 77.

- (1) Every vessel shall be the subject of an inclining test** on completion of construction, and again **whenever any alteration is made which affects her lightship weight or the position of her centre of gravity**, and in any event **whenever a lightweight survey shows a deviation from the recorded**

lightship displacement exceeding two per cent or a deviation in longitudinal centre of gravity exceeding one per cent of length.

(2) A lightweight survey shall be carried out at intervals not exceeding five years.

(3) Every vessel shall carry a Stability Information Book approved by the Director, containing — the results of the inclining test; the lightship particulars; a curve or table of maximum permissible KG or minimum required GM for the full range of displacements; approved loading conditions covering departure and arrival, full load, part load and light condition, with and without deck cargo; free-surface corrections for every tank; the passenger crowding and turning heeling moment calculations; the downflooding angle and the position of every downflooding opening; and simplified loading guidance in a form usable by the master at the point of loading.

(4) Before departure on every voyage the master shall calculate the vessel's condition, satisfy himself that it complies with the criteria, and record the calculation and the result in the official log book.

(5) The vessel shall comply with the intact stability criteria set out in the Schedule [being the criteria of the 2008 IS Code, adapted to domestic service], including the criteria relating to passenger crowding and turning.

(6) All weathertight and watertight closing appliances shall be secured before the vessel proceeds to sea and shall be kept secured, and the fact shall be recorded in the official log book.

(7) No alteration affecting the structure, stability, machinery or equipment shall be made without the prior written sanction of the Director.

Paragraph (4) is the operative reform. Guyanese law presently requires a master to carry a book; **it does not require him to open it** (Deficiency 9).

Paragraph (7) is the *Sewol* lesson and the transposition of **SOLAS I/11** (Deficiency 66).

12.8 Survey and certification

Deficiencies closed: 13, 40, 65.

(1) Every vessel shall be subject to an initial survey before being put into service, a renewal survey at intervals not exceeding twelve months, and additional surveys whenever an accident occurs, a defect is discovered, or an alteration is made.

(2) For a vessel more than thirty years of age, the renewal survey shall include thickness measurement of the structure in accordance with the Schedule, and the vessel shall not be certified where diminution exceeds the permissible limits set out therein.

(3) The condition of the vessel and her equipment shall be maintained at all times so as to conform with these Regulations.

(4) The Passenger Vessel Certificate shall be **carried on board and displayed**, and shall state the certificated number of persons, the permitted area of operation, and any conditions.

Paragraph (2) is the answer to an 86-year-old hull (Deficiency 11). **Paragraph (3) is SOLAS I/11 without the Safety Convention Certificate condition** (Deficiency 12).

12.9 Manning, muster, drill and briefing

Deficiencies closed: 7, 69, 70, 72.

(1) The Director shall issue to every vessel a **Minimum Safe Manning Document**, and the vessel shall not proceed to sea unless manned in accordance with it.

(2) A **muster list** shall be exhibited in conspicuous places throughout the vessel, specifying the emergency signals, the action to be taken by crew and passengers, the duties assigned to each member of the crew **including the closing of watertight doors, fire doors, valves, scuppers, side scuttles, skylights and portholes**, the preparation and launching of survival craft, the **mustering of passengers**, and the duties in relation to fire.

(3) Every member of the crew shall participate in **at least one abandon ship drill and one fire drill in every month**, conducted **as if there were an actual emergency**.

(4) **Before departure on every voyage**, passengers shall be given **safety instructions** including the location of muster stations, the emergency signals, and the method of donning a lifejacket, in a language or languages they understand; **and the fact shall be recorded in the official log book**.

(5) The master shall record every drill and its result in the official log book.

Paragraph (4) is deliberately stricter than SOLAS III/19, which requires a muster within 24 hours of embarkation. On a voyage of this character, lasting less than 24 hours, **a muster requirement expressed in that form would never bite**. The duty must attach to every departure.

12.10 Safety management

Deficiencies closed: 63, 73, 88.

(1) Every person operating a vessel to which these Regulations apply shall establish, implement and maintain a **Safety Management System** in accordance with the Schedule [an adapted ISM Code], and shall designate a **Designated Person Ashore** having **direct access to the highest level of management**.

(2) **The master has overriding authority and the responsibility to make decisions with respect to safety and to request assistance as may be necessary**. No person shall subject a master to any detriment by reason of a decision taken in good faith under this regulation.

(3) Every operator shall hold a **Document of Compliance** and every vessel a **Safety Management Certificate**.

Paragraph (2) is the single most important protective provision in this entire chapter for the people who actually run these ships. Guyanese law presently supplies a master with a **defence for sailing** when he should not have (Deficiency 17) and **no protection at all for refusing**.

12.11 Loading and the Loading Officer

Deficiencies closed: 52, 62.

(1) No vessel shall load cargo except under the supervision of a **Loading Officer** holding a certificate issued by the Director.

(2) The Loading Officer shall — verify that the cargo presented corresponds with the documents; **determine and record the weight and the position of stowage of every item exceeding [500] kilograms**; ensure that cargo is secured in accordance with an approved **Cargo Securing Manual**; ensure that no cargo is stowed above the main deck except as approved; **and deliver to the master, before departure, a signed statement of the weights loaded and their positions**.

(3) The master shall not proceed to sea until he has received that statement and has completed the calculation required by regulation [stability](#).

(4) Any question whether goods are **dangerous goods** shall be determined **by reference to the International Maritime Dangerous Goods Code**, and where the carrier and the shipper differ, **by the Director**, whose determination shall be recorded in writing.

(5) A Loading Officer who fails to comply commits an offence.

Paragraph (4) removes the determination from the carrier (Cap. 49:04 s. 17(3), Deficiency 52). **Paragraph (2) creates in law the office that presently exists only in fact** (Deficiency 62) — and does so **before**, not after, the next casualty makes an individual answerable for a role the statute never defined.

12.12 Ballast, closures and free surface

Deficiency closed: the unnumbered ballast item at 11.4; and 77.

(1) The approved loading conditions shall specify the **ballast required in each condition**, and the vessel shall not proceed to sea otherwise than in accordance with them.

(2) No ballast tank shall be emptied, and no slack tank condition created, otherwise than in accordance with the approved loading conditions.

This is the *Christena* provision and the *Sewol* provision. Both vessels sailed with insufficient ballast, in both cases as a matter of routine operational practice adopted for reasons that seemed sensible at the time.

12.13 Lights

Deficiencies closed: 49, 78.

Coasting and Passenger Trade Regulations **regulation 15 is revoked** and the following substituted:

Every vessel shall comply with the International Regulations for Preventing Collisions at Sea, 1972, as amended.

This is a one-line repeal and replacement, and the replacement formula already exists in Guyanese law at River Navigation Regulations reg. 53.

INSTRUMENT 3 — THE TRANSPORT SAFETY BOARD ACT

Deficiencies closed: 29, 30, 31, 32, 33, 34, 42, 43, 44, 61, 74, 91.

12.14 Why a multi-modal Board

A State of Guyana's size cannot economically sustain a marine-only investigation body. It can sustain a **multi-modal Transport Safety Board** covering **marine, aviation and road**, sharing investigators, methodology, laboratory access, legal support, publication and recommendation-tracking. **This is the Indonesian (KNKT), Australian (ATSB) and Canadian (TSB) model.** It also has a specific virtue on these facts: **the distress alert on 18 July 2026 was received by an aviation authority**, and a multi-modal body is structurally equipped to examine an interface of that kind.

12.15 The core provisions

Establishment and independence. There shall be a Transport Safety Board, which shall be **independent of any Ministry, department or authority responsible for the regulation of transport or for the operation of any transport undertaking**, and which shall report to the National Assembly.

