



4 March, 2022

The Independent Reviewer
PAMA and PBLIS Independent Review
Transport for NSW
231 Elizabeth Street,
Sydney NSW 2000

Attention: Mr Ed Willett – by email freight@transport.nsw.gov.au

Dear Mr Willett,
Submission on behalf of the Maritime Advisory Council (MAC)

Further to our meeting on 17 February, 2002, I am writing to formalise the submission to the review on behalf of the Maritime Advisory Council.

In this submission we will specifically address the matters raised under sections 2.2 and 2.5 of the discussion paper as they fall within the mandate of the MAC.

Port Operations and Marine Safety Functions

Question 1: *Do you have any feedback on the marine safety functions under the Act? and*

Question 3: *Do you have any feedback on the Port Authority or private port operator provisions in the Act?*

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

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

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

Both areas have well proven records of managing their respective domains and that separation of responsibilities should be retained and not confused. A case in point is compliance of recreational and light commercial vessel activities. NSW Maritime leads on compliance in this regard, with the support of Marine Area Command with the latter providing 24/7 capability, if and when required. There is no need, for example, to see the Port Authority powers expanded over compliance of recreational/ light commercial vessel activities expanded.

In another example, the Port Authority would reasonably need to be involved in major aquatic events on a waterway like Sydney Harbour but that should not be confused with leading what is essentially a recreational/ light commercial event. Especially as TfNSW Maritime manages the licence

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

Recommendations:

1. Ensure that the existing responsibilities for vessel management between TfNSW Maritime and the Port Authorities remains intact and the light commercial and recreational aspects are not subsumed into the Port Authorities.
2. Ensure that TfNSW Maritime continues to lead on issues of recreational and light commercial vessel management in NSW.
3. Ensure there is a formal and regular liaison between TfNSW Maritime and PANSW to minimise confusion and ensure cooperation, coordination and efficiency in the respective areas of TfNSW management of recreational/light commercial vessels in NSW waters, and the Port Authorities management of vessels that require a pilot in NSW waters.

Maritime Advisory Council & Waterways Fund

Question 2: *Do you have any feedback on the provisions of the Act in relation to the **Maritime Advisory Council** or the **Waterways Fund**?*

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

34 Maritime Advisory Council

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

The MAC serves the boating industry, the boating public and government policy makers because it is formalised in legislation and enables information sharing and discussions of consequence directly with the Minister and or the Minister's representative(s), as well as heads of the relevant departments. It enables the MAC to advise the Minister on matters referred to it, and to advise and make recommendations to the Minister on safety and expenditure priorities including but not limited to maritime infrastructure and maritime research.

The MAC was created to be the peak advisory body within the stakeholder engagement structure that has evolved over the past 15 years to address an originally dysfunctional relationship between government, industry and users. The breadth, diversity and large scale of engagement recreational boating activities (from paddlecraft to superyachts and everything in-between) requires high levels of engagement between government policy makers, regulators, industry and users to maximise safety outcomes, efficiently deliver infrastructure and achieve appropriate policy settings to deliver the

appropriate balance of education and regulation for a large proportion of the community. Combined with local forums, RVAG, CVAG and MPAG provide a framework for diverse groups to provide advocacy for their interests. Members of MAC on the other hand are providing their personal experience and expertise in an advisory capacity where, as a group, the Minister, Minister's staff and senior members of the Department can seek counsel from the MAC on a range of matters. This structure has assisted various Ministers and the Department to achieve great progress in improved safety outcomes, increased lifejacket wear and targeted and efficient infrastructure across NSW as well as access feedback on complex or controversial policy issues of the day within the Department or with other departments that may be impacting the industry (ie Planning)

This review therefore provides the opportunity to align the provisions of the Act with the current and future needs of the MAC and we make the following recommendations:

Recommendations:

1. Amend the Act (4) (b) so that it reads:
 - a. The Maritime Advisory Council has the following functions(b) to advise and make recommendations to the Minister on maritime safety and on expenditure priorities for the exercise of TfNSW's functions in connection with maritime **safety, property, infrastructure and maritime research.**

This suggestion would better and more appropriately reflect the actual work program of TfNSW which can be distilled into three core areas: safety, infrastructure and property.

