



New South Wales

Ports and Maritime Administration Amendment Bill 2024

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are as follows—

- (a) to amend the *Ports and Maritime Administration Act 1995* (the **PAMA Act**), the *Ports and Maritime Administration Regulation 2021* and the *Road Transport (Vehicle Registration) Regulation 2017* to implement various recommendations arising from an independent review of the PAMA Act, including to—
 - (i) clarify the objectives of the PAMA Act in relation to the safety, and the responsible and effective management, of waterways and waterways infrastructure, and
 - (ii) provide for continuing offences relating to dangerous goods remaining at port facilities beyond set time limits, and
 - (iii) establish a statutory licensing scheme to regulate the provision of towage services, lines handling services and bunkering services (**licensed services**) at ports in which pilotage of vessels is compulsory under the *Marine Safety Act 1998* (**pilotage ports**), and
 - (iv) provide for the offence of failing to comply with port operator directions and for penalty infringement notices for the offence, and
 - (v) reduce mandatory notice periods for port operator directions from 2 weeks to 1 week to allow more timely responses to general safety or security issues at ports, and
 - (vi) extend liability for parking offences at ports or on adjacent land owned or controlled by Transport for NSW (**TfNSW**) or the Port Authority of New South Wales to the relevant vehicle owner and enable vehicle registration information to be provided to port operators for the purposes of enforcing parking offences, and

- (vii) provide for information requirements relating to the environmental performance of vessels, and
 - (viii) increase the required advance notice period for changes in port charges to—
 - (A) for advance notice to the Minister—40 business days, and
 - (B) for advance notice to the industry—20 business days, and
 - (ix) provide for additional vessel manifest information requirements and improved information sharing mechanisms to improve the quality of information provided and enable more efficient data sharing, and
 - (x) clarify the functions of TfNSW to reflect responsibilities for managing waterways infrastructure and the provision of maritime services across the State, and
 - (xi) clarify key functions of the Minister in relation to the safety of, and the responsible and effective management of, waterways and waterways infrastructure, and
 - (xii) expand the functions of the Maritime Advisory Council to include giving the Minister advice and recommendations about property and infrastructure to align with the expertise of Council members and the functions of TfNSW, and
 - (xiii) allow, with the Minister’s approval, the Port Corporation to engage in activities that are complementary to its principal objectives and functions, and
 - (xiv) make consequential, transitional and law revision amendments, including amendments to relocate particular provisions, omit redundant provisions and references, correct cross-references and enable particular documents and notices to be published or given electronically,
- (b) to make consequential amendments to other Acts and regulations.

Outline of provisions

Clause 1 sets out the name, also called the short title, of the proposed Act.

Clause 2 provides for the commencement of the proposed Act.

Schedule 1 Amendment of Ports and Maritime Administration Act 1995 No 13—amendments relating to provision of licensed services at pilotage ports

Schedule 1[2] inserts proposed Part 4B, which provides for a statutory licensing scheme to regulate the provision of towage services, lines handling services and bunkering services to vessels, other than defence vessels, at pilotage ports as follows—

- (a) proposed Division 1 sets out the ports and vessels in relation to which the scheme applies and defines *towage service*, *lines handling service* and *bunkering service* for the scheme,
- (b) proposed Division 2 provides for the Port Authority of New South Wales to make licensed service determinations setting out requirements and standards for the provision of licensed services in pilotage ports,
- (c) proposed Division 3 requires a person to hold a licence in order to provide a licensed service at a pilotage port and sets out the processes for applying for, and granting, licences, including the following—
 - (i) matters that must and may be considered when deciding applications for licences,
 - (ii) particular grounds on which licences may or must be refused,
- (d) proposed Division 4 provides for the surrender of licences by licence holders,
- (e) proposed Division 5 provides for—
 - (i) the suspension and revocation of licences by the Port Authority of New South Wales, including—

