

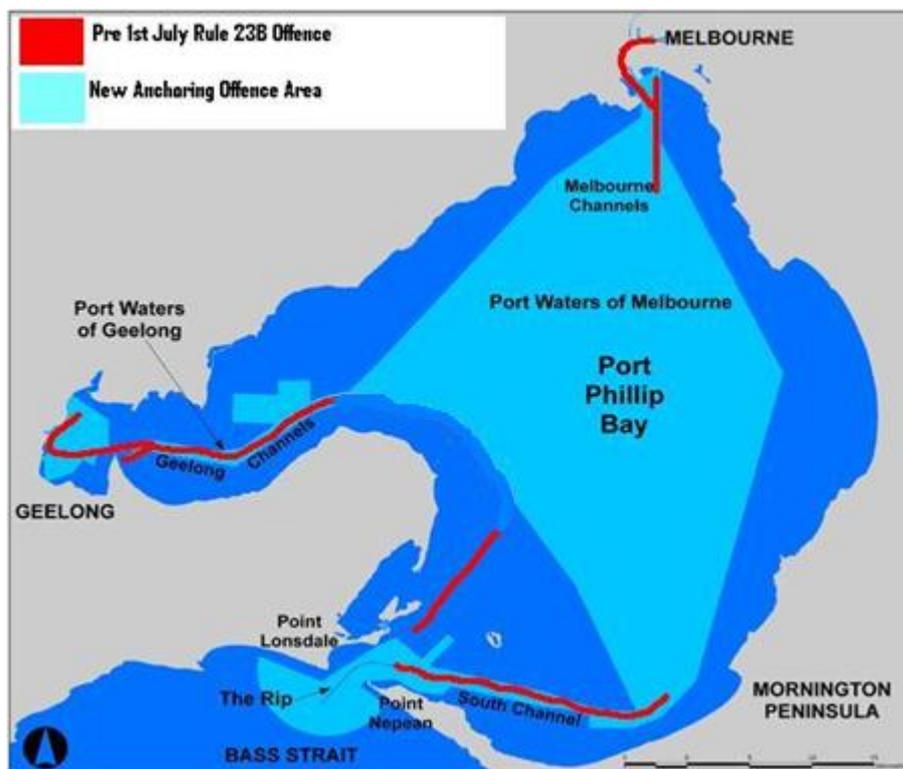


For Immediate Release

8th December 2012

Victorian State Government Bans Recreational Vessel Anchoring in Port Phillip Bay waters controlled by Port of Melbourne Corporation

Recreational vessel masters who anchor a vessel within the waters of Port Phillip Bay that are an area of navigable waters usually used by vessels larger than 50m LOA for navigation through the area (*i.e. Port of Melbourne controlled waters*) can be charged with an offence under the Marine Safety Act 2010. Previous to 1st July 2012, recreational vessels masters were only prohibited from anchoring within a marked shipping channel, declared prohibited anchorage (*i.e. TOZ, gas pipeline*) or impeding the safe passage of a large commercial vessel.



Advice recently received from the Ports Ministers office is that recreational boaters are incurring penalty infringement notices under the broader area now defined by the Vessel Operating and Zoning Rules for Victorian Waters (July 2012) and Marine Safety Act 2010. BIAV has concerns that recreational boaters are being kept in the dark as to the new offence application and that there was no consultation on this rule change as required by law. Please note this broader offence is applicable to all Victorian waters.

1. How did this Happen?

A new set of Vessel Operating and Zoning Rules for Victorian Waterways (*waterway rules*) was created by Transport Safety Victoria (TSV) as a Marine Act 1988 *Section 15(2) Notice* and published in the Victorian Government Gazette No. S 221 on Thursday 28th June 2012.

This Notice revoked all notices previously made under Marine Act 1988 section 15(2).

1.1 Transport Safety Victoria changed Waterway Rule 23B

The S221 Notice and subsequently TSV published 'Guide to Vessel Operating and Zoning Rules' (*July 2012*) states¹:

1.1.1 New Rule 23B - Vessels not to be anchored in Channels

The master of a vessel must not cause or allow the vessel to be anchored in a channel.