2. Promote transparency by ensuring the MAC are updated routinely on the Waterways Fund income and expenditure, and expenditure priorities. The reporting in this regard has progressively decreased with the reduction of independence of the Maritime function within TfNSW.
3. Promote transparency by ensuring the MAC are updated routinely on the Marine Rescue NSW levy on boat licences and registrations (ie paid by boaters) particularly how it relates to delivery of the agreed 'purposes' of the funding as marine Rescue NSW sits outside TfNSW.
4. To encourage the government to make greater use of the MAC and its ability to advise and make recommendations on prominent issues within its remit.

Question 2: Do you have any feedback on the provisions of the Act in relation to the Maritime Advisory Council or the **Waterways Fund?**

The Waterways Fund exists under the *Ports and Maritime Administration Act 1995* see Part 4, Division 3, Section 42. It is funded from revenue raised from recreational boating licences, registrations and moorings, and also from maritime property management including wetland leases. As a hypothecated fund, the Fund supports the TfNSW annual effort in delivering back to its customer base through programs, products and services. Of particular relevance are these extracts:

The Act state⁴², (2) reads:

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

- (a) *all money received by Transport for NSW in connection with the exercise of its functions under section 41, and*
- (b) *all penalties recovered for offences against the marine legislation or the National law that are recovered in prosecutions brought by (or penalty notices issued by) any person except where the penalty is payable to a Port Corporation under section 21A, and*
- (c) *all interest received in respect of the investment of money belonging to the Fund, and*

- (d) all money borrowed by Transport for NSW in connection with the exercise of its functions under section 41, and
- (e) all money appropriated by Parliament for the purposes of Transport for NSW in connection with the exercise of its functions under section 41, and
- (f) all money directed to be paid into the Fund by this or any other Act.

(4) There is payable from the Waterways Fund—

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

The Fund has long been the envy of many regulators (and industry and boating publics) in Australia who generally have struggled to fund their respective maritime safety, property and infrastructure programs and are typically reliant on regular bids for government allocations from consolidated revenue. Queensland is a case in point, where the maritime regulator in that State relies on allocations from consolidated revenue funds and is consequently restricted in its ability to deliver funded and sustained safety education and compliance actions to help address its fundamental on-water safety concerns relating to preventable trauma and loss of life on the waterways.

It is noted the 2020-21 TfNSW Annual Report states under *Cash and Cash Equivalents*, \$338million (2020: \$358million) held within Westpac Bank Accounts that are included in the Treasury Banking System in relation to funds administered on behalf of the Maritime Waterways fund. These funds are restricted to activity relating to maritime transactions and are covered by Section 42 of the Ports and Maritime Administration Act 1995. The Report also states under *Financial Assets at Fair Value*, an amount of \$134million (2020: \$120million) held within TCorpIM Funds in NSW TCorp. These funds are administered on behalf of the Maritime Waterways fund and are restricted to activities relating to maritime transactions. The investments are controlled by Transport for NSW and are covered by Section 42 of the Ports and Maritime Administration Act 1995.

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

There has, over the years, been times when the government of the day has considered accessing the Fund for what may normally be considered consolidated fund projects that are not directly connected to revenue sources (ie, recreational and light commercial boat owners, and wetland lease/ maritime property tenants) or use the Fund for wider government initiatives. These have been strongly resisted by the Boating Industry, the Boating community and the maritime Department as the creation of the fund was from representations to the community and such re-allocation would be contrary to that representation and ultimately diminish safety and infrastructure outcomes to a large proportion of the population and to the marine estate.

It is important to stress that any derogation of the funds protections would be strongly resisted by the industry and boating and fishing communities.

