

Tabled, by leave,
Mr Graham
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for B. Duff
Clerk of the Parliaments
15 / 8 / 24

PORTS AND MARITIME ADMINISTRATION AMENDMENT BILL 2024

STATEMENT OF PUBLIC INTEREST

Need: Why is the policy needed based on factual evidence and stakeholder input?

The purpose of the Ports and Maritime Administration Amendment Bill 2024 is to implement in part the recommendations of the Independent Review of the Ports and Maritime Administration Act 1995 (the Act) and the Port Botany Landside Improvement Strategy (PBLIS) – the Review. The Review was announced by the NSW Government on 12 November 2021 and the Final Report was released on 25 January 2024.

The Review of the Act considered whether the framework for ports and maritime administration remained effective. It considered the objectives of the Act and their suitability for the current and expected future ports and maritime environment, along with stakeholder feedback provided during consultation.

The Review found that the policy objectives of the Act remain valid but there are opportunities to improve parts of the Act and its application, to facilitate the delivery of the Act objectives to support safety, efficiency and effective governance arrangements for NSW's ports and maritime environment.

Sixteen recommendations were made to amend the Act (and Regulation), to modernise and streamline it, clarify functions, improve safety and efficiency in ports and wharves, improve visibility of the port related supply chain and address other issues raised during consultation with stakeholders. These Recommendations include proposals from stakeholders, and all require legislative change. These amendments will ensure the legislation remains an effective and modern regulatory tool.

The detail on some of the more substantial Act changes will be included in the Regulation, in line with the NSW Government legislative framework.

The recommendations from the Review relating to PBLIS are being considered separately and to implement would require amendment to the Regulation, Mandatory Standards and non-regulatory activity.

Objectives: What is the policy's objective couched in terms of the public interest?

Efficient and productive ports are a key contributor to the overall freight supply chain, the cost of goods, the value of exports and the people of NSW and Australia. The State's three trading ports contribute more than \$15 billion to NSW's economy each year and examining the regulatory framework that underpins their effective operation is important to ensure ongoing international competitiveness.

The Independent Review was undertaken by Mr Ed Willett who has extensive experience in economic regulation and competition policy and was supported by Transport for NSW (TfNSW). The Final Report responds to the Terms of Reference and includes recommended reforms to the Act and PBLIS.

The Act sets the framework for ports and maritime management across NSW, including relevant functions of the Port Authority of New South Wales (Port Authority), the two private port operators (Port of Newcastle and NSW Ports) and TfNSW. It also specifies the marine safety functions of the Minister and contains provisions relating to the management of wharves and moorings, port price monitoring and the regulation of parts

of the port supply chain. The Act is relevant for both the freight industry and the recreational and domestic commercial vessel sectors.

The Review was conducted using a three phased approach: Discussion Paper, Options Paper and Final Report to government. The NSW Government Better Regulation Principles and evidence-based research and analysis, including independent external inputs and comprehensive engagement with stakeholders guided the Review.

Options: What alternative policies and mechanisms were considered in advance of the bill?

The Review process included the consideration of options for addressing issues raised by stakeholders and changes required to address the application of the Better Regulation Principles, including areas such as modernising the Act. Options considered included the continuation of the legislation unchanged, non-regulatory approaches and different regulatory approaches. A number of legislation changes were considered and determined to not be suitable, so were not progressed as options for consideration in the Options Paper.

Stakeholder feedback on the options presented and further consideration has informed the refinement of some Act recommendations, and two additional recommendations were included. Other key issues raised by stakeholders that were not recommended are explained in four of the five Act Findings in the Review Final Report.

Analysis: What were the pros/cons and benefits/costs of each option considered?

These reforms arose out of the Independent Review of the Ports and Maritime Administration Act 1995 and Port Botany Landside Improvement Strategy.

The table below covers the details of changes to the Act. Not all Review recommendations require Act changes, so where they are relevant for the Regulation only they have not been included, these are Review Act Recommendations 2, 4, 11 and 15.

