

Ports and Maritime Administration Act 1995

Better Regulation Statement

July 2023

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Table of Contents

Executive summary.....	3
Stakeholder consultation.....	4
Need for government action.....	4
Objective of government action and preferred options	5
Details of Act changes	6
Evaluation and review	11
Assessment of the introduction of a statutory licensing regime for towage, line handling and bunkering services.....	12

Executive summary

Principle 4 - Government action should be effective and proportional.

An Independent Review of the *Ports and Maritime Administration Act 1995* (the Act) and Port Botany Landside Improvement Strategy (PBLIS) was announced by the NSW Government on 12 November 2021 and completed in May 2023.

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. "This review will look at how we can improve efficiency and operations at our ports and I will make recommendations to the Government on any changes to the Act or PBLIS."

The Independent Reviewer, Mr Ed Willett has extensive experience in economic regulation and competition policy and was commissioned to undertake the review. He 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.

PBLIS was established under the Act (details are covered in the Ports and Maritime Administration Regulation 2021 (the Regulation) and subordinate Mandatory Standards) and was introduced in 2010 to support improved efficiency and reduced congestion in and around the Port Botany precinct. PBLIS regulates the container stevedore landside servicing of trucks and trains (loading and unloading of containerised freight) at NSW's primary container port, Port Botany and is supported by non-regulatory measures. Port Botany handles 99 per cent of the State's containerised freight.

This Better Regulation Statement addresses the review recommended changes to the Act only, other recommendations for PBLIS will be addressed in the subsequent Regulation amendment process and in changes to the subordinate PBLIS Mandatory Standards.

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 has guided the Review.

The Review made 16 Act recommendations and five findings as well as 21 PBLIS recommendations and three findings which are designed to be adopted as a package. The recommendations include changes that require legislative amendment. Findings are changes which do not require legislative amendments or where key proposals made by stakeholders have been considered but are not recommended for progression.

¹ Transport for NSW media release Independent Review of PAMA and PBLIS 12 November 2021

Stakeholder consultation

Principle 5 - Consultation with business and the community should inform regulatory development.

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. This process collected stakeholder feedback to understand any issues and suggestions for reforms.

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. Feedback was sought on the options proposed.

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. These included:

- Five virtual round table sessions (four for freight stakeholders and one for maritime stakeholders) attended by 39 participants and individual meetings with stakeholders.
- Site visits with stevedores at Port Botany (DP World, Hutchison, and Patrick Terminals), port tours (NSW Ports and Port Authority at Port Botany and Port of Newcastle at Newcastle Port), transport operators, industry associations and empty container parks at Port Botany.

The Review received 26 written submissions (20 were from organisations and six from individuals) 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:

- Four roundtable sessions (both in-person and virtual) were attended by 60 participants, along with some individual stakeholder meetings.

The Review received 21 written submissions (19 were from organisations and two were from individuals) on the Review Options Paper.

Stakeholder views of the options are detailed in the Final Report in 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.

Need for government action

Principle 1 - The need for government action should be established.

The Review of the Act has 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 Regulation was recently remade, and the amendment came into effect on 1 September 2021. During that process stakeholders raised some issues about the functioning and operation of the Act and aspects of the Regulation (some industry parties were calling for a comprehensive review of PBLIS) which were outside of the scope of the review as they required a process with a broader scope. This feedback coupled with the need to regularly review regulations to ensure they remain fit for purpose and current justified the need for a broadscale and independent review.

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 include 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 the four of the five Act Findings.

Objective of government action and preferred options

Principle 2 – The objective of government action should be clear.

Principle 3 – The impact of government action should be properly understood by considering the costs and benefits of a range of options, including non-regulatory options.

Principle 4 - Government action should be effective and proportional.

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, 10, 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 subsequent 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).

Details of Act changes

Rec No.	Act changes	Details of change and scope of the regulatory amendment
1	<p>Dangerous goods time limit penalty - 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 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. 	<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 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> <p>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.</p>
3	<p>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.</p> <p>Net benefits</p> <ul style="list-style-type: none"> • 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 	<p>Towage – improved administration for existing license requirement, reduced regulatory burden.</p> <p>Lines handling and Bunkering – new license requirement – increased regulatory burden, full impacts to be covered in the RIS.</p> <p>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.</p> <p>Lines handling operations are critical for the prevention of property damage, pollution incidents and personal injury, and to overall port productivity. Applying a licensing requirement provides Port</p>

Rec No.	Act changes	Details of change and scope of the regulatory amendment
	<p>safety outcomes and appropriate oversight by Port Authority</p> <ul style="list-style-type: none"> Promotes competition in the market for these services. 	<p>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.</p> <p>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.</p> <p>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.</p> <p>Following amendment to the Act, the 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 smaller 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.</p>
5	<p>Enforcement of private port operator directions</p> <p>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.</p> <p>Net benefits</p> <ul style="list-style-type: none"> Strengthens enforcement of port operator safety and security directions to support safe and efficient operations and management of private ports. Provides clarity for port users on their obligations in port areas by outlining 	<p>Extension of current Act requirement – increased regulatory burden (justified), full impacts to be covered in the RIS.</p> <p>Implementation – Act and Regulation change</p> <p>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.</p> <p>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.</p> <p>The introduction of a criminal offence and PIN for breaching a private port operator direction</p>

