Regulatory Impact Statement

Ports and Maritime Administration Regulation 2020

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Contents

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1 Executive summary

The proposed *Ports and Maritime Administration Regulation 2020* (Proposed Regulation) is a remake of the *Ports and Maritime Administration Regulation 2012* (2012 Regulation) which will be automatically repealed by the *Subordinate Legislation Act 1989* (Subordinate Legislation Act).

This document is a Regulatory Impact Statement (RIS) for the Proposed Regulation. It considers the need for and objectives of government action, alternative options to the Proposed Regulation and the costs and benefits of the options.

Three options are considered by this RIS: no regulation; remaking the 2012 Regulation without amendment; and the Proposed Regulation. This RIS concludes that the Proposed Regulation is the preferred option. It represents significant benefits to the community as a whole as compared to the 'no regulation' option – the Port Botany Landside Improvement Strategy aspects of the regulation alone provided $96.3 million in quantified benefits in the period 2009 to 2019. The Proposed Regulation also has a number of unquantified benefits as compared to remaking the 2012 Regulation without amendment.

This RIS and the Proposed Regulation will be subject to a 10 week public consultation period. All submissions will be taken into account in the finalisation of the proposal.

If made, the Proposed Regulation would take effect in 2021.

2 Introduction

The Proposed Regulation is made under the Ports and Maritime Administration Act 1995 (the Act). It contains the following nine parts:

- **Part 1: Preliminary** contains the commencement provisions and a small number of definitions;
- **Part 2: Port charges** identifies the general principles, exemptions and information requirements for the port charges established by the Act;
- **Part 3: Access to charter and commuter wharves** provides the arrangements for the charter wharf booking system and commuter wharf permit scheme. Schedule 1 of the regulation identifies the commuter and charter wharves and contains the fees for permits and bookings;
- **Part 4: Mooring licences** provides the arrangements for the mooring licence scheme. Schedule 2 contains the fees for mooring licences;
- **Part 5: Traffic control at ports and wharves** establishes powers for the control of vehicle traffic in the vicinity of a port;
- **Part 6: Port Botany Landside Improvement Strategy (PBLIS)** provides a framework for the setting of mandatory standards and providing directions relating to the operational performance of stevedores and carriers at Port Botany;
- **Part 7: Management of dangerous goods** applies standards and requirements to the handling and transport of dangerous goods in port areas; and
- **Part 8: Miscellaneous** provides for the membership and procedures of the Maritime Advisory Council (MAC) (which are further detailed in Schedule 3), establishes an offence for disturbing the bed of a port, and provides for persons employed in the Transport Service (which includes officers of Transport for NSW) to be delegated functions and powers under the Act. Schedule 4 contains a description of port boundaries, while Schedule 5 identifies the provisions for which a penalty notice may be issued.

The Proposed Regulation remakes the 2012 Regulation with only two significant changes, namely:

- expansion of the exemption from the navigation service charge for vessels moving between the ports in Sydney, to provide a 50% discount for vessels which leave and return to the same port in Sydney (without entering another port); and
- inclusion of the requirements for the handling and transport of dangerous goods in ports. Although new to the Ports and Maritime Administration Regulation, the requirements contained in Part 7 of the Proposed Regulation reflect the requirements already in place under Part 11 of the repealed Dangerous Goods (General) Regulation 1999, and preserved by the Work Health and Safety Regulation 2011, with some changes.

As the Proposed Regulation deals with matters other than repeals or commencements, the Subordinate Legislation Act requires a RIS to be prepared before the Proposed Regulation can be made. This document is a RIS on the Proposed Regulation and is intended to meet the RIS requirements of the Subordinate Legislation Act.

3 The need for government action

This chapter identifies the need for government action in relation to each substantive Part of the Proposed Regulation.

3.1 Part 2: Port charges

The Act establishes a number of charges which may be imposed by the relevant port operator for services provided to port users. The 'relevant port operator' is the Port Authority of New South Wales (Port Authority), Minister or a private port operator as relevant to the port and the charge. For the purposes of the pilotage charge, a private contractor may also be the relevant port operator, if the Minister has contracted with a private contractor to provide pilotage in a port.

While the Act establishes a framework for the setting of port charges, it does not cover the process through which the relevant port operator calculates, applies and recovers the charges. To this end, the Act specifically provides for regulations to be made covering:

- the manner in which charges are paid;
- the furnishing to the relevant port operator of information that enables the charge(s) to be calculated and applied; and
- exemptions from the charges.

The passing of regulations covering these issues ensures that the relevant port operator can levy charges in a transparent and consistent manner to the users of the services provided at the port. It also ensures that the users of the services are accountable for the provision of information which is needed in order to accurately calculate the charges payable.

The Proposed Regulation includes the following amendments to Part 2 of the 2012 Regulation:

- minor changes to the structure and clarity of the general principles for the calculation of charges are proposed, including:
    - referencing the definition of 'container' used in the *International Convention for Safe Containers 1972*, rather than replicating part of the definition; and
    - clarifying that goods in bulk are loaded on or discharged from *a hold or a tank* of a vessel;
- the exemption from the navigation service charge is proposed to be expanded so that vessels which leave and return to the same port in Sydney (without entering another port) receive a 50% discount on the navigation service change for subsequent entries;
- the information required for the purposes of the site occupation charge is proposed to include (in addition to the current requirements) the purpose for which the site is sought; and
- alignment of the timing for the provision of manifest data for goods discharged from the vessel between Port Botany and Port Kembla to three working days after the vessel enters the port.