A number of changes to the Act also require subsequent details to be included in the Regulation. These Regulation changes will be subject to a following Regulatory Impact Statement and Draft Regulation stakeholder consultation process.

Where changes result in increased or decreased costs for compliance, administration or other costs, these will be addressed in the Regulatory Impact Statement (Act changes that require this consideration are noted in the table below).

Rec No.	Act changes	Details of change and scope of the regulatory amendment
1	<p>Dangerous goods time limit penalty</p> <p>Replace the current three-tier dangerous goods in ports time-limit penalty structure with an ongoing penalty that applies for each day that dangerous goods remain at port facilities beyond the set time limits.</p> <p>Net benefits</p> <ul style="list-style-type: none"> Ensures the continued and consistent effectiveness of the 	<p>Extension of current Act penalty requirement -no change to regulatory burden, full impacts to be covered in the RIS.</p> <p>Implementation – Act and Regulation change</p> <p>Dangerous goods can pose significant risks to port facilities, and their management is regulated to ensure they are handled and stored safely in line with international requirements. Port facility time limits for dangerous goods are applied from the time the goods enter the port facility (for import or export) to when they are transported out of the port.</p>

Rec No. Act changes

management of the dangerous goods penalty structure by creating an incentive to comply with requirements that extend beyond 96 hours

- Simplifies the penalty structure to improve clarity, consistent with the NSW Government Better Regulation Principles.

Details of change and scope of the regulatory amendment

Following amendment of the Act it will provide for continuing offences to apply whenever an offence provision in the Act or regulations specifies a penalty for continuing offences. Further amendment of the Regulation is required to fully implement this recommendation.

This change ensures there is an effective incentive to comply with dangerous goods time limit requirements and that dangerous goods are appropriately removed from port facilities. The penalty amount would be reviewed (in the Regulation) to ensure it remains current and suitably proportionate to the risks it is designed to address.

3 Towage lines handling and bunkering services

Introduce a statutory licensing regime administered by Port Authority to:

- Replace the current towage licence system, administered by Port Authority under its harbour master powers and Port Safety Operating Licence (PSOL)
- Apply licensing requirements for the provision of lines handling services, using a similar approach to towage licensing
- Apply licensing requirements for the provision of some bunkering services, including information requirements and minimum safety standards.

Net benefits

- Provides a robust statutory licensing regime to support the safe and effective provision of critical port operations to ensure that there are no disruptions to trade
- Supports enforcement of standards and requirements for towage, lines handling and bunkering to ensure safety

Towage – improved administration for existing license requirement

Lines handling and Bunkering – new license requirement – increased regulatory burden (justified), full impacts to be covered in the RIS. Implementation – Act and Regulation change

Towage, lines handling and bunkering are services that can present risks to safety, the environment, and property, as well as to ongoing port operations.

Port Authority administers a towage licence system under its PSOL for the ports of Sydney Harbour, Botany Bay, Newcastle, and Port Kembla. Vessels directed by the harbour master as requiring towage services must utilise providers who have been issued a towage licence from Port Authority (under its non-exclusive licence arrangement).

Current enforcement action via a harbour master direction is an indirect approach as the directions apply to the vessel using a towage service, rather than the towage service provider itself. Introducing a requirement for service providers to be licensed is an effective approach to administering this current license requirement.

Lines handling operations are critical for the prevention of property damage, pollution incidents and personal injury, and to overall port

**Rec Act changes
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outcomes and appropriate oversight by Port Authority

- Promotes competition in the market for these services.

Details of change and scope of the regulatory amendment

productivity. Applying a licensing requirement provides Port Authority with the ability to require minimum service capability and safety performance to support port safety and efficiency outcomes. It also signals to the market that multiple providers can operate.

Bunkering is the process of refuelling ships. The provision of bunkering is a high-risk activity as it can involve the transfer of large quantities of fuel and may occur in busy commercial ports among other vessels and port activities and in the presence of other dangerous goods.

Ships are currently required to inform Port Authority of their intention to carry out bunkering activities. However, there are no licensing requirements for bunkering providers with insufficient information about who is providing these services and the quality of the service.