- (A) requirements to give licence holders notice of proposed suspensions or revocations and decisions to suspend or revoke licences, and
- (B) the grounds on which the Port Authority of New South Wales may suspend or revoke licences, and
- (ii) the immediate suspension of licences in circumstances involving wilful, deliberate or grossly negligent acts or omissions by licence holders,
- (f) proposed Division 6 provides for the renewal of licences, including—
 - (i) matters the Port Authority of New South Wales must consider when deciding renewal applications, and
 - (ii) particular grounds on which renewals may or must be refused,
- (g) proposed Division 7 establishes a register of licences,
- (h) proposed Division 8 provides for the following—
 - (i) particular offences relating to licences, including—
 - (A) falsely claiming to be licensed, and
 - (B) making false statements for the purposes of obtaining or renewing a licence, and
 - (C) obstructing an authorised officer exercising functions under the proposed division,
 - (ii) the powers of the Port Authority of New South Wales to—
 - (A) require, by written direction, a licence holder, the master of a ship, a shipping agent or an operator of facilities at or adjacent to a pilotage port to give the Port Authority of New South Wales information reasonably required for the purposes of monitoring and enforcing compliance with the licensing scheme, and
 - (B) enter land or premises at or adjacent to a pilotage port for the purposes of monitoring and enforcing compliance with the licensing scheme,
 - (iii) requirements for the Port Authority of New South Wales to report annually on key aspects of the licensing scheme, including—
 - (A) the number and types of licences granted and refused each year, and
 - (B) details of compliance and enforcement actions taken by the Port Authority of New South Wales each year,
 - (iv) further regulation-making powers in relation to the licensing scheme.

Schedule 1[1] amends section 3 to insert and amend relevant definitions consequent on amendments in Schedule 1[2].

Schedule 1[3] inserts a transitional provision enabling a provider of towage services under an existing contract to continue to provide the towage services under the existing contract until the provider's application for a licence under the new licensing scheme is decided.

Schedule 2 Amendment of Ports and Maritime Administration Act 1995 No 13—general amendments

Schedule 2[1] inserts proposed section 2A, which sets out the key objectives of the PAMA Act.

Schedule 2[3] and [4] amend section 3 to correct cross-references in the definitions of *pilotage* and *pilotage port*, and to insert definitions consequent on other amendments in Schedule 2.

Schedule 2[2], [5], [7]–[15], [18], [19], [21], [22], [24]–[30], [32]–[35], [37], [44], [47], [49]–[52], [56]–[59], [63], [64], [70], [71], [74], [75], [77] and [78] amend the PAMA Act to update references to the Port Corporation.

Schedule 2[16] inserts proposed section 10AA, which allows the Port Corporation to provide additional facilities or services, or conduct additional businesses, that are complementary to its principal objectives or functions, but only with the approval of the Minister. The Minister may only grant approval if satisfied the provision of the facility or service, or the conduct of the business, is complementary to, and will not detract from, the Port Corporation's principal objectives or functions, and may grant approval subject to conditions.

Schedule 2[17] amends section 10A to enable the Minister to give the Port Corporation directions in relation to the exercise of any of the Port Corporation's functions in connection with—

- (a) the Port Corporation's principal objectives of promoting and facilitating a competitive commercial environment in port operations or improving productivity and efficiency in its ports and the port-related supply chain, and
- (b) the provision of a facility or service, or the conduct of a business, by the Port Corporation under an approval given by the Minister under proposed section 10AA.

Schedule 2[31] substitutes sections 24 and 25 to clarify that the Minister's general and particular marine safety and amenity functions include the maintenance and improvement of the amenity of navigable waters.

Schedule 2[38] amends section 34 to provide that the functions of the Maritime Advisory Council include advising and making recommendations to the Minister on expenditure priorities for the exercise of TfNSW's functions in connection with maritime property.

Schedule 2[40] amends section 38 to decrease the notice port operators are required to give harbour masters of proposed port operator directions from 2 weeks to 1 week.

Schedule 2[42] amends section 38 to enable notice of proposed port operator directions to be given by email.

Schedule 2[43] amends section 39 to make it an offence for a person to fail to comply with a port operator direction, with a maximum penalty of 30 penalty units.

Schedule 2[48] inserts proposed section 48A to clarify the Minister's power to designate the Port Corporation as the appropriate public agency for a port for the price monitoring scheme. **Schedule 2[46]** makes a consequential amendment. **Schedule 2[79]** inserts a consequential transitional provision confirming existing designations.

Schedule 2[53] amends section 59 to remove the requirement for a port authority to keep physical copies of maps defining the sites owned, operated or leased by the port operator at the port operator's offices. **Schedule 1[54]** amends section 59 to require the port authority to instead keep and make publicly available, free of charge, an electronic copy of the maps. **Schedule 1[55]** makes a consequential amendment.