Rec No.	Act changes	Details of change and scope of the regulatory amendment
	<p>the types of traffic control related matters private port operators could give directions on.</p>	<p>strengthens their enforcement which experience to date (since the long-term lease of the State's three main ports in 2013 and 2014) has proven to be challenging in some instances.</p>
<p>6</p>	<p>Notice of private port operator directions 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>Net benefits</p> <ul style="list-style-type: none"> • Supports effective port management by allowing more timely responses to general (non-emergency) safety or security issues. 	<p>Minor change to existing requirement, reduction in regulatory burden. Implementation – Act change 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. 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>
<p>8</p>	<p>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.</p> <p>Net benefits</p> <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. 	<p>Modernisation of requirements, increase in 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 request information on will be considered during the Regulation change process.</p>

Rec No.	Act changes	Details of change and scope of the regulatory amendment
9	<p>Port price monitoring scheme reporting requirements</p> <p>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.</p> <p>Net benefits</p> <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 Minister is suitably advised under the port price monitoring scheme • Provides increased and consistent notice to industry of upcoming changes to port charges prior to implementation. 	<p>Improving administration increase to regulatory burden (justified).</p> <p>Implementation - Act change</p> <p>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.</p> <p>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 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:- 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> <p>A criminal offence should be created in the Regulation for failure to provide required information in a manifest within required timeframes.</p>	<p>Modernisation of requirements, increase in 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>Changes to the Act to mandate the provision of electronic information will be flexible to accommodate different system-to-system information exchange formats and to ensure the</p>

Rec No.	Act changes	Details of change and scope of the regulatory amendment
	<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>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. 	<p>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>
13	<p>Maritime Advisory Council functions - Expand the functions of the Maritime Advisory Council (MAC) to include advice and 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.</p> <p>Net benefits</p> <ul style="list-style-type: none"> • 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 	<p>Clarification of existing requirements no change in regulatory burden.</p> <p>Implementation - Act change</p> <p>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.</p> <p>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.</p>

Rec No.	Act changes	Details of change and scope of the regulatory amendment
	in relation to domestic commercial and recreational vessels.	
14	<p>Port Authority objectives Allow Port Authority to engage in activities that are complementary to its principal objectives, with the Minister’s approval.</p> <p>Net benefits</p> <ul style="list-style-type: none"> • 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. 	<p>Modernisation of governance arrangements for a SOC - increase in regulatory burden (for Port Authority only), full impacts to be covered in RIS.</p> <p>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.</p>
16	<p>Updates to the Act and Regulation - Outline the objectives of the Act and make other amendments to remove outdated references and requirements and simplify the Act.</p> <p>Net benefits</p> <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. 	<p>Modernisation – minor changes no change in regulatory burden.</p> <p>Implementation - Act and Regulation change Changes will be made to simplify, update and streamline the Act and remove unnecessary or outdated requirements.</p>

Evaluation and review

Principle 7- Regulation should be periodically reviewed, and if necessary reformed to ensure its continued efficiency and effectiveness.

The Act changes are designed to ensure the legislation is current and new requirements will be designed giving consideration to their longevity. While some changes to the Act powers are required, the detail of the more substantial changes will be included in the Regulation, in line with the NSW Government legislative framework. Regulations are subject to the five yearly stage review process and the policy objectives can be considered through this process.

Assessment of the introduction of a statutory licensing regime for towage, line handling and bunkering services.

The introduction of a statutory licensing regime, administered by the Port Authority of New South Wales (Port Authority), has been assessed as being necessary 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.

Stage one of the Licensing Framework has been addressed below with stages two to four to be addressed as part of the Ports and Maritime Administration Regulation 2021 amendment Regulatory Impact Statement process.

Stage one - Is licensing appropriate?

- Is there an ongoing need for the government to intervene?

The safe and effective provision of towage, lines handling and bunkering services are essential for port operations. Regulating a licensing regime for these services would support safer port operations by setting clear standards and performance indicators.

Towage, lines handling and bunkering are services that can present risks to safety, the environment, and property, as well as to ongoing port operations. Given these potential risks, it is appropriate that streamlined regulatory oversight of these services is established to appropriately address them.

A statutory licensing regime also promotes competition in the market for these services. The 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 licence. To date, the lack of a 'right' to provide services conferred by a licence has impeded contestability in the provision of these services.

Towage

Towage services refers to the use of tugboats to help move or position other vessels, usually during entry to or exit from a port or berth, which is a critical safety function at ports.

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

Requirements and standards currently applied to towage licences in NSW include the availability of the service, emergency equipment and response, booking systems, service standards (including certificates, training and maintenance of an auditable safety management system), conditions for subcontracting, minimum requirements of the tug fleet, general obligations such as prevention of pollution, reporting of accidents and incidents, as well as recording and monitoring of performance.

