



Submission:

Ports and Maritime Administration Act 1995

ISSUE: Ports and Maritime Administration Act 1995

SUBJECT: Transport for NSW Review 2022

INTRODUCTION:

The NSW Government is conducting a review of the *Ports and Maritime Administration Act 1995* (PAMA) and the Port Botany Landside Improvement Strategy. The Government appointed independent reviewer Ed Willett to lead the review.

BIA has lodged interest in being part of the review consultation process. Of particular interest is the PAMA Act which sets the legislative framework that currently captures administrative functions such as:

- Maritime Advisory Council;
- Waterways Fund;
- Moorings; and
- Marine Safety Functions.

Transport for NSW has posted details on the review at <https://yoursay.transport.nsw.gov.au/hub-page/pamareview>

Submissions are due 4 March and can be emailed to: Freight@transport.nsw.gov.au

Second round of consult is in June/ July

SUBMISSION

The Boating Industry Association Ltd (BIA) commend Transport for NSW for the opportunity to provide input.

The BIA is the peak body in Australia that represents the interests of recreational and light commercial boating which includes boat manufacturers, importers, brokers, insurers, retailers, charters, marinas, events, designers, surveyors and trades from boat builders to riggers, and more. BIA is an advocate for boaters and the boating lifestyle and supports safe, responsible, and enjoyable boating.

The boating economy generates significant benefits through employment. In 2021 the industry reported national turnover of \$8.835 billion, directly employed more than 27,630 people with more than 10,000 contractors. Seventy-five per cent are in small family businesses, employing local workers and supporting local communities.



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With more than 85 per cent of the population living within 50km of the coast, it is little wonder that almost 1 in 5 households can have a boat or watercraft. Furthermore, the number of vessels and watercraft in our communities should not surprise as the reality is people of all ages, gender and ability can participate in boating across paddle, sail and power for leisure and sport.

Boating as a result is a significant contributor to the economy that spans metropolitan, rural and regional Australia.

The BIA notes the *Ports and Maritime Administration Act 1995* (PAMA) provides the legislative framework which contains matters of significance to the recreational and light commercial vessel sector of NSW. This submission will focus on the following key priority areas:

Maritime Advisory Council

This issue also directly relates to the Discussion Paper Question 2: Do you have any feedback on the provisions of the Act in relation to the Maritime Advisory Council or the Waterways Fund?

The Maritime Advisory Council (MAC) exists under the *Ports and Maritime Administration Act 1995* Part3, Section 34

34 *Maritime Advisory Council*

- (1) *The Minister may, subject to and in accordance with the regulations, establish a Maritime Advisory Council.*
- (2) *The members of the Maritime Advisory Council are to be appointed by the Minister in accordance with the regulations.*
- (3) *The regulations may make provision for or with respect to the membership and procedure of the Maritime Advisory Council.*
- (4) *The Maritime Advisory Council has the following functions—*
 - (a) *to advise the Minister on any matter that is referred to it by the Minister in connection with the operation of the marine legislation or the National law,*
 - (b) *to advise and make recommendations to the Minister on maritime safety and on expenditure priorities for the exercise of TfNSW's functions in connection with maritime infrastructure and maritime research.*

The MAC is a standout benefit to industry and the boating public because it is formalised in legislation and enables information sharing and discussions of consequence directly with the Minister and or the Minister's representative(s), as well as heads of the relevant department. It enables the MAC to advise the Minister on matters referred to it, and to advise and make

recommendations to the Minister on safety and expenditure priorities eg., maritime infrastructure and maritime research.

Only Qld has a body that is remotely comparable, with the Queensland Maritime Committee being established in 2021. This Committee however is not enshrined in legislation and consequently has weaker accountability and ability to advise and make recommendations on significant issues.

NSW leads the nation through the provision of such high-level engagement to help inform government strategies across recreational and light commercial boating. The Minister and TfNSW are to be applauded for establishing and maintaining the MAC.