Purpose. The sole object of an investigation under this Act is **to determine the circumstances and the causes of the occurrence with the aim of improving safety and preventing future occurrences. It is not the object of an investigation to determine liability or to apportion blame.**

Mandatory investigation. The Board shall investigate every very serious **marine casualty**, being a marine casualty involving the total loss of a ship, a death, or severe damage to the environment; and may investigate any other marine casualty or marine incident.

Powers. An investigator may — enter and inspect any ship, wreck, place or vehicle; require the production of any document or record; **require any person to answer questions**; take statements; secure and remove evidence; and require the preservation of a scene.

Protection of evidence. No statement made to an investigator, no record of communications between persons involved in the operation of a ship, no medical or private information obtained, no opinion expressed in the course of an investigation, and **no draft report**, shall be **admissible in any criminal, civil or disciplinary proceedings**, nor shall any such material be disclosed, **unless a competent authority determines that the benefit of disclosure outweighs the adverse domestic and international impact on that or any future investigation.**

Findings not binding. The findings of the Board **shall not be binding on the parties to any legal, disciplinary or other proceedings**, and **no part of a report of the Board shall be admitted in evidence in any civil action for damages.**

Publication. The Board shall publish its final report in full, shall lay it before the National Assembly, and shall submit it to the International Maritime Organization where the occurrence is a marine casualty.

Recommendations and response. A recommendation may be addressed to any person, body, department or Ministry. The recipient shall, within ninety days, respond in writing stating whether the recommendation is accepted and what action will be taken and by when; the response shall be published; and the Board shall maintain and publish a register of recommendations and their implementation status.

Duty of candour. Every public official and every public authority shall assist the Board fully, frankly and truthfully, and shall disclose to the Board any information relevant to an investigation whether or not it is requested. A person who knowingly fails to comply commits an offence.

Protection of persons who report. No person shall be subjected to any detriment by reason of having made a report, given information, or raised a safety concern in good faith, whether to the Board, to the Director, or to his employer.

12.16 The duty of candour and its indispensable counterpart

The Guyana Human Rights Association proposed a positive duty of candour on public officials and authorities, compelling them to cooperate and testify truthfully, backed by sanctions including prosecution and imprisonment. That proposal is right and it is adopted above.

But a duty of candour without protection is a duty to incriminate oneself, and it will not produce candid evidence from the people who most need to give it. The two provisions must travel together:

- **the duty of candour** compels the evidence;
- **the protection of evidence** makes it safe to give;
- **the finding that reports are inadmissible** makes it safe for the organisation as well as the individual;
- **and the protection from detriment** makes it safe for the person still in the job.

All four are in the draft above and all four are required. Enacting the first without the other three would make the position worse than it is now.

12.17 Consequential repeals

Cap. 49:01 Part XVIII (ss. 427–432) is repealed. Cap. 49:07 Part I (ss. 2–16) is repealed. Cap. 49:01 s. 442 is repealed and replaced by a provision requiring the Board to investigate every death occurring on a Guyana ship, **without prejudice to any inquest or criminal proceedings.**

INSTRUMENT 4 — THE MERCHANT SHIPPING (CONSOLIDATION AND AMENDMENT) ACT

12.18 Application and the owner-regulator collapse

Deficiencies closed: 1, 2, 3, 4.

Cap. 49:01 s. 2 — insert: “*non-commercial purposes*”, in relation to a Guyana Government ship, **does not include the carriage of passengers or goods for a fare, freight or other reward, whether or not the service is subsidised or operated at a loss.**

Cap. 49:01 s. 3(2) — for “may” substitute “**shall, within twelve months of the commencement of this section,**”.

Cap. 49:01 s. 3(3) — delete the words “and for the purpose of such application any reference to an owner shall be construed as a reference to the Director” and substitute: “*and for the purpose of such application the owner shall be the Department, authority or body operating the ship, and the Director shall exercise in relation to that ship all the functions of the Director under this Act.*”

New s. 4A — *The functions of survey and certification, the functions of casualty investigation, and any function arising from the ownership or operation of a ship, shall not be exercised by the same officer, and the Director shall establish and publish arrangements securing their separation.*

12.19 Penalties and defences

Deficiencies closed: 15, 16, 17, 35, 58.

Cap. 49:01 s. 337 — insert a penalty: *a fine of [] and imprisonment for [] years*, calibrated so that the offence of sending a ship to sea in a condition likely to endanger life is **not less than** the penalty for submerging a load line under s. 319.

Cap. 49:01 s. 337(1)(b) and s. 337(2) — **delete the defence that sending the ship to sea in an unseaworthy state was “in the circumstances reasonable and justifiable.”** Retain the due diligence defence in s. 337(1)(a).

Cap. 49:01 s. 338(2) — **repeal.**

Cap. 49:07 ss. 26 and 27 — **make corresponding amendments.**

Cap. 49:01 s. 445 — insert: “*No offence relating to the safety of a ship, to the number of persons carried, to the loading or stability of a ship, or to the reporting of a casualty, shall be a compoundable offence.*” And: “*The Director shall maintain a register of every offence compounded, which shall be published annually and laid before the National Assembly.*”

New general provision — *The Minister may by order, subject to affirmative resolution, vary any monetary penalty under this Act to reflect changes in the value of money; and shall review all such penalties at intervals not exceeding five years.*

12.20 Detention, complaints and whistleblowers

Deficiencies closed: 18, 19.

Cap. 49:01 s. 339 — for the words requiring a complaint or representation “made in sufficient time before the sailing” substitute: ***“Where the Director or a surveyor has reason to believe, howsoever arising, that a ship is unseaworthy, he shall forthwith ascertain whether the ship ought to be detained.”***

Cap. 49:01 s. 341 — **repeal in relation to complaints concerning the safety of life.**

New provision — *The Director shall establish a **confidential hazard reporting scheme** by which any person may report a concern relating to the safety of a ship, and the identity of a person making such a report shall not be disclosed without his consent. **No person shall be dismissed, disciplined or subjected to any other detriment by reason of having made such a report in good faith, and any such dismissal shall be unlawful.***

12.21 Exemptions

Deficiency closed: 37.

*No power of exemption or waiver under this Act or under any regulations made under it shall be exercised unless the Minister or the Director, as the case may be, is satisfied that **an equivalent level of safety is secured**; and every exemption shall — state its reasons; **specify a period not exceeding twelve months**; be **published in the Gazette**; and be included in an **annual return laid before the National Assembly**.*

This single clause governs Cap. 49:01 ss. 3(2), 398(3), 453 and 455, and Reg. 5/2005 reg. 5 and Reg. 6/2005 reg. 4.

12.22 Conventions

Deficiencies closed: 36, 86, 87, 5, 23, 26, 85.

Cap. 49:01 s. 455 — **delete the words “unless the Minister otherwise provides”.**

New Part — enact the **Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, as amended by the Protocol of 2002**, including — **strict liability** for death or personal injury caused by a shipping incident up to the first tier; **liability for presumed fault** thereafter; **limits of liability** in units of account; **compulsory insurance** for every carrier carrying more than twelve passengers; and **a direct right of action against the insurer**, the insurer being entitled to invoke the defences available to the carrier but not defences arising from the carrier’s insolvency or winding-up.

Cap. 49:01 s. 10(4) — prescribe the manner of providing evidence of financial responsibility, and extend it expressly to **liability for the death of and personal injury to passengers**.

Deficiency 84 note. Because the passenger limit under **s. 411** is a function of the number the ship is authorised to carry, **the reform at 12.5 (a published, physically-derived certificated number)** is a precondition of a workable liability limit as well as of **safety**. The two reforms are the same reform.