An example of the MAC's involvement in protecting the fund is attached (Letter to Minister Constance 23 July, 2019)

Hence a review of the Act is a time to reinforce and protect the benefits of the hypothecated funding structure.

A further example of the importance of the fund is the Boating Now Program which has resulted in increased accessibility and safety across NSW Waterways through the delivery of more than 200 infrastructure projects. In addition, in October 2020 the NSW Government announced a \$205 million investment commitment in regional maritime infrastructure, regional dredging, ferry wharf upgrades and Maritime property improvements, to be funded from the Waterways Fund. The funding has also enabled TfNSW to address preventable drowning rates statewide by promoting lifejacket wear, with NSW recording an increase of lifejacket wear rates of more than 300 per cent during the past decade.

RECOMMENDATIONS:

1. Ensure that the Waterways Fund continues as is and is not used for purposes not directly related to its revenue base which is primarily the recreational boating community and wetland lease tenants
2. TfNSW keep its customer base informed of the hypothecated nature of the fund and how it is being used in that context for the benefit of the current and future boating public
3. TfNSW to make it an ongoing commitment to report back to its customers (the boating public) on the annual use of the Fund
4. TfNSW to routinely report to its maritime customer base on the NSW Marine Rescue Levy and how it is delivering to the purposes of the agreement to provide the funding
5. To ensure the Fund is not modified to weaken its hypothecated structure in order to support non-maritime government projects
6. To ensure the Fund is not used to bolster the Government's consolidated revenue fund for general expenditure
7. To ensure funded projects such as the Ferry Wharf Upgrade program and the revitalisation of Regional Ports and Harbours which are now under the management of TfNSW make it a priority within such programs to deliver benefits in safety, access, storage and infrastructure to the recreational and light commercial boating community of NSW.
8. That there is an evidence-based strategic approach to dredging and less on ad hoc short-term projects. The Waterways Fund should not be the sole source of funds because dredging is often an economic issue and there should be shared funding solutions with Councils and the State Government.

Question 5: *Do you have any feedback on the management of wharves and moorings under the Act?*

The Act states:

85B Use of moorings by vessels

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

There are over 27,000 mooring sites across NSW. Only holders of a private mooring licence are permitted to moor their vessel on navigable waters. Private mooring licences are issued to individuals for vessels 5.2 metres or more in length that are registered in NSW. These licences are subject to special conditions relating to the mooring apparatus and vessel, with other conditions applied as required. The licences are not leases of the seabed and there is no guarantee of tenure. A private mooring licence cannot be traded or sub-let in any way.

A commercial mooring licence is issued to TfNSW approved marine businesses, clubs and associations. A commercial licence permits vessels to occupy moorings under a commercial

arrangement, with licence conditions relating to the apparatus and vessel and other conditions applied as required.

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

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

RECOMMENDATIONS:

1. Ensure moorings continue to be managed for the benefit of the general boating public in terms of affordability and not based, for example, on adjacent land market values. In some quarters, there is a perception that boating is the domain of the wealthy; the truth is that boating is a part of the Australian lifestyle with almost one in five households in NSW having a registered boat and/ or non-registerable watercraft; and that there is a boat for all budgets regardless of age, gender or ability.
2. To ensure appropriate 'Definitions' are developed, in consultation with stakeholders, to improve outcomes when dealing with issues such as 'mooring minders' and compliance
3. For TfNSW Maritime to consider how to better manage moorings and relieve highly qualified and trained Boating Safety Officers from the administrative burden of managing moorings. Such officers are an invaluable resource for on-water safety patrols and every effort should be made to maximise their time on the water in this key safety role, and less on low-risk issues such as mooring management.
4. That mooring management in the regional harbours and ports should be based upon consistency, transparency, probity and putting the (boating/ maritime) customer at the center of decision making as opposed to local networks
5. To consider how public mooring areas could be managed, where appropriate, by nearby commercial marina operators .

