



AUSTRALIAN COMPETITION TRIBUNAL

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MEMORANDUM

TO: Justice Michael O'Bryan
Dr Darryn Abraham
Professor Kevin Davis

FROM: Justice Middleton, President of the Australian Competition Tribunal

DATE: 12 October 2020

SUBJECT: Applications under section 44ZP of the *Competition and Consumer Act 2010* (Cth) for review of the arbitration determination by the Australian Competition and Consumer Commission in relation to an access dispute between Glencore Coal Assets Australia Pty Ltd and Port of Newcastle Operations Pty Ltd

Applicant: Port of Newcastle Operations Pty Ltd (ACT 2 of 2018)
Applicant: Glencore Coal Assets Australia Pty Ltd (ACT 3 of 2018)

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1. Pursuant to s 44ZZP of the *Competition and Consumer Act 2010* (Cth) and reg 28H of the *Competition and Consumer Regulations 2010* (Cth), I direct that the Tribunal be constituted for the purpose of the hearing and determination of the above applications (upon being remitted by the Full Federal Court of Australia) by the remaining member Dr Darryn Abraham, Professor Kevin Davis (who replaces Mr R F Shogren who has ceased to be a member of the Tribunal) and Justice Michael O'Bryan (who replaces Justice John Middleton who is not available for the purpose of the review).
 2. The constitution of the Australian Competition Tribunal for the purpose of the hearing and determination of the above applications upon being remitted by the Full Federal Court of Australia shall therefore be as follows:

Justice Michael O'Bryan
Dr Darryn Abraham
Professor Kevin Davis
 3. By virtue of reg 28G(2) of the *Competition and Consumer Regulations 2010* (Cth), the presiding member of the Tribunal as constituted above shall be Justice Michael O'Bryan.