The proposed changes to the general principles for calculation of the charges are for clarification purposes only.

The proposed expansion of the exemption from the navigation service charge, so that it includes a 50% discount for vessels which leave and return to Port Botany or leave and return to Sydney Harbour, provides flexibility to industry while encouraging efficient vessel movements in and out of the ports.

The proposed amendment to the information provision requirements supports the ability of the private port operators and the Port Authority to allocate berths appropriately to assist with efficient port operations.

The final change is necessary to provide consistency between Port Kembla and Port Botany, both of which are operated by NSW Ports, regarding the submission of manifest data. This change aligns the regulatory arrangements with the current practices of NSW Ports at both ports.

3.2 Part 3: Access to charter and commuter wharves

The Act prohibits persons from securing commercial vessels to wharves without a 'wharf authorisation', which includes: a contract with Transport for NSW authorising the person to secure a commercial vessel to a wharf; a commuter wharf permit; or a charter wharf booking.

Further government action is required to:

- provide a transparent process for applying to Transport for NSW for a commuter wharf permit and for making a charter wharf booking;
- identify the 'commuter' and 'charter' wharves for which the permits or bookings are required;
- attach rights and conditions to permits and bookings; and
- specify the fees for the permits and bookings.

The Proposed Regulation remakes the current commuter and charter wharf access provisions with only minor amendments proposed, namely:

- restructuring and wording changes for clarification purposes;
- clarification that a commuter wharf permit may be renewed;
- greater flexibility for Transport for NSW to vary the maximum berthing time for a vessel operating under a commuter wharf permit to be greater than 5 minutes; and
- that the requirement to notify Transport for NSW of any changes to the particulars specified in a commuter wharf permit be made within 14 days after the change.

All of these proposed changes aim to clarify the current arrangements for access to charter and commuter wharves.

3.3 Part 4: Mooring licences

The Act prohibits a vessel from occupying a mooring except in accordance with a mooring licence issued by Transport for NSW.

Further government action is required to:

- provide a transparent process for applying to Transport for NSW for a mooring licence;
- attach rights and conditions to mooring licences; and
- specify the fees for mooring licences.

The Proposed Regulation includes the following amendments to the current provisions:

- removal of courtesy and emergency moorings licence classes, which are currently only required to be issued to Transport for NSW;
- clarification that a mooring licence is not a 'property right';
- removal of the requirement to display the mooring licence number on the buoy attached to the mooring;
- provision of a process for managing the mooring licence if a licence holder is incapacitated or deceased;
- clarification that notification is required where a vessel vacates or is absent from a mooring for a period of 28 consecutive days;
- the exemption of persons/vessels from the mooring licence requirement where they have a licence, approval or authority to occupy a mooring issued by another authority; and
- specification of a fee of $25 for the replacement of a mooring licence.

These changes are minor in nature. They provide clarity and remove unnecessary duplications or administration burdens.

This includes the removal of the specification to display the mooring licence number on a buoy attached to the mooring, as this is already covered by the mooring licence conditions. Mooring licences will continue to be issued with the requirement that the licence number is displayed on the buoy, post or pole, whichever is relevant.

Similarly, the specification of a fee for the replacement of a mooring licence will clarify the current arrangements. Under the 2012 Regulations, Transport for NSW can 'determine' the appropriate fee, and, using this power, have charged for the service. The specification of the fee for the replacement of a mooring licence is in line with replacement fees in other transport regulation in NSW.

3.4 Part 5: Traffic control at ports and wharves

Government action is required to ensure that port and wharf operators have sufficient power to manage vehicle traffic at a port or wharf. This includes empowering authorised officers (which may include an officer, employee or agent of a Port Authority, private port operator and Transport for NSW) to manage vehicle traffic within the vicinity of the port or wharf.

The Proposed Regulation remakes the current traffic control provisions without amendment.

3.5 Part 6: Port Botany Landside Improvement Strategy

Section 10B of the Act provides for regulations to be made which promote the economically efficient operation of, use of and investment in, land-based port facilities and port-related supply chain facilities.

A report completed by the NSW Independent Pricing and Regulatory Tribunal (IPART) in 2008 on the *Interface between the Land Transport Industries and the Stevedores at Port Botany* concluded that a focus on improving the transparency and efficiency of the Port's landside operations would have a positive impact on congestion in-and-around the Port.

In line with the IPART recommendations, Phase 1 of the PBLIS focused on developing, agreeing and implementing voluntary initiatives, with the assistance and

leadership of Sydney Ports Corporation. Phase 1 was ultimately not successful. Two taskforces, which included key industry stakeholders, were convened; however after two years of negotiation no voluntary solution could be agreed.

As a result, Part 6 of the regulations was implemented in order to improve the efficiency, transparency and consistency of the landside supply chain, to lessen congestion in peak periods and to reduce the costs associated with congestion in-and-around Port Botany.

The Proposed Regulation includes only one change to the current PBLIS arrangements – moving the procedures for booking cancellations from the regulation to the mandatory standards. This change is necessary to provide greater flexibility to the Minister to (in consultation with industry) determine, and modify, the booking cancellation procedures in accordance with the needs of the port.