We trust this submission is of assistance in your review and we look forward to our ongoing engagement in this regard.

Yours Sincerely

A large black rectangular redaction box covering the signature and name of the sender.

Appendix 1 : Letter from Mac to Minister Constance re Hypothecated fund

23 July, 2019

The Honorable Andrew Constance MP

Minister for Transport & Roads
52 Martin Place
Sydney NSW 2000

Dear Minister,

Re: The Waterways Fund

Thank you for the opportunity to meet with you in my capacity as Chair of the Maritime Advisory Council. It is in that capacity that I write to you now specifically about the Waterways Fund. (the "Fund").

The Waterways Fund is a hypothecated fund held in a Statutory Special Deposits Account created under the Ports & Maritime Administration Act 1995 (the "Act"). Section 42 of the Act provides direction in relation to which monies are paid into the Fund and commensurately which monies can be paid from the Fund. The broader maritime industry and recreational boaters and fishers are well aware of the existence of the fund and its nature and purpose. It remains a key pillar that enables all stakeholders to work together to deliver safety outcomes, access and infrastructure investment and programs that support education to effect behavioral change ahead of regulatory burden. Given the high level of boating participation within the NSW community, with over 500,000 boat and PWC licence holders, over 240,000 registered boats and innumerable unregistered water and paddlecraft, over 20% of the NSW population engage in some form of boating activity annually. The application of the hypothecated fund to the delivery of maritime services to the NSW community has delivered tangible benefits in dramatic improvements in safety, access, infrastructure and education. This has seen injury and fatality rates well below long term averages and a steady increase in safety compliance rates. Consequently, the integrity and prudential management of the Fund must be protected.

By way of example, the fund provides for the delivery of essential maritime infrastructure across the state of New South Wales. A lot has been achieved to date but there is a wide range of significant projects that still need to be implemented. These include:

1. The creation of safe havens within defined passage times to provide refuge points for coastal sailors. This requirement invokes the need for new and improved breakwall infrastructure, channel and bar dredging along with ongoing maintenance programs for same.
2. The application of research, resources and infrastructure to deliver long term sustainable outcomes for the maintenance of safe depths for coastal bars. This isn't just maintenance dredging but a total strategy that takes into account breakwall sizes and configurations and

dredging strategies that deliver permanent solutions and adapt to climate change consequences.

3. The ongoing development and improvement of boat ramps and associated infrastructure across the state including both coastal estuaries and inland waterways and rivers to meet the needs of the large proportion of the community who engage with boating and fishing activities.
4. The re-purposing of redundant or rundown fishing co-ops to create activation of the waterfront in regional areas for the benefit of regional communities.
5. The creation of maritime precincts to provide necessary maritime infrastructure in regional locations creating economic and employment benefits, for example in Coffs Harbour.
6. The development of maritime infrastructure to activate waterfronts for the broader community and to provide support infrastructure for commercial activities that activate tourism like commercial vessels servicing marine tourism.

Many projects that fall within the above categories are set out in the Maritime Infrastructure Plan and other projects currently under the management of the Maritime Infrastructure Delivery Office.

One of the responsibilities of the Maritime Advisory Council under Section 34 of the Act is to *“advise the Minister on Maritime Safety and expenditure priorities for the exercise of the Authority’s Functions..”*. A key component of this advice has always been the protection of the Waterways Fund and its administration in accordance with the Act. Section 42(3) of the Act does provide the opportunity for the Minister to agree with the Treasurer that some revenue generated by the Authority could be allocated to Consolidate Revenue rather than the Waterways Fund. I must advise that I am not aware of this ever occurring on my watch and I have been further advised in the past that this could not be used retrospectively, that is, to re-direct money already in the Fund. I would certainly caution against the exercise of this function as we would anticipate a significant backlash from the boating community to same.

I remain at your disposal to discuss any aspect of this letter and in any further capacity of which I can be of assistance.

