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Dear Sir / Madam

REVIEW OF THE PORTS AND MARITIME ADMINISTRATION ACT 1995 (NSW) AND THE PORT BOTANY LANDSIDE IMPROVEMENT SCHEME

Thank you for the opportunity to provide a submission as part of the Independent Review of the *Ports and Maritime Administration Act 1995* (NSW) (the ‘**PAMA Act**’) and the Port Botany Landside Improvement Strategy (the ‘**PBLIS**’).

As the private port operator of Port Botany (including the Enfield Intermodal Logistics Centre and the Cooks River Intermodal Terminal) and Port Kembla, NSW Ports is a key stakeholder in each of the PAMA Act and the PBLIS and, accordingly, welcomes the opportunity to offer our input as part of the Independent Review.

NSW Ports considers that the PAMA Act is currently achieving its various policy objectives and generally remains fit for purpose. We do, however, consider that amendments to the provisions relating to port operator directions, dangerous goods management and supply chain data / information (amongst others) would improve safety and risk management and infrastructure planning in and around Port Botany and Port Kembla.

Similarly, while the PBLIS has been effective in reducing truck queuing at container terminals, NSW Ports has a number of suggestions to optimise road operations and to remove the current impediments to further improvements in rail performance.

By reference to the Discussion Paper dated December 2021, we have set out our feedback below by reference to the ‘list of questions for consideration’ at Appendix 1.

Question	NSW Ports Feedback
Question 1: Do you have any feedback on the marine safety functions under the PAMA Act?	<p>The PAMA Act currently regulates the provision of pilotage and towage services but not the provision of mooring line services.</p> <p>Noting that mooring line operations are critical for the prevention of property damage, pollution incidents and personal injury, and to overall port productivity, NSW Ports recommends that provision for the licensing of mooring line operations also be included in the PAMA Act in order to regulate and manage safety and business continuity in this essential aspect of port operations.</p>

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	Such licence would be implemented by the Port Authority of NSW ('PANSW'), as currently occurs with towage licences.
Question 2: Do you have any feedback on the provisions of the PAMA Act in relation to the Maritime Advisory Council or the Waterways Fund?	<p>While NSW Ports is not a key stakeholder in the Maritime Advisory Council ('MAC') (noting that the MAC does not provide advice on freight-related matters), as was set out in our submission on the draft <i>Ports and Maritime Administration Regulation 2020</i> (NSW) ('PAMA Regulation'), NSW Ports considers that clarity of the role, responsibilities, discussions and outcomes of the MAC would be beneficial.</p> <p>This could be achieved through the publication of a list of MAC Members and the timely circulation of the minutes of MAC meetings (noting that these do not appear to have been updated on the TfNSW website since November 2020).</p> <p>NSW Ports also suggests that it would be good governance practice to have an articulated process for the appointment / re-appointment of MAC Members.</p>
Question 3: Do you have any feedback on the Port Authority or private port operator provisions in the PAMA Act?	<p>NSW Ports raised a number of matters in our submission on the draft PAMA Regulation in February 2021 which Transport for NSW ('TfNSW') considered to be outside of the scope of the PAMA Act (and, therefore, not able to be facilitated within the PAMA Regulation).</p> <p>Accordingly, NSW Ports resubmits these amendment requests (with some variations) as follows:</p> <p><u>Dangerous Goods Management</u></p> <p>The handling of dangerous goods within port precincts is a key risk for NSW Ports and one that, to date, NSW Ports has had limited visibility of or control over.</p> <p>NSW Ports requires more information on the handling of dangerous goods in each of Port Botany and Port Kembla for effective port operations and to manage compliance with NSW Ports' various hazard and risk obligations and consent conditions (irrespective of the fact that NSW Ports does not have overall responsibility for dangerous goods management).</p> <p>Rather than amending the PAMA Regulation itself (as was proposed in our submission on the draft PAMA Regulation), NSW Ports suggests that PANSW's Port Safety Operating Licence, which is issued under section 12(2) of the PAMA Act, should be amended to require PANSW to provide the following to NSW Ports (and to other port operators, as applicable):</p> <ul style="list-style-type: none"> (i) notification where PANSW exempts a person or class of person from a requirement under Part 7 (Management of Dangerous Goods) of the PAMA Regulation (PAMA Regulation, Section 69); (ii) access to details of all dangerous goods that are to be brought into the waters of Port Botany or Port Kembla, or into a port facility within either of those ports (PAMA Regulation, Section 73);

