



## HIGH COURT OF AUSTRALIA

### NOTICE OF FILING

This document was filed electronically in the High Court of Australia on 30 Apr 2021 and has been accepted for filing under the *High Court Rules 2004*. Details of filing and important additional information are provided below.

#### Details of Filing

File Number: S33/2021  
File Title: Port of Newcastle Operations Pty Limited v. Glencore Coal As  
Registry: Sydney  
Document filed: Form 27B - Appellant's chronology  
Filing party: Appellant  
Date filed: 30 Apr 2021

#### Important Information

This Notice has been inserted as the cover page of the document which has been accepted for filing electronically. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties and whenever the document is reproduced for use by the Court.

IN THE HIGH COURT OF AUSTRALIA  
SYDNEY REGISTRY

BETWEEN: PORT OF NEWCASTLE OPERATIONS PTY LIMITED ACN 165 332 990  
Appellant

and

GLENCORE COAL ASSETS AUSTRALIA PTY LTD ACN 163 821 298  
First Respondent

10

AUSTRALIAN COMPETITION TRIBUNAL  
Second Respondent

AUSTRALIAN COMPETITION & CONSUMER COMMISSION  
Third Respondent

**APPELLANT'S CHRONOLOGY**

20

**Part I: Certification**

The Appellant certifies that this chronology is in a form suitable for publication on the internet.

**Part II: Chronology**

30

Date	Event	CAB ref
4 November 2016	First Respondent notifies the Third Respondent (the <b>ACCC</b> ) under s 44S(1) of the <i>Competition and Consumer Act 2010</i> (Cth) ( <b>CCA</b> ) of an access dispute ( <b>Dispute</b> ) concerning access to the following declared service at the Port of Newcastle ( <b>Port</b> ):  <i>The provision of the right to access and use the shipping channels (including berths next to</i>	14-15 [13], [15]

Date	Event	CAB ref
	<i>wharves as part of the channels) at the Port of Newcastle (Port), by virtue of which vessels may enter a Port precinct and load and unload at relevant terminals located within the Port precinct and then depart the Port precinct</i>  (the <b>Service</b> ).	
10  20 July 2018	ACCC provides its draft determination to the Appellant and the First Respondent under s 44V(4) of the CCA, together with a draft statement of reasons.	16 [22]
20  18 September 2018	ACCC makes its final determination in respect of the Dispute under s 44V of the CCA ( <b>Final Determination</b> ). In its Final Determination, the ACCC determines:  a) a navigation service charge ( <b>NSC</b> ) of \$0.6075 per gross tonne;  b) a wharfage charge ( <b>WhC</b> ) of \$0.0746 per revenue tonne;  c) that the scope of the determination includes the terms and conditions of access:  i. where the First Respondent, either directly or by agent, charters a vessel to enter the Port precinct and load First Respondent coal; and  ii. where the First Respondent makes a representation to the Appellant of the kind referred to in s 48(4)(b) of the <i>Ports and Maritime Administration Act 1995 (PMA Act)</i> that it has the functions of the owner of a vessel, or accepts the	16-17 [23]-[25]

Date	Event	CAB ref
10	<p>obligation to exercise those functions, in order to enter the Port precinct and load First Respondent coal;</p> <p>d) the Final Determination did not apply to:</p> <ul style="list-style-type: none"> <li>i. the terms and conditions of access to apply in respect of vessels carrying coal that have not been chartered by the First Respondent or in respect of which the First Respondent has not made a representation of the kind referred to in s 48(4)(b) of the PMA Act;</li> <li>ii. terms and conditions of access for vessels other than those calling at the coal terminals at the Port; and</li> <li>iii. any charges imposed by the Appellant other than the NSC and the WhC.</li> </ul>	
20	<p>The Appellant and the First Respondent respectively apply to the Second Respondent (the <b>Tribunal</b>) for review of the ACCC's Final Determination under s 44ZP(1) of the CCA.</p>	12 [1]-[3]
	<p>Hearing before the Tribunal (Middleton J, Mr R F Shogren and Dr D R Abraham).</p>	
	<p>The declaration of the Service is deemed to be revoked under s 44J(7) of the CCA, as the designated Minister does not publish a decision on the recommendation of the National Competition Council to revoke the declaration of the Service under s 44J(1) of the CCA.</p>	197 [87]
30	<p>The Tribunal makes its determination in respect of the Appellant's and First Respondent's respective</p>	8-9