The most recent waterway rules² revoked by the 28 June 2012 S221 Notice stated:

1.1.2 Old Rule 23B - Vessels not to be anchored in Channels

The operator, master or person in charge of a vessel must not allow a vessel to be anchored in a channel that is marked with beacons or buoys. [Emphasis added]

1.1.3 Reason for Waterway Rule 23B change

The change to the wording of waterway rule 23B was intended to remove the inconsistency between the Safety Director direction (waterway rule) and the PoM Harbour Master Direction and therefore remove the effect of section **234(2)** Marine Safety Act 2010. More importantly, it allowed recreational boaters to receive a penalty infringement for anchoring in areas that were previously legal.

Marine Safety Act 2010

Section 234 General provisions relating to harbour master directions

s234(2) If a direction given by a harbour master under section 232 is inconsistent with a direction given by the Safety Director under item 24 of Schedule 1, the direction given by the Safety Director prevails and the harbour master's direction is, to the extent of the inconsistency, of no effect.

1.1.4 Port of Melbourne Harbour Masters Directions (September 2011)

Small Vessels

A master of a small vessel must not anchor in a fairway or channel and is strictly prohibited from anchoring or dragging anchor within 0.17 nautical miles (300 metres) of the underwater gas pipeline between Mordialloc and Altona, as delineated on chart AUS 143 and AUS 155

2. Introducing the Marine Safety Act 2010 (MSA 2010)

The Marine Safety Act 2010 came into operation on the 1st July 2012. Of critical importance to the current issue are the following 2 sections and 2 definitions contained within the Act:

¹ See attached Files: S221 p8 and VOZRs2012 p11

² See attached File: VOZRs2011 p9

2.1 Sections 197 and 198 MSA 2010 creates an offence and the application of 'owner onus' to the offence³:

2.1.1 MSA 2010 Division 4—Compliance with waterway rules

Section 197 Offence not to comply with waterway rules

A person must not operate a vessel or use any waters in contravention of a waterway rule.

Penalty: 20 penalty units (\$2816 max. fine or \$281.68 penalty infringement)

Section 198 Offences of waterway rule contraventions relating to vessel operation are owner onus offences

An offence for contravention of a waterway rule relating to the operation of a vessel is an owner onus offence for the purposes of Part 4.7.

2.1.2 Interpretation of the Marine Safety Act 2010 - Definitions

Section 3 Definitions:

- i. **Channel** includes swinging basin, turning circle, an area alongside a berth or dock, fairway and anchorage;
- ii. **Fairway** means that part of an area of navigable waters that is usually used by vessels for navigation through the area;

3. Advice from Minister for Ports Office

The BIAV contacted the Minister for Ports office requesting clarification of any new law that would result in recreational vessel master/owners being fined for anchoring in areas of Port Phillip Bay such as the Fairway between the Hovell Pile and the Southern end of the Transit Only Zone.

The Minister for Ports Office provided the following response (28/11/2012):

"Boaters can be fined for anchoring in the fairway between the T1/T2 end of the transit only zone - south to the Hovell Pile.

Section 197 of the Marine Safety Act 2010 197 stipulates that a person must not operate a vessel or use any waters in contravention of a waterway rule. Rule 23B of the Vessel Operating and Zoning rules stipulate that the master of a vessel must not cause or allow the vessel to be anchored in a channel.

You should note that the Marine Safety Act 2010 defines a channel as including a swinging basin, turning circle, an area alongside a berth or dock, fairway and anchorage; and a fairway as that part of an area of navigable waters that is usually used by vessels for navigation through the area.

Additionally, Regulation 111(2) of the Marine Safety Regulations 2012 requires masters of vessels underway in a channel or fairway to keep out of the way of a vessel that can only safely navigate within the channel or fairway.

Both of these offences attract an infringement penalty of two penalty units (\$282).

