

In April 2007, the Minister for Planning approved an expansion of the Kooragang terminal from 77 to 120 million tonnes per annum and the total nominal capacity of Port Waratah Coal Services to 145 million tonnes per annum.

2.3.5 Newcastle Coal Infrastructure Group Pty Limited

It is noted that the Newcastle Coal Infrastructure Group Pty Limited (NCIG) has commenced construction of a coal export terminal at Kooragang Island. NCIG was formed in 2005 to address fundamental capacity issues associated with coal handling for regional coal exporters. In April 2007 the New South Wales Government granted NCIG approval to construct the new coal terminal, with an ultimate capacity of up to 66 million tonnes per annum.

On 11 April 2008 NCIG commenced construction of its new \$922 million coal export terminal which will be developed in two stages. Stage 1 is scheduled to be completed in the first quarter of 2010 and will provide an initial capacity of up to 33 million tonnes per annum. Stage 2 will increase this capacity to up to 66 million tonnes.

2.4 The Coal Export Market

The following Table shows the export markets for coal shipped through Newcastle² :

Market	Percentage
Japan	65
Taiwan	13
Korea	11
Mexico	4
Malaysia	2
Other	5

It will be seen that the market is heavily dependent on Asian markets, and in particular, Japan.

2.5 Problems with the Current Access Arrangements

2.5.1 Demand – Capacity Imbalance at Newcastle

There is an imbalance between the demand for coal loading services at the Port of Newcastle and the capacity of the Hunter Valley coal chain.

Currently, the demand for coal loading services at the Port of Newcastle exceeds the capacity of the Hunter Valley coal chain. According to NPC, this imbalance is being driven by:

- Continuing high levels of demand for export coal: the Australian Bureau of Agriculture and Resource Economics (ABARE) has estimated that demand for export coal will continue to grow at an average rate of 4.4 per cent per year. Nationally, coal exports

² PWCS Annual Report 2007.

Any capacity balancing system to maintain orderly access to the coal loaders may contravene the TPA. The ACCC has given authorisation for a capacity balancing system, so avoiding a breach of this Act. For various reasons the ACCC indicated that it was not inclined to extend this authorisation beyond 31 December 2008⁸.

Without interim Government intervention to maintain a capacity balancing system through application of access rules there will be:

- increased vessel queues and associated demurrage costs;
- increased coal stockpiling and increased uncertainty for producers regarding the coal they are able to ship;
- increased environmental risk to the area around the Port of Newcastle caused by the large number of vessels queued offshore.

The Regulation would permit the continuation of an access regime until 30 June 2009 to give stakeholders further time to develop a long term approach to terminal access and expansion so as to eliminate the capacity-demand imbalance.

⁸ For an update of this situation, please refer to the Preface.

3. OBJECTIVES OF THE AMENDMENT

3.1 Statement of Objectives of the Regulation

The Regulation introduces the setting of standards for the equitable and efficient use of the two land-based port facilities at Newcastle operated by Port Waratah Coal Services Limited known as the Kooragang Coal Terminal and the Carrington Coal Terminal.

The general objective of the Regulation is to facilitate continued equitable access by coal producers to the Kooragang and Carrington Coal Terminals at Newcastle, pending the finalisation by industry of a comprehensive approach to the management of access to Newcastle coal terminals, for submission to the ACCC in 2009.

The objectives of the Regulation in outcome terms are to:

- reduce vessel queues and associated demurrage costs;
- increase certainty for producers regarding the coal they are able to ship;
- reduce environmental risk to the area around the Port of Newcastle; and
- provide additional time to enable the development of a long term approach to terminal access and expansion so as to eliminate the capacity-demand imbalance.

3.2 The Statutory Status and Expected Effects of the Regulation

3.2.1 Statutory Status

The existing *Ports and Maritime Administration Regulation 2007* was made in 2007.

The new Part of the *Ports and Maritime Administration Regulation 2007* has been drafted having effect from 19 December 2008

Compliance by the operator with the approved access rules during the period from 1 January 2009 to 30 June 2009 is specifically authorised for the purposes of the TPA and the Competition Code of New South Wales by the *Competition Policy Reform (New South Wales) Regulation 2008*.

3.2.2 Expected Effects of the Amendment

It is expected that the amendment will ensure fair access to the coal loading facilities by:

- ensuring clarity of access arrangements;
- ensuring reporting of vessel usage of facilities to ensure transparency of access arrangements; and
- providing for a regime of penalties to be invoked for a range of offences.

5 *Consultation with business and the community should inform regulatory development*

The proposed Regulation is principally directed at the one corporation which operates the Kooragang and Carrington Coal Terminals at Newcastle. There has been significant consultation with that corporation and other Hunter Valley Coal Chain participants throughout 2008 in relation to short and long term approaches to manage capacity at Newcastle coal terminals.

While industry has not been consulted directly on the use of a regulation as a mechanism to authorise the continuation of a CBS, all affected industry parties have been consulted extensively on the substantive content of CBS access rules.

6 *The simplification, repeal, reform or consolidation of existing regulation should be considered*

This is a necessary amendment which does not raise simplification, repeal, reform or consolidation of existing regulation issues for consideration.

7 *Regulation should be periodically reviewed, and if necessary reformed to ensure its continued efficiency and effectiveness*

The proposed *Ports and Maritime Administration Amendment (Access Rules) Regulation 2008* will be effective for the period 1 January 2009 to 31 June 2009 only. It is anticipated that by 1 July 2009 a long-term access arrangement will have been agreed by participants in the Hunter Valley Coal chain and submitted to the ACCC for authorisation.