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	<p>(iii) notification and access to details of any dangerous goods incidents that occur within Port Botany or Port Kembla as soon as reasonably practicable (PAMA Regulation, Section 74); and</p> <p>(iv) notification where PANSW approves the carrying out of work or the bunkering of a ship that is in the waters of, or berthed at a port facility within, Port Botany or Port Kembla (PAMA Regulation, Section 81).</p> <p><u>Port Operator Directions</u></p> <p>NSW Ports has issued a number of port operator directions under the PAMA Act (Part 3A, Division 2) but has ongoing concerns regarding the utility of this regime, particularly in terms of enforcement.</p> <p>One of NSW Ports' primary considerations when it comes to the regulation of activities at Port Botany and, to a lesser extent, Port Kembla, is the management of vehicles stopping and parking on port roads and the leaving of unattended trailers and goods within the port precinct. This was a particular issue for NSW Ports in 2020, when trucks queuing to access Empty Container Parks ('ECPs') caused significant traffic congestion and safety hazards within Port Botany.</p> <p>In an effort to address these issues, on 10 July 2020, NSW Ports formally gave port operator directions prohibiting the unauthorised stopping and / or parking of vehicles on port roads and employed security guards and traffic marshals to enforce the same, but these directions and NSW Ports' enforcement efforts were routinely ignored by transport operators.</p> <p>While NSW Ports ostensibly has the power to enforce compliance with a port operator direction by removing from the port any person or vehicle that is contravening the direction (PAMA Act, Section 39(2)(a) and (b)), when met with non-compliance, NSW Ports has practically found itself in the position of needing to contact the New South Wales Police Force for assistance in removing such persons or vehicles from the port precinct (as any attempt to take these steps ourselves risks an escalating confrontation and puts our people and subcontractors at risk).</p> <p>Further, while the PAMA Act expressly prohibits the obstruction of or interference with authorised officers in the exercise of any function associated with a port operator direction (PAMA Act, Section 40C), NSW Ports is not empowered to issue penalty notices under the PAMA Act with the effect that, once again, NSW Ports has little option but to seek the assistance of the New South Wales Police Force.</p> <p>Accordingly, NSW Ports submits that the following amendments to the PAMA Act would substantially increase the utility of the existing port operator directions regime:</p> <p>(i) The direction regimes under Sections 37 and 43E of the PAMA Act should be harmonised, such that NSW Ports may also issue port</p>