Schedule 2[61] amends section 80 to increase the required notice a port operator must give the Minister of proposed changes in service charges from 20 to 40 business days. **Schedule 2[62]** amends section 80 to increase the required publication of notice of the proposed changes on the port operator's website from 10 to 20 business days. **Schedule 1[60]** makes a consequential amendment.

Schedule 2[65] substitutes section 85A to enable the Minister to designate, by order published in the Gazette, a wharf of TfNSW that is outside Sydney Harbour and its tributaries as a regulated wharf of TfNSW. A person must not secure a commercial vessel, or cause a commercial vessel to be secured, to a regulated wharf of TfNSW without a wharf authorisation.

Schedule 2[68] substitutes section 103 to clarify that proceedings for an offence against the marine legislation may be brought by any person, including police officers, TfNSW or a member of staff of TfNSW, or the Port Authority of New South Wales or a member of staff of the Port Authority of New South Wales.

Schedule 2[69] inserts proposed sections 104A–104C. Proposed section 104A enables the regulations to prescribe offences as continuing offences. Proposed section 104B creates a new

offence to extend liability for parking offences to a vehicle owner as if the vehicle owner were the actual offender guilty of the parking offence in particular circumstances. Proposed section 104C gives authorised officers powers to require a person reasonably suspected of committing an offence under the PAMA Act to give the person's full name and address. **Schedule 2[67]** amends section 100 to enable penalty notices to be issued in relation to parking offences under proposed section 104B.

Schedule 2[72] amends section 110 to clarify that the regulations may make provision about the driving, stopping and parking of vehicles on land owned by or under the control or management of TfNSW or the Port Authority of New South Wales that is near a port or wharf owned by or under the control or management of TfNSW or the Port Authority of New South Wales.

Schedule 2[73] amends the PAMA Act to insert proposed section 110(1B) to provide that the regulations may make provision about—

- (a) the making, keeping, inspection and provision of records and information relating to goods loaded onto or discharged from a vessel at a port, and
- (b) the making, keeping, inspection and provision of records and information relevant to the management and mitigation of environmental risk or impact, and
- (c) the sharing of records and information provided, or required to be provided, under the PAMA Act with or between TfNSW, port operators, port authorities and other entities in the port-related supply chain.

Schedule 2[6], [20], [23], [36], [39], [41], [45], [66] and [76] make law revision amendments, including omitting redundant provisions and correcting cross-references, and other minor amendments consequent on other amendments in Schedule 2.

Schedule 3 Amendment of Ports and Maritime Administration Regulation 2021

Schedule 3[1] amends section 10 to update a reference to the Port Corporation.

Schedule 3[2] amends section 11 to clarify that the owner of a vessel must, within the timeframes set out in section 11(2), give the port operator of a designated port a manifest of goods discharged from the vessel that includes the information set out in section 11(3). **Schedule 3[3] and [4]** amend section 11(3) to require the manifest to also include the relevant tariff classification number for the goods discharged, the identifying marks and numbers of the containers for the goods and the relevant Australian postcodes for the point of origin or destination of the containers.

Schedule 3[5] amends section 12 to clarify that the owner of a vessel must, within the timeframes set out in section 12(2), give the port operator of a designated port a manifest of goods loaded onto the vessel that includes the information set out in section 12(3). **Schedule 3[6]** amends section 11(3) to require the manifest to also include the Australian Harmonized Export Commodity Classification for the goods loaded onto the vessel.

Schedule 3[7]–[10] make law revision amendments, including to correct cross-references and update the formatting of definitions.

Schedule 3[11] prescribes the offence under the PAMA Act, section 39(1) of failing to comply with a port operator direction as a penalty notice offence.

Schedule 4 Amendment of Road Transport (Vehicle Registration) Regulation 2017

Schedule 4 inserts proposed clause 133B, which authorises TfNSW to release particular registration information for a vehicle to a port operator for the purposes of enabling the port operator to take enforcement action in relation to parking offences under the PAMA Act.

Schedule 5 Consequential amendments of other Acts and instruments

Schedule 5 amends various Acts and instruments to update references to the Port Corporation consequent on amendments in Schedule 2.