

c2022-174O
OPP--OPPOSITION

LEGISLATIVE COUNCIL

Port of Newcastle (Extinguishment of Liability) Bill 2022

Second print

Proposed amendments

No. 1 **Declaration of extinguishment of liability**

Pages 2 and 3, clauses 4–9, line 8 on page 2 to line 37 on page 3. Omit all words on the lines. Insert instead—

4 Definitions

In this Act—

NSW Ports Strategy—see section 5(1)(f).

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

positive report—see section 6(2).

5 Declaration of extinguishment of liability

- (1) The Treasurer must declare, by order published in the Gazette, that a reimbursement provision of the Port of Newcastle Port Commitment Deed is extinguished, if—
 - (a) the Treasurer has received a positive report from an independent person under section 6(1), and
 - (b) the Treasurer has decided that making the declaration would be in the public interest under section 6(2), and
 - (c) the Treasurer has made a statement to Parliament about the decision under section 6(4), and
 - (d) 30 days has passed since the Treasurer made the statement, and
 - (e) the Treasurer has made all reasonable efforts to ensure no compensation is payable as a consequence of making the declaration, and
 - (f) the Treasurer has, before 1 January 2025, prepared a strategy for ports in New South Wales (the *NSW Ports Strategy*) that considers the future needs of Port Kembla and other ports.
- (2) A reimbursement provision of the Deed has no legal effect from—
 - (a) the date on which the order is published in the Gazette, or
 - (b) if the order specifies a later date—the later date.
- (3) A declaration—

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- (a) does not affect the validity of another provision of the Deed, and
 - (b) prevails to the extent of an inconsistency with another Act or law.

(4) In this section—

reimbursement provision means a provision requiring an operating entity associated with the Port of Newcastle 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.

6 Treasurer's assessment of public interest

- (1) The Treasurer may require an independent person to provide a report on whether a container terminal would be constructed at the Port of Newcastle as a consequence of the Treasurer making a declaration under section 5(1).
- (2) If the report provides that the independent person is satisfied a container terminal would be constructed (a *positive report*), the Treasurer must decide whether making the declaration would be in the public interest.
- (3) In deciding whether making the declaration would be in the public interest, the Treasurer must consider the following—
 - (a) if the construction of the container terminal would require the State to invest in the construction of major infrastructure—whether the investment would be in the public interest,
 - (b) whether the construction and operation of the container terminal would directly increase employment opportunities associated with the Port of Newcastle,
 - (c) whether the State would be liable to pay compensation as a consequence of making the declaration,
 - (d) if the Treasurer has completed the preparation of the NSW Ports Strategy—the strategy.
- (4) As soon as practicable after receiving a positive report, the Treasurer must make a statement to Parliament—
 - (a) stating the Treasurer has received a positive report, and
 - (b) stating whether the Treasurer has decided that making a declaration under section 5(1) would or would not be in the public interest, and
 - (c) explaining the reasons for the decision.
- (5) In this section—

independent person means—

 - (a) the Independent Pricing and Regulatory Tribunal of New South Wales, or
 - (b) the NSW Productivity Commissioner, or
 - (c) a person independent of the management of the Port of Newcastle who has global supply chain experience.

No. 2 Treasurer must publish Port Commitment Deeds

Note. Only to be moved if amendment No. 1 is successful.

Page 3. Insert after line 37—

7 Treasurer must publish Port Commitment Deeds

- (1) Within 7 days of the commencement of this Act, the Treasurer must—
 - (a) make the following documents publicly available on a website—
 - (i) the Port of Newcastle Port Commitment Deed,

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- (ii) the deeds, however described, entered into by the State on or about 31 May 2013 for the purposes of privatising Port Botany and Port Kembla, as in force from time to time, and
 - (b) table the documents in Parliament.
 - (2) The Treasurer may present the documents to the Clerk of a House of Parliament if Parliament is not sitting when the documents are required to be tabled.
 - (3) A document presented under subsection (2)—
 - (a) is, on presentation and for all purposes, taken to have been laid before the House, and
 - (b) may be printed by authority of the Clerk of the House, and
 - (c) if printed, is taken to be a document published by or under the authority of the House, and
 - (d) must be recorded on the first sitting day of the House after receipt of the copy of the report by the Clerk—
 - (i) for the Legislative Council—in the Minutes of the Proceedings of the Legislative Council, or
 - (ii) for the Legislative Assembly—in the Votes and Proceedings of the Legislative Assembly.
 - (4) No compensation is payable as a result of compliance with this section.

No. 3

Treasurer must publish Deeds

Page 3. Insert after line 37—

10 Treasurer must publish Deeds

- (1) Within 7 days of the commencement of this Act, the Treasurer must—
 - (a) make the following documents publicly available on a website—
 - (i) the Deed,
 - (ii) the deeds, however described, entered into by the State on or about 31 May 2013 relating to the leasing of Port Botany and Port Kembla, as in force from time to time, and
 - (b) table the documents in Parliament.
- (2) The Treasurer may present the documents to the Clerk of a House of Parliament if Parliament is not sitting when the documents are required to be tabled.
- (3) A document presented under subsection (2)—
 - (a) is, on presentation and for all purposes, taken to have been laid before the House, and
 - (b) may be printed by authority of the Clerk of the House, and
 - (c) if printed, is taken to be a document published by or under the authority of the House, and
 - (d) must be recorded on the first sitting day of the House after receipt of the copy of the report by the Clerk—
 - (i) for the Legislative Council—in the Minutes of the Proceedings of the Legislative Council, or
 - (ii) for the Legislative Assembly—in the Votes and Proceedings of the Legislative Assembly.
- (4) No compensation is payable as a result of compliance with this section.