12.23 The Transport and Harbours Act

Deficiencies closed: 50, 51, 52, 53, 54, 55, 56, 57, 58.

New s. 14(3) — *In managing the Government vessels the General Manager shall ensure that each vessel is at all times operated in compliance with the Guyana Shipping Act and any regulations made thereunder, and shall not permit any vessel to proceed to sea otherwise than in a seaworthy condition; and shall for that purpose appoint a Marine Superintendent holding qualifications approved by the Director.*

s. 17(3) — **repeal** and substitute the IMDG Code provision at 12.11(4).

s. 23 — **repeal**, and substitute a limitation provision consistent with the Athens Convention 2002, running from the date of disembarkation or of death, with power in the Court to extend.

s. 24(1)(e) — **repeal**.

s. 47 — **repeal**.

s. 53 — **retain the channelling limb**; confine the personal exemption to acts done in good faith in the execution of a duty under the Act.

s. 48 — **repeal the hundred-dollar cap; retain and extend the nautical assessor mechanism** to any proceeding in which a technical maritime question arises.

12.24 The 1883 Act and the 1896 Regulations

Deficiencies closed: 42, 43, 44, 45, 46, 47, 48, 49.

Cap. 49:07 Part I — repealed and replaced by the Transport Safety Board Act (12.17).

Cap. 49:07 s. 23 — re-enact as a **free-standing offence**, deleting the words “contrary to the regulations” and tying the offence to **the certificated number under the Domestic Passenger Vessel Safety Regulations**; retain the deeming of the master, the extension to any person concerned in or party to the overcrowding, and the powers of apprehension and detention.

Cap. 49:07 s. 25 — retain as a live head of power; **exercise it**.

Cap. 49:07 s. 35(2) — repeal and substitute a **recognised organisation** provision consistent with the **RO Code**.

Coasting and Passenger Trade Regulations reg. 13(3) — revoke the Board of Trade reference and substitute the certificated-number rule at 12.5.

Coasting and Passenger Trade Regulations reg. 15 — revoke and substitute the COLREG provision at 12.13.

12.25 Search and rescue

Deficiencies closed: 59, 60, 83.

A Maritime Search and Rescue Act providing for — the **establishment of the Maritime Rescue Coordination Centre** as a statutory body operating continuously; the **definition of Guyana’s search and rescue region** by agreement with neighbouring States; the **designation of the authority responsible for the receipt of distress alerts by every means** including satellite, radio, telephone and **aeronautical channels**; **maximum times** within which an alert shall be passed to the MRCC and within which the MRCC shall initiate a response; the **appointment of an on-scene coordinator**; a **statutory duty on the Guyana Defence Force and on every public authority to render assistance when requested by the MRCC**; a **duty on the Coast Guard to report the serviceability of its search and rescue assets to the MRCC at prescribed intervals**; and **provision for the entry of the rescue units of other States into Guyana waters for search and rescue purposes**.

12.26 Consolidation

Deficiencies closed: the unnumbered coherence items at 11.10.

A single **Merchant Shipping Act** consolidating Cap. 49:01, Cap. 49:04 Parts II and III so far as they relate to vessels, Cap. 49:07, Cap. 49:03 and Cap. 50:01, with **one definition of “ship”, one definition of “vessel”, one geographic scheme of voyages, one scheme of officers, one scale of penalties, one default penalty, one set of exemption criteria, and one casualty reporting duty**.

12.27 THE SEQUENCE, AND WHY IT MATTERS

Phase	Action	Requires
Now — weeks	12.1 protection of claims; 12.2 fleet-wide directions; 12.3 publication	A signature. No legislation for 12.2 and 12.3
Months	Instrument 2, the Domestic Passenger Vessel Safety Regulations	Existing powers: Cap. 49:01 ss. 251, 398, 452, or Cap. 49:07 s. 25 with affirmative resolution

Phase	Action	Requires
One session	Instrument 3, the Transport Safety Board Act; the Maritime Search and Rescue Act	New Acts
Two sessions	Instrument 4, consolidation and amendment; accession to the Athens 2002 Protocol	New Act; treaty action

The point of the sequencing is this. The most important safety reform — closing the 24-metre gap — is also the fastest, because Parliament already gave the power away twice, in 1998 and in 1883, and nobody has used it.

CHAPTER 13 — TIME-CRITICAL ACTIONS AND EVIDENCE PRESERVATION

13.1 WHY THIS CHAPTER IS SEPARATE

Everything else in this document can wait for the Commission to report. **The items in this chapter cannot.** Each has a deadline fixed by law, by physics, or by human memory, and each will be lost if not acted upon within a defined period. **They are set out in order of urgency.**

13.2 THE SIX-MONTH LIMITATION PERIOD — ON OR ABOUT 18 JANUARY 2027

This is the most urgent item in this document and it concerns the bereaved families directly.

Cap. 49:04 s. 23(2) provides that every action or suit against the Transport and Harbours Department for anything done in pursuance or execution or intended execution of Part II of that Act **shall be commenced within six months after the thing done or omitted, and not otherwise.**

s. 23(1) provides that no such action may be commenced **until one month has expired after written notice** has been served on the Department stating the cause of the action, the name and address of the person bringing it, **and the name and address of his legal practitioner.**

13.2.1 The dates

Event	Date
The casualty	18 July 2026
Six months expires	on or about 18 January 2027
One month's notice must therefore be served by	on or about 18 December 2026
Prudent date to have instructed a practitioner and served notice	as early as possible; not later than the end of October 2026

13.2.2 What must happen, in order

1. **Instruct a legal practitioner admitted in Guyana.** The notice cannot validly be served without one, because s. 23(1) requires the notice to state the practitioner's name and address.
2. **Serve the written notice** on the Transport and Harbours Department, stating the cause of the action or suit, the claimant's name and address, and the practitioner's name and address.
3. **Wait one month.**
4. **Commence proceedings within six months of the act or omission.**

13.2.3 The six reasons this is a trap

1. **The period runs from the act or omission — not from knowledge, not from death, not from identification of a body, and not from the grant of representation.**
2. **The Commission of Inquiry will very probably not have reported within six months.** A family that waits for it — the natural and reasonable thing to do — may find the period gone.
3. **The claimants are disproportionately residents of Region One, which has no road to Georgetown,** and the vessel that connected them to it is on the seabed.
4. **The notice must name a practitioner,** so the family must find and instruct one before the clock can be stopped.
5. **Five recovered victims remained unidentified** at Suddie Mortuary as at 27 July 2026, and **at least thirty persons remained unaccounted for.** A family with no body and no death certificate cannot readily obtain a grant of representation, and s. 23 makes no allowance.
6. **Ex gratia assistance is not compensation and does not stop the clock.** The President has been emphatic that the assistance being arranged is **not compensation.** Unless a Guyanese practitioner advises otherwise in a particular case, **receiving assistance neither establishes nor preserves a legal claim.**

13.2.4 What should be done, and by whom

Nothing in this document is legal advice, and the application of s. 23 to any particular claim — including whether the claim arises under Part II at all, how s. 23 interacts with Cap. 49:01 s. 421 and Part XVI, and whether any extension is available — is a question for a legal practitioner admitted in Guyana.

For the State. An immediate published undertaking not to rely on s. 23, or emergency legislation suspending it, in the terms drafted at Chapter 12.1. Neither prejudices any question the Commission has to decide. Both are preceded after mass-casualty events elsewhere. **Option B, legislation, is preferable, because it binds and does not depend on continuing goodwill or on the identity of a future office-holder.**

For the Commission. A recommendation on this point **as an interim measure, before the final report.** The Commission's terms of reference do not need to be exhausted before it can protect the position of the persons whose interests it exists to serve.