3.6 Part 7: Management of dangerous goods

The Act provides for regulations to be made covering the management of dangerous goods in ports. Dangerous goods are categorised by the risks they pose to individuals, to the vessels and vehicles transporting the goods, to port infrastructure, including port terminals, and to the environment. These risks are driven by the flammability, toxicity, ability to spontaneously combust and corrosivity of the goods. Unsafe handling and storage of dangerous goods in ports may result in explosions or fire, serious injuries or fatalities or damage to infrastructure or the environment.

Government action is required to manage and minimise these risks, as they may not otherwise be fully controlled by consignors, vessel owners and masters, terminal operators and consignees.

Dangerous goods in ports regulations are currently contained in Part 11 of the repealed *Dangerous Goods (General) Regulation 1999*, and preserved by the *Work Health and Safety Regulation 2011*. Under the Proposed Regulation, these arrangements will be incorporated into the Ports and Maritime Administration Regulation through a new Part 7, and Part 11 of the repealed *Dangerous Goods (General) Regulation 1999* will no longer be preserved.

Under the new Part 7, the terminal time limits for some types of dangerous goods have been increased from two hours to 12 hours, including for some types of explosives, low specific activity radioactive goods and restricted chemicals. This change is necessary to more closely align the terminal time limit requirements with the Australian Standard (AS 3846-2005 *The handling and transport of dangerous goods in port areas*) and to minimise the disruption to other terminal operations.

In addition, Part 7:

- establishes clear responsibilities for compliance with the dangerous good requirements. In particular, consignors, terminal operators and consignees are directly responsible for ensuring compliance to some of the requirements, such as approval, notification and terminal time limit obligations. These changes align with the requirements in the *International Maritime Dangerous Goods Code* (IMDG Code) and Commonwealth legislation (including *Marine Order 41 – Carriage of Dangerous Goods 2017*);
- improves consistency with other dangerous goods legislation and standards, particularly in regards to the definitions of categories and types of dangerous goods; and
- contains structural and wording changes designed to improve readability.

These changes are designed to improve the clarity of the regulation to support compliance and reduce the cost of compliance. In particular, greater consistency in

dangerous goods requirements between ports in NSW and ports in other Australian and international jurisdictions makes it easier for industry to comply.

3.7 Part 8: Miscellaneous

3.7.1 Maritime Advisory Council

The Act empowers the Minister to establish the MAC in accordance with the regulations. The MAC is designed to provide advice to the Minister on matters concerning maritime safety, marine legislation and expenditure priorities.

Further government action is desired to provide greater certainty and transparency regarding the establishment, membership and procedures of the MAC. The Proposed Regulation remakes the current MAC provisions without amendment.

3.7.2 Disturbance of the bed of a port

The Act prevents works from being undertaken that may result in a change to the water depth or water profile within a port, without the approval of the relevant Harbour Master. The depth of the waters in and around a port is instrumental to the size and loading of vessels entering the port, and to the safety and efficiency of the port.

Further government action is required to ensure that other actions (such as the use of drags, grapplings or other apparatus to lift materials from the bed of a port) are not undertaken without the approval of the relevant Harbour Master. The precise definition of port boundaries in the Proposed Regulation also enables all stakeholders to understand where the obligation to seek approval applies.

3.7.3 Delegation of certain functions of the Minister

The Act imposes a number of functions on the responsible Minister(s), and provides for the delegation of these functions to the Port Authority (and officers of the Port Authority), Harbour Masters, other public employees and other classes of persons prescribed by the regulations. Further government action is required to ensure that Transport for NSW (and officers of Transport for NSW) can be delegated functions under the Act.

3.7.4 Penalty notices

The Act provides that penalty notices may be issued where the offence is prescribed in the regulations. Further government action is required to prescribe the offences and allow for the enforcement of the Act and the regulations.

The Proposed Regulation includes one additional provision for which a penalty notice may be issued – clause 58(4) (stevedore failing to make another slot available for booking by a carrier where required to do so under the regulation). Clause 58 (4) is not a new provision, and the proposed amendment allows a penalty notice to be issued for this existing offence. This addresses an oversight in the 2012 Regulation. The penalty notice amount for this offence is $1,000 for an individual.

The Act also empowers police officers to issue the penalty notices. Further government action is required to authorise other officers (such as those authorised under the *Marine Safety Act 1998*) to issue the penalty notices.

4 Objectives of the Proposed Regulation

In line with the need for government action identified in Chapter 2, the objectives of the Proposed Regulation are to:

- ensure that port operators (including the Port Authority) are able to accurately calculate and impose efficient port charges based on an open and transparent set of stated criteria;
- provide a transparent process for applying to Transport for NSW for a commuter wharf permit and for making a charter wharf booking, and to attach rights and conditions to permits and bookings;
- provide a transparent process for applying to Transport for NSW for a mooring licence, and to attach conditions to mooring licences;
- empower authorised officers (which may include an officer, employee or agent of the Port Authority, private port operators and Transport for NSW) to manage vehicle traffic within the vicinity of the port;
- improve the efficiency of Port Botany's container terminals and the broader logistics supply chain and reduce congestion on roads leading to and from Port Botany;
- apply standards and requirements to the handling and transport of dangerous goods in NSW ports, in order to manage the significant risks associated with dangerous goods;
- provide transparency regarding the membership and procedures of the MAC;
- protect the bed of the port by ensuring that actions which may disturb the bed of the port are not undertaken without the approval of the relevant Harbour Master;
- ensure that Transport for NSW (and officers of Transport for NSW) can be delegated functions under the Act; and
- establish a regime of penalties to be invoked for a range of offences at a level which facilitates compliance.

