



Federal Court of Australia

District Registry: New South Wales

Division: General

No: NSD2289/2018

**AUSTRALIAN COMPETITION & CONSUMER COMMISSION**

Applicant

**NSW PORTS OPERATIONS HOLD CO PTY LTD ACN 163 262 351** and others named  
in the schedule

Respondent

**ORDER**

**JUDGE:** JUSTICE JAGOT

**DATE OF ORDER:** 12 December 2019

**WHERE MADE:** Sydney

**THE COURT ORDERS THAT:**

**Discovery**

1. On or before 28 January 2020, each party file and serve any application for discovery pursuant to rr 20.13 or 20.23 of the *Federal Court Rules 2011* (Cth).
2. On or before 3 February 2020, the parties confer about the discovery applications and seek to agree discovery categories to be notified the Court on that date.
3. If there is no agreement or only partial agreement about discovery categories, the applications for discovery be listed for hearing on a date to be fixed.
4. On or before 2 March 2020:
  - (a) the Applicant identify and produce to all parties documents in response to the request made by the First to Third Respondents on 26 August 2019 pursuant to s 157(1) of the *Competition and Consumer Act 2010* (Cth); and
  - (b) the parties give discovery in respect of any agreed or partially agreed categories of documents.

**Mediation**

5. The parties to agree a mediator by no later than 31 January 2020.
6. The parties to attend a conference with the mediator by no later than 3 April 2020.



### **Lay evidence**

7. The principal proceeding and the cross-claim be heard and determined together and evidence in the principal proceeding be evidence in the cross-claim and vice versa.
8. On or before 27 March 2020, the Applicant file and serve any lay evidence in chief (including any document at that time proposed to be tendered) upon which it intends to rely at trial.
9. On or before 1 May 2020, the First to Third Respondents/Cross-claimants file and serve any lay evidence in chief (including any document at that time proposed to be tendered) upon which they intend to rely at trial.
10. On or before 29 May 2020, the Fourth Respondent and Cross-respondents file and serve any lay evidence in chief (including any document at that time proposed to be tendered) upon which they intend to rely at trial.
11. On or before 12 June 2020, the Applicant file and serve any lay evidence in reply to the Respondents (including any document at that time proposed to be tendered) upon which it intends to rely at trial.
12. On or before 24 June 2020, the Cross-claimants file and serve any evidence in reply to the Cross-respondents' evidence (including any document at that time proposed to be tendered) upon which it intends to rely at trial.

### **Expert evidence**

13. On or before 30 March 2020, the Applicant is to notify the other parties of the topics and fields of expertise on which they intend to call expert evidence and the identity of the experts.
14. On or before 1 July 2020, the Applicant file and serve any expert evidence upon which it intends to rely at trial.
15. On or before 29 July 2020, the First to Third Respondents/Cross-claimants file and serve any expert evidence upon which they intend to rely at trial.
16. On or before 26 August 2020, the Fourth Respondent and Cross-respondents file and serve any expert evidence upon which they intend to rely at trial.



17. On or before 9 September 2020, the experts are to confer and provide one or more joint reports, topic by topic as appropriate, identifying areas of agreement and disagreement between them.

#### **Statement of agreed facts**

18. On or before 3 August 2020, the Applicant serve on the Respondents and the Cross-Respondents, a proposed schedule identifying the issues of fact that are agreed between the parties in the proceeding.
19. On or before 17 August 2020, each of the Respondents and the Cross-Respondents, serve on the parties its response to the Applicant's proposed schedule above identifying those aspects of the proposed schedule with which it agrees, and those aspects with which it does not agree.
20. On or before 24 August 2020, the Applicant serve on the Respondents and the Cross-Respondents a final form of the schedule, amended to include any changes required as a result of the Respondents' and Cross-Respondents' responses.
21. On or before 31 August 2020, the Applicant file and serve a final version of any agreed schedule.

#### **Court book**

22. On or before 11 September 2020, the Applicant prepare and provide to the Respondents and Cross-respondents a draft court book index containing the following documents:
  - (a) the pleadings;
  - (b) affidavits together with any annexures; and
  - (c) all other documents, in date order, which any party expects to tender in evidence in chief or to be referred to in cross-examination, including any document proposed to be tendered that was not filed and served with a party's evidence.
23. On or before 21 September 2020, the Respondents and Cross-respondents provide their comments on the draft court book index to the Applicant.
24. On or before 28 September 2020, the Applicant provide the Respondents, the Cross-respondents and the Court a court book.



### **Objections to evidence**

25. On or before 14 September 2020, the parties exchange schedules of objections to evidence, which are to identify the evidence objected to, the basis for the objection, and provide columns for the party adducing the evidence to respond and the objecting party to reply by not pressing an objection.
26. On or before 28 September 2020, the parties provide any responses to any objections to evidence as part of the schedule provided in Order 24.
27. On or before 6 October 2020, the parties file and serve the schedules of objection including their replies indicating whether each objection is pressed or not.

### **Trial**

28. The parties are to confer in relation to the allocation of hearing time.

### **Opening submissions**

29. On or before 21 September 2020, the Applicant file and serve a written outline of its opening submissions.
30. On or before 28 September 2020, the First to Third Respondents/Cross-claimants file and serve written outlines of their opening submissions.
31. On or before 6 October 2020, the Fourth Respondent and Cross-respondents file and serve written outlines of their opening submissions.

### **Authorities**

32. On or before 6 October 2020, each party file and serve a list of authorities.

### **Other matters**

33. The matter be listed for a case management hearing at 9.30am on 10 February 2020 to hear the Interlocutory Application of the First to Third Cross-respondents filed on 15 October 2019 and the Interlocutory Application of the First to Third Respondents and Cross-claimants filed on 11 December 2019.
34. Costs reserved.
35. The parties have liberty to apply.



Date that entry is stamped: 12 December 2019

*Sia Lagos*  
Registrar



## Schedule

No: NSD2289/2018

Federal Court of Australia  
District Registry: New South Wales  
Division: General

Interested Person	PORT OF NEWCASTLE INVESTMENTS PTY LIMITED
Second Respondent	PORT BOTANY OPERATIONS PTY LTD ACN 161 204 342
Third Respondent	PORT KEMBLA OPERATIONS PTY LTD ACN 161 246 582
Fourth Respondent	STATE OF NSW
Fourth Respondent	STATE OF NSW

### **CROSS CLAIM**

Cross-Claimant	NSW PORTS OPERATIONS HOLD CO PTY LTD ACN 163 262 351
Second Cross-Claimant	PORT BOTANY OPERATIONS PTY LTD ACN 161 204 342
Third Cross-Claimant	PORT KEMBLA OPERATIONS PTY LTD ACN 161 246 582
Cross Respondent	PORT OF NEWCASTLE OPERATIONS PTY LIMITED ACN 165 332 990
Second Cross Respondent	PORT OF NEWCASTLE INVESTMENTS (PROPERTY) PTY LIMITED ACN 169 286 024
Third Cross Respondent	PORT OF NEWCASTLE INVESTMENTS PTY LIMITED ACN 169 132 441
Cross Respondent	STATE OF NSW