For the Guyana Bar and the legal profession. A coordinated protective-notice exercise. **A single practitioner can serve protective notices for many families in a day, and the notices cost nothing but time.**

For every family. Take advice now. Do not wait for the Commission.

13.3 EVIDENCE THAT DEGRADES OR DISAPPEARS

13.3.1 The wreck — the most urgent physical decision

The position as at 29 July 2026 is unresolved and has moved twice. On 27–28 July the Prime Minister said raising the vessel was “not being forwarded at this stage”, that she was “likely to remain there as is”, that efforts to right her had not succeeded, that teams had “reached a point where we’re not finding any more bodies”, and that “it’s obvious that bodies are trapped in the wreck.” A draft “**Declaration of Agreement**” was circulated to families proposing that the site remain undisturbed as a sacred memorial with a maritime monument inscribed with every victim’s name. **Some relatives continue to press for full salvage**, and the Opposition Leader has described abandoning her as an act of cruelty. **On 29 July the Prime Minister said the families of the dead will determine whether the vessel is salvaged or a memorial constructed.**

This document takes no position on whether the wreck should be raised. That decision concerns the recovery of the dead and the wishes of the bereaved, and it is not the author’s to make.

But the evidential consequence must be stated plainly, because it is unlikely to be obvious to a family being asked to sign a declaration:

The hull is the principal physical evidence in this case. Determination of her structural condition, of the state of her watertight and weathertight closures, of the position and condition of every opening, of the securing of cargo and where it was stowed, of the condition of her machinery and steering gear, and of whether and where she was taking water, **will be very substantially harder — and in some respects impossible — without access to the structure.**

Whatever is decided about salvage, the following should be done now and can be done without raising her:

1. **A complete photogrammetric and sonar survey** of the wreck and the debris field, of sufficient resolution to permit later structural analysis, secured as evidence and provided to the Commission’s naval architect.
2. **Recording of the position, attitude and heading of the hull**, and of the position of every recoverable item in the debris field.
3. **Recovery, if it can be done safely, of items of high evidential value:** the official log book; the bridge and engine room records; any electronic navigation or position-recording equipment; the loading documentation; and any cargo item whose position and weight is material.
4. **Preservation of the site against interference** pending the Commission’s decision.
5. **A formal record of the reasons for whatever decision is taken about salvage**, made contemporaneously.

Note the legal gap identified at Chapter 7.6.6. The mandatory duty to mark a sunken vessel with buoys and lights, and the power to raise or remove her, are contained in the **Harbour and Pilotage Regulations** and apply **only in a pilotage district**. The wreck lies

about nine miles off the Essequibo coast. **There is therefore no statutory duty on anyone to mark her as a danger to navigation and no statutory power in the Harbour Master to remove her.** Whether any other power exists — under Cap. 49:08, under the Receiver of Wreck provisions of Cap. 49:01, or otherwise — is a Priority One verification item, and it should be resolved **before** a decision about salvage is taken, not after.

13.3.2 Human memory

Survivor and witness recollection degrades measurably within weeks and is contaminated by exposure to other accounts and to media reporting. As at 29 July 2026 there are **76 survivors**, an unknown number of persons who saw the vessel load and depart, and the Transport and Harbours Department staff who were **sent on leave**.

Recommendation: structured investigative interviews of every survivor and every material witness, conducted by trained investigators, **as a matter of weeks and not months**, recorded in full, with the interviewee's account taken before any exposure to other accounts.

The obstacle is Chapter 8.5.5. The two most important witnesses — the master and the chief mate — are accused persons entitled to silence. **The interim protection available is described at 13.5.**

13.3.3 The closed-circuit television evidence

The specialist review of boarding CCTV by maritime experts with senior Guyana Police Force and Guyana Defence Force officers produced the figure of 179 aboard — 81 males, 37 females, 43 children and 18 crew — against a manifest of 133.

CCTV systems overwrite. The original recordings, in their native format with metadata intact, together with the working papers of the review team and the methodology by which the count was arrived at, **must be secured immediately if they have not already been.** So must the recordings of the loading of cargo, if any exist, because they may be the only surviving evidence of what was stowed and where.

13.3.4 Documents in the possession of the operator and the regulator

The full schedule is at Chapter 14. The point here is one of timing: **a formal preservation direction should issue now**, addressed to the Transport and Harbours Department, the Maritime Administration Department, both Ministries, and any contractor involved in the 2024 docking and the March 2026 tender, requiring the preservation of all records including electronic records, emails, message traffic and backups, and prohibiting routine destruction under any retention policy.

13.3.5 Physical and forensic material

Blood samples taken from the crew; medical records of survivors and of the deceased; post-mortem findings; the five unidentified bodies at Suddie Mortuary and any DNA material; and any recovered cargo, lifejackets, liferafts or equipment. **All should be under a documented chain of custody.**

13.3.6 Meteorological and oceanographic data

The sea state, wind, tide and current on the evening of 18 July 2026 in the area between the Pomeroon and the reported wreck position. This data is time-limited in some archives and should be requisitioned now from the Hydrometeorological Service, from the hydrographic function of MARAD, from ExxonMobil Guyana and other offshore operators in the area, and from regional and international meteorological sources. **It bears directly on the terms of reference and on the survivor accounts of a large wave.**

13.3.7 The 31-nautical-mile discrepancy

The reported initial distress position and the position at which the wreck was found are approximately 31 nautical miles apart (Chapter 3.3.1). Resolving this requires: the **original distress transmission** and its recorded position, in raw form; the **Air Traffic Control Centre recording and log** for 22:43 and after; the **Georgetown Lighthouse log**; the **MRCC log**; the **GDFS 1030 deck log and navigational record**; and **drift modelling** based on the tide and current data at 13.3.6.

None of this material is required by Guyanese law to exist or to be retained. All of it should be secured now.

13.4 THE FLEET — THE EXPOSURE THAT IS LIVE TODAY

Deficiency 41 is that the 24-metre gap is systemic. Every Guyanese domestic passenger vessel of 24 metres and over is in it today, and there is no reason to suppose that the conditions which existed on 18 July 2026 have changed on any other vessel.

The interim directions drafted at Chapter 12.2 should issue now. They require no legislation. In summary: a hard certificated number applied at the lowest supported figure where disputed; a mandatory embarkation count reconciled against tickets and retained ashore; a prohibition on boarding after the count is closed; no cargo above the main deck without a surveyor's written approval; all closures secured before sea and logged; and a recorded pre-departure loading assessment by the master, **with an express statement that no adverse consequence attaches to a master who declines to sail.**

The last of these is the one that will save the next ship.

13.5 THE COLLISION BETWEEN THE COMMISSION AND THE PROSECUTION

On 28 July 2026 the master, the chief mate and the loading superintendent were charged with murder and remanded to 3 August 2026. They are presumed innocent.

The problem, stated neutrally: the Commission cannot complete a technical investigation of a stability casualty without the evidence of the master and the mate; those two men are now accused persons with a right to silence; anything they say to the Commission is

capable of being used against them; and questions of *sub judice* arise in relation to a Commission examining the same events as a live prosecution.

Guyanese law provides no mechanism to manage this (Chapter 8.5.5). There is no statutory privilege for evidence given to a safety investigation, no protection against the use of compelled testimony, and no power to stay one proceeding in favour of the other.

Four interim options, each of which is available now and none of which requires the Transport Safety Board Act to be in force:

1. **A statutory use-immunity, enacted as part of the emergency instrument at Chapter 12.1**, providing that no statement made to the Commission by any person shall be admissible against that person in any criminal proceedings. **This is the cleanest solution and it is a short clause.**
2. **An undertaking by the Director of Public Prosecutions** to the same effect. Faster; less secure.
3. **Sequencing** — the Commission taking the technical, documentary and institutional evidence first, and deferring any evidence from the accused until the criminal process permits.
4. **Severance of the technical inquiry** — the Commission's naval architect and surveyor conducting the technical reconstruction from documents, the wreck survey, the CCTV and the survivor evidence, without dependence on the accused.