RECOMMENDATION: To note the above and:

- To encourage government to retain the MAC as part of the Act
- To suggest amendment of (4) (b) so that it reads (amends in red):
 - The Maritime Advisory Council has the following functions ... (b) to advise and make recommendations to the Minister on maritime safety and on expenditure priorities for the exercise of TfNSW's functions in connection with maritime safety, property, infrastructure and maritime research.
 - Note: This suggestion would better and more appropriately reflect the actual work program of TfNSW which can be distilled into three core areas: safety, infrastructure and property.
- To promote transparency by ensuring the MAC are updated routinely on the Waterways Fund income and expenditure, and expenditure priorities
- To promote transparency by ensuring the MAC are updated routinely on the Marine Rescue NSW levy, which is applied to significant segments of the boating public, particularly how it relates to delivery of the agreed 'purposes' of the funding
- To encourage the government to make greater use of the MAC and its ability to advise and make recommendations on prominent issues within its remit.

Waterways Fund

This issue also directly relates to the Discussion Paper Question 2: Do you have any feedback on the provisions of the Act in relation to the Maritime Advisory Council or the Waterways Fund?

The Waterways Fund exists under the *Ports and Maritime Administration Act 1995* see Part 4, Division 3, Section 42 for details. It is funded from revenue raised from recreational boating licences, registrations and moorings, and also from maritime property management including

wetland leases. As a hypothecated fund, the Fund funds the TfNSW annual effort in delivering back to its customer base through programs, products and services.

Of particular relevance are these extracts:

The Act state⁴², (2) reads:

(2) *There is payable into the Waterways Fund—*

- (a) *all money received by Transport for NSW in connection with the exercise of its functions under section 41, and*
- (b) *all penalties recovered for offences against the marine legislation or the National law that are recovered in prosecutions brought by (or penalty notices issued by) any person except where the penalty is payable to a Port Corporation under section 21A, and*
- (c) *all interest received in respect of the investment of money belonging to the Fund, and*
- (d) *all money borrowed by Transport for NSW in connection with the exercise of its functions under section 41, and*
- (e) *all money appropriated by Parliament for the purposes of Transport for NSW in connection with the exercise of its functions under section 41, and*
- (f) *all money directed to be paid into the Fund by this or any other Act.*

(4) *There is payable from the Waterways Fund—*

- (a) *all payments made on account of Transport for NSW in respect of its functions under this Act or otherwise required to meet the expenditure incurred in relation to the functions of Transport for NSW under this Act, and*
- (aa) *payments authorised by the Minister to fund the Minister's functions relating to marine safety and the provision of infrastructure and services for vessels, and*
- (b) *the remuneration (including allowances) of staff of Transport for NSW engaged in the administration of this Act, and*
- (c) *all money directed to be paid from the Fund by this or any other Act.*

The Fund has long been the envy of all regulators (and industry and the boating public) in Australia who generally have struggled to fund their respective maritime safety, property and infrastructure programs and are typically reliant on regular bids for government allocations.



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Queensland is a case in point, where the maritime regulator in that State relies on allocations from consolidated revenue funds and is consequently restricted in its ability to deliver funded and sustained safety education and compliance actions to help address its fundamental on-water safety concerns relating to preventable trauma and loss of life on the waterways. This is in part why the Queensland regulator has had an aspiration over recent years to establish a similar hypothecated funding model.

It is noted the 2020-21 TfNSW Annual Report states under Cash and cash equivalents... \$338.0 million (2020: \$358.0 million) held within Westpac Bank Accounts that are included in the Treasury Banking System in relation to funds administered on behalf of the Maritime Waterways fund. These funds are restricted to activity relating to maritime transactions and are covered by Section 42 of the Ports and Maritime Administration Act 1995.

The Report also states under Financial assets at fair value ...Financial assets at fair value consist of \$134.0 million (2020: \$120.0 million) held within TCorpIM Funds in NSW TCorp. These funds are administered on behalf of the Maritime Waterways fund and are restricted to activities relating to maritime transactions. The investments are controlled by Transport for NSW and are covered by Section 42 of the Ports and Maritime Administration Act 1995.