5 The options

Two options have been identified as alternative options to the Proposed Regulation:

1. no regulation; and
2. remaking the 2012 Regulation without amendment.

5.1 Option 1: No regulation

This option involves the repeal of the 2012 Regulation with no regulation implemented in its place. Under this option, the requirements for dangerous goods in ports remain in Part 11 of the repealed *Dangerous Goods (General) Regulation 1999*.

5.2 Option 2: Remaking the 2012 Regulation

Option 2 involves remaking of the 2012 Regulation without amendment. Under this option, the requirements for dangerous goods in ports would also remain in Part 11 of the repealed *Dangerous Goods (General) Regulation 1999*.

5.3 Option 3: Proposed Regulation

Option 3, the Proposed Regulation, has been described in detail in Chapters 1 and 2 of this RIS. As outlined in Chapter 2, there are only a few differences between Options 2 and 3, these are:

- expansion of the exemption from the navigation service charge for vessels moving between the ports in Sydney, so that it includes a 50% discount for subsequent entries for vessels moving in and out of the same port in Sydney;
- minor changes to the wording of the general principles, and to the information provision requirements, for the calculation of port charges;
- minor changes to the commuter wharf access provisions which cover the renewal of permits, the time for which a vessel may berth at the wharf and a timeframe for notifying Transport for NSW of changes in details which are relevant to the permit;
- minor changes to the mooring licence provisions, which remove the requirement for courtesy and emergency mooring licences, provide a process for managing the mooring licence if a licence holder is incapacitated or deceased and specify the fee for replacing a licence;
- one minor change to PBLIS provisions, which moves the booking cancellation procedures from the regulation to the mandatory standards; and
- the inclusion of the requirements for dangerous goods in ports in the regulation, with the following amendments to the current arrangements:
    - increases to some terminal time limits and changes to some key definitions, which more closely align the requirements to national and international standards; and
    - assignment of clear responsibilities for compliance to all relevant parties in the supply chain.

6 Impact analysis

This chapter identifies the impact of Option 3, the Proposed Regulation.

The impacts of Option 1 (no regulation) and Option 2 (current regulation) are considered in Chapter 6 – the impacts of these two options are derived from the assessment of Option 3.

6.1 Scope of impact

The following parties will be affected by the Proposed Regulation:

- the Port Authority;
- private port operators, including NSW Ports and Port of Newcastle;
- the owners, masters and crew of the trading ships that comprise the 6,200 vessel visits to ports in NSW each year;
- the Harbour Masters of the ports in NSW;
- three stevedores at Port Botany: DP World, Patrick Stevedores and Hutchison Ports;
- thousands of importers and exporters;
- customs brokers and freight forwarders who provide services to facilitate the movement of goods being imported and exported;
- approximately 280 road carriers at Port Botany;
- five rail operators at Port Botany;
- two rail track owners at Port Botany;
- five metropolitan intermodal terminals around Port Botany;
- more than a dozen regional intermodal terminals supporting Port Botany;
- thousands of warehouses reliant on Port Botany;
- local residents of Port Botany, Newcastle Port and Port Kembla;
- up to 1,200 passenger and charter vessels operating in NSW, which may seek a commuter wharf permit or charter wharf booking;
- up to 20,000 mooring licence holders in NSW;
- all persons working in ports in NSW or those living or working in the vicinity of ports in NSW;
- consignors and consignees of dangerous goods which are handled at ports in NSW; and
- Transport for NSW.

6.2 Methodology

6.2.1 Incremental impacts only

Only the incremental impacts of the option – the impacts of the option as compared to the base case – are relevant. Option 1 (no regulation) is the ‘base case’ for the purpose of this RIS.

It should be noted that this RIS is not assessing the Act itself. It can only consider the costs and benefits that result from changes brought about by the Proposed Regulation and the alternative options to the Proposed Regulation.

6.2.2 Transferred costs and distributional impacts

In accordance with the NSW Treasury's *Guide to Better Regulation 2019* (Guide), impacts that are pure transfers or redistributions from one group in the community to another are identified in order to determine distributional impacts, but are not included in the calculation of total costs and benefits as they do not represent an absolute increase or decrease for society as a whole.

Taxes, subsidies, bounties and penalties imposed for non-compliance are examples of costs that are transferred.

6.3 Impact assessment of the Proposed Regulation

6.3.1 Part 2: Port charges

Port charges are imposed by the Act, and not by the Proposed Regulation. As such, the costs and benefits of the charges themselves cannot be considered.

Impact of the expansion of the exemption from the navigation service charge.

The exemption from the navigation service charge was first introduced into regulation in 2002, but reflected an administrative arrangement already in place at that time. The RIS on the *Ports Corporatisation and Waterways Management Regulation 2002* (2002 RIS) stated:

> "The Sydney Ports Corporations, and historically the former MSB Sydney Ports Authority, applies a policy whereby a navigation services charge is applied only once to a vessel departing Sydney Harbour (without departing the territorial waters of Australia or entering another port) and re-entering the port of Botany Bay, and vice versa."