Whichever is adopted, it should be adopted deliberately and recorded, rather than left to emerge. And the underlying lesson should be recorded too: **this collision is the direct product of Deficiency 32 and Deficiency 91**, and it will recur at every future casualty until the Transport Safety Board Act is passed.

13.6 THE CONSOLIDATED TIME-CRITICAL LIST

Priority	Action	Deadline	Responsible
1	Protect the families' claims — undertaking or emergency legislation on Cap. 49:04 s. 23	Before end October 2026; absolute long-stop 18 January 2027	Attorney General; National Assembly
2	Protective notices served for every family that wishes to preserve a claim	Before 18 December 2026	Legal profession; families
3	Interim fleet-wide operational directions (Chapter 12.2)	Immediately	Minister; Director
4	Formal document preservation direction	Immediately	Commission; Attorney General
5	Secure CCTV originals, metadata and review working papers	Immediately — systems overwrite	Commission; GPF

Priority	Action	Deadline	Responsible
6	Photogrammetric and sonar survey of wreck and debris field	Before any decision on salvage	Commission
7	Resolve whether any statutory power exists to mark or remove the wreck outside a pilotage district	Before any decision on salvage	Attorney General
8	Structured interviews of all survivors and material witnesses	Weeks	Commission
9	Requisition meteorological, oceanographic, ATC, Lighthouse, MRCC and Coast Guard records	Immediately	Commission
10	Resolve the Commission/prosecution collision by use-immunity or sequencing	Before the Commission takes evidence from any accused	Attorney General; DPP; Commission
11	Publish the passenger certificate and technical calculations	Immediately	MARAD
12	Publish the IMO audit report, the corrective action plan and the Pollard recommendations	Immediately	MARAD; Ministry
13	Obtain Cap. 49:03 and Cap. 49:08	Immediately	Ministry of Legal Affairs
14	Make the Domestic Passenger Vessel Safety Regulations	Months — no new Act required	Minister or Director

CHAPTER 14 — DOCUMENT DEMAND SCHEDULE AND VERIFICATION REQUIREMENTS

14.0 HOW THIS SCHEDULE IS ORGANISED

Part A lists the documents required to resolve the **legal** questions in this analysis — the verification items generated throughout. **Part B** lists the documents required to resolve the **factual** conflicts recorded in Chapter 3.4. **Part C** lists the **institutional** documents. **Part D** states the verification requirements attaching to this document itself.

Every item in Parts A to C is a document of the State or of a body answerable to it, or is in the possession of an identifiable third party. None of it requires investigation to discover. It requires only a requisition.

PART A — LEGAL VERIFICATION ITEMS

14.1 Priority One — items which, if resolved differently, change the analysis

#	Document	Why it matters	Source
A1	Cap. 49:03, the Passengers Act, in full	Coasting Regs reg. 11(4) caps an inspector's certificate at "the number allowed by section 6 of the Passengers Act ". If in force, this is a primary-statute ceiling on the number of persons a vessel may carry and the most important passenger-number provision in Guyanese law	Ministry of Legal Affairs — request directly; the published PDF filenames are unreliable
A2	A complete table of Guyana's IMO and ILO treaty status — for each instrument: party or not; date and mode of consent; entry into force for Guyana; reservations; the domestic instrument transposing it; and if none, why	Chapter 9.0. This table does not exist in the public domain. Every comparison in Chapter 9 is presently expressed subject to it	Ministry of Foreign Affairs; MARAD; IMO
A3	Every Gazette notification made under Cap. 49:01 s. 3(3) in respect of Transport and Harbours Department vessels, and specifically in respect of the <i>MV Barima</i>	Determines whether the Act applied to her at all, and on what exceptions and modifications. If none was made, the applicability of the entire Guyana Shipping Act turns on the undefined phrase "non-commercial purposes" (Chapter 5.1.5)	Official Gazette
A4	A complete schedule of all subsidiary legislation made under Cap. 49:01, Cap. 49:04, Cap. 49:07 and Cap. 50:01 since L.R.O. 1/2012, with texts	Every negative finding in this document is expressed subject to this. Specifically: regulations under ss. 3(2), 105, 251, 290, 398, 431, 452, 453 ; rules under s. 431 ; and any instrument prescribing compoundable offences under s. 445	MARAD; Official Gazette; Ministry of Legal Affairs
A5	The Guyana Shipping (Tonnage) Regulations	Referred to in Reg. 6/2005 reg. 2; not in the authorised consolidation. The application	MARAD

#	Document	Why it matters	Source
		of the only survey régime above 24 m depends on them, and the “284 tons” confusion at the heart of Conflict 1 turns on tonnage measurement	
A6	The Guyana Shipping (Ship and Port Facility Security) Regulations as revised, or confirmation that the revision was never completed	Absent from the authorised text since 2012 (Deficiency 38)	MARAD
A7	Cap. 49:08, in full	Cross-referred in the Harbour and Pilotage Regulations for sunken vessels; subject matter indicates a wreck and salvage instrument ; bears directly on whether any power exists to mark or remove the MV <i>Barima</i>	Ministry of Legal Affairs
A8	The Home Trade Ships (Masters, Mates and Engineers Certificates) Regulations , and identification of the instrument under which the certificates of the master and chief mate were issued	If issued under Cap. 49:04, a Board under Cap. 49:01 s. 429(3) may have had no power to cancel or suspend them (Deficiency 79)	MARAD; T&HD
A9	The current Gazette assignment of ministerial responsibilities , and the date of any transfer of MARAD between Ministries	Determines which Minister held which power at which time (Chapter 8.2)	Office of the President; Official Gazette

14.2 Priority Two

#	Document	Why it matters
A10	The rules made under Cap. 49:07 s. 9(1) : R. 6/1961 (<i>Van S / Lowood II</i>), R. 8/1961 (m.v. <i>Batchelder</i>), R. 3/1969 (m.v. <i>Powis</i>), and the reports of those three inquiries	The only recorded Guyanese marine casualty inquiries. They will show what was recommended and whether it was implemented
A11	Any Local Load Line assignment rules, freeboard tables and conditions of assignment used by MARAD	Deficiency 76. The mark relied on publicly was assigned by an unpublished process
A12	The register of compounded offences under Cap. 49:01 s. 445, if one exists, and	Deficiency 35

#	Document	Why it matters
	the instrument prescribing compoundable offences	
A13	The Maritime Zones Act, Cap. 63:01 , and a determination of the position of the casualty relative to the territorial sea	Determines the applicable jurisdictional rules
A14	Any exemptions granted under Cap. 49:01 ss. 3(2), 398(3) or 453, or under Reg. 5/2005 reg. 5 or Reg. 6/2005 reg. 4, in respect of any Transport and Harbours Department vessel	Deficiency 37
A15	The State Liability and Proceedings Act , and any opinion on the interaction of Cap. 49:04 ss. 22, 23, 47 and 53 with it and with Articles 40 and 149 of the Constitution	Chapter 7.5.5, 7.6.2