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	<p>operator directions that relate to “the conduct of any person or class of persons”.</p> <p>(ii) Section 38(3) of the PAMA Act should be amended to reduce the required notice period to the Harbour Master and Minister (the latter in the case of port operator directions relating to dangerous goods) to one (1) week, in order to align with the notice period in Section 40 of the PAMA Act (noting that this would allow NSW Ports to better respond to safety / security issues which aren’t necessarily ‘emergencies’).</p> <p>(iii) Section 39(1) of the PAMA Act should be amended in line with Section 43G(1) such that a failure to comply with a port operator direction is an offence with a maximum penalty of 30 penalty units. More broadly, NSW Ports should be specifically empowered to issue infringement notices under each of Sections 39(1), 40C and 40G of the PAMA Act.</p> <p>(iv) Section 39(4) of the PAMA Act should be amended to specify that NSW Ports may pursue a recovery claim against the owner / operator of the vehicles or goods in question or, where relevant, the employer of the vehicle’s driver. To this end, NSW Ports requests that TfNSW’s current ‘Solicitor Online Information Request System’ be extended so as to allow an in-house legal counsel with a current practising certificate to obtain vehicle and driver information in connection with motor vehicle accident claims and the enforcement of port operator directions.</p> <p>(v) Section 40B(1) of the PAMA Act should be expanded to apply to an authorised officer who is a subcontractor of NSW Ports.</p> <p>(vi) While certain nominated NSW Ports representatives can be formally appointed by the Minister as ‘authorised officers’ under Section 96 of the <i>Marine Safety Act 1998</i> (NSW) and identity cards issued, it would be preferable for this appointment mechanism to be under the PAMA Act (which, if required, could expressly specify that the powers of such authorised officers are limited to the PAMA Act’s port operator directions regime).</p> <p>(vii) Section 40D(1) of the PAMA Act should be amended to reduce the reporting required of NSW Ports to a single annual report, which is due within 3 months after 30 June of each year.</p> <p>It would also be helpful if the PAMA Regulation could be amended to specify the powers of NSW Ports’ authorised officers, particularly in relation to traffic control, in much the same way that Part 5 of the PAMA Regulation currently does in respect of the authorised officers of TfNSW and PANSW.</p>

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	<p data-bbox="544 302 911 331"><u>Scope of Information Provision</u></p> <p data-bbox="544 369 1430 499">As was identified in our submission on the draft PAMA Regulations, there are a number of categories of information that NSW Ports requires on a regular basis for the purposes of operating and managing Port Botany and Port Kembla and for compiling trade and supply chain statistics.</p> <p data-bbox="544 537 1422 701">While the 'information direction' regime in section 40E of the PAMA Act allows for one-off requests for relevant information, NSW Ports submits that each of the PAMA Act and the PAMA Regulation should be amended in order to mandate the routine provision of the following information to NSW Ports:</p> <p data-bbox="544 739 1369 801">Vessel operational performance: For each vessel calling at either Port Botany and Port Kembla:</p> <ul data-bbox="544 840 1430 1238" style="list-style-type: none"> <li data-bbox="544 840 1398 902">(i) the type of fuel(s) in use on the vessel (including sulphur content, where applicable); <li data-bbox="544 940 1369 1003">(ii) whether or not the vessel is fitted with an exhaust gas cleaning (scrubber) system; <li data-bbox="544 1041 1430 1137">(iii) noise emission levels for the vessel (both whilst underway and whilst alongside at wharf or at anchor) and noise control / mitigation measures in place (if any); and <li data-bbox="544 1176 1410 1238">(iv) for vessels carrying bulk liquids, the capacity of all relevant pumps and outlets. <p data-bbox="544 1276 1430 1406">This information is relevant to NSW Ports from both an operational, commercial, environmental and community stakeholder perspective (noting that noise levels, for example, have the potential to impact on local residents in the suburbs surrounding Port Botany).</p> <p data-bbox="544 1444 1430 1507">Trade information: The following trade information should be provided in Electronic Data Interchange ('EDI') format:</p> <ul data-bbox="544 1545 1430 1877" style="list-style-type: none"> <li data-bbox="544 1545 1430 1641">(i) where goods are carried in a container, the inland point of destination / origin for the container within Australia (represented by a four (4) digit Australian postcode); <li data-bbox="544 1680 1410 1742">(ii) for import containers, the Electronic Import Delivery Order ('EIDO') details; and <li data-bbox="544 1780 1430 1877">(iii) the relevant Australian Harmonised Export Commodity Classification Code(s) for the goods (as published by the Australian Bureau of Statistics) to six (6) digits). <p data-bbox="544 1915 1430 2042">Inland point of destination / origin data would provide a single and reliable source of data on import and export distribution patterns within New South Wales and, therefore, road / rail infrastructure requirements for intrastate and interstate cargo movements (thereby driving efficient supply chains by</p>

