

NOTICE OF LODGMENT
AUSTRALIAN COMPETITION TRIBUNAL

This document was lodged electronically in the AUSTRALIAN COMPETITION TRIBUNAL and has been accepted for lodgment pursuant to the Practice Direction dated 3 April 2019. Filing details follow and important additional information about these are set out below.

Lodgment and Details

Document Lodged: Affidavit of Simon Byrnes

File Number: ACT 2 of 2020

File Title: 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

Registry: VICTORIA – AUSTRALIAN COMPETITION TRIBUNAL



REGISTRAR

Dated: 10/10/2021 8:32 PM

Important information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Tribunal and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.



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 (ACN 165 332 990)

AFFIDAVIT

I, Simon Byrnes, of Level 4, 251 Wharf Road, Newcastle in the State of New South Wales, lawyer, affirm:

1. I am the Chief Commercial Officer and General Counsel for Port of Newcastle Operations Pty Limited (**PNO**), the applicant in this proceeding. I am authorised to make this affidavit on PNO's behalf.
2. I have previously affirmed affidavits in these proceedings on 15 March 2021 (**First Affidavit**) (Hearing Book (**HB**), pages 115 to 303), 25 June 2021 (HB 688 to 846) and 30 July 2021 (**Third Affidavit**) (HB 847 to 951). In this affidavit, I adopt terms defined in my previous affidavits.
3. Except where otherwise indicated, I make this affidavit from my own knowledge acquired from my personal experience, and from my examination of certain documents and records of PNO which are made and kept in the normal course, and for the purposes, of the business of PNO. Where I depose to matters from information or belief, I believe those matters to be true.

Clayton Utz
Level 15, 1 Bligh Street
Sydney NSW 2000

Handwritten signature of Simon Byrnes in black ink, positioned above a horizontal line.

L\342052841.1

Telephone: 02 9353 4000
Fax: 02 8220 6700
Email: blloyd@claytonutz.com
Ref: Bruce Lloyd

Handwritten signature of Bruce Lloyd in black ink, positioned above a horizontal line.

Cost Analysis

4. In my First Affidavit, I provided facts and information regarding the costs incurred by coal producers and coal purchasers relative to charges levied by PNO at the Port of Newcastle. This included a cost breakdown analysis annexed and marked "SB-3" to my First Affidavit (**Cost Analysis**) (HB 145 to 148), which I described at paragraphs 25 to 26.
5. That Cost Analysis included figures from around 2015. In particular, it referred to a Newcastle thermal coal spot price of A\$84.02/tonne.
6. I have reviewed the publicly available data from the World Bank and as at around today's date, the same Newcastle thermal coal spot price is around A\$257.69/tonne.
7. This data is available at <https://www.worldbank.org/en/research/commodity-markets>.

Discussions with vessel agents

8. In my Third Affidavit, I deposed (at [13]-[18]) to the terms of Vessel Agent Deeds which PNO has entered with vessel agents on behalf of all coal vessels calling at the Port. The Vessel Agent Deeds are substantively in the form of the template vessel agent deed published on PNO's website and annexed and marked "GS-2" to the affidavit of Ms Sainsbury affirmed 15 March 2021 in this proceeding (HB 358 to 375).
9. Clause 10 of the Vessel Agent Deeds (HB 364) provides for at least biannual meetings between PNO and each vessel agent counterparty to discuss matters including:
 - (a) measures that can be introduced to improve the efficiency of delivery of services by PNO to vessel agents;
 - (b) PNO's delivery of vessel services, including (as they relate to the delivery of such services) PNO's capital expenditure, proposed variations to PNO's fees and charges and the needs of vessel agents in respect of these services; and
 - (c) respective market insights of the parties, including volume forecasts and shipment destinations.
10. Since entering into the Vessel Agent Deeds in early 2020, PNO has met and consulted with vessel agent counterparties pursuant to clause 10. In my opinion, these meetings have been beneficial to PNO, insofar as they have allowed me and other representatives of PNO to strengthen PNO's relationships with vessel operators, and to understand the individual priorities and matters of concern for each agent counterparty.

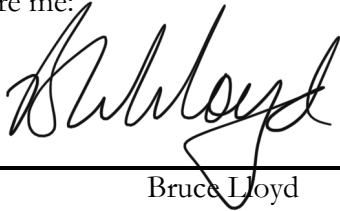




11. In these meetings, vessel agents have raised a range of issues, ranging from significant operational issues (such as matters relating to severe weather events and disruption to services at the Port), to particular requests of PNO (such as in one instance a request to use PNO's printer facilities at the Port).
12. In light of this positive experience meeting with vessel agents, my expectation is that even if PNO were to agree meet with vessel agents (or producers) collectively, PNO would still wish to organise one-on-one meetings with vessel agents (and producers, if they signed producer deeds) so that PNO continued to have an opportunity to discuss each agent's (and producer's) individual concerns.

AFFIRMED by the deponent
at Newcastle in New South Wales
on 10 October 2021

Before me:



Bruce Lloyd
NSW solicitor (21174)

Signature of deponent

