

21 December 2015

Ref: DOC/15/547144

Your ref: COR 2010 004736

Kate Doherty
Coroners Registrar
Coroners Court of Victoria
65 Kavanagh Street
SOUTHBANK VIC 3006

Dear Ms Doherty

**INVESTIGATION INTO THE DEATH OF LEIGH T DAVIES
FINDING WITH INQUEST – TSV RESPONSE TO RECOMMENDATIONS
CASE NUMBER - COR 2010 004736**

On behalf of Transport Safety Victoria's (TSV's) Maritime Safety branch, I write in response to your letter of 30 September 2015 and the Coroner's finding with inquest in relation to the investigation into the death of Leigh T Davies and the recommendations as follows.

1. *That the definition of the Port Phillip Heads area be widened and extended. I recommend that the inshore boundary of Port Phillip Heads be as proposed by Dr Provis. I attach a map (Map 3), setting out the alternative lines which would mark the boundary to the north and east of the current imaginary line running between Point Lonsdale and Point Nepean.*

The inshore boundary should be an imaginary line between Shortland Bluff and Observatory Point; alternatively it could be an imaginary line between Shortland Bluff, Popes Eye and then onto Observatory Point. A further alternative could be from Shortland Bluff to the Monash Light (although this would be a more complicated solution).

2. *I recommend that the Director, Marine Safety Victoria and/or Australian Maritime Safety Authority (AMSA) as the National Regulator, implement a voyage specific safety plan requirement for all commercial vessels/voyagers within the expanded Port Phillip Heads area.*
3. *I recommend that the Director, Marine Safety Victoria make a declaration pursuant to section 81 of the Marine Safety Act 2010 (Vic), declaring the expanded Port Phillip Heads area as waters for which commercial vessel masters/coxswains are required to hold a Local Knowledge Certificate. The declaration should specify that the Local Knowledge Certificate requirement apply to commercial vessels of all sizes, and specify training and assessment requirements to be fulfilled by vessel masters/coxswains.*

Response:

In relation to recommendation 1, TSV supports this recommendation. On 8 December 2015, the definition of Port Phillip Heads contained in the *Marine Safety Regulations 2012 (Vic) (MSR)* was changed by virtue of the *Marine Safety Amendment Regulations 2015* and, under regulation 4, the definition now contained in the MSR is as follows:

Port Phillip Heads means all the waters between an imaginary line drawn between Shortland Bluff and Point Nepean, and the seaward limits of an imaginary line constituting the arc of a circle with a radius of 3 nautical miles centred on Point Lonsdale.

This new definition has the effect of expanding the areas of 'heightened risk' within which personal flotation device requirements apply to certain recreational vessels and hire and drive vessels pursuant to regulation 101 of the MSR.

The new MSR definition is substantially similar to the definition proposed in recommendation 1 and covers the most significant areas of high hazard related to the unpredictable conditions in the area of Port Phillip Heads. It is specifically designed to provide very obvious landmarks for mariners in small vessels to identify their position on the water when approaching the Port Phillip Heads area from inside Port Phillip Bay. No other landmarks are available in this location that provide such an obvious visual reference for those who may not have access to electronic navigation equipment.

However, I also note that this definitional change does not extend the scope of the local knowledge requirement for Port Phillip Heads, which is dependent on a declaration made by the Director, Transport Safety (**Safety Director**) under section 81 of the MSA as per recommendation 3 and discussed below.

In relation to recommendation 2, TSV supports this recommendation in principle and believes that the current Safety Management System (**SMS**) framework allows for that requirement where it is warranted by the risk profile of the operating environment. However, under the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* (Cth) (**National Law**), a decision to implement a voyage-specific safety plan requirement for all commercial vessels would need to be made by the Australian Maritime Safety Authority (**AMSA**) as the National Regulator.

TSV does not support the option proposed by Mr Ranasingha at the inquest hearing on 14 April 2015 to require voyage-specific safety plans that are approved by a relevant regulatory authority – such a requirement would be inconsistent with the regulatory approach of the National Law and contemporary safety regulation more broadly. In the context of vessel operations in Port Phillip Heads and other hazardous areas, it is vessel operators and crew who are most familiar with their vessels' capabilities and suitability for operations in a given set of conditions. Vessel operators and crew should be responsible for determining when it is safe to operate and be held accountable for those decisions.

In relation to recommendation 3, and as noted at the inquest hearing and TSV's Maritime Safety branch's submissions, TSV has conducted a review of the local knowledge certificate scheme to establish:

- which areas the requirement for masters to hold a local knowledge certificate should apply to;
- which classes (including size) the requirement should apply to;
- what training and assessment requirements applicants should be required to fulfil.

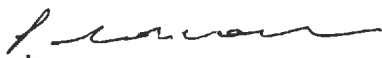
As part of the review, an initial round of consultations and risk workshops has been undertaken with local and commercial port managers across Victoria and a draft revised local knowledge scheme has been prepared for formal consultation with all affected stakeholders. Subject to these consultations, and completion of other applicable statutory procedural steps required by the *Transport Integration Act 2010* (Vic) and *Subordinate Legislation 1984* (Vic), we anticipate that a fresh declaration of local knowledge waters will be made by 31 March 2016.

The draft revised local knowledge scheme proposes that the new MSR definition of Port Phillip Heads be adopted as the waters for which a local knowledge certificate is required and that the two types of local knowledge certificate currently required (as follows) are retained:

- a certificate for the master of a commercial vessels over 12 metres in length
- a certificate for the master of all commercial vessels carrying passengers.

If you require any further information in relation to this response, please contact Elizabeth Muhlebach, Senior Policy & Legal Counsel (Regulation & Governance), on (03) 9655 1712.

Yours sincerely



PETER CORCORAN
Director, Maritime Safety

Cc: Mick Kinley, Chief Executive Officer
Australian Maritime Safety Authority