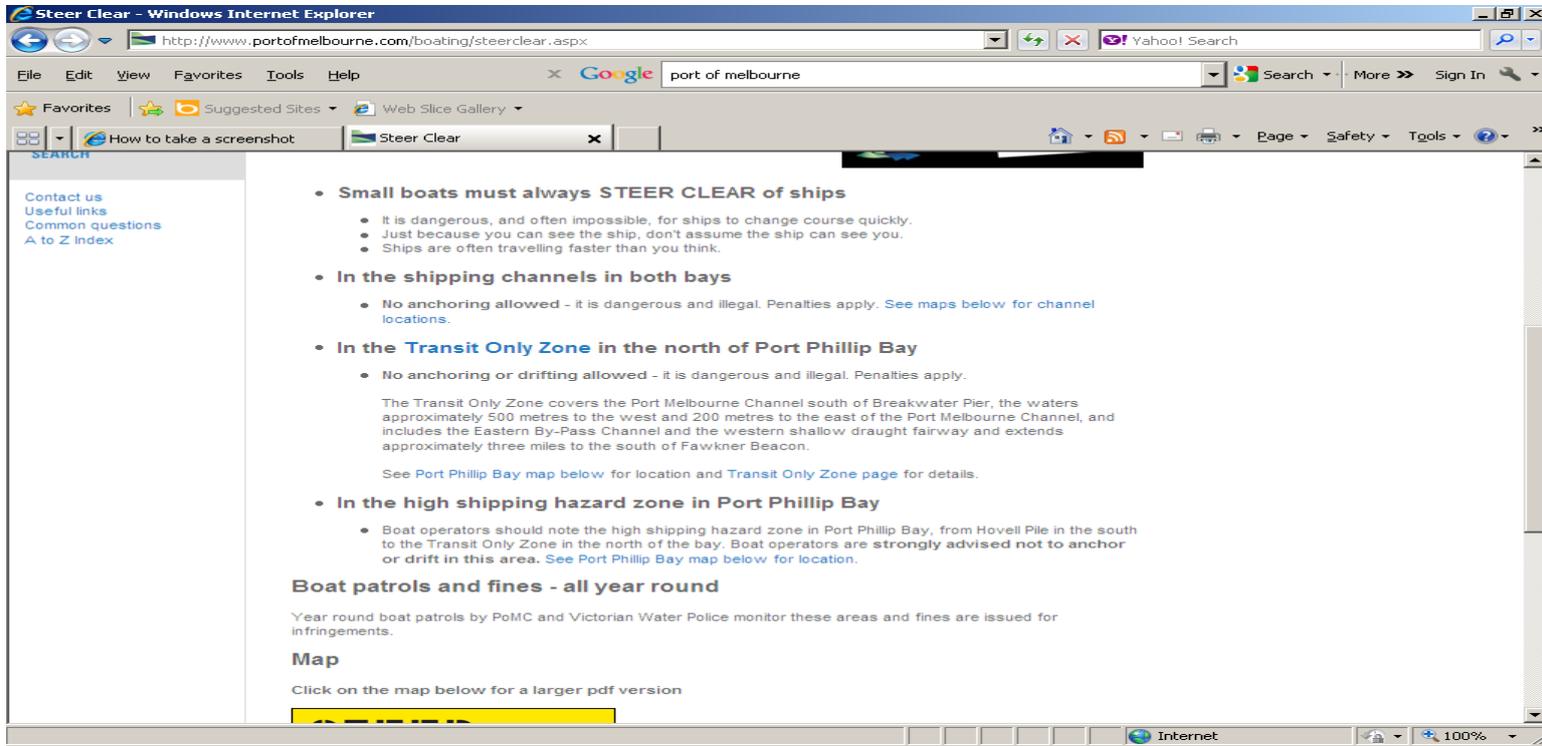
All Boat operators should note the high shipping hazard zone in Port Phillip Bay, from Hovell Pile in the south to the Transit Only Zone in the north of the bay.

A common sense approach is being taken by authorities and enforcement action is generally only taken against vessel operators who anchor within a straight line between T1/T2 and Hovell Pile, and those operators who fail to give way to vessels in these waters".