Following amendment to the Act, specific details of the statutory licensing regime will be covered in the Regulation amendment Regulatory Impact Statement process. Taking a risk-based approach, it is planned to apply to providers of these services to larger commercial vessels at commercial ports. Bunkering for recreational or domestic commercial vessels would be excluded from the regime. It would also not apply to facilities licensed by the Environment Protection Authority under the Protection of the Environment Operations Act 1997.

Alternatives to licensing were considered during the Review (two are outlined below), however the introduction of a statutory licensing regime as outlined in this bill is required to address the identified problems and policy objectives.

- Market competition – towage, lines handling and bunkering services have a limited number of participants in the port markets. Competition in these markets should be supported and encouraged. A licensing regime would be non-exclusive, meaning that any service provider wishing to commence or continue operations in a port or ports could apply for a license. To date,

Rec Act changes
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Details of change and scope of the regulatory amendment

the lack of a 'right' to provide services conferred by a licence has impeded contestability in the provision of these services.

- Voluntary certification – the development of voluntary certification schemes is often driven by societal demands for certain characteristics of the product or service and service providers desire to ensure that they meet specified requirements. Voluntary certification also relies on third party verification which would impose a new cost and means it is unlikely industry would voluntarily introduce certification. Towage, lines handling and bunkering services are high risk, technical and specialised services with a low number of operating participants. Each service presents environmental and workplace safety risks which current regulation does not mitigate.

5 Enforcement of private port operator directions

Make changes to private port operator directions to introduce a criminal offence and penalty infringement notice (PIN) for persons who breach private port operator directions at Port Botany, Port Kembla, and Port of Newcastle, relating to: the driving, stopping, and parking of vehicles; the movement, handling or storage of goods; or any activity that may pose a risk to safety and security at the port.

Net benefits

- Strengthens enforcement of port operator safety and security directions to support safe and efficient operations and management of private ports.

Extension of current Act requirement –increased regulatory burden (justified), full impacts to be covered in the RIS.

Implementation – Act and Regulation change

Under the Act a private port operator can, for the purposes of maintaining or improving safety and security at the port, give directions (port operator directions) regulating the following activities in the landside port precinct of a private port, including:

- the driving, stopping and parking of vehicles
- the movement, handling, or storage of goods
- any activity that may pose a risk to the safety or security at the port.

Not complying with a direction can result in serious safety and security issues, depending on the nature of the direction and its breach. The Cost Benefit Analysis of PBLIS also found that enforcement of parking rules in the port precinct contributed to reducing traffic congestion at Port Botany.

The introduction of a criminal offence and PIN for breaching a private port operator direction strengthens their enforcement which experience to date (since the long-term lease of the State's