Since 2002, the regulatory exemption has applied to vessels which:

- leave the port of Sydney Harbour and, without leaving the territorial sea of Australia or entering another port, enter the port of Botany Bay; or
- leave the port of Botany Bay and, without leaving the territorial sea of Australia or entering another port, enter the port of Sydney Harbour.

However, the exemption was, at times, also applied to vessels which left and returned to the same port in Sydney. This practice continued until the 2018/19 financial year, when the Port Authority began applying the exemption in accordance with the Regulation.

The exemption is mainly relevant to bulk liquid vessels delivering refined fuel and chemicals to Gore Bay (Viva) in Sydney Harbour and the Bulk Liquids berth (NSW Ports) and Kurnell (Caltex) in Botany Bay. In the 2017/18 financial year, there were 400 bulk liquid vessel visits to the Sydney ports. Of these, 35 vessels delivered two (or three) cargos and sought the exemption for their subsequent port entry. Most of these vessels spent two to three days out of the port before re-entering. The total value of the exemptions granted to these 35 vessels was approximately $1.5 million. Over the five years from 2013/14 to 2017/18, the average value of the exemptions granted to vessels leaving and returning to a port in Sydney was $1.3 million per year.

The Port Authority and some relevant industry operators have negotiated that vessels leaving and returning to the same port in Sydney will be granted an exemption of 50% of the navigation service change for subsequent entries.

The navigation service charge at Port Botany and Sydney Harbour is paid to the Port Authority and covers the costs of:

- hydrographical surveys;
- navigation aids;
- port operations (communications and vessel traffic services);
- port safety and security measures;
- emergency response;
- environmental protection and pollution control;
- Harbour Master duties and responsibilities; and
- the management of dangerous goods.

The expansion of the exemption to include a 50% discount for vessels leaving and returning to the same port in Sydney will provide flexibility to industry while encouraging efficient ship movements.

Additionally, the Port Authority's operational policy permits a complete exemption from the relevant navigation service charge for the re-entry into the relevant port of Sydney if the reason for the departure from the port is due to weather conditions and the vessel returns within the time period permitted under the policy.

Impact of the general principles for the calculation of charges

The criteria contained in the Proposed Regulation have been in place for over a decade, and are well understood by both industry and the relevant port operators (which may be the Port Authority, Minister or a private port operator as relevant to the port. For the purposes of the pilotage charge, a private contractor may also be the relevant port operator if a private contractor is appointed by the Minister to a provide pilotage services at a port). The general principles remove any uncertainty regarding how the charges will be calculated.

The proposed changes to the general principles aim to provide greater clarity and are not expected to have a significant impact.

Impact of the particulars to be furnished

The provision of information by vessel owners (or shipping agents on their behalf) supports the accurate levying of port charges in exchange for the services provided to port users.

The Proposed Regulation includes three changes to the current information provision requirements as compared to the 2012 Regulation, namely:

- the definition of 'container' has been clarified, by referring to definition used in the International Convention for Safe Containers 1972, rather than replicating part of that definition;
- for the purposes of the site occupation charge, information on the purpose for which the site is sought must also be provided; and
- alignment of the timing for the provision of manifest data (for goods discharged from the vessel) between Port Botany and Port Kembla to three working days after the vessel enters the port.

The first two changes support the accurate application and calculation of the charges, as well as the efficient operation of the port, and are not expected to impose material additional costs on vessel owners and operators.

The alignment of the timing for the provision of manifest data reflects the current practices of NSW Ports at Port Kembla, and will not impose any new or additional costs on vessel owners or operators.

Impact of the calculation of charges

The Act requires the charges to be calculated in a particular way, unless otherwise provided by the regulation. The Proposed Regulation allows the site occupation charge to be calculated on the basis of time of occupation, tonnage, passenger numbers, a combination of time and tonnage or a combination of time and passenger numbers.

This provides flexibility for the relevant port operator to develop a pricing strategy that accommodates a number of different factors. It also allows the relevant port operator to strategically allocate berths and thereby increase the efficiency and utilisation of the port assets. Time-based charges alone cannot easily factor in value of use.

6.3.2 Part 3: Access to charter and commuter wharves

The Act prohibits persons from securing commercial vessels to wharves without a 'wharf authorisation', which includes a contract with Transport for NSW authorising the person to secure a commercial vessel to a wharf, a commuter wharf permit or a charter wharf booking.

The Proposed Regulation provides a transparent process for applying to Transport for NSW for a commuter wharf permit and for making a charter wharf booking, the rights and conditions that attach to permits and bookings, and the fees that apply. Transparency is important as it makes it easier for new entrants to enter the market, and is a benefit of the Proposed Regulation.

The fees for charter wharf bookings and commuter permits are transfer costs (a direct cost to one party that is a direct benefit to another party), and as such are not counted for the purposes of the cost benefit analysis of the Proposed Regulation. However, it is noted that these are commercial vessels, for which booking and permit costs are ultimately recouped through fees charged to passengers. In addition, there are costs to government in providing and maintaining the infrastructure, managing the charter wharf booking system and issuing commuter wharf permits, a small proportion of which are recovered through the charter wharf and commuter permit fees.