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	<p>supporting operational planning and the assessment of transport infrastructure needs).</p> <p>Mandating the provision of EIDOs by shipping lines would eliminate a time-consuming step in the container de-hire process whereby transport operators and ECPs are currently required to manually enter container data (in the absence of an EIDO) before a container can be de-hired. The provision of EIDOs would assist with the automation of this process, thereby avoiding unnecessary delays at ECPs.</p> <p>Harmonised Code ('HC') descriptions would significantly improve the availability and integrity of collated data and would support better market analysis, trade forecasting and infrastructure planning. Specifying six (6) digits is important to ensure that the HC adequately describes the goods (rather than generic categories by two (2) or four (4) digit codes). It is worth noting in this regard that the HCs are standardised for worldwide usage via the World Customs Organisation.</p> <p>The HC system is far more robust than free text descriptions of cargo (which are prone to input errors and terminology variations) and it should be noted that standardisation is already established and in use across the international logistics industry. By way of example, NSW Ports notes that most major shipping lines in Port Botany are already providing HCs on manifests. Formally mandating the provision of HC data for all cargo will ensure that the data is comprehensive and reliable.</p> <p>Finally, and speaking generally, each of the PAMA Act and the PAMA Regulation should specifically require that all manifests must be provided in EDI format. While current industry practice is to use EDI format, a mandate in the PAMA Act will significantly improve administrative efficiency for all parties.</p> <p>If EDI is not relevant / feasible in all ports in New South Wales, NSW Ports submits that the relevant provisions in the PAMA Act and / or the PAMA Regulation could be drafted to specifically exclude those ports where EDI is not practical.</p>
<p>Question 4: Do you have any comments on the PAMA Act coverage of port charges and the port price monitoring scheme?</p>	<p>Generally speaking, NSW Ports considers that those provisions of Part 5 of the PAMA Act relevant to NSW Ports (being Division 1 (Preliminary), Division 2 (Navigation Service Charges), Division 4 (Port Cargo Access Charges), Division 5 (Site Occupation Charges and Wharfage Charges), Division 6A (Port Infrastructure Charges), Division 7 (Agreements in respect of Charges) and Division 8 (Miscellaneous) provide a robust and transparent mechanism for the imposition, regulation and ongoing monitoring of port charges in New South Wales.</p> <p>This is evidenced by NSW Ports' responsible approach to pricing since privatisation, which has been broadly based on CPI and which included deferred price increases during the COVID-19 epidemic.</p> <p>In particular, NSW Ports notes that PAMA Act, Part 5, Division 6A has been instrumental in facilitating a number of strategic port infrastructure</p>

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	<p>developments including, for example, NSW Ports' ongoing projects to increase 'on-dock' rail capacity at Port Botany.</p> <p>It is also noted that wharfage represents a small component of the overall supply chain cost. NSW Ports would be willing to provide additional information in this regard, upon request.</p>
Question 5: Do you have any feedback on the management of wharves and moorings under the PAMA Act?	N / A.
Question 6: Do you have any feedback on the PAMA Act powers relating to port facilities?	N / A.
Question 7: Are there any issues with access to relevant information? If so, what are the expected impacts of accessing additional information?	Please refer to our response to Question 3 above under the headings of 'Dangerous Goods Management' and 'Scope of Information Provisions'.
Question 8: Do you have any suggestions to improve the PAMA Act to ensure it appropriately supports the management of NSW's ports and maritime operations?	No.
Question 9: What has PBLIS achieved since introduction and what is it achieving now?	<p>The PBLIS has reduced the queuing of trucks and waiting time of trucks arriving at stevedoring terminals at Port Botany. It has resulted in world class truck turnaround times.</p> <p>Whilst this addressed the significant queuing issue that existed at the time of its introduction, the PBLIS needs to evolve in light of the growth in container volumes and the need to optimise landside transport productivity. This is covered in our response to Question 11.</p>
Question 10: Are there inefficiencies in other parts of the port landside supply chain not under PBLIS? How would these be best addressed?	<p>NSW Ports notes that there are a number of constraints in other parts of the port landside supply chain that are not regulated under the PBLIS and over which port stakeholders have limited control.</p> <p><u>Operating Hours at Off-Port Industrial Precincts</u></p> <p>While Port Botany operates 24 hours per day, 7 days per week, reduced operating hours at key off-port industrial precincts naturally impact the ability for transport operators to utilise night / weekend periods for container transport. This results in high demand for slot bookings during the morning and afternoon peak periods and only minor utilisation of</p>