Replacing the existing licensing regime administered under the PSOL with a statutory licensing regime provides greater clarity for users and strengthens enforcement of requirements and standards to ensure these services are provided safely and efficiently. Current enforcement

action by way of 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 under the Regulation for service providers to be licensed offers an effective approach to facilitate the safe and efficient provision of this critical port service.

In May 2022, the Victorian Government passed the Transport Legislation Amendment (Port Reforms and Other Matters) Act 2022 (Vic), which requires providers of towage services to hold a licence to provide services under the Port Management Act 1995 (Vic) and outlines the licensing regime for this purpose. Under this legislation, which commenced in March 2023, requirements and standards can be set that relate to minimum numbers of vessels, towing and pushing capacity, ability and availability of vessels to provide the necessary service and emergency response capabilities.

During consultation, stakeholders that supported this option recommended towage licensing should include penalties for non-compliance, compliance management processes, complaints handling mechanisms and standards for matters such as service continuity, stakeholder consultation, safety, and environmental impacts. Other feedback was that regulation could result in more costly towage tariffs for customers. This change however is proportional and suitable to support safety and efficiency outcomes. Any cost impacts could be minimised by implementation of a streamlined licensing process.

The statutory licensing regime would set out key safety conditions and efficiency outcomes, standards in relation to operational requirements and reporting against key performance indicators relating to operational and environmental safety and service delivery. The specific details will be included in the Regulation and will be considered in detail including stakeholder consultation during that Regulation amendment process.

Lines handling

Shipping lines engage a lines handling service to ensure the safe mooring and unmooring of a vessel from wharf infrastructure. This mooring operation is a critical part of a successful vessel port call and is currently unregulated. These services attach and remove the ropes that secure the vessel to the wharf. Lines handling services are currently provided at the ports of Sydney Harbour, Botany Bay, Newcastle, Port Kembla and Eden, including at private bulk liquid terminals at Kurnell and Gore Bay.

During consultation on the Review, lines handling operations were noted as being critical for the prevention of property damage, pollution incidents and personal injury, and to overall port productivity.

Applying a licensing requirement in a similar approach as the proposed towage licence provides Port Authority with the ability to require minimum service capability and safety performance to support port safety and efficiency outcomes. The licence could include standards such as requiring providers to maintain an adequate safety management system that is subject to periodic audits, reporting of all incidents when servicing a vessel and to advise of the outcome of safety investigations. The specific details will be included in the Regulation and will be considered in detail including stakeholder consultation during that Regulation amendment process.

Bunkering

Bunkering is the process of refuelling vessels. 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. There are numerous bunkering service providers in Sydney Harbour, Port Botany, Port Kembla and Newcastle.

Ships are currently required to inform Port Authority of their intention to carry out bunkering activities. However, there are no licensing or registration requirements for bunkering providers at the commercial ports of NSW, with insufficient information regarding who is providing these services, how these services are being provided and the quality of the service. The Regulation currently does not enable Port Authority to set standards for bunkering providers that covers appropriate training and equipment standards for performing these tasks, or for incident response.

A licensing requirement would facilitate a formal requirement for the consistent provision of information by bunkering providers on their operational standards. Port Authority could specify and monitor minimum standards for training, equipment, and emergency response arrangements during bunker transfer operations and have oversight of the service providers' insurance coverage, which should be based on the level of service being provided.

A licence arrangement for bunkering services could also include indicators relating to safety and environmental performance. This may include minimum requirements in relation to service delivery equipment, such as hose testing and adherence to applicable Australian standards and guidelines, as well as agreements on operating parameters to ensure safe operations.

Taking a risk-based approach, the licence requirement would apply to providers of bunkering services to larger commercial vessels (those requiring pilotage or the master to hold a certificate of local knowledge) at the commercial ports of Sydney Harbour, Botany Bay, Newcastle, Port Kembla, Eden and Yamba. It would apply to providers that service these vessels from either the landside or waterside to ensure appropriate management of risks.

Providers of bunkering to recreational or smaller domestic commercial vessels would be excluded from the regime as this requirement is disproportionate to the risks they pose. It would also not apply to facilities licensed under the Protection of the Environment Operations Act 1997, administered by the NSW Environment Protection Authority (EPA), as these facilities are already regulated. This means, for example, the regime would not cover provision of bunkering directly from marinas or bulk liquid facilities.

However, bunkering service providers that transport fuel from a licensed facility to vessels in a commercial port for the purpose of bunkering will be covered under the statutory licensing regime. This is because the refuelling of a vessel from a vehicle outside a licensed facility is not covered under that facility's EPA licence.

During consultation on the Review, one stakeholder requested sufficient flexibility be built in to support changes in practice during a transition to any new statutory licensing regime.

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 outcomes and appropriate oversight by Port Authority
- Promotes competition in the market for these services.

Alternatives to licensing

- **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, 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.

Does something else address the problem?

No

Is there an ongoing need for specific regulation in this area?

Yes

Is licensing still required to address the policy objectives?

The existing towage service provision remains required to address the policy objectives, as outlined above.



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