



New South Wales

Port of Newcastle (Extinguishment of Liability) Regulation 2023

under the

Port of Newcastle (Extinguishment of Liability) Act 2022

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Port of Newcastle (Extinguishment of Liability) Act 2022*.

MATT KEAN, MP
Treasurer

Explanatory note

The objects of this Regulation are to—

- (a) prescribe the period in which the determination of compensation payable by the operator of the Port of Newcastle to the State under the *Port of Newcastle (Extinguishment of Liability) Act 2022*, section 7(1) (the **determination**) must be made, and
- (b) prescribe the way in which the adjustment of the compensation for inflation must be calculated, and
- (c) provide for the payment of the remuneration of the person appointed to make the determination, and
- (d) prescribe matters the appointed person must consider in making the determination, and
- (e) require the appointed person to publish the determination on a publicly available website, and
- (f) provide for the compulsory production of information to the appointed person for the purposes of making the determination, and
- (g) regulate the way in which the appointed person may use and disclose information the appointed person obtains for the purposes of making the determination.

This Regulation comprises or relates to matters set out in the *Subordinate Legislation Act 1989*, Schedule 3, namely—

- (a) matters of a machinery nature, and
- (b) matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

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Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Port of Newcastle (Extinguishment of Liability) Regulation 2023*.

2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.

3 Definitions

In this Regulation—

compulsory production notice—see section 9(1).

determination means the determination of relevant compensation the appointed person must make under the Act, section 7(1).

information includes documents.

party means the Port operator or the State.

relevant information means information obtained by the appointed person for the purposes of consideration under the Act, section 7(3), whether by a compulsory production notice or otherwise.

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

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

Part 2 General

4 Prescribed period for making determination—the Act, s 7

- (1) For the Act, section 7(2)(b), the prescribed period is—
 - (a) 6 months from the appointment date, or
 - (b) if, before the end of the 6 month period, the appointed person gives written notice to the Treasurer and the Port operator that the appointed person has formed the view, that is reasonable in the circumstances, that additional time is required to complete the determination—12 months from the appointment date.
- (2) The notice must include the reasons the appointed person formed the view that additional time is required to complete the determination.
- (3) If the appointed person issues a draft determination to the Port operator and the State before the end of the prescribed period, the prescribed period is extended by 3 months.
- (4) Subsection (3) applies only in relation to the first draft determination issued by the appointed person.
- (5) In this section—
appointment date means the date the appointed person is appointed under the Act, section 6.

5 Calculation of inflation adjustment—the Act, s 8

- (1) For the Act, section 8(3), the amount payable is calculated as follows—
$$A \times \frac{B}{C}$$
where—
A is the relevant compensation.
B is the CPI number for the quarter ending immediately before the relevant compensation is paid in accordance with the Act, section 8.
C is the CPI number for the June quarter of 2014.
- (2) In this section—
CPI number means the Consumer Price Index (All Groups Index) weighted average of eight capital cities published by the Australian Bureau of Statistics.
quarter means a period of 3 months ending on 31 March, 30 June, 30 September or 31 December.

6 Remuneration of appointed person—the Act, s 9

- (1) For the Act, section 9(3)(a)(iii), the State and the Port operator are each liable to pay half of the appointed person's remuneration.
- (2) In this section—
remuneration means—
 - (a) the amount the Treasurer and the appointed person agree will be paid to the appointed person for making the determination, and
 - (b) the reasonable costs and disbursements incurred by the appointed person in making the determination.

7 Consideration of submissions about draft determination—the Act, s 9

- (1) For the Act, section 9(1)(c) and (3)(c), if the appointed person issues a draft determination to the parties before making the determination, the appointed person must—
 - (a) consider any written submissions about the draft determination that a party makes to the appointed person within the submission period for the draft determination, and
 - (b) if the appointed person does not agree with a submission—give the party that made the submission a written response explaining the appointed person’s reasons for disagreeing with the submission.
- (2) The appointed person is not required to consider submissions made by a party after the end of the submission period for the draft determination.
- (3) The appointed person may, on request of a party, extend the submission period for the draft determination if the appointed person is of the opinion that the extension is reasonable and necessary in the circumstances.
- (4) If the appointed person must give a written response under subclause (1)(b), the appointed person must give the response when the appointed person makes the determination.
- (5) In this section—

submission period, for a draft determination, means the longer of the following periods—

 - (a) the period of 42 days after the day on which the draft determination is issued, or
 - (b) if the appointed person extends the submission period under subsection (3)—the period as extended.

8 Publication of determination—the Act, s 9

For the Act, section 9(1)(c), the appointed person must, within 14 days after making the determination, publish notice of the determination on a publicly available website maintained by the appointed person.

Part 3 Information requirements

9 Compulsory production of information—the Act, ss 7 and 9

- (1) For the Act, sections 7(3) and 9(1)(c), the appointed person may issue a written notice requiring a person to produce information to the appointed person (a *compulsory production notice*).
- (2) The appointed person may issue a compulsory production notice only if the appointed person considers that the information could not reasonably be obtained by other means.
- (3) A compulsory production notice must state that it is issued under this section.
- (4) A person to whom a compulsory production notice is issued must take reasonable steps to comply with the notice.

10 Use of information—the Act, s 9

For the Act, section 9(3)(d), the appointed person may use relevant information only for the purposes of the Act.

11 Disclosure of confidential information—the Act, s 9

- (1) For the Act, section 9(3)(d), a person (the *notifier*) may give the appointed person written notice that certain relevant information the notifier has given the appointed person is confidential (a *confidentiality notice*).
- (2) The appointed person must not disclose information the subject of a confidentiality notice, except—
 - (a) if the appointed person considers the disclosure necessary for the purposes of making the determination, to—
 - (i) an employee of the appointed person, or
 - (ii) a person engaged to provide professional advice to the appointed person on terms requiring the person to keep the information confidential, or
 - (b) if the information becomes publicly available, or
 - (c) with the notifier's consent, or
 - (d) as required by another Act or law.