Land and Environment Court
of New South Wales

CITATION : **Caroona Coal Action Group Inc v Coal Mines Australia Pty Limited and Minister for Mineral Resources (No 4) [2010] NSWLEC 91**

PARTIES :

APPLICANT
Caroona Coal Action Group Inc

FIRST RESPONDENT
Coal Mines Australia Pty Limited

SECOND RESPONDENT
Minister for Mineral Resources

FILE NUMBER(S) : 80003 of 2009

CORAM: Preston CJ

KEY ISSUES: PRACTICE AND PROCEDURE :- Disclosure and use of discovered document admitted into evi

- document confidential - undertaking given restricting inspection, disclosure and use to applicant's legal advisers only - proceedings concluded - applicant's legal advisers give notice of intention to disclose document to applicant and public - confidentiality orders sought restric such disclosure and public inspection of document on court file - confidentiality orders made

CASES CITED:

Ansell Rubber v Allied Rubber Industries [1967] VR 37
British American Tobacco Australia Services Ltd v Cowell [2003] VSCA 43; (2003) 8 VR 571
Caroona Coal Action Group Inc v Coal Mines Australia Pty Limited and Minister for Mineral Resources (No 2) [2010] NSWLEC 1; (2010) 172 LGERA 25
Caroona Coal Action Group Inc v Coal Mines Australia Pty Limited and Minister for Mineral Resources (No 3) [2010] NSWLEC 59
Faccenda Chicken v Fowler (1985) 6 IPR 155
Lansing Linde v Kerr (1990) 21 IPR 529
R v Waterfield [1975] 1 WLR 711
Seale Australia v Public Interest Advocacy Centre (1992) 36 FCR 111
The Herald and Weekly Times Ltd v The Magistrates' Court of Victoria [1999] 3 VR 231
The Herald and Weekly Times Ltd v The Magistrates' Court of Victoria [2000] 2 VR 346

DATES OF HEARING: 1 March 2010, 26 March 2010

DATE OF JUDGMENT: 10 June 2010

LEGAL REPRESENTA APPLICANT

TIVES: Mr B R McClintock SC with him Ms J S Gleeson

SOLICITORS
Environmental Defender's Office

FIRST RESPONDENT Dr J E Griffiths with him Mr R C Beasley SOLICITORS Minter Ellison

SECOND RESPONDENT No appearance

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JUDGMENT:

**THE LAND AND
ENVIRONMENT COURT
OF NEW SOUTH WALES**

PRESTON CJ

10 June 2010

80003 of 2009

CAROONA COAL ACTION GROUP INC V COAL MINES AUSTRALIA PTY LTD AND MINISTER FOR MINERAL RESOURCES (NO 4)

JUDGMENT

Nature of application and conclusion

1 On 6 January 2010, I dismissed the proceedings brought by the applicant, Caroona Coal Action Group Inc, challenging the validity of certain mining authorities issued by the Minster for Mineral Resources ("the Minister") to Coal Mines Australia Pty Limited ("CMA"): *Caroona Coal Action Group Inc v Coal Mines Australia Pty Ltd v Minister for Mineral Resources (No 2)* [2010] NSWLEC 1; (2010) 172 LGERA 25. On 29 April 2010, I ordered the unsuccessful applicant to pay the costs of the Minister and CMA: *Caroona Coal Action Group Inc v Coal Mine Australia Pty Ltd and Minster for Mineral Resources (No 3)* [2010] NSWLEC 59. The litigation in this Court is therefore concluded.

2 Nevertheless, in response to the applicant's legal advisers giving notice of their intention to disclose to members the applicant, which is an incorporated association, a confidential document received into evidence at the hearing o the proceedings as part of a tender bundle of documents, CMA seeks, by what ultimately became the Third Further Amended Notice of Motion, orders restricting disclosure and use of parts of that document. The document is an expression of interest submitted by BHP Billiton (CMA is a wholly owned subsidiary of BHP Billiton) to the

NSW Government entitled "Caroona Coal Exploration Area December 2005" ("Caroona EOI"). CMA seeks an order restricting access to specified statements and data in the Caroona EOI to the applicant's legal advisers onl In practice, this can be achieved by producing a redacted version of the Caroona EOI, the redactions being

the specified statements and data (the Redacted EOI). Unrestricted access would be permitted to the Redacted EOI but only the applicant's legal advisers would have access to the unredacted Caroona EOI.

