



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

DIRECTIONS

TRIBUNAL: Justice O'Bryan (Deputy President)
DATE: 8 April 2021
WHERE MADE: Melbourne

THE TRIBUNAL DIRECTS THAT:

Section 44ZZOAAA(3)(c) information

1. The designated minister, the Commonwealth Treasurer Joshua Frydenberg, is to provide the Tribunal with a copy of all of the information that he took into account in connection with the making of the decision that is the subject of this application by 21 April 2021 (**Decision Information**).
2. The Tribunal is to provide a copy of the Decision Information to the National Competition Council (**NCC**) and to the external legal advisors to New South Wales Minerals Council (**NSWMC**) and the Port of Newcastle Operations Pty Ltd (**PNO**) as soon as practicable.
3. Any Decision Information that is marked confidential is to be dealt with as Confidential Material and is subject to the confidentiality regime in directions 18 to 26.

Third parties and applications to intervene

4. Any application for leave to intervene in this proceeding, and any material relied on in support of any application, be filed and served on or before Wednesday, 21 April 2021.

5. By Monday, 12 April 2021, the NCC is to give written notice of this application to all persons who made submissions to the NCC in connection with its recommendation to the designated Minister advising them of the terms of direction 4.
6. Any submissions responding to an application to intervene be filed and served (including on the applicant for intervention) on or before Wednesday, 28 April 2021.
7. The Tribunal will determine any application made under direction 4 on the papers, unless any person notifies the Tribunal by 4:00pm on Friday, 30 April 2021 that they require a hearing to resolve the application.

Service of documents

8. Documents that are to be served in this proceeding are to be served on NSWMC, PNO, the NCC and any person who has been given leave to intervene by the Tribunal.

Statements of Facts, Issues and Contentions

9. NSWMC is to file and serve a Statement of Facts, Issues and Contentions on or before Friday, 30 April 2021.
10. PNO is to file and serve a Statement of Facts, Issues and Contentions on or before Friday, 14 May 2021.

Hearing book

11. NSWMC is to serve a draft index for the Hearing Book listing all documents proposed to be relied upon at the hearing on or before Friday, 14 May 2021.
12. PNO and the NCC are each to serve a list of any additional documents to be included in the Hearing Book on or before Wednesday, 19 May 2021.
13. NSWMC shall file and serve a Hearing Book containing the documents referred to in directions 11 and 12 by 4.00pm on Monday, 24 May 2021 which is in electronic form and:
 - (a) is produced in a text-recognised PDF format;
 - (b) is paginated sequentially throughout;
 - (c) is divided into folders such that each folder comprises a single PDF file and the file name of each PDF file is the folder number; and
 - (d) each folder (being a PDF file) contains electronic bookmarks to each document in that folder.

Submissions

14. NSWMC shall file and serve an outline of submissions not exceeding 20 pages by 4.00pm on Wednesday, 26 May 2021.
15. PNO and any intervener shall file and serve an outline of submissions not exceeding 20 pages by 4.00pm on Wednesday, 9 June 2021.

National Competition Council

16. To assist the Tribunal in the review, the NCC shall file and serve an outline of submissions not exceeding 10 pages by 4.00pm on Wednesday, 16 June 2021 and may appear at the hearing in this matter to make submissions.

Hearing

17. This proceeding will be set down for hearing in Sydney at 10.15am on Tuesday, 22 June 2021 for 3 days.

Confidentiality regime

18. If any party files material in respect of which it claims confidentiality (**Confidential Material**), non-confidential versions must be served upon all parties as soon as practicable thereafter.
19. Disclosure of Confidential Material be restricted to:
 - (a) the NCC and its external legal advisers and engaged experts (and their direct staff);
 - (b) the external legal advisers and experts (and their direct staff) engaged by PNO; and
 - (c) the external legal advisers and experts (and their direct staff) engaged by NSWMC.
20. Other than the disclosure permitted by paragraph 19, the Confidential Material must not be disclosed to any other person or otherwise made public.
21. Without the leave of the Tribunal, the Confidential Material must not be used by any person to whom it has been disclosed other than for the purposes of this proceeding.
22. Any written submission made to the Tribunal, or other document provided to the Tribunal, that refers to or incorporates the Confidential Material must be marked to identify clearly the Confidential Material.

23. The Confidential Material 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).
24. Until further order of the Tribunal, the Confidential Material 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 19 of these directions.
25. Nothing in these directions imposes an obligation on the NCC 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 declaration before the NCC.
26. The parties have liberty to apply to vary directions 18 to 25 generally or in relation to specific documents or information.

General liberty to apply

27. NSWMC, PNO and any intervener have liberty to apply for further directions.



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

REGISTRAR

Australian Competition Tribunal