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	<p>evening and weekend slots. In order to spread port truck arrivals across the 24 hour day and on weekends, off-port logistics must also be permitted to operate 24/7.</p> <p><u>Rail Operations</u></p> <p>NSW Ports has developed a rail strategy that identifies opportunities to improve rail capacity, rail productivity and rail mode share. Aspects considered in the strategy include:</p> <ul style="list-style-type: none"> (i) Curfews on the shared metropolitan rail network (ii) Use of intermodal terminals for freight consolidation onto port shuttles. (iii) Mode shift incentive schemes <p>We would be willing to provide additional information on request.</p> <p><u>ECPs</u></p> <p>Pursuant to the recent amendments to the PAMA Regulation, the Minister should issue a direction for the mandatory supply of data from ECPs to each of TfNSW and the operators of private ports (i.e. NSW Ports). This data is required to forecast ECP availability and triangulate movements between ECPs and the container terminals. This data would provide an evidence base from which any further actions or mandatory standards could be implemented if required.</p> <p>ECP data should include a daily gate in / out file which includes (at a minimum) time zone booking, arrival time, departure time, transport carrier name, container ID #, container type and any other relevant information required to monitor the performance of ECP operations and transport carrier utilisation patterns.</p> <p>Mandating the provision of EIDOs by shipping lines (as mentioned above) will also assist in streamlining the container de-hire process, thereby avoiding unnecessary administrative delays.</p>
<p>Question 11: What changes, if any, could improve the current PBLIS arrangements, whether in the PAMA Act, the PAMA Regulation or the Mandatory Standards? What are the expected impacts of those changes?</p>	<p><u>Road</u></p> <p>A key area for improvement in the current PBLIS arrangements is to incentivise greater truck utilisation. Truck capacity (TEU per truck) at Port Botany has grown (primarily due to the increased deployment of High Productivity Vehicles – ‘HPVs’), however, truck utilisation has not grown at the same rate.</p> <p>NSW Ports considers that this may be due to the fact that the current PBLIS Mandatory Standards relevant to the road interface do little to drive improvements in truck utilisation (containers / TEU per trip) or the two-way loading of trucks. The effect of this is that trucks are often underutilised, thereby unnecessarily adding to road traffic and increasing truck kilometres travelled on Sydney’s road network.</p>