3 The second respondent, the Minister, did not wish to be heard on CMA's application.

4 The applicant, however, opposes CMA's application. The applicant's opposition is not because it would suffer any forensic disadvantage (which it could not because the litigation is concluded) but rather on the broader princip of open justice. The applicant submits that the public interest in open justice means that the whole document, and not just a redacted version, should be able to be accessed by any member of the public who wishes to inspect documents on the Court file.

5 I have determined that CMA's application should be upheld and that access by persons other than the applicant's advisers should be restricted to only the Redacted EOI, and not the Caroona EOI. Costs should follow the event so that the applicant which opposed CMA's application should pay the costs of CMA in respect of the application.

The Caroona EOI came into existence as a confidential document

6 The Caroona EOI came into existence in response to an invitation on 1 August 2005 by the Minister, for express of interest for the awarding of an exploration licence over the Caroona coal exploration area. Four companies subn an expression of interest, including BHP Billiton in December 2005.

7 BHP Billiton's expression of interest was submitted on a confidential basis. The Caroona EOI stated at page 15, vol 1 that:

- "These Expression of Interest, The Concept and the Appendices contain trade secrets and comm which would have significant adverse effects on the affairs of members of the BHP Billiton Consequently, the information is provided on the basis that it remains confidential and BHI considers these Expression of Interest, The Concept and Appendices as a document that wo

be exempt from disclosure under the Freedom of Information Act 1989 (NSW)".

8 Mr Mullard, the Executive Director, Mineral Resources in the NSW Department of Industry and Investment, gave affidavit evidence that the expressions of interest were received by the Department on a confidential basis. Mr Mullard said:

"The following measures were adopted to ensure that the EOIs received were kept confidential:

(a) Only the name of the companies that submitted EOIs was made public. This was consi With the information contained in the Department's information package, that 'Only the name of the company/companies or consortium and any company equity involved will be made public':Tender Bundle, Tab 32, p. 128, para 6.3.

(b) Following the public opening and declaration of the four EOIs received, the EOIs were stored in a secure area. On 12 December 2005 Lindsay Gilligan, Acting Deputy Director-General, Mineral Resources, wrote to Mr Fennell setting out the security arrangements for the receipt and storage of the EOIs received. A true copy of that lette is at Tab 35, p. 617 of the Tender Bundle.

(c) Each member of the evaluation team signed a confidentiality undertaking, stating 'I wi not disclose confidential information in relation to this Expression of Interest'. A true c of the confidentiality undertakings by the four members of the evaluation team and the independent probity audit is at Tab 35, p. 619 to 623 of the Tender Bundle.

(d) On 18 January 2006 the evaluation team finalised its report 'Caroona coal exploration –evaluation of expressions of interest'. The report is marked 'confidential'. A true cop of this report, including the appendices and attachments, is at Tab 35, p. 588 to 623.

(e) Garth Holmes, Manager Minerals Development, Mineral Resources was one of the mem of the evaluation team. Mr Holmes prepared a brief to the Minister recommending that the f respondent be announced as the successful applicant for the proposed exploration licence ov the Caroona Coal area. The brief describes the evaluation team's report compiling informati extracted from the report and a copy of the executive summary of the first respondent's EOI 'confidential'. A true copy of this Ministerial briefing is at Tab 35, p. 563 to 567 of the Tend Bundle."

9 The Minister renewed Coal Authorisation A216 on 22 February 2006 and subsequently partially transferred A21 to CMA on 12 April 2006 creating Exploration Licence EL6505.

Applicant's solicitors give undertakings preventing inspection, disclosure and use of the Caroona EOI by applicant

10 On 7 July 2009, the applicant commenced the proceedings by summons challenging the renewal and partial tra of the mining authorities.

11 On 3 August 2009, I directed the Minister to provide discovery of documents relating to the mining authorities by 17 August 2009 and inspection of discovered documents to take place by 24 August 2009.

12 On 11 August 2009, CMA's solicitors wrote to the Minister's solicitors requesting that certain documents be discovered in accordance with the Court's directions. The Caroona EOI fell within the categories of documents referred to in CMA's request.

13 On 13 August 2009, the Minister's solicitors wrote to CMA's solicitors advising that the Caroona EOI would b amongst the documents the Minister would be discovering.