PART B — THE DOCUMENTS THAT RESOLVE THE FACTUAL CONFLICTS

14.3 Conflict 1 — certificated capacity

#	Document
B1	The MV <i>Barima</i>'s current Passenger Ship Certificate , and every predecessor certificate held on file
B2	The technical calculations on which the certificated number was based , including the survival craft capacity calculation, the lifejacket count, and any evacuation analysis
B3	The vessel's Stability Information Book in full, with the inclining test report — original and any subsequent — and any sister-ship determination relied upon under s. 290(2)
B4	All approved loading conditions , and any maximum-KG or minimum-GM curve
B5	The Load Line Certificate (International or Local) and the assignment calculation and conditions of assignment
B6	The vessel's Tonnage Certificate and the measurement on which 284 grt and 111 nrt rest
B7	Every document in which a figure of 397, 394, 290, 284, 268, 150 or 126 appears in relation to her capacity, in any unit
B8	Any document evidencing the “ sliding scale ” between passengers and cargo described by the Director-General
B9	The historical and design records relied upon by Mr Patterson as establishing a design capacity of approximately 150 passengers and 290 metric tonnes
B10	The Ferguson Brothers (Port Glasgow) build specification, general arrangement, capacity plan and hydrostatics for yard no. 340 , and for her sisters <i>Pomeroon</i> and <i>Lady Northcote</i> — obtainable from Scottish shipbuilding archives and from the Crown Agents records

Item B10 deserves emphasis. The MV *Barima* was built to a Crown Agents order at a Scottish yard in 1939. **Her original drawings, hydrostatics and capacity plan may survive in United Kingdom archives even if the Guyanese file does not**, and they are the only independent check on the disputed design capacity.

14.4 Conflict 2 — persons on board

#	Document
B11	The manifest as compiled , with the time of compilation and the identity of the compiler
B12	The ticketing records for the sailing, including any manual records
B13	The original CCTV recordings of boarding, in native format with metadata
B14	The working papers, methodology and report of the specialist CCTV review , and the identities and qualifications of the reviewers

#	Document
B15	The crew list and articles , resolving whether 17 or 18 persons were crew and whether the eighteenth was signed on
B16	The reconciliation performed by the joint MARAD / police / army task force on the manifest

14.5 Conflict 3 — the cargo

#	Document
B17	The cargo manifest , with weights
B18	The stowage plan , if any, and any record of where each item was placed
B19	All documentation relating to the government equipment carried , including the Public Works ATV, the pickup and the car
B20	Any record of the vessel's drafts forward and aft, and of her load line reading, before departure — and the identity of the person who read them
B21	Any record of fuel, fresh water and ballast on board at departure, tank by tank
B22	Any record or photograph of cargo stowed on the upper deck

14.6 Conflicts 4, 5 and the response

#	Document
B23	The T&HD sailing notice of 14 July 2026 and the operational record of the actual departure time
B24	The original distress transmission and its recorded position, in raw form
B25	Air Traffic Control Centre, Timehri — recordings and logs from 22:00 on 18 July
B26	Georgetown Lighthouse log
B27	MRCC log and the record of the National SAR Committee
B28	GDFS 1030 deck log and navigational record; deck logs of the two Ruimveldt vessels
B29	GDF serviceability records for the three Bell helicopters
B30	Drift modelling and the tide, current, wind and sea state data for the area on the evening of 18 July
B31	The seabed mapping and position confirmation by ExxonMobil Guyana, VESHI and Sealand Survey's <i>Gilligan Island</i>
B32	The reports of the French Armed Forces dive team , the Trinidad and Tobago Coast Guard and the Brazilian Navy

14.7 Condition, maintenance and history

#	Document
B33	Every survey report on the vessel , from every source, for the whole of her service life so far as retained
B34	The 2017 refit specification, scope and completion records

#	Document
B35	The 2024 Parika dry-docking report , including hull thickness measurements if any were taken
B36	The March 2026 tender documents for approximately G\$124.5 million of docking and overhaul work, the scope of works, and the reason the work had not been done
B37	The re-engining records — specification, weights, positions, and any stability recalculation
B38	Every report made under Cap. 49:01 s. 237 in respect of this vessel, for at least ten years, and the record of what was done with each
B39	Every report made under Cap. 49:01 s. 292(2) — accidents, defects and alterations
B40	The official log books for at least the preceding twelve months, including all s. 239 drill entries
B41	All defect reports, work orders, maintenance records and engineering records for at least five years
B42	All correspondence, internal reports, minutes and message traffic concerning the vessel's condition, seaworthiness or fitness for service
B43	Any record of water ingress and of how it was categorised or dealt with
B44	The crew's certificates of competency , with the instrument under which each was issued and the date
B45	Rest hour and duty records for the crew
B46	The medical and toxicological reports , with the chain of custody

PART C — INSTITUTIONAL DOCUMENTS

#	Document	Why
C1	The IMO Member State Audit report on Guyana (2018)	Chapter 8.4. It identified the implementation gap
C2	Guyana’s corrective action plan submitted in response, and all progress reports	It will state what Guyana undertook to do and by when
C3	All correspondence between MARAD and the IMO concerning implementation	
C4	The Pollard report and recommendations on updating Guyana’s maritime legislation, in full	Completed before March 2019. Chapter 8.4.2
C5	Any Cabinet or Ministerial decision, minute or submission on the Pollard recommendations	Why seven years passed
C6	MARAD’s organisation chart, staffing, budget and surveyor establishment for the past ten years	Capacity
C7	T&HD’s organisation chart, the job description of the Superintendent of Loading , and the terms of appointment of every person holding that post	Deficiency 62
C8	T&HD’s fleet list , with the length, tonnage, age, certification and survey status of every vessel	Deficiency 41 — the live exposure
C9	All records concerning the Indian-built replacement vessel and the Port Kaituma pier project, including the decision to keep the MV <i>Barima</i> in service pending completion	Directly in issue
C10	The instrument of appointment and published terms of reference of the Commission of Inquiry	Not published as at 29 July 2026 (TIGI objection)
C11	The MV <i>Christena</i> Commission of Inquiry report (Renwick, October 1970) in full	Chapter 10.2. The closest analogue, and it reported in ten weeks
C12	CARIBSMART-Law programme documents and any Guyanese participation records	Chapter 9.17

PART D — VERIFICATION REQUIREMENTS ATTACHING TO THIS DOCUMENT

This document should not be relied upon without the following verifications, and the author states them so that nobody is misled.

1. **Every statutory citation should be checked against the authorised L.R.O. 1/2012 text before use in any proceeding.** The author has read every provision cited directly from that text, but a transcription error is always possible in a document of this length.
 2. **Every negative finding — every statement that a regulation does not exist — is expressed subject to item A4.** The consolidation is current only to 2012.
 3. **The section numbering of Cap. 49:04 used here is the L.R.O. 1/2012 numbering.** A reader checking against an older edition or a third-party database should expect a one-section displacement from s. 46 onwards (Chapter 7.0).
 4. **No assertion is made about Guyana's accession status to any individual international instrument** (Chapter 9.0). Item A2 resolves it.
 5. **No factual conflict recorded in Chapter 3.4 is resolved by this document, and none should be treated as resolved.**
 6. **The factual record is current to 29 July 2026 only.** The Commission has not reported; the criminal proceedings are at an early stage; the decision on the wreck is unresolved and has moved at least twice; and the death toll may change.
 7. **The author is not admitted to practise law in Guyana or anywhere else, and nothing in this document is legal advice.**
 8. **Every person charged, detained, suspended, sent on leave or named in reporting in connection with this casualty is presumed innocent.**
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CHAPTER 15 — SOURCES

15.1 PRIMARY LEGISLATION — READ DIRECTLY FROM THE AUTHORISED TEXT

All read from the Laws of Guyana, Revised Edition, as authorised by **L.R.O. 1/2012**.