8.3 List of Data and Information Sources Used

The following documents/information sources were studied:

- o *Ports and Maritime Administration Act 1995;*
- o *Ports and Maritime Administration Regulation 2007;*
- o *The Ports and Maritime Administration Amendment (Port Competition and Co-ordination) Act 2008;*
- o The draft Regulation;
- o ACCC Determination 23 April 2008;
- o Newcastle Port Corporation Annual Report 2007/08; and
- o PWCS Annual Report 2007.

8.4 Evaluation Strategy

The Regulation requires the reporting of vessel usage of facilities. This will ensure that the effectiveness of the Regulation can be evaluated during its life.

As mentioned, it is anticipated that by 1 July 2009 a long-term access arrangement will have been agreed by participants in the Hunter Valley Coal chain and submitted to the ACCC for authorisation.

8.5 The Consultation Process

8.5.1 Previous Consultation during the Regulation Development Process

There has been consultation with industry by both NPC and the Minister's office concerning the access arrangements for the terminal (including both long and short term).

Those discussions have revolved around developing appropriate access arrangements.

There has been a great deal of consultation with industry on the short term model that might be implemented and broadly, that consultation is supportive of the model that Government is considering.

8.5.2 Consultation Period

This Regulation will enable the coal industry to develop interim access rules without risking a breach of the TPA, for the 6-month duration of the Regulation. However, the Regulation will need to take effect as soon as the current ACCC Authorisation expires on 31 December 2008.

This RIS will enable consultation with industry to take place in early January 2009.

This course of action is in the public interest because, if no equitable access system can be found, there is a significant risk that the vessel queue at the Port of Newcastle could grow rapidly. This has the potential to cost industry a significant amount in deadweight demurrage costs, in addition to posing potential safety and pollution risks.

ATTACHMENT A
The Regulation



New South Wales

Ports and Maritime Administration Amendment (Access Rules) Regulation 2008

under the

Ports and Maritime Administration Act 1995

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Ports and Maritime Administration Act 1995*.

JOSEPH TRIPODI, M.P.,
Minister for Ports and Waterways

Explanatory note

The object of this Regulation is to provide for the Minister for Ports and Waterways to:

- (a) set mandatory access standards for facilitating access by coal producers to the Kooragang and Carrington Coal Terminals at Newcastle, and
- (b) approve access rules proposed by the operator of the coal terminals (which are to be complied with by the operator until 30 June 2009).

This Regulation is made under the *Ports and Maritime Administration Act 1995*, including section 10B and Schedule 4.

2008 No 606

Clause 1 Ports and Maritime Administration Amendment (Access Rules) Regulation
2008

Ports and Maritime Administration Amendment (Access Rules) Regulation 2008

under the

Ports and Maritime Administration Act 1995

1 Name of Regulation

This Regulation is the *Ports and Maritime Administration Amendment (Access Rules) Regulation 2008*.

2 Amendment of Ports and Maritime Administration Regulation 2007

The *Ports and Maritime Administration Regulation 2007* is amended as set out in Schedule 1.

Schedule 1 Amendment

(Clause 2)

Part 2A

Insert after Part 2:

Part 2A Mandatory access standards for Newcastle coal terminals

18A Definitions

In this Part:

approved access rules means access rules approved by the Minister under this Part.

mandatory access standards means standards set and notified by the Minister under this Part.

Newcastle coal terminals means land-based port facilities at Newcastle operated by Port Waratah Coal Services Limited and known as the Kooragang Coal Terminal and the Carrington Coal Terminal.

the operator of the Newcastle coal terminals means Port Waratah Coal Services Limited.

18B Minister may set mandatory access standards for Newcastle coal terminals

- (1) The Minister may set standards in connection with the operation of the Newcastle coal terminals in relation to access to those terminals during the period from 1 January 2009 to 30 June 2009, for the purpose of ensuring equitable access to those terminals during that period for all coal producers who seek it.
- (2) In setting those standards, the Minister is to have regard to the following:
 - (a) past usage of allocated access by applicants for access,
 - (b) the capacity of the terminals,
 - (c) the capacity of the port-related supply chain that connects to the terminals,
 - (d) the number and capacity of vessels available to use the terminals to load coal.
- (3) The Minister must notify the operator in writing of any standard set by the Minister under this clause.

2008 No 606

Ports and Maritime Administration Amendment (Access Rules) Regulation
2008

Schedule 1 Amendment

18C Access rules

- (1) The operator must provide the Minister with proposed rules (*access rules*) that will regulate the allocation of access by the operator to the Newcastle coal terminals, for the purpose of ensuring compliance by the operator with the mandatory access standards.
- (2) The Minister may direct the operator to review proposed access rules having regard to any matters directed by the Minister.
- (3) The Minister may approve proposed access rules either without modification or with such modifications as the Minister considers appropriate for ensuring compliance by the operator with the mandatory access standards.
- (4) The operator must ensure that the approved access rules are complied with by the operator during the period from 1 January 2009 to 30 June 2009.
Maximum penalty: 500 penalty units.

18D Records and information

- (1) The operator must keep such records and provide such information (including reports) to the Minister in connection with the operation of the approved access rules as the Minister may direct by notice in writing to the operator to facilitate the monitoring of compliance by the operator with the mandatory access standards.
Maximum penalty: 250 penalty units.
- (2) The Minister may publish information provided to the Minister under this clause in such manner as the Minister thinks fit.

BY AUTHORITY