The Proposed Regulation includes a small number of minor changes to the current commuter wharf permit provisions as compared to the 2012 Regulation. These are:

- clarification that a permit may be renewed;
- greater flexibility for Transport for NSW to vary the maximum berthing time for a vessel operating under a permit; and
- introduction of a timeframe (14 days) for notifying Transport for NSW of changes that are relevant to the permit.

These changes clarify existing arrangements and allow Transport for NSW to accommodate larger or different types of vessels through the commuter wharf permit system. They are not expected to have a significant impact on vessel owners or operators.

6.3.3 Part 4: Mooring licences

The Act prohibits a person from causing a vessel to occupy a mooring except in accordance with a mooring licence issued by Transport for NSW. The Proposed Regulation provides a transparent process for applying to Transport for NSW for a mooring licence, the rights and conditions that apply to mooring licences, and the fees

that apply. Transparency is important as it provides an even playing field for persons to apply for, and obtain, a mooring licence.

Transparency is particularly important in the context of mooring licences, where demand outstrips supply in some parts of Sydney Harbour. There are 22,810 mooring spaces across NSW, including 17,819 spaces for private mooring licences and 4,991 spaces for commercial mooring licences. At any given time, there are approximately 3,000 mooring spaces that are either unavailable (often due to changes in the natural or built environment) or in transition between licensees. Importantly, there are also currently 751 applicants on waiting lists for moorings in Sydney Harbour 'hot spots', such as Kirribilli, Double Bay and Drummoyne. The demand for mooring space will continue to grow as the fleet grows over time, and as the proportion of larger vessels (which cannot be stored on land on trailers) in the fleet increases (between 2009 and 2018, the number of vessels over 6 metres in length grew on average by 265 vessels per annum).

As well as providing a transparent process, a further benefit of the Proposed Regulation is the clarification that a mooring licence is not a property right, and as such does not form part of a deceased estate. However, the Proposed Regulation does provide a time period for the trustee of the will to deal with a vessel – the vessel is entitled to remain on a mooring for at least six months after the death of the licence holder, even though the licence is no longer valid.

In addition, the Proposed Regulation ensures that persons who have the right to use a mooring managed by another authority (for example, through a permit or licence issued by another authority such as the NSW Department of Planning, Industry and Environment) are not required to obtain a mooring licence. This removes unnecessary red tape and duplication.

Finally, the Proposed Regulation specifies a fee of $25 for issuing a replacement mooring licence. This reflects the costs to Transport for NSW of providing this service and is in line with replacement fees in other transport regulation in NSW. Under the 2012 Regulation, Transport for NSW can 'determine' the appropriate fee for issuing a replacement mooring licence. Given the low number of replacement licences issued, the impact of the fee will be minor.

6.3.4 Part 5: Traffic control at ports and wharves

Part 5 provides for traffic control at ports and wharves, including on land in the vicinity of ports and wharves that is vested in Transport for NSW or the Port Authority.

Private port operators, the Port Authority and Transport for NSW must manage the safety and efficiency of the wharves and ports. The power to manage land traffic (particularly vehicle parking) on land in the vicinity of a wharf or port is essential to the safe and efficient operation of the wharves and ports. Part 5 of the Proposed Regulation is necessary to enable Transport for NSW and the Port Authority to fulfil their statutory functions and key objectives of providing for the safe and efficient operation of the wharves and ports.

6.3.5 Part 6: Port Botany Landside Improvement Strategy

Part 6 provides a framework for the setting of mandatory standards and providing directions relating to the operational performance of stevedores and carriers at Port Botany.

The impact assessment of Part 6 of the Proposed Regulation is based on analysis completed by Deloitte Access Economics. Part 6, and the mandatory standards applied under Part 6, have had a significant impact on truck turnaround times. Both the reduction of turnaround times, and the greater consistency in turnaround times,

reduce supply chain costs – including by reducing the 'buffer time' needed to be built into delivery schedules.

Deloitte Access Economics considered a range of direct costs and benefits and noted unquantified benefits such as reduced congestion. Deloitte Access Economics estimated that PBLIS would provide $96.3 million in benefits over the 10 year period 2009 to 2019.[1] The Proposed Regulation includes one change to the current PBLIS arrangements – moving the procedures for booking cancellations from the regulation to the mandatory standards. This provides greater flexibility to the Minister to (in consultation with industry) determine, and modify, the booking cancellation procedures in accordance with the needs of the port.

6.3.6 Part 7: Management of dangerous goods

Part 7 of the Proposed Regulation applies requirements and standards to the handling and transport of dangerous goods in ports. Part 7 requires compliance to the requirements of the IMDG Code, the *International Maritime Solid Bulk Cargoes Code* (IMSBC Code), Australian Standard AS 3846-2005 *The handling and transport of dangerous goods in port areas* (AS 3846) and the *Safe Transport for Radioactive Material Code* that apply to the identification, marking, labelling, placarding, separation and segregation, stowage, classification, packaging, handling and testing of the dangerous goods being handled and transported in the port.

Part 7 also imposes specific notification, approval, operational and reporting requirements on the transport and handling of dangerous goods in the port.

In addition, Part 7 assigns responsibility for compliance to the person(s) or entity(ies) in the supply chain who are in the best position to control the way in which the goods are handled. For example:

- consignors are responsible for ensuring compliance with the notification, approval and declaration requirements, packaging requirements and terminal time limits;
- masters are responsible for ensuring compliance with the conditions of an approval and with the standards or requirements for loading, unloading and handling dangerous goods; and
- terminal operators are responsible for ensuring compliance with handling requirements and with terminal time limits.

Compliance costs for industry

There are compliance costs associated with the management of dangerous goods. Packaging, handling, stowage, operating, notification and approval requirements all impose compliance costs on industry. However, by applying national and international standards and codes, the Proposed Regulation will likely increase consistency with national and international requirements. Consistency minimises compliance costs for industry, as systems and packaging used in one jurisdiction are accepted in other jurisdictions.

In addition, these costs are not new, and would exist without the Proposed Regulation. Currently, dangerous goods requirements for ports are contained in Part 11 of the repealed *Dangerous Goods (General) Regulation 1999*, and preserved by the *Work Health and Safety Regulation 2011*. If the Proposed Regulation was not

[1] Analysis completed by Deloitte Access Economics for Transport for NSW, February 2016

introduced, the current arrangements in Part 11 of the repealed *Dangerous Goods (General) Regulation 1999* would continue.

A small number of substantive changes to the Part 11 arrangements are proposed. The terminal time limits for some types of dangerous goods are proposed to be increased from two hours to 12 hours. This change will more closely align the requirements with Australian Standard 3846.

In addition, the Proposed Regulation places clear and unambiguous obligations on a number of parties in the supply chain to ensure compliance with the requirements for dangerous goods. In comparison to the current arrangements (Part 11 of the repealed *Dangerous Goods (General) Regulation 1999*), which only places obligations on the master of the vessel carrying dangerous goods, the Proposed Regulation also places obligations on consignors, consignees and terminal operators. These parties are best-placed to ensure compliance to some requirements – for example, consignors are best-placed to ensure that the notification and approval requirements of Part 7 are complied with. Imposing clear responsibilities on these parties in the supply chain will support a high level of compliance, and therefore ensure that the risks of dangerous goods are managed.

Assigning responsibilities for compliance on a number of parties in the supply chain is also consistent with existing chain of responsibility legislation, which places obligations for managing safety on all parties in supply chains. Under the chain of responsibility laws, the management of compliance to heavy vehicle safety laws, including those covering the carriage of dangerous goods, is not limited to the heavy vehicle operator or the driver. Rather, consignors, packers, loaders, prime contractors (heavy vehicle operators), rail operators, drivers and consignees all have a responsibility to ensure compliance – within the scope of their ability to influence compliance.[2]

Importantly, the obligations contained in Part 7 will not impose additional or new costs. This is because the substantive requirements of Part 7 (in regards to the management of dangerous goods) remain the same as under Part 11 of the repealed *Dangerous Goods (General) Regulation 1999*.

The Proposed Regulation also makes some other minor changes to the current arrangements for dangerous goods, namely:

- clarifying the definitions of explosives, gas and other classes of dangerous goods; and
- modifying some of the language and requirements to more closely align with other dangerous goods legislation.

These changes are designed to improve consistency with other dangerous goods legislation and standards, particularly in regards to the definitions of categories and types of dangerous goods, and to improve the readability of the requirements. These changes are not expected to impose new or additional costs on industry.

Port Authority costs

The obligation to administer dangerous goods legislation has been required of the Port Authority (and previously, the Port Corporations) since its inception. For example, the Port Safety Operating Licence (PSOL) issued under the Act requires the Port Authority to administer certain regulations concerning dangerous goods. If the Proposed Regulation was not introduced, the Port Authority would continue to be

[2] See, for example, the *Dangerous Goods (Road and Rail Transport) Regulation 2014* (NSW) and the *Heavy Vehicle National Law* (NSW)

responsible for administering Part 11 of the repealed *Dangerous Goods (General) Regulation 1999.*

The changes to the current arrangements for dangerous goods will not substantially increase the costs to the Port Authority in administering the dangerous goods regulations.

Benefits of dangerous goods regulations

Regulations, such as Part 7 of the Proposed Regulation, for the handling and transport of dangerous goods assist in reducing the frequency and severity of incidents involving dangerous goods. Dangerous goods incidents can cause injuries, serious injuries and fatalities, as well as major damage to property (including vessels, vehicles, terminals and port infrastructure) and the environment. The cost of a significant dangerous goods incident could run into the hundreds of millions of dollars.

As dangerous goods regulations for ports have been in place for many years, the number of incidents is low. Yet, a significant amount of dangerous goods pass through the NSW ports each year. According to the Port Authority's 2018/19 Annual Report, in that financial year:

- in Sydney and Port Botany, 1,229 bulk dangerous goods transfer checks were undertaken;
- in Newcastle, 307 bulk dangerous goods transfer check were undertaken; and
- in Port Kembla, 81 bulk dangerous goods transfer checks were undertaken.

The large amount of dangerous goods moved through the NSW ports each year means that there is a significant risk posed by dangerous goods in the NSW ports, which needs to be managed.

In addition, dangerous goods regulation compliance costs are generally considered to be minor in comparison with the potentially devastating consequences of a major accident,3 and any increase in deaths and incidents is considered to be unacceptable. For these reasons, dangerous goods are heavily regulated in developed countries. The proposed changes to the management of dangerous goods will increase consistency with national and international requirements, making it easier for industry to comply.