Chapter	Title	Act	Amendments	Authorised pages
Cap. 49:01	Guyana Shipping Act	Act 7 of 1998	Act 7 of 2006	1–904
Cap. 49:04	Transport and Harbours Act	Act 30 of 1931 (in force 5 January 1932)	1/1932, 25/1932, 38/1933, 19/1935, 22/1936, 16/1941, 37/1944, 26/1946, 39/1947, 24/1951, 27/1953, 17/1962, 27/1965, 16/1970, 4/1972, 25/1977, 7/1998, H. of A. Res. 6 of 1982	1–123
Cap. 49:07	Shipping Casualties (Investigation and Prevention) Act	Act 4 of 1883 (Part I in force 5 December 1883; Part II 20 February 1895)	2/1895, 3/1914, 32/1914, 11/1978, 6/1997, 7/1998, Res. 9 of 1982	1–45
Cap. 50:01	River Navigation Act	Act 17 of 1891 (in force 25 July 1891)	11/1924, 18/1944, 8/1948, 29/1961, 6/1997, 7/1998	1–50
Cap. 47:01	Post and Telegraph Act	—	—	1–68

Note on verification of Cap. 49:07 and Cap. 50:01. The authorised texts of both Chapters were supplied to the author a **second time, from a separate copy**, after the analysis in Chapters 4 and 6 had been written. **Every provision cited in this document from either Chapter has been re-read and confirmed against that second copy, and no discrepancy of any kind was found.** For **Cap. 50:01** this is a material upgrade in evidential status: the analysis originally rested on a text retrieved from the Ministry of Legal Affairs website and now rests on a direct reading of the authorised text. Three provisions were refined on the second reading, and the refinements are recorded at **Chapter 4.2.4.1** and **Chapter 6.6.2A: reg. 8** (the branded-waterline freeboard scale) applies to *“every vessel other than a vessel propelled by steam or other machinery, and every boat”*, and therefore not to machinery-propelled vessels; **reg. 18** (the length × breadth × draft ÷ 25 formula) is expressed to apply *“except as hereinafter provided with respect to vessels propelled by machinery”*; and **reg. 19** is accordingly the machinery-propelled rule. **None of these refinements alters any finding; each sharpens one.**

Note on the source files. Two of the files supplied as PDFs were in fact plain extracted text of Cap. 49:01 and Cap. 49:04. **The file bearing a filename indicating Cap. 49:07 was, correctly, Cap. 49:07** — a fact not previously established, and the reason the earlier drafts treated that Act as unobtainable. **The Ministry of Legal Affairs publishes multiple distinct volumes under near-identical filenames of the form “Volume 11 Cap. 49.02 – 58.01”, and the filenames do not reliably indicate the contents.** This is recorded because it is the reason a live Act was missing from the analysis for as long as it was, and because it will mislead others.

15.2 SUBSIDIARY LEGISLATION — READ DIRECTLY

Under Cap. 49:01: - Guyana Shipping (Registration of Ships) Regulations — Reg. 4/2000 — p. 298 - Guyana Shipping (Licensing of Ships) Regulations — Reg. 4/2001 — p. 422 - **Guyana Shipping (Small Commercial Ship Safety) Regulations — Reg. 5/2005 — p. 486**, made under ss. 51, 105, 251, 452 and 458, **with the SCV Code annexed in full - Guyana Shipping (Cargo Ship Survey) Regulations — Reg. 6/2005 — p. 723**, made under s. 452, with the CCSS Code - *Omitted by the volume’s own note:* Guyana Shipping (Ship and Port Facility Security) Regulations 2004

Under Cap. 49:04: - Government Railway and Steamer Services Rules — Reg. 23/1/1924 — p. 38 - Harbours and Pilotage Regulations — p. 45 - Harbours Regulations — p. 76 - Home Trade Ships (Masters, Mates and Engineers Certificates) Regulations — p. 96 - T&HD (Superannuation and Other Benefits) Regulations — p. 119

Under Cap. 49:07: - **Coasting and Passenger Trade Regulations — Regs. 28/4/1896 and 11/4/1902 — p. 26**, with four Schedules - Buoying of Punts Regulation — Reg. 15/9/1920 — p. 45 - *Noted in the volume:* rules under s. 9(1) — **R. 6/1961** (*Van S / Lowood II*), **R. 8/1961** (*m.v. Batchelder*), **R. 3/1969** (*m.v. Powis*)

Under Cap. 50:01: - North Western District Oil Launches Regulations — Reg. 31/12/1905 — p. 8 - Demerara River Oil Launches Regulations — Reg. 29/3/1906 — p. 10 - River Oil Launches Regulations — Reg. 13/5/1912 — p. 11 - **River Navigation Regulations** — Regs. 8/11/1918, 26/6/1924, 5/12/1928, 34/1945, 23/1947, 11/1950, 3/1956, 19/1960, 27/1960, 12/1969 — p. 13 - River Navigation Regulations (Exemption) Order — O. in C. 18/9/1934 — p. 49 - Declaration of Government Station Notice — Nt. 27/11/1925 — p. 50

15.3 STATUTES REFERRED TO BUT NOT OBTAINED

- **Cap. 49:03 — Passengers Act.** Cross-referred at Coasting and Passenger Trade Regulations reg. 11(4) (s. 6 — ceiling on persons certified). **Priority One.**
- **Cap. 49:08.** Cross-referred in the Harbour and Pilotage Regulations (sunken vessels). **Priority One.**
- Cap. 63:01 Maritime Zones Act; Cap. 16:06 Explosives Act; Cap. 80:01 Tax Act; Cap. 7:01 Summary Jurisdiction (Petty Debt) Act; Cap. 10:02 Summary Jurisdiction (Procedure) Act; the Commissions of Inquiry Act; the State Liability and Proceedings Act; the Constitution of the Co-operative Republic of Guyana, Cap. 1:01.

15.4 INTERNATIONAL INSTRUMENTS

SOLAS 1974 as amended, and the 1978 and 1988 Protocols — in particular Chapters I (regs. 7, 11), II-1, II-2, III (regs. 8, 19, 27, 37), IV, V (reg. 13), IX, XI-1 (reg. 6) and XI-2. LSA Code. International Convention on Load Lines 1966 and the 1988 Protocol. COLREG 1972. STCW 1978 as amended, including the 1995 amendments, the STCW Code and the 2010 Manila amendments. International Convention on Tonnage Measurement of Ships 1969. International Convention on Maritime Search and Rescue 1979, and the IAMSAR Manual. LLMC 1976 and the 1996 Protocol. Athens Convention 1974 and the 2002 Protocol. ISM Code. ISPS Code. MLC 2006. IMO Instruments Implementation Code (III Code), resolution A.1070(28), and the IMO Member State Audit Scheme. **Casualty Investigation Code, resolution MSC.255(84)**, mandatory under SOLAS XI-1/6 from 1 January 2010. IMO Model Regulations on Domestic Ferry Safety. Manila Statement on Enhancing Domestic Ferry Safety. 2008 International Code on Intact Stability. IMDG Code. RO Code. UNCLOS 1982, Articles 58(2), 94 and 97. Torremolinos Protocol 1993 / Cape Town Agreement 2012 (contextual). **SCV Code** — Code of Safety for Small Commercial Vessels operating in the Caribbean Sea, revised to July 2002, **as annexed to Reg. 5/2005 and therefore part of the law of Guyana**. **CCSS Code** — Code of Safety for Caribbean Cargo Ships, applied by Reg. 6/2005.