Rec No.	Act changes	Details of change and scope of the regulatory amendment
6	<p data-bbox="231 537 718 616">Notice of private port operator directions</p> <p data-bbox="231 660 718 862">Amend the port operator direction notification period from at least two weeks to at least one week to allow for more timely responses to general (non-emergency) safety or security issues.</p> <p data-bbox="231 907 399 940">Net benefits</p> <ul data-bbox="231 952 718 1108" style="list-style-type: none"> • Supports effective port management by allowing more timely responses to general (non-emergency) safety or security issues. 	<p data-bbox="742 537 1417 616">Minor change to existing requirement -reduced regulatory burden.</p> <p data-bbox="742 616 1133 649">Implementation – Act change</p> <p data-bbox="742 694 1417 929">Private port operators are currently required to give at least two weeks’ notice of their directions to the relevant harbour master for the port, and to the Minister if the direction relates to the management of dangerous goods. This advanced notification is not required if the direction is given in an emergency.</p> <p data-bbox="742 974 1417 1153">Reducing the notice period for private port operator directions from at least two weeks to at least one week allows for more timely responses to general (non-emergency) safety or security issues.</p>
7	<p data-bbox="231 1164 718 1198">Traffic control at ports and wharves</p> <p data-bbox="231 1243 718 1411">Extend liability for non-compliance with parking rules in all ports and on TfNSW or Port Authority land near a port or wharf to the owner of the vehicle.</p> <p data-bbox="231 1456 399 1489">Net benefits</p> <ul data-bbox="231 1500 718 1848" style="list-style-type: none"> • Strengthens effective traffic control by addressing situations where vehicles are parked illegally with the potential to cause safety and traffic management issues and the driver cannot be found • Improves consistency in traffic control measures across all ports and wharf landside areas. 	<p data-bbox="742 1164 1417 1265">Extension of Act and Regulation powers for private port operators, TfNSW and Port Authority -increased regulatory burden (justified).</p> <p data-bbox="742 1265 1133 1299">Implementation – Act change</p> <p data-bbox="742 1344 1417 1523">TfNSW and Port Authority can issue PINs to drivers for parking-related breaches inside their own ports, as well as near a port of wharf – and this bill introduces this power for private port operators (Act Rec 5).</p> <p data-bbox="742 1568 1417 1769">To address situations where the driver cannot be found –which can cause safety and traffic management issues where vehicles are parked illegally – the bill enables PINS to be issued to the vehicle owner. These powers already exist in other NSW legislation.</p> <p data-bbox="742 1814 1417 1989">Privacy issues related to the sharing of vehicle owner information with private port operators will be addressed –other private sector entities are given lawful access to this information for specific purposes.</p>

Rec No.	Act changes	Details of change and scope of the regulatory amendment
8	Vessel environmental performance information Require trading ships to provide relevant port authorities with vessel performance information such as fuel types, exhaust gas cleaning systems, noise emission levels and noise mitigation measures where relevant and for vessels carrying bulk liquids to also provide information such as pump and outlet capacities. Net benefits <ul style="list-style-type: none"> • Contributes to effective management of environmental performance and risk mitigation strategies in ports by making consistent information available regarding the environmental performance of vessels • Supports the ongoing monitoring of vessels' environmental performance to help identify opportunities for improvement and assess new initiatives, as well as inform future port investments. 	Modernisation of requirements -increased regulatory burden (justified), full impacts to be covered in RIS. Implementation – Act and Regulation change Under the Act, port operators can request information from vessels for specific purposes, including monitoring compliance with port operator directions, calculating and applying port charges, compiling required statistics and coordinating communication at the port. An expansion of these requirements would support ongoing monitoring of vessel environmental performance through the provision of information such as, type of fuel(s) in use, whether or not the vessel is fitted with an exhaust gas cleaner (scrubber) system and noise emission levels for the vessel. This information would contribute to effective management of environmental protection and risk mitigation strategies in ports – for example, air quality and noise control. The specific vessel environmental performance matters that port operators can require will be considered during the Regulation change process.
9	Port price monitoring scheme reporting requirements Change the port operator charges notification period to provide 40 business days' notification to the Minister before implementation, and within that period 20 business days' notification to industry before implementation. Net benefits <ul style="list-style-type: none"> • Ensures a consistent approach to port charges notification across port operators and provides clarity of the regulatory reporting requirements • Facilitates appropriate monitoring of port charges by ensuring the 	Improving administration -increased regulatory burden (justified). Implementation – Act change Under the Act, the Minister is responsible for monitoring the prices that port operators charge users. The Minister does not regulate or approve port charges. Currently port operators are required to inform the Minister at least 20 business days before the change and notify industry at least 10 business days before the change. To ensure the notification process is reasonable and clear for port operators, government and industry, the notification timeframe would be changed to 40 business days in total. Port operators would be required to notify the Minister at least 40 business days before