14 On 17 August 2009, CMA's solicitors wrote to the applicant's solicitors seeking an undertaking that inspection of the Caroona EOI which was to be discovered by the Minister would be limited to the applicant's legal advisers and that the applicant's legal advisers would not disclose any of the information contained in the Caroona EOI to a other persons including the applicant or any other individual member of the applicant. The basis for CMA seeking the undertakings stated in the letter was that the Caroona EOI was provided to the Department of Primary Industri by BHP Billiton on a confidential basis. The statement of confidentiality in the Caroona EOI earlier quoted was se in the letter. The letter also explained why the statements and data in the Caroona EOI were confidential.

15 On 19 August 2009, the applicant's solicitors wrote to CMA's solicitors and provided an undertaking limiting inspection to the applicant's legal advisers and that the applicant's legal advisers would not disclose the contents of the Caroona EOI to other persons, including the applicant. The applicant's solicitors said:

> "I confirm that the applicant has agreed to the undertakings sought in your letter dated 17 August 2009, specifically that only the applicant's legal advisers will inspect the expression of interest lodged by BHP Billiton and would not disclose the contents of the EOI to other perso including the applicant. I note that this undertaking is subject to the proviso that we are satisfied the documents are genuinely of a nature that ought be the subject of an undertaking as to confidentiality. Obviously, we reserve our right to seek to tender these documents in the Court proceedings in the event that they are relevant to the matters in dispute in the proceedings."

16 On the same day, 19 August 2009, CMA's solicitors responded to the applicant's solicitors requesting that CM solicitors be given sufficient time to approach this Court if the applicant's solicitors decided that all or part of the Caroona EOI was not commercial in confidence/confidential.

17 The applicant's solicitors promptly responded agreeing to give CMA's solicitors sufficient notice to approach the Court in the event that they decided that anything in the Caroona EOI was not properly commercial in confidence/confidential.

18 The hearing of the proceedings took place on 26 and 27 October 2009. The Caroona EOI was included as one of the documents in a tender bundle of documents. The whole of the Tender Bundle was received into evidence. No application was made under Pt 21, r 21.7 of the Uniform Civil Procedure Rules 2005 ("UCPR") restricting disclosure or use of the Caroona EOI which was included within the Tender Bundle.

19 I reserved judgment at the conclusion of the hearing on 27 October 2009.

Applicant's solicitors give notice of intention to allow applicant to inspect, disclose and use the Caroona EOI

20 On 6 November 2009, the applicant's solicitors wrote to CMA's solicitors advising of their intention to make the Caroona EOI available to the applicant within 7 days of the letter unless CMA's solicitors objected beforehand The applicant's solicitors stated they intended doing so on two bases.

21 First, they noted that the Caroona EOI was part of the joint tender bundle which was admitted into evidence in court without objection. Neither the Minister nor CMA sought any direction from the Court that access to the Caroona EOI be limited in any way, including that it be dealt with as commercial in confidence. The applicant's solicitors therefore asserted that the restrictions that ordinarily apply to use of discovered documents no longer applied to the Caroona EOI.

22 Secondly, the applicant's solicitors referred to CMA's solicitors' letter of 17 August 2009 and their subsequent correspondence in which the applicant's solicitors undertook not to disclose the Caroona EOI to the applicant or an other person. The applicant's solicitors referred to the caveat that they had placed on their undertakings that if they formed the view that the Caroona EOI could not properly be described as commercial in confidence, they would give notice before making the document available to the applicant.

CMA applies for confidentiality orders

23 In response to the applicant's solicitors' letter of 6 November 2009, CMA filed its notice of motion seeking an order under Pt 21 r 21.7 of the UCPR restricting disclosure and use of the Caroona EOI. That notice of motion was listed for hearing before a judge on 15 December 2009, however, by consent the matter of the notice of motion wa adjourned to be heard before me on a later date. Also, by consent, the Court made interim orders restricting access to the Caroona EOI and other documents relating to the expressions of interest in the Tender Bundle.

24 On 6 January 2010, I delivered judgment in the substantive proceedings, dismissing the proceedings and reserv the question of costs.

25 On 1 March 2010, I heard CMA's notice of motion seeking orders under Pt 21 r 21.7 of the UCPR restricting the disclosure and use of the Caroona EOI, together with the applications of CMA and the Minister for orders for c I reserved judgment on the applications for costs, however, I adjourned CMA's application for restrictions on disc and use of the Caroona EOI for further hearing on 26 March 2010. The hearing of that application concluded on 26 March 2010 and I reserved judgment.