15.5 THE CASUALTY — PUBLISHED RECORD TO 29 JULY 2026

Statements attributed to: President Dr Mohamed Irfaan Ali; Prime Minister Mark Phillips (written statement; chronological account to the National Assembly, 27 July 2026); Minister of Public Works Juan Edghill; Minister of Public Utilities and Aviation Deodat Indar; MARAD Director-General Captain Stephen Thomas; the Guyana Police Force; the Ministry of Health; Chief Magistrate Judy Latchman (Georgetown Magistrates' Court, 28 July 2026); Opposition Leader Azruddin Mohamed; David Patterson, AFC Leader and former Minister of Public Infrastructure; APNU; the joint parliamentary opposition (WIN, APNU, FGM, AFC, VPAC); the Guyana Human Rights Association; Transparency Institute Guyana Inc.; Lieutenant Commander Alexis Touboul, French Armed Forces; and further commentary attributed to Ms Walton-Desir and to Mr Figueira.

Agency and outlet reporting consulted: Reuters; Associated Press; ABC News; UPI; the Caribbean Media Corporation; *Guyana Chronicle*; *Guyana Standard*; *Demerara Waves*; *Caribbean National Weekly*; *Jamaica Observer*; *The St Kitts Nevis Observer*; *Times Caribbean Online*; *News Americas*; WIC News; *Washington Times*; GMA News Online.

Key items relied on and identified in the text: - Reuters, 28 July 2026 — captain and two crew members charged with murder. - *Demerara Waves*, 28 July 2026 — names, ages and addresses of the accused; the charge laid on the advice of the Director of Public Prosecutions. - *Caribbean National Weekly*, 28 July 2026 — 72 counts; remand to 3 August 2026; the captain's statement in court. - ABC News / AP, 26 and 28 July 2026 — the Commission's membership; the replacement vessel and Port Kaituma pier; the wreck at approximately 50 feet. - *Guyana Chronicle*, 26 July 2026 — the Commission's membership and terms of reference. - *Guyana Standard*, 29 July 2026 — the Prime Minister's statement

that the families of the dead will determine whether the vessel is salvaged or a memorial constructed.

15.6 THE REGULATOR'S OWN STATEMENTS

- **MARAD Director General Claudette Rogers**, reported in *Guyana Standard*, **27 March 2019**, “Legislative review completed to prepare MARAD for oil sector”: the completion of the legislative review; the retention of **Professor Duke Pollard**, retired Judge of the Caribbean Court of Justice, and the completion of his assignment with recommendations; the statement that **although Guyana has ratified the main international maritime conventions the requisite regulations need to be enacted**; the completion of the **IMO Member State Audit** in 2018; the statement that as a direct result of the audit **the enacting of regulations to give full and complete effect to the conventions Guyana has ratified** was necessary; and the statement concerning **STCW 95** and the issuing of certificates.
- **MARAD**, “About Us” — MARAD established by the Guyana Shipping Act, Act No. 7 of 1998; key agency for the administration and implementation of all laws relative to maritime affairs including IMO instruments.
- **Ministry of Public Works** and other published MARAD material — MARAD party to SOLAS, STCW and MARPOL “among others”; functions including registration, licensing, certification, enforcement of maritime codes and conventions, prevention of accidents, survey, **investigation of wreck and salvage, assistance in search and rescue**, pollution prevention, port security, pilotage, dredging and hydrographic survey, harbour dues, and the lighthouse and Berbice pilot station.

15.7 COMPARATIVE MATERIAL

MV Christena, 1 August 1970. 160-foot government ferry, Basseterre–Charlestown; **built 1958–59 by Sprostons Ltd, Georgetown, British Guiana**; in service from 15 June 1959; refurbished at Bridgetown, Barbados two months before the loss; owned and operated by the Saint Kitts and Nevis Ministry of Communications, Works and Transport. Capacity 155; approximately 320–322 on board; **233 dead, 91 survivors, 123 bodies recovered, 110 trapped in the vessel.** Commission of Inquiry under the Commissions of Inquiry Act; **Commissioner J. D. B. Renwick; 45 witnesses; report submitted October 1970.** Findings including dangerous overloading, improper cargo loading, **no reliable system for counting passengers before departure, ballast tanks empty as standard procedure**, and watertight doors not closed. Capacity fixed by the **Passenger Regulations, Chapter 155 of the Laws of Saint Christopher, Nevis and Anguilla, Revised Edition 1961** — not more than two passengers per foot of keel or six per registered ton — as modified by the Passengers (Motor Boats) Regulations.

MV Doña Paz, Philippines, 20 December 1987, and the MARINA régime. **MV Bukoba, Tanzania, 21 May 1996**, and **MV Nyerere, 20 September 2018**, Lake Victoria. **MV Le Joola, Senegal, 26 September 2002** — certified for approximately 550, carrying an estimated 1,800 or more; approximately 1,863 dead, 64 survivors; the Casamance route. **MV Sewol, Republic of Korea, 16 April 2014** — 304 dead; unlawful modification raising

the centre of gravity; overloading; unsecured cargo; insufficient ballast; independent investigation commission and coast guard restructuring.

Permanent investigation bodies: United Kingdom **Marine Accident Investigation Branch** (1989, following the *Herald of Free Enterprise*); **Australian Transport Safety Bureau**; **Transportation Safety Board of Canada**; **United States National Transportation Safety Board**; Indonesia **Komite Nasional Keselamatan Transportasi**.

15.8 THE AUTHOR'S EARLIER WORK, AND WHAT WAS CORRECTED

Two earlier analyses by the author were supplied as raw material and were **not relied upon for any citation**. Both contained errors which are corrected in this document and which are recorded here so that anyone holding the earlier documents is not misled:

1. **The Cap. 49:04 analysis was mis-numbered throughout.** ss. 46, 52, 32, 48 and 53 should read **47, 53, 34, 49 and 54** (Chapter 7.0).
2. **Cap. 49:07 was treated as unobtainable and its contents unknown.** It has now been read in full and it changes the central conclusion (Chapter 6.5).
3. **The framing of a single-ministry fusion of operator and regulator was wrong.** MARAD and the T&HD sit under different Ministers. The real defect is narrower and sharper and lies in Cap. 49:01 ss. 3(3), 429(1) and 429(6) and Cap. 49:04 s. 24(1)(e) (Chapter 8.2).
4. **Cap. 49:04 s. 47 was treated too broadly.** It is confined by its own words to **Part III** and to the General Manager and persons employed in the pilotage service (Chapter 7.5.5).
5. **Cap. 49:04 s. 53 was treated as a simple immunity.** Its second limb channels damages onto the Department's revenue and is **favourable to a claimant** (Chapter 7.6.2).

15.9 CLOSING NOTE

Seventy-three people are known to have died and at least thirty more are unaccounted for. Five of the recovered remained unidentified as at 27 July 2026. Most of them were travelling on the only connection between the capital of their country and a region of 38,956 people that has no road.

The question this document was written to answer is how the maritime laws and statutes of Guyana fail the people of Guyana. The answer, on the evidence of the statute book itself, is this.

They fail by leaving the vessels that carry the most people subject to the least law. They fail by conferring powers to make safety regulations, in 1883 and again in 1998, and never using them. They fail by making the regulator the owner of the ships he regulates. They fail by making investigation discretionary, and by excluding the State's own ships from the only regime with real investigative teeth. They fail by pointing, in 2026, at the Board of Trade of the United Kingdom. They fail by punishing a submerged load line four times more heavily

than sending a ship to sea in a condition likely to kill everyone aboard, and by supplying a defence that doing so was reasonable. They fail by giving a master no protection for refusing to sail and a defence for sailing. They fail by naming the Athens Convention and enacting none of it, so that seventy-three families have no insurer to claim against and six months to sue a Government Department. And they fail, most of all, by requiring nobody to count the people who go aboard.

Every one of those failures was identified before this casualty. Most were identified by a British commissioner in Nevis in October 1970, and the rest by an IMO audit of Guyana in 2018 and by a retired Judge of the Caribbean Court of Justice whose report was completed before March 2019.

None of it required this ship to be lost.

End of document.