4. Recreational Boaters are actively being misled by the Authorities!

³ See attached file: MSA 2010 p190 & p3, 4

Prior to 1st July 2012 it was not an offence to anchor anywhere in Port Phillip Bay that was not a defined channel (*other than the TOZ and declared Prohibited Anchorages as delineated on charts Aus 143, Aus 144, Aus 154, Aus 155, and Aus 158*), and providing no "vessel"⁴ was impeded. Advice still found and promoted on both the Transport Safety Website AND the Port of Melbourne Website is shown below and suggests this is still the case:



⁴ PoM Harbour Masters Directions (Sept 2011) declares > 50m LOA applies

The screenshot shows a Windows Internet Explorer browser window displaying the website <http://www.transportsafety.vic.gov.au/maritime-safety/recreational-maritime/safe-operation/big-ships,-litt>. The page title is "Big ships, little boats". The navigation menu includes Home, Bus safety, Maritime safety, Rail safety, About Transport Safety Victoria, Publications & forms, and Contact us. The left sidebar lists various maritime safety topics, with "Big ships, little boats" selected. The main content area contains the following text:

Home > Maritime safety > Recreational maritime > Safe operation > Big ships, little boats

Big ships, little boats

Recreational vessels have a responsibility to stay well clear of large vessels. They are prohibited from impeding the passage of big ships in channels.

All boat operators should take note of the following:

- Big ships operate at all times of the day and night.
- The speed of a ship can be deceptive. It may not look like it from a distance, but they could be travelling at speeds in excess of 20 knots.
- Ships can weigh up to 100,000 tonnes and do not have brakes. They cannot stop or change course suddenly and will travel a long distance before stopping.
- A ship's blind spot can extend for many hundreds of metres ahead.
- Bow waves caused by a ship can swamp a small boat hundreds of metres away.
- Sailing vessels do not have right of way over ships restricted in their ability to manoeuvre.
- A ship will sound five short blasts on its whistle if it believes a smaller vessel is at risk of collision. Small vessels must take evasive action immediately.

Transit only zones

A transit only zone is a regulated area of water in the vicinity of a commercial shipping channel or fairway. Small boat operators must not anchor, moor, drift or engage in fishing activities within a transit only zone.

The purpose of designating a transit only zone is:

- to avoid potential collisions between small boats and large commercial ships, and
- for the safety of small boat operators and their passengers.

A transit only zone in Port Phillip Bay extends from Point Gallibrand (Williamstown) south to an imaginary line at latitude 38° south.

'Yellow 'special mark' light buoys are used to define the boundary zone (see map below).

For further information visit the Port of Melbourne website.
[Port of Melbourne website](#)

The right sidebar contains a banner for "NAVIGATE THE NEW MARINE SAFETY ACT" and a link to "Publications and forms".

As per the Ports Ministers Office advice it is clearly an enforced offence for a recreational vessel master/owner to anchor in any area of Port Phillip Bay usually used by large vessels for navigation through the area including: a channel (*whether marked by lateral marks or not*), fairway, swinging basin, turning circle or anchorage.

Consult with **Aus Chart 143, 144, 154, 155, and 158** for the areas now out of bounds to anyone wanting to anchor and/or fish for snapper!!

Aside from the fact that a "channel" by its very nature needs to be "marked" in order for recreational vessel masters *in situ* to know of its existence (*i.e. Is it a regulated requirement for recreational vessels to carry the relevant Aus chart?*) and therefore avoid being fined for an offence, the removal of the above emphasised "that is marked with beacons or buoys" effectively creates a new waterway rule. There has been no consultation and subsequently this is clearly a breach of the Safety Directors obligation under Part 5.1 Division 2 MSA 2010.

**Division 2—The Safety Director's power to make waterway rules
 192 Consultation for the purpose of assessing appropriateness of urgent safety rule**

(1) For the purpose of making a decision under section 191, the Safety Director must invite submissions and comments from the public in accordance with this section.

This is yet another blatant example of regulatory overreach by the Department of Transport that we have been complaining about for two years. It is clear that the State Coalition Government, regulatory authorities and PoMC have known this was being implemented yet they chose to not only keep recreational boaters in the dark, but actively worked to deceive them.

*The inclusion of definitions for **channel** and **fairway** in the interpretive provisions MSA 2010 were not found in the Marine Act 1988, nor covered in the explanatory memorandum - Marine Safety Bill 2010 (See attached file: MSA2010EM p9).*