6.3.7 Part 8: Miscellaneous

The Proposed Regulation enables the Minister to establish the MAC. The regulations specify the membership and processes for the MAC. This creates transparency, which is important in the context of a council that includes industry representatives and which directly advises the Minister and government agencies on strategic matters concerning maritime safety, marine legislation and expenditure priorities.

By preventing the disturbance of the bed of a port, except with the approval of the relevant Harbour Master, the Proposed Regulation helps maintain the integrity of the port and also ensures that the Harbour Master is aware of any activity that may have disturbed the bed of the port so that relevant examinations can be undertaken.

[3] This has been the finding of a number of Regulatory Impact Statements on dangerous goods regulations. See for example WorkSafe Victoria's *Regulatory Impact Statement – Dangerous Goods (Storage and Handling) Regulations September 2012*

By enabling functions of the Minister under the Act to be delegated to persons employed in the Transport Service (which includes officers of Transport for NSW), the Proposed Regulation supports the efficient administration of the Act.

The Proposed Regulation also enables penalty notices to be issued for offences against specified provisions of the Proposed Regulation, and empowers officers authorised under the *Marine Safety Act 1998* to issue the penalty notices. This supports compliance by facilitating the enforcement of the requirements through the issue of penalty notices.

Finally, Part 8 also ensures a smooth transition from the 2012 Regulation to the Proposed Regulation, by recognising actions (such as permits, licences and approvals) under the 2012 Regulation.

7 Evaluating the options

Option 1, no regulation, is not supported because it would:

- hamper the ability of the private port operators and the Port Authority to administer the port charges;
- reduce the transparency of the commuter wharf permit scheme, charter wharf booking system and mooring licence scheme;
- reduce the safety and efficiency of ports and wharves by reducing the power of the private port operators, Port Authority and Transport for NSW to control vehicle traffic;
- allow for a return to reduced efficiencies in the movement of containers at Port Botany from the port to customers via road;
- increase congestion at Port Botany and on surrounding roads and increase supply chain costs connected to Port Botany;
- continue the current inconsistencies in dangerous goods requirements between ports in NSW and other Australian and international ports;
- reduce the transparency of the Maritime Advisory Council;
- reduce oversight over activities that may disturb the bed of a port; and
- prevent the effective administration of the Act.

Option 1 fails to discharge any of the objectives of government action.

Option 2, remaking the 2012 Regulation without amendment, offers the same costs and benefits as the Proposed Regulation, except in relation to a small number of issues with the 2012 Regulation. Option 2 is not the preferred option because it does not fully discharge the following objectives of government action:

- provide an efficient charging framework. The limitation of the exemption from the navigation service charge to vessels which move between Port Botany and Sydney Harbour does not provide sufficient flexibility for operators to depart and re-enter the same port where circumstances require it;
- ensure that there is no duplication or unnecessary administrative burden in the mooring licence requirements; and
- reduce compliance costs for the management of dangerous goods in ports through greater consistency between the requirements for ports in NSW and those for ports in other Australian jurisdictions and internationally.

Option 3, the Proposed Regulation is the preferred option. The PBLIS aspects of the Proposed Regulation provided $96.3 million in quantified benefits in the period 2009 to 2019. The Proposed Regulation also offers the numerous unquantified benefits set out in the previous chapter, in particular the:

- establishment of an efficient charging framework by expanding the current exemption from the navigation service charge to include a 50% discount for vessels which leave and re-enter the same port in Sydney (without entering another port);
- reduced time in collecting information and invoicing for the port charges;
- increased transparency of the commuter wharf permit, charter wharf booking and mooring licence schemes; and

- reduced compliance costs for industry for the management of dangerous goods in ports through greater consistency between the requirements for ports in NSW and those for ports in other Australian jurisdictions and internationally.

The Proposed Regulation is the only option which meets all of the objectives of government action.

8 Consultation

8.1 Consultation undertaken to date

Consultation was undertaken in 2016 on the proposal to include the dangerous goods in ports requirements in the regulation. In November and December 2018, targeted initial consultation was undertaken on the remake of the regulation in full, including the dangerous goods provisions.

Stakeholders consulted included the Port Authority, private port operators, shipping agents, peak industry bodies, terminal owners, stevedores and freight industry companies. The members of the Freight Advisory Council, Maritime Advisory Council and other advisory groups representing the road and rail freight industry, and recreational and commercial vessels users, were also consulted, along with government agencies and local councils. Feedback from these stakeholders focussed in particular on the information provision requirements for the port charges, the PBLIS provisions and the dangerous goods in ports provisions.

This feedback was considered and incorporated into the proposal where appropriate. In some cases the feedback was the driver of the proposed changes to the current arrangements.

8.2 Consultation on the Proposed Regulation and this RIS

Public consultation on the Proposed Regulation and this RIS will occur over a 10 week period. An extended consultation period has been provided (the usual consultation period is four weeks) in order to accommodate any impacts of the COVID-19 pandemic on the ability of stakeholders to review the Proposed Regulation and provide input.

Individuals and organisations will be notified of the consultation through:

- publication of a notice in the Sydney Morning Herald and the Daily Telegraph;
- publication of a notice in the Government Gazette;
- publication of the Proposed Regulation and this RIS on the Transport for NSW website; and
- an individual notification will be sent to key stakeholders.

Following the consultation period, the comments received in public submissions will be reviewed by Transport for NSW and, where appropriate, changes to the Proposed Regulation will be made.