

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: Interlocutory Application

File Number: ACT 1 of 2021

File Title: 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).

Registry: VICTORIA – AUSTRALIAN COMPETITION TRIBUNAL



REGISTRAR

Dated: 22/04/2021 9:15 AM

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



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

**APPLICATION FOR LEAVE TO INTERVENE IN A REVIEW BY
THE AUSTRALIAN COMPETITION TRIBUNAL**

1. Pursuant to paragraph 4 of the directions of Justice O'Bryan dated 8 April 2021, the Australian Competition and Consumer Commission (**Commission**) applies for leave to intervene in the application for review of the Minister's decision dated 16 February 2021 not to declare a service provided at the Port of Newcastle by Port of Newcastle Operations Pty Ltd, filed by the New South Wales Mineral Council (**NSWMC**).
2. This application for leave to intervene is made pursuant to section 109(2) of the *Competition and Consumer Act 2010* (Cth) (**CCA**), alternatively section 44K(5) of the CCA, or pursuant to the Australian Competition Tribunal's implied powers in respect of matters of procedure in proceedings before the Tribunal.
3. The Commission seeks leave to intervene on the basis that it has a significant interest in the determination to be made by the Tribunal. The issues raised by the application made by the NSWMC will likely require the Tribunal to consider the proper construction and application of the declaration criteria in section 44CA(1)(a) and (d) of the CCA. The Commission has significant experience, knowledge and expertise that would be likely to be of assistance to the Tribunal in

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considering these matters; and the resolution of these issues of construction will impact on the Commission's discharge of its statutory functions and the exercise of its statutory powers.

4. The Commission relies on the following in support of its application for leave to intervene:
 - 4.1 the affidavit of Sarah Maryjean Proudfoot, Executive General Manager, Infrastructure Regulation Division at the Commission, affirmed on 21 April 2021; and
 - 4.2 the Commission's outline of submissions in support of its application also dated 21 April 2021.
5. A copy of the orders sought by the Commission is attached as Annexure A to the Commission's outline of submissions in support of its application.
6. The Commission's address for service is:

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DATED: 21 April 2021

DLA PIPER AUSTRALIA
Solicitors for the Australian Competition
and Consumer Commission