Rec No.	Act changes	Details of change and scope of the regulatory amendment
	<p>Minister is suitably advised under the port price monitoring scheme</p> <ul style="list-style-type: none"> Provides increased and consistent notice to industry of upcoming changes to port charges prior to implementation. 	<p>implementation, and within that period, publish the change on their website at least 20 business days before the change is implemented, to give industry 20 business days' notice.</p> <p>This will facilitate a consistent approach across all port operators and support appropriate monitoring of port charges, while also providing industry with an increased statutory notice period for upcoming changes to port charges. This approach aligns with the current practice of most port operators.</p>
10	<p>Vessel manifest information and data formats</p> <p>Strengthen vessel manifest information requirements and information sharing mechanisms to support quality information provision and efficient data sharing.</p> <p><i>Vessel manifests</i></p> <p>The following information should be provided by a vessel owner in a manifest for goods loaded or discharged from a vessel to the relevant port operator:</p> <ul style="list-style-type: none"> -The Harmonized System (HS) classification based on internationally agreed descriptors for imports and exports -For containerised imports, the inland point of destination or origin for the container within Australia. <p>A criminal offence should be created in the Regulation for failure to provide required information in a manifest within required timeframes.</p> <p><i>Effective information sharing</i></p> <p>Delivery orders for cargoes and vessel manifests should be provided by the owner of the vessel to relevant parties, including port operators and empty container parks, in an appropriate electronic format, unless agreed otherwise.</p>	<p>Modernisation of requirements -increased regulatory burden (justified), full impacts to be covered in RIS.</p> <p>Implementation – Act and Regulation change</p> <p>A manifest is a document listing cargo information and port operators use this information to calculate port charges under the Act.</p> <p>Requiring the additional information on a manifest will provide a single and reliable source of data on import and export distribution patterns within NSW and improve understanding of road and rail infrastructure requirements for cargo movements to facilitate infrastructure planning.</p> <p>The system-to-system electronic exchange of information is important for the effective operation of the port supply chain. The provision of vessel manifests in an appropriate electronic format will be mandated to improve information sharing, unless agreed otherwise with the port operator.</p> <p>Further changes during the Regulation amendment process will fully implement this recommendation including to mandate the provision of electronic information which will be flexible to accommodate different system-to-system information exchange formats and to ensure the requirements remain fit for purpose for the future ports environment. There would also be alignment with recognised information sharing standards to minimise administrative effort in providing information.</p>

Rec No.	Act changes	Details of change and scope of the regulatory amendment
	<p>Information provided in vessel manifests and delivery orders should also be made available by relevant parties to the NSW Government.</p> <p>Net benefits</p> <ul style="list-style-type: none"> • Improves consistency in the information provided in vessel manifests to provide a more accurate and reliable overview of import and export container movements to inform planning for future freight supply chain requirements • Ensures compliance with vessel manifest requirements by strengthening enforcement provisions • Modernises and streamlines information sharing methods to support efficient and effective information transfers. 	
12	<p>TfNSW functions</p> <p>Clarify functions of TfNSW to reflect changes in responsibilities for managing waterways infrastructure and the provision of maritime services across NSW and improve clarity of the role of TfNSW.</p> <p>Net benefits</p> <ul style="list-style-type: none"> • Supports better understanding of TfNSW's maritime functions and the maritime responsibilities of government under the Act • Ensures TfNSW functions under the Act are aligned with current operational responsibilities. 	<p>Updating of functions - increased regulatory burden (justified).</p> <p>Implementation – Act change</p> <p>Some of the Minister's functions under the Act are administered by TfNSW. Over time, the marine legislation and organisational structures and functions have evolved.</p> <p>Additional functions should capture TfNSW's role in removing debris from Sydney Harbour, the maintenance of additional waterways infrastructure (such as river entrance management infrastructure and vessel maintenance facilities), and other maritime functions TfNSW undertakes.</p> <p>This will ensure TfNSW's current responsibilities and obligations are clear.</p>
13	<p>Maritime Advisory Council functions</p> <p>Expand the functions of the Maritime Advisory Council (MAC) to include advice and</p>	<p>Clarification of existing requirements - no change in regulatory burden.</p> <p>Implementation – Act change</p>

Rec No. Act changes

recommendations on maritime property, in addition to the current MAC functions of providing advice on maritime safety, infrastructure and research, in relation to domestic commercial vessels and recreational vessels.

