



New South Wales

# Port of Newcastle (Extinguishment of Liability) Act 2022 No 71

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# **Port of Newcastle (Extinguishment of Liability) Act 2022 No 71**

Act No 71, 2022

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An Act to establish a process for the extinguishment of certain liabilities of the operator of the Port of Newcastle in relation to the Port of Newcastle Port Commitment Deed; and for related purposes. [Assented to 25 November 2022]

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**The Legislature of New South Wales enacts—**

**1 Name of Act**

This Act is the *Port of Newcastle (Extinguishment of Liability) Act 2022*.

**2 Commencement**

This Act commences on the date of assent to this Act.

**3 Act binds Crown**

This Act binds the Crown.

**4 Definitions**

In this Act—

**appointed person** means the person appointed by the Treasurer under section 6 to determine the relevant compensation under section 7.

**Deed** means the “Port Commitment Deed” entered into by the State on or about 30 May 2014 relating to the leasing of the Port of Newcastle, as in force from time to time.

**Port operator** means the operator of the Port of Newcastle who is required to pay an amount to the State under the reimbursement provision of the Deed.

**reimbursement provision**, of the Deed, means a provision of the Deed relating to the requirement for the operator of the Port of Newcastle, however described in the Deed, to pay an amount to the State following receipt of a notice that the State is required to pay an amount to an operating entity associated with another port.

**relevant compensation**—see section 7(1).

**Note**— The *Interpretation Act 1987* contains definitions and other provisions that affect the interpretation and application of this Act.

**5 Port operator may request determination of compensation**

- (1) The Port operator may, by written notice to the Treasurer and in accordance with the regulations, request a determination of the relevant compensation under section 7.
- (2) The Port operator may make a single request under subsection (1) only.

**6 Appointment of person to determine compensation**

- (1) As soon as practicable after receiving a request under section 5(1), the Treasurer must appoint a person to determine the relevant compensation under section 7.
- (2) The Treasurer must appoint a person who has—
  - (a) appropriate qualifications or experience to determine the relevant compensation, and
  - (b) no pecuniary or other interest that appears to raise a conflict with the proper exercise of the appointed person’s functions under this Act.

**7 Determination of compensation**

- (1) The appointed person must determine the amount by which the financial value of the right to operate and lease the assets of the Port of Newcastle for 98 years would have been reduced, in the opinion of a reasonable person at the time the Deed was entered into, because of the inclusion of the reimbursement provision in the Deed (the **relevant compensation**).
- (2) The appointed person must determine the relevant compensation under subsection (1) within—

- (a) 6 months of being appointed, or
  - (b) another period prescribed by the regulations.
- (3) In determining the relevant compensation, the appointed person may—
- (a) obtain and consider information from the Port operator and the State, and
  - (b) obtain and consider information from other persons, including legal or financial advice, and
  - (c) consider any other matters the appointed person considers relevant.

## **8 Extinguishment of liability by payment of compensation to State**

- (1) From the date on which the Port operator pays the relevant compensation, adjusted for inflation under subsection (2), to the State, the reimbursement provision of the Deed has no legal effect.
- (2) The amount of relevant compensation must be adjusted for changes in the Consumer Price Index for the period between the date on which the Deed was entered into and the date on which the Port operator pays the amount.
- (3) The regulations may provide for the calculation of the amount payable by the Port operator to the State under this section.
- (4) Subsection (1) prevails to the extent of an inconsistency with another Act or law.

## **9 Regulations**

- (1) The Governor may make regulations about the following—
  - (a) matters this Act expressly requires to be prescribed by regulations,
  - (b) matters this Act expressly permits to be prescribed by regulations,
  - (c) other matters, but only to the extent that making regulations about the matters is necessary or convenient to give effect to this Act.
- (2) The regulations must not be inconsistent with this Act.
- (3) Regulations may be made about the following matters—
  - (a) the appointment of the person under section 6, including the following—
    - (i) the required qualifications and experience,
    - (ii) the terms and conditions of the appointment,
    - (iii) remuneration,
  - (b) the functions of the appointed person,
  - (c) the matters the appointed person must consider in determining the relevant compensation,
  - (d) the use and disclosure of information obtained by the appointed person, including information obtained from the State and the Port operator,
  - (e) dispute resolution procedures for disputes between the Port operator and the State, including disputes in relation to the amount payable by the Port operator under section 8.

[Second reading speech made in—

Legislative Assembly on 13 October 2022

Legislative Council on 10 November 2022]