This is an opportune time for recreational and light commercial boat owners, and maritime property customers of TfNSW to focus on the Fund and how it functions. Particularly as they are the primary contributors and meant to be its beneficiaries.

There has, for many years, been 'talk' in government of making more use of the Fund for what may normally be considered consolidated fund projects that are not directly connected to revenue sources (ie, recreational and light commercial boat owners, and wetland lease/ maritime property tenants) or use the Fund for wider government initiatives.

A review of the Act is a time to reinforce the benefits of the hypothecated funding structure.

A case in point regarding its success is the Boating Now Program which has resulted in increased accessibility and safety across NSW Waterways through the delivery of more than 200 infrastructure projects.

In addition, in October 2020 the NSW Government announced a \$205 million investment commitment in regional maritime infrastructure, regional dredging, ferry wharf upgrades and Maritime property improvements, to be funded from the Waterways Fund.

The funding has also enabled TfNSW to address preventable drowning rates statewide by promoting lifejacket wear, with NSW recording an increase of lifejacket wear rates of more than 300 per cent during the past decade.

The fund supports the TfNSW motto of putting the customer at the centre of everything it does. The 'customer' for the maritime teams within the department is the broad boating public across paddle, power and sail - and maritime businesses/ property owners/ lease holders - across all ages, abilities and genders. The sense of customer is reinforced as this broad cohort is the



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source of revenues that continually replenish the hypothecated Waterways Fund which in turn funds the work of the maritime teams in TfNSW.

The BIA applauds the Minister and TfNSW for supporting to date this model of funded public service.

RECOMMENDATION:

To note the above, and:

- To ensure the Fund continues as is and is not used for purposes not directly related to its revenue base which is primarily the recreational boating community and wetland lease tenants
- For TfNSW keep its customer base informed of the hypothecated nature of the fund and how it is being used in that context for the benefit of the current and future boating public
- For TfNSW to make it an ongoing commitment to report back to its customers (the boating public) on the annual use of the Fund
- For TfNSW to routinely report to its maritime customer base on the relatively unique NSW Marine Rescue Levy (which exceeded \$7.5m last year in funding) and how it is delivering to the purposes of the agreement to provide the funding
- To ensure the Fund is not modified to weaken its hypothecated structure in order to support non-maritime government projects
- To ensure the Fund is not used to bolster the Government's consolidated revenue fund for general expenditure
- To ensure funded projects such as the Ferry Wharf Upgrade program and the revitalisation of Regional Ports and Harbours which are now under the management of TfNSW make it a priority within such programs to deliver benefits in safety, access, storage and infrastructure to the recreational and light commercial boating community of NSW.
- That there is an evidence-based strategic approach to dredging and less on ad hoc short-term projects. The Waterways Fund should not be the sole source of funds because dredging is often an economic issue and there should be shared funding solutions with Councils and the State Government.
- That TfNSW continues to put their customers at the centre of everything it does and that means the greater good of that cohort especially in the context of Future Transport and the awesome potential of TfNSW to do great things for the State and its customers in the boating/ maritime sector.

Moorings

This issue also directly relates to the Discussion Paper Question 5: Do you have any feedback on the management of wharves and moorings under the Act?

The Act states: *85B Use of moorings by vessels*

A person must not cause a vessel to occupy a mooring in any navigable waters except in accordance with a mooring licence issued by Transport for NSW in accordance with the regulations.

There are over 27,0008 mooring sites across NSW. Only holders of a private mooring licence are permitted to moor their vessel on navigable waters. Private mooring licences are issued to individuals for vessels 5.2 metres or more in length that are registered in NSW. These licences are subject to special conditions relating to the mooring apparatus and vessel, with other conditions applied as required. The licences are not leases of the seabed and there is no guarantee of tenure. A private mooring licence cannot be traded or sub-let in any way.

A commercial mooring licence is issued to TfNSW approved marine businesses, clubs and associations. A commercial licence permits vessels to occupy moorings under a commercial arrangement, with licence conditions relating to the apparatus and vessel and other conditions applied as required.

