



**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: 6 May 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).
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 Directions.
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.



*[Handwritten signature]*

REGISTRAR  
Australian Competition Tribunal

## ANNEXURE A

1. The confidential version of the affidavit of Simon Byrnes affirmed 15 March 2021 (**Byrnes Affidavit**).
2. The confidential version of the affidavit of Gabriella Sainsbury affirmed 15 March 2021.
3. The report entitled *Scenario Development and Planning* prepared for PNO by Wood Mackenzie, dated January 2021.
4. The working sheets used to produce the graph at paragraph 22 of the Byrnes Affidavit.