Net benefits

- Aligns the statutory functions of the MAC with the expertise required of its members and the functions of TfNSW to provide clarity and improve understanding of the skills and expertise of the MAC
- Provides clarity on all relevant areas that the MAC advises the Minister on in relation to domestic commercial and recreational vessels.

14 Port Authority objectives

Allow Port Authority to engage in activities that are complementary to its principal objectives, with the Minister's approval.

Net benefits

- Ensures complementary activities that are outside of Port Authority's principal objectives, are not unduly restricted under the Act
- Ensures appropriate government oversight of these complementary Port Authority activities.

Details of change and scope of the regulatory amendment

Council members are appointed by the Minister and in accordance with the Regulation. Each must have demonstrated individual expertise across one or more of the recreational boating, domestic commercial vessel, or maritime property sectors. However, the required maritime property expertise is not currently reflected in the statutory functions of the MAC.

There is a need to expand the role of the MAC to better reflect all TfNSW maritime functions, including management of property vested within it. This would align the statutory functions of the MAC with an existing competency required of its members and the maritime functions of TfNSW. It would also provide greater clarity on matters the MAC advises the Minister on.

Modernisation of governance arrangements for a SOC-increased regulatory burden (for Port Authority only), full impacts to be covered in RIS. Implementation – Act and Regulation change

The Port Authority is established as a statutory State owned corporation (SOC). The Act sets out the principal objectives and functions of Port Authority. The Act provides very limited scope to accommodate activities that are outside of these port objectives. The Port Authority however manages a range of lands and there is the potential for complementary activities to be accommodated without impacting port functions, which could further the broader objectives of the SOC to be a successful business and exhibit a sense of social responsibility.

These complementary activities should be allowed provided Port Authority's primary focus remains on its principal objectives and functions. The Ministerial approval role will ensure appropriate NSW Government oversight to determine whether the activities proposed are complementary.

Rec No.	Act changes	Details of change and scope of the regulatory amendment
16	Updates to the Act and Regulation	Modernisation, minor changes -no change in regulatory burden.
	Outline the objectives of the Act and make other amendments to remove outdated references and requirements and simplify the Act.	Implementation – Act and Regulation change
	Net benefits	Changes will be made to simplify, update and streamline the Act and remove unnecessary or outdated requirements.
	<ul style="list-style-type: none"> Provides greater clarity on matters covered under the Act and ensures it remains fit for purpose by updating and modernising legislation in line with current and expected future practice, including streamlining the Act where appropriate. 	

Pathway: What are the timetable and steps for the policy's rollout and who will administer it?

The Act is administered by TfNSW on behalf of the Minister for Transport. The rollout of the reforms will be managed by TfNSW, including preparation of a communications plan for internal and external stakeholders.

Consultation: Were the views of affected stakeholders sought and considered in making the policy?

An extensive public consultation process was undertaken in line with the NSW Government's Better Regulation Principles. The Review heard from individuals, logistics and retail businesses, port operators, peak industry bodies and industry advisory groups, container stevedores, transport operators (road and rail), maritime (domestic commercial and recreational vessels), unions, agriculture exporters, government, community groups and other stakeholders.

Two rounds of consultation were undertaken. The first round was on the Review Discussion Paper which outlined the Review scope and provided relevant data and information but did not include proposed changes. The second round of consultation was on the Review Options Paper and outlined the Review findings and proposed options for changes to the Act and PBLIS.

The first round of stakeholder consultation included a series of virtual (due to the COVID-19 situation at the time) consultation roundtable sessions open to all interested stakeholders, and individual meetings with the Independent Reviewer. The Review received 26 written submissions on the Review Discussion Paper. Non-confidential submissions were published on the TfNSW website.

The second round of consultation on the Review Options Paper included further roundtable sessions conducted both in-person and virtually. The Review received 21 written submissions on the Review Options Paper.

Stakeholder views of the options are detailed in the Final Report under each Recommendation. Additionally, where some key stakeholder suggestions were not recommended these have been covered in the Act Findings.

The Review also included comprehensive consultation with relevant NSW Government agencies and engagement with the Productivity Commission, throughout the Review.