



## COMMONWEALTH OF AUSTRALIA

*Competition and Consumer Act 2010 (Cth)*

### IN THE AUSTRALIAN COMPETITION TRIBUNAL

File No: ACT 1 of 2021

Re: Application for review lodged by New South Wales Minerals Council under subsection 44K(2) of the *Competition and Consumer Act 2010 (Cth)* of the decision of the designated Minister under subsection 44H(1) of the *Competition and Consumer Act 2010 (Cth)*

Applicant: New South Wales Minerals Council

### DETERMINATION

TRIBUNAL: Justice O'Bryan (Deputy President)  
Dr D Abraham (Member)  
Prof K Davis (Member)

DATE: 4 August 2021

WHERE MADE: Melbourne

### THE TRIBUNAL DETERMINES AND DIRECTS THAT:

1. The decision dated 16 February 2021 by the designated Minister, the Hon Joshua Frydenberg MP, Treasurer of the Commonwealth of Australia, under s 44H(1) of the *Competition and Consumer Act 2010 (Cth)* (**Act**), not to declare the service provided at the Port of Newcastle comprising the provision of the right to access and use all the shipping channels and berthing facilities required for the export of coal from the port, by virtue of which vessels may enter a port precinct and load and unload at relevant terminals located within the port precinct, and then depart the port precinct, currently being provided by Port of Newcastle Operations Pty Ltd, be affirmed.
2. Within 14 days after the date of this determination, Port of Newcastle Operations Pty Ltd (**PNO**) is to notify the Tribunal, the New South Wales Minerals Council (**NSWMC**) and the National Competition Council (**NCC**) whether it seeks an opportunity to make further written submissions on the question of the Tribunal's power under s 44KB(1) of the Act to make an order for costs in this proceeding.

3. If PNO gives notice under direction 2 that it seeks an opportunity to make further written submissions on the question of the Tribunal's power under s 44KB(1) of the Act:
- (a) PNO must file such submissions, and any supplementary submissions on the exercise of the Tribunal's discretion to make an order for costs (should the Tribunal reach the view that it has power to make an order for costs), limited to 10 pages, within 28 days after the date of this determination;
  - (b) NSWMC must file any submissions in reply, limited to 10 pages, within 42 days after the date of this determination;
  - (c) the Tribunal will determine the application for costs on the papers unless PNO or NSWMC indicate in their written submissions that they seek an opportunity to advance oral submissions on the application.



A handwritten signature in blue ink, consisting of a stylized 'R' followed by a 'U'.

REGISTRAR  
Australian Competition Tribunal