

NSW Ports, Submission to "Parliamentary Inquiry Submission Impact of Port of Newcastle sale arrangements on public works expenditure in New South Wales", January 21 2019

<https://www.parliament.nsw.gov.au/lcdocs/submissions/62607/021%20NSW%20Ports%20Redacted.pdf>

page 20

PORT COMMITMENT DEEDS

The Port of Newcastle Port Commitment Deed is a 2014 agreement between the Port of Newcastle and the NSW Government. This agreement does not preclude Port of Newcastle from operating a container terminal but we understand that it 'passes-through' any payment obligations that the NSW Government has arising from the handling of more than a specified throughput of containers at Port of Newcastle. NSW Ports is not a party to this Deed and was not aware of its existence until recently. NSW Ports has not seen a copy of this agreement.

The Port of Newcastle is not required to recover the payments to the NSW Government from the stevedore or from the container market such as via wharfage. This fee is to be paid by the Port of Newcastle to the NSW Government. We suggest that this is effectively a 'deferred payment' to the State for the right to build and operate a container terminal. The Port however is agitating that the Deed conditions are 'unfair' and should be removed - thereby seeking to gain value from changes to the sale conditions at the expense of the NSW taxpayers.

The Port of Newcastle (owned by China Merchants Port Holdings/The Infrastructure Fund) entered into the Newcastle Port Commitment Deed with the NSW Government knowingly and willingly as part of its \$1.75 billion purchase of the 99 year lease for the port in 2014. The Deed therefore formed part of Port of Newcastle's value consideration. We would expect that the NSW Government and NSW taxpayers would be concerned that appropriate benefit is obtained from the Port of Newcastle for changes to sale conditions where those changes create an uplift in business value for the Port of Newcastle. The Port Botany and Port Kembla Port Commitment Deeds are separate documents, unlinked, to the Port of Newcastle Port Commitment Deed.

The Port Botany and Port Kembla Port Commitment Deeds are Deeds between NSW Ports and the NSW Government. Port of Newcastle is not a party to these Deeds. The Port Botany and Port Kembla Port Commitment Deeds formed a part of the consideration by NSW Ports in its \$5.07 billion purchase of the 99 year leases for Port Botany and Port Kembla in 2013.

The support only applies where NSW Ports can justify that Port Botany and Port Kembla are not at full capacity and the container throughput at these ports is less than would have occurred if Newcastle did not exceed the throughput threshold. The agreement applies until 2063. Significantly, the terms of the Port Botany Port Commitment Deeds do not prevent Port of Newcastle from operating a container terminal.