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	<p>NSW Ports understands that transport operators are hesitant to commit to another trip (stevedore or ECP) prior to a stevedore slot booking as they do not want to risk delays and a resultant PBLIS penalty for late arrival.</p> <p>NSW Ports submits that one possible approach to incentivise truck density and two-way loading would be to amend the Mandatory Standards such that trucks making trips to other relevant port facilities (stevedores or ECPs) prior to a nominated stevedore time zone are either granted an automatic time extension or relief against late arrival penalties.</p> <p>This could be administered by TfNSW noting that automatic number plate recognition ('ANPR') cameras have now been installed at all relevant port facilities so arrival / departure times can now be recorded.</p> <p>In addition, NSW Ports is supportive of amendments to the PBLIS Mandatory Standards to incentivise better truck spread across the day and on weekends, perhaps by way of a reduced penalty structure for night-time calls.</p> <p>Finally, NSW Ports submits that the VBS booking process should also be reviewed to ensure that booking multiple containers and two-way loadings is possible (and is actively promoted wherever possible).</p> <p><u>Rail</u></p> <p>The current drafting of the PBLIS Mandatory Standards has seen stevedores focus on improving the servicing of road transport, perhaps to the detriment of rail service levels and / or growth of volumes transported by rail. This has been further compounded by the current Mandatory Standards applicable to rail which have not been reviewed since their implementation.</p> <p>Overall, NSW Ports' position is that the current Mandatory Standards for rail are no longer fit for purpose and should be removed.</p> <p>Before considering any new Mandatory Standards, NSW Ports recommends increasing the visibility and transparency of rail performance and access to data for relevant stakeholders. Data on available rail windows, rail window schedules, rail window performance (% utilisation) and stevedore / rail operator performance should be published on a public website in order to encourage improved performance.</p> <p>Any new Mandatory Standards should be implemented with significant caution to avoid undermining the significant private sector investment in rail in recent years at intermodal terminals and at the port. Operations of these new investments are in their early phases or are yet to commence.</p> <p>A relevant example of this is NSW Ports' investment in new rail capacity at the stevedore terminals at Port Botany. Phase 1 of this investment will see significant additional rail capacity introduced at the Patrick container terminal, however, the new rail terminal will not be complete until late 2023.</p>

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	<p>Investment will follow at the other stevedore terminals at the appropriate time.</p> <p>In addition to investment, NSW Ports has implemented rail access frameworks ('RAF') with each of Patrick and DP World in order to drive rail efficiencies.</p> <p><u>Truck Marshalling Area ('TMA')</u></p> <p>The performance of the TMA is not currently known or has not been made available to NSW Ports. This is a prime location within Port Botany that may be underutilised and could be enhanced.</p> <p>Opportunities to use surplus capacity, if any, for staging of non-container (bulk liquid) trucks may exist. Consideration of the need for an additional TMA closer to the Patrick and Hutchison container terminals may also be required.</p> <p>This can only be determined through further understanding of the use and utilisation of the TMA.</p>
<p>Question 12: Are there any unintended impacts of PBLIS on the movement of goods through Port Botany? If so, how could these be addressed?</p>	<p>Please refer to our response to Question 11.</p>
<p>Question 13: Are there any aspects of the application of PBLIS to stevedore operations that create inefficiencies in the landside supply chain? If so, how can these be improved?</p>	<p>Please refer to our response to Question 11.</p>
<p>Question 14: Are there any aspects of the application of PBLIS to road transport operations that create issues in the landside supply chain? If so, how can these be addressed?</p>	<p>Please refer to our response to Question 11.</p>
<p>Question 15: Are there any aspects of the implementation of PBLIS that create issues in the supply chain? If so, how could the administration of PBLIS be improved?</p>	<p>Please refer to our responses to Question 10 and Question 11.</p>

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Question 16: Does PBLIS remain the best approach for promoting the efficient and productive operation of the landside interface at Port Botany into the future? Are there ways that PBLIS could be improved?	Please refer to our responses to Questions 9, 10 and 11.

As an additional observation, NSW Ports considers that there may be opportunities to streamline / remove duplication of effort between TfNSW and NSW Ports. NSW Ports notes, for example, that there is currently a duplication of effort in monitoring and assessing port data and in developing strategies to respond to issues within Port Botany. Greater cooperation between TfNSW and NSW Ports would allow NSW Ports to focus 'inside the port boundaries' and TfNSW to focus 'outside the port boundaries' to drive the overall efficiency of the port landside supply chain.

NSW Ports appreciates the opportunity to provide this submission as part of the Independent Review of the PAMA Act and the PBLIS.

We would of course be happy to provide further information or to discuss our submission in further detail as / when required. Please do not hesitate to contact [REDACTED] to discuss our feedback and / or to arrange a further meeting.

Yours sincerely