26 On 29 April 2010, I delivered judgment on CMA's and the Minister's application for costs.

Applicant opposes confidentiality orders

27 At the hearing of CMA's application for an order restricting disclosure and use of the Caroona EOI, the applica solicitors no longer sought to be released from their express undertakings given to CMA's solicitors on 19 August that only the applicant's legal advisers could have access to the Caroona EOI and that the applicant's legal adviser would not disclose the contents of the Caroona EOI to other persons, including the applicant. The applicant's solic also did not seek to be released from the implied undertaking not to use discovered documents, which included the

Caroona EOI, except for the purposes of the proceedings. As the applicant's counsel fairly conceded at the hearing of CMA's application for orders restricting disclosure and use of the Caroona EOI, there was no forensic need for the applicant's solicitors to be released from the express or implied undertakings because the proceedings were concluded when judgment was delivered.

28 Nevertheless, the applicant continued to oppose CMA's application for orders restricting disclosure and use of of the Caroona EOI. Although there was no benefit to the applicant in opposing CMA's application, the applicant submits that it was in the public interest that members of the public should be able to have access to the Caroona E on the Court file. The public interest was the principle of open justice.

29 The applicant submits that:

- "(a) CMAL bears the onus of demonstrating the confidentiality of the documents: *Idoport Pty L National Australia Bank Ltd* [2001] NSWSC 1024 at [16]. Convincing evidence must be advanced to sustain such a claim: *Idoport* at [19].
  (b) If the documents are demonstrated to be confidential, CMAL then bears the onus of demonstrating that the confidentiality should continue to be protected by orders of the kind sought: *Idoport* at [16].
  (c) An order prohibiting the publication of evidence is only valid if it is 'really necessary to the proper administration of justice in proceedings' before the court. Such an order must 'do more than is necessary to achieve the due administration of justice': *John Fairfax & Sons Lt Police Tribunal of New South Wales* (1986) 5 NSWLR 465 at 476-477 per McHugh JA.
  (d) The principle of open justice is 'one of the most fundamental aspects of the system of ju in Australia': *John Fairfax Publications Pty Ltd v Attorney General (NSW)* (2000) 181 ALR at 703. 'It is of obvious concern that such a paramount principle as the requirement of open justice should not be whittled away on a case by case basis according to individual judges'

subjective views of the merits or demerits of the claims of privacy of individual litigants': *J v L & A Services Pty Ltd (No 2)* [1995] 2 Qd R 10 at 45 per Fitzgerald P and Lee J."

CMA's submissions in support of confidentiality

30 CMA submits that it has demonstrated the confidentiality of the Caroona EOI and in particular those parts in re of which CMA now seeks an order restricting disclosure to and use by any person other than the applicant's legal advisers. CMA submits that the Caroona EOI was provided to the Minister on the basis that its contents were confidential and contained trade secrets and that no part of the Caroona EOI would be disclosed to the public. This is the manner in which the Minister treated the Caroona EOI. CMA submits that the confidentiality of the Ca EOI is clear from three matters, set out in CMA's outline of submissions filed 15 December 2009:

- "*First*, almost all of the information in the EOI is secret, in the sense that it is not public knowle The EOI contains sections and expert reports dealing with matters such as conceptual mine indicative exploration programs, projections and estimates regarding economic benefits and feasibility, possible strategies in relation to the use of infrastructure, and a variety of other matters. None of this information has been released to the public. Even internally CMAL an BHP limited dissemination of the EOI, and required consultants to sign confidentiality agreements: Mr Golding's affidavit at [16]-[17].

- *Secondly*, as a whole, the EOI has been produced by a method created by employees of CMAL BHP, and has been drafted and structured in accordance with that method and in accordance the evaluation criteria set out by the Minister in the EOI information package. The EOI is th product of years of experience in responding to tenders and processes such as an expression interest process. The precise way in which BHP/CMAL has dealt with the evaluation criteri in order to ultimately be the successful tenderer, is something that CMAL/BHP wishes to pr The way in which EOI is organised, the level of detail and manner of addressing each evalu

criteria, and the decisions made to include other pertinent information for the decision make are all matters that go into making the EOI a coherent and compelling document such as to r in CMAL being the successful applicant. Even matters of more minor detail like styling and presentation have value, and are not matters which CMAL/BHP wish its competitors to see copy.

