

**COMMONWEALTH OF AUSTRALIA**

*Competition and Consumer Act 2010 (Cth)*

**IN THE AUSTRALIAN COMPETITION TRIBUNAL**

File No: ACT 2 of 2020  
Re: Application for authorisation AA1000473 lodged by New South Wales Minerals Council on behalf of itself, certain coal producers that export coal through the Port of Newcastle, and mining companies requiring future access through the Port, and the determination made by the ACCC on 27 August 2020  
Applicant: Port of Newcastle Operations Pty Limited

**DIRECTIONS**

TRIBUNAL: Justice O'Bryan (Deputy President)  
DATE OF DIRECTIONS: 9 March 2021  
WHERE MADE: Melbourne



**THE TRIBUNAL DIRECTS THAT:**

1. Disclosure of the documents listed in Annexure A to these directions and the information contained in them (**Confidential Information**) be restricted to:
  - (a) the Australian Competition and Consumer Commission (**ACCC**) and its external legal advisers and engaged experts (and their direct staff);
  - (b) Port of Newcastle Operations Pty Limited (**PNO**) and its external legal advisers and engaged experts (and their direct staff);
  - (c) the external legal advisers and experts (and their direct staff) engaged by the New South Wales Minerals Council (**NSWMC**); and
  - (d) the Chief Executive Officer of NSWMC (Stephen Galilee) and the Policy Director of NSWMC (Andrew Abbey), subject to their providing to the Tribunal a signed Confidentiality Undertaking in the form of Annexure B and provided that only the redacted form of the Confidential Information provided to the Tribunal on 4 March 2020 is to be disclosed to those two persons.

2. Other than the disclosure permitted by paragraph 1, the Confidential Information must not be disclosed to any other person or otherwise made public.
3. Without the leave of the Tribunal, the Confidential Information must not be used by any person to whom it has been disclosed other than for the purposes of this proceeding.
4. Any written submission made to the Tribunal, or other document provided to the Tribunal, that refers to or incorporates the Confidential Information must be marked to identify clearly the Confidential Information.
5. The Confidential Information must not be referred to orally during the hearing of this proceeding (whether in oral submissions made to the Tribunal or cross-examination) unless the Tribunal has directed that the hearing of the submissions or cross-examination is to take place in private pursuant to s 106(2) of the *Competition and Consumer Act 2010* (Cth).
6. Until further order of the Tribunal, the Confidential Information is not to appear in any transcript of the proceeding before the Tribunal other than in a confidential copy of the transcript, which shall only be made available to the persons referred to in paragraph 1 of these Orders.
7. Nothing in these directions imposes an obligation on the ACCC in respect of a document or information which has been obtained by it otherwise than in the course of these Tribunal proceedings, or on PNO or NSWMC in respect of a document or information which has been obtained by it otherwise than in the course of these Tribunal proceedings or the preceding application for authorisation before the ACCC.
8. The parties have liberty to apply to vary these directions.



A handwritten signature in blue ink, consisting of a stylized 'R' followed by a '4'.

REGISTRAR  
Australian Competition Tribunal

## **ANNEXURE A**

1. The Port Services Agreement dated 17 December 2013 between Newcastle Port Corporation and Port of Newcastle Operations Pty Limited.
2. The Harbour Management System Access Agreement dated 17 December 2013 between Newcastle Port Corporation and Port of Newcastle Operations Pty Limited.

## ANNEXURE B

### CONFIDENTIALITY UNDERTAKING

I, [insert name, position and address],

HEREBY UNDERTAKE to the Australian Competition Tribunal (**Tribunal**) in relation to the documents made available to me pursuant to the directions of the Tribunal dated 9 March 2021 (**Directions**) in proceeding ACT 2 of 2020 (**Confidential Documents**) as follows:

1. I will not use the Confidential Documents except for the purpose of Tribunal proceeding ACT 2 of 2020.
2. Without the leave of the Tribunal, I will not disclose or otherwise make public the Confidential Documents or any part of them other than as permitted by the Directions.
3. I will not make any copies or record of the Confidential Documents or any part of them including by way of taking notes, photographs or screenshots.
4. If I become aware of any unauthorised use or disclosure of the Confidential Documents, I will inform the Port Authority of New South Wales' legal advisers as soon as practicable.
5. At the conclusion of Tribunal proceeding ACT 2 of 2020, I will return the Confidential Documents to the Port Authority of New South Wales' legal advisers as soon as practicable.
6. The terms of this undertaking may be varied by direction of the Tribunal.
7. The provision of this undertaking does not constitute any acknowledgement that the Confidential Documents contain information of a nature that warrants their inspection in this proceeding to be limited.
8. This undertaking does not apply to any part of the Confidential Documents which is made public at any time.
9. I give this undertaking subject to the extent that I am required to disclose the Confidential Documents or any part of them by law, statutory body or court.

Dated: