

**APPLICATION BY GLENCORE COAL PTY LTD FOR DECLARATION OF THE SHIPPING CHANNEL AT THE  
PORT OF NEWCASTLE  
PORTS AUSTRALIA SUBMISSION**

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Ports Australia welcomes the opportunity to make a submission addressing the application made to the National Competition Council by Glencore Coal Pty Ltd, that it issue a recommendation supporting the declaration of specified services provided by the Port of Newcastle in accordance with the provisions of Part 111A of the *Competition and Consumer Act 2010*.

Glencore's application indicates that the services it seeks to have covered by the application are those provided by the shipping channel to vessels utilising the *"terminals located within the Port precinct"*.

**Ports Australia - Representation**

Ports Australia is the peak industry body representing all port authorities and corporations, both publicly and privately owned, at the national level. Ports Australia is a constituted company limited by guarantee with a Board of Directors, comprising the CEOs of 10 member ports. Our website is at [www.portsaustralia.com.au](http://www.portsaustralia.com.au)

**Our General Position**

The Members of Ports Australia advocate that the most effective and efficient means of determining the terms of access to port infrastructure services is through commercial negotiation supported by light handed regulation. In this respect the Harper Competition Review notes that *"Ports throughout Australia are subject to various regulatory frameworks established in the State or Territory in which the port is located"*

Ports Australia strongly opposes the application on the basis that:

- The application fails to provide a rigorous case supporting key criteria necessary to satisfying the Minister that a declaration is warranted. In particular the contention contained in the application that access would promote a material increase in competition is tenuous at best; and
- A declaration would feasibly generate substantial increase in costs and act contrary to the public interest both in its potential to add layers of costs and to produce sub optimum outcomes.

The application essentially relies on anecdote. For example the assertion that prospects for long term financing and investment in coal ventures is dependent on channel charges given the nature and dynamics of the international coal commodity market, to us, is extraordinary. Likewise the comment that the *most efficient and effective way to provide commercial certainty for coal producers ....and to facilitate investment in their coal mining projects is through a declaration of the service....'* is not established by the application and is disputed by this organisation.

In addition much of the narrative is demonstrably immaterial to supporting a case for declaration. If anything the application describes a functional, competitive and well-coordinated coal logistics network.

## **Some Relevant Settings**

The Port of Newcastle notified the market that it was adjusting its channel service fees in an open and transparent process supported by the provisions of the Ports and Marine Administration Act requiring ministerial notification and publication and with potential oversight by the Independent Pricing and Regulatory Tribunal (IPART)

The Port has described that it required a variation to reflect a commercial return on this important asset and its upkeep (it requires constant maintenance dredging to keep the channel and berth pockets at safe and specified depths) and even so, over a 20 year period, and until January 2015 its charges over a 20 year period had declined in real terms. Its public documentation indicates that it constitutes a one off adjustment. Furthermore the port has focussed on driving productivity improvements out of its channel, as a key component of its supply chain – for example the introduction of a second towage operator has introduced a competitive element not previously present. Further, coal producers have access to a highly competitive shipping market.

It is also our observation that while coal production has currently and understandably levelled out throughput at Newcastle has increased from about 100 million tonnes in 2005 to about 160 million tonnes in 2015 and according to forecast will probably continue to experience a medium term growth rate of approximately 3 percent. Plans for new expansions are substantial and their timing will be dependent on a global recovery in the price of thermal coal which is typically subject to cyclical highs and lows. There is very little to substantiate a link between future capacity expansion and channel fees.

## **The Competition Test**

Our case is firstly that the application fails to establish that a declaration will improve competition in the markets described in the application.

The application erroneously refers to the channel at Newcastle as a bottleneck which is well understood within the industry to mean a point in the supply chain where capacity constraints are evident and by implication capacity needs to be rationed or say or spread through the application of differential price signals and so on. The channel at Newcastle is not subject to capacity constraints and is not predicted to be so into the foreseeable future.

Ports Australia frankly cannot see that the NCC could objectively conclude, given all the other dynamics of the industry, that the price of channel services, representing 1 percent of FOB cost, would have a “material” impact on competition or on plans for further capacity development. Parties that we have consulted as part of this process, and expert in the coal industry and the decision making process around production and new capacity, reliably inform us that port charges do not figure, or are otherwise regarded as insignificant, in making judgements about viability of new coal projects.

## **The Public Interest Test**

Our case is secondly that the application fails to establish that a declaration would not be contrary to the public interest.

In this respect we note that both the Hilmer Review and the Productivity Commission have issued cautioning notes about the potential costs to the economy of “intrusive regulation of infrastructure assets” the application by Glencore has all the hall marks of a price dispute that does not, in our view, warrant, a heavy handed approach constituting an expensive overlay of regulation which, in fact, may not necessarily produce outcomes that are efficient. In this respect the case of the

declaration of the Dalrymple Coal Terminal, which generated very substantial disruption and uncertainty, is highly instructive.

We make the following further observations:

1. The least active approach or a light handed approach to price regulation minimises the burden of regulation, whilst still providing an avenue for government to step in if necessary.
2. This approach also encourages the free hand of the market to do its work and is most conducive to optimisation of system flexibly, efficiency, and maximisation of capacity, responding to unplanned events, and trialling or implementing new technologies and operating practices that might improve system efficiency.
3. Regulation of access could interfere with port efficiencies, cause delays, impediments and other disincentives to improvements and expansions of system capacity.
4. Regulation of access could create an unexpected burden / barrier for port customers. Ports are dynamic environments, subject to changing external influences such as swells, siltation and customers' booking alterations. In a commercial environment, unconstrained port managers already have sufficient commercial motivation to maximise vessel access for customers, as increased port activity provides a greater commercial return.
5. Regulation of port access could limit the growth of fledgling trades. Dominant or majority commodities within a port could win the upper hand in access arrangements, to the detriment of smaller, fledgling trades. This could limit the growth of new trades, which could then have a flow on impact for the community.
6. Regulation could discourage investment in port assets, which could result in trade inefficiencies and stifle growth. Commercial investors require port managers to deliver a reasonable return on the asset.
7. If regulation stifles commercial pricing, port managers may focus on optimisation of costs to the detriment of service provision.
8. Regulation could lead to an increase in prices if a regulator ascertained that a port's pricing was below market rates.

Ports Australia would be pleased to expand on these comments as appropriate.

David Anderson  
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