Date	Event	CAB ref
<p>10</p> <p>20</p>	<p>applications (<b>Tribunal Determination</b>). The Tribunal Determination varied the ACCC's Final Determination by providing as follows:</p> <ul style="list-style-type: none"> <li>a) that the scope of the determination is confined to the terms and conditions of access where the First Respondent owns or, either directly or by agent, charters a vessel that enters the Port precinct and loads First Respondent coal;</li> <li>b) for the avoidance of doubt, the determination does not apply to:               <ul style="list-style-type: none"> <li>i. the terms and conditions of access to apply in respect of vessels carrying coal that are not owned, or have not been chartered, by the First Respondent;</li> <li>ii. the terms and conditions of access for vessels other than those calling at the coal terminals at the Port;</li> <li>iii. any charges imposed by the Appellant other than the NSC and the WhC; and</li> </ul> </li> <li>c) the NSC payable by the First Respondent to the Appellant in accordance with the determination is \$1.0058 as at 1 January 2018.</li> </ul>	
<p>27 November 2019</p>	<p>First Respondent applies to the Federal Court for review of the Tribunal Determination pursuant to s 44ZR of the CCA: proceeding NSD 1986 of 2019.</p>	<p>160-166</p>
<p>27 November 2019</p>	<p>Third Respondent applies to the Federal Court for review of the Tribunal Determination pursuant to s 5 of the <i>Administrative Decisions (Judicial Review) Act 1977</i> (Cth), s 39B of the <i>Judiciary Act 1903</i> (Cth) and the</p>	

30

10

20

Date	Event	CAB ref
	implied jurisdiction of the Federal Court, and seeks declaratory relief under s 163A(3) of the CCA: proceeding VID 1285 of 2019.	
1-3 July 2020	Hearing before the Full Court of the Federal Court of Australia (Allsop CJ, Beach and Colvin JJ).	
24 August 2020	Full Court delivers judgment setting aside the determination of the Tribunal made on 30 October 2019 in proceeding NSD 1986 of 2019, and dismissing the Third Respondent's application in proceeding VID 1285 of 2019.	174-259 260-262
1 September 2020	Full Court makes orders in proceeding NSD 1986 of 2019 that the Appellant pay the First Respondent's costs of and incidental to the application.	263-264
16 September 2020	Full Court makes orders in proceeding VID 1285 of 2019 that there be no order as to costs of the application.	
25 September 2020	Application for special leave filed by the Appellant in the High Court of Australia.	
30 September 2020	First Respondent filed notice of appearance in the special leave application.	
1 October 2020	Second Respondent filed submitting appearance in the special leave application.	
8 October 2020	Third Respondent filed submitting appearance in the special leave application.	
12 March 2021	Special leave to appeal granted by Kiefel CJ and Keane J.	304-306
26 March 2021	Notice of Appeal filed in the High Court of Australia.	307-310

<b>Date</b>	<b>Event</b>	<b>CAB ref</b>
31 March 2021	First Respondent filed notice of appearance in this appeal.	
1 April 2021	Third Respondent filed notice of appearance in this appeal.	

Dated: 30 April 2021



.....

**Cameron Moore SC**

+61 2 8239 0222

[cameron.moore@banco.net.au](mailto:cameron.moore@banco.net.au)

.....

**Declan Roche**

+61 2 8239 0662

[declan.roche@banco.net.au](mailto:declan.roche@banco.net.au)