TfNSW also offers a number of courtesy moorings, which are free for the boating public and available to use in most locations on a 24-hour basis.

There is no doubt that the increasing participation rates in boating are putting pressure on access and storage facilities, and moorings are a valuable resource for the boating public.

Recommendations:

To note the above and:

- Ensure moorings continue to be managed for the benefit of the general boating public in terms of affordability and not based, for example, on adjacent land market values. In some quarters, there is a perception that boating is the domain of the wealthy; the truth is that boating is a part of the Australian lifestyle with almost one in five households in NSW having a registered boat and/ or non-registerable watercraft; and that there is a boat for all budgets regardless of age, gender or ability.
- To ensure appropriate 'Definitions' are developed, in consultation with stakeholders, to improve outcomes when dealing with issues such as 'mooring minders' and compliance
- For TfNSW Maritime to consider how to better manage moorings and relieve highly qualified and trained Boating Safety Officers from the administrative burden of managing

moorings. Such officers are an invaluable resource for on-water safety patrols and every effort should be made to maximise their time on the water in this key safety role, and less on low-risk issues such as mooring management

- That mooring management in the regional harbours and ports should be based upon consistency, transparency, probity and putting the (boating/ maritime) customer at the center of decision making as opposed to local networks
- To consider how public mooring areas could be managed, where appropriate, by nearby commercial marina operators.

Port Operations and Marine Safety Functions

This issue also directly relates to the Discussion Paper Question 1: Do you have any feedback on the marine safety functions under the Act? and Question 3: Do you have any feedback on the Port Authority or private port operator provisions in the Act?

The Act sets the framework for ports and maritime management across NSW, including relevant functions of the Port Authority of New South Wales (the 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 the freight industry and the recreational and domestic commercial vessel sectors.

When it comes to maritime safety functions in areas or port operations it is critical that the recreational/ light commercial vessel activities and ports activities are connected but not confused.

It is vital, for example, that Transport for NSW (NSW Maritime) operations division retains the lead statewide on matters relating to recreational/ light commercial vessels. Similarly, it is vital the Port Authorities lead on matters relating to vessels requiring a pilot eg., cargo and passenger shipping.

Both areas have well proven records of managing their respective domains and that separation of responsibilities should be retained and not confused.

A case in point is compliance of recreational and light commercial vessel activities. NSW Maritime leads on compliance in this regard, with the support of Marine Area Command with the latter providing 24/7 capability, if and when required. There is no need, for example, to see the Port Authority powers over compliance of recreational/ light commercial vessel activities expanded.



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In another example, the Port Authority would reasonably need to be involved in major aquatic events on a waterway like Sydney Harbour but that should not be confused with leading what is essentially a recreational/ light commercial event. Especially as TfNSW Maritime manages the licence and registration databases and therefore has the customer relations connection for recreational vessel activities statewide.

The same can apply to hydrographic surveys and navigation aids, the vast majority of vessel activity in a waterway like Sydney Harbour is recreational/ light commercial and it is essential TfNSW Maritime leads on these matters because of not only the local relevance to the majority of activity but also because of the obvious need for consistency of management of the system of navigation aids that guide the navigation of the more than 250,000 registered recreational and light commercial vessels in the State.

Recommendations:

- To ensure the existing responsibilities for vessel management between TfNSW and the Port Authorities remains intact
- To ensure TfNSW Maritime continues to lead on issues of recreational and light commercial vessel management in NSW
- Ensure there is a formal and regular liaison between TfNSW Maritime and PANSW to minimise confusion and ensure cooperation, coordination and efficiency in the respective areas of TfNSW management of recreational/light commercial vessels in NSW waters, and the Port Authorities management of vessels that require a pilot in NSW waters.

BIA appreciates the opportunity to provide input to this review. Please do not hesitate to contact Mr Neil Patchett, Co General Manager, e. neil@bia.org.au or m. 0418 279 465 on this matter.

Issue date: 3 March 2022