- If competitors of CMAL/BHP were to see the EOI, and therefore gain access to the structure us by BHP to tender for an exploration licence, and the matters it addresses and the means by v it deals with and discusses those matters, it could be damaging to BHP/CMAL in relation to future tenders and expressions of interest. Put bluntly, CMAL does not want the way it goes about responding to tenders copied by a competitor.
- *Thirdly*, there are specific matters in the EOI which are confidential, of great value to CMAL, and which would prove damaging if released to the public. These matters include:

  (a) CMAL's views on the thermal coal market and the global demand for thermal coal;

  (b) the conceptual mine plan. In developing this plan, BHP engaged the services of a numbe mining experts, who subsequently prepared reports that are a part of the EOI, and that have incorporated into other parts of the EOI including those tendered in the hearing. Possible mi layout configurations, mining methods, mine design issues, systems of work and infrastructu BHP/CMAL goes about developing a conceptual mine plan (and deals with and discuss the matters mentioned) is confidential, takes a considerable amount of time, skill and money to develop, and its value to a competitor of BHP/CMAL is obvious;

  (c) further, by examining any of these matters in the EOI, a competitor would be able to "reverse engineer" the individual parts of the EOI – particularly in relation to opinions regar

coal quality, coal quantity, the potential lifespan of the mine and its likely cost (including al infrastructure matters) – to determine why CMAL "pitched" its financial bid for the explora licence at the level that it did. If these matters were copied in the future, a critical competitiv advantage could be lost."

31 CMA therefore submitted that the Caroona EOI:

"(a) was created for CMAL's business activities;

(b) contains confidential information provided under an express understanding that it would be disclosed;

(c) is the product of skill and experience, and was produced at considerable cost; and

(d) is of obvious value to CMAL/BHP, as it would be to one of its competitors such that rea harm would be caused to CMAL/BHP if the document were obtained by a competitor."

32 As such, CMA submits, the Caroona EOI has all the indicia of a trade secret and should be considered as such: *Faccenda Chicken v Fowler* (1985) 6 IPR 155; *Ansell Rubber v Allied Rubber Industries* [1967] VR 37; *Lansing L v Kerr* (1990) 21 IPR 529; *Seale Australia v Public Interest Advocacy Centre* (1992) 36 FCR 111.

33 CMA's submissions as to the confidentiality and value of the information in the Caroona EOI were based on th affidavit evidence of Mr Golding, Vice President Commercial of BHP Billiton Energy Coal. Mr Golding's evidenc was specific to the Caroona EOI.

34 In addition, affidavit evidence was given by Mr Mullard, the Executive Director, Mineral Resources in the NSW Department of Industry and Investment. Mr Mullard's evidence as to the confidentiality of the expressions o

interests, including the Caroona EOI, has already been referred to earlier in this judgment. In addition, Mr Mullard evidence as to the confidentiality of EOIs received for proposed exploration licences received by the Department. Mr Mullard stated:

- "Information in EOIs is kept confidential because disclosure of this information is likely to be detrimental to the company submitting the EOI, for the following reasons:
  (a) An EOI which identifies areas of interest for future exploration activities, mining or infrastructure development and includes projections as to future production may lead t competitors using that information to obtain an unfair advantage;

  (b) Disclosure of the company's marketing and utilisation plans to competitors may under its ability to access markets;

  (c) Disclosure of the company's innovative exploration or mining concepts may reduce its competitive advantage; and

  (d) EOIs may contain confidential information about a company's financial or other performance."

35 Mr Mullard also stated that:

"A further reason why EOIs are kept confidential is that companies submitting EOIs may withhold relevant information rather than risk the adverse consequences which would result from disclosure of the information."

36 Mr Mullard concluded that:

"Disclosure of information contained in the EOIs submitted in relation to the exploration lic over the Caroona coal exploration area now would be detrimental to the companies which submitted those EOIs."

Caroona EOI is confidential

37 I am satisfied that the particular statements and data the Caroona EOI in respect of which CMA seeks an order restricting disclosure and use under r 21.7 of the UCPR are confidential. The evidence of Mr Golding and Mr Mul is convincing and I accept CMA's submissions in this respect.

Confidentiality should be protected by court rodersi

38 I am also satisfied that the confidentiality should continue to be protected by the particular orders sought in CMA's Third Further Amended Notice of Motion. Through the course of the hearing of CMA's application, CMA refined the terms of the orders sought, and in particular narrowed the class of statements and data in respect of which CMA sought orders restricting disclosure and use. As a consequence, the Redacted EOI discloses conside more statements and data than would have been the position under the original notice of motion by CMA. I consid that the redacted statements and data, in respect of which access would be restricted to the applicant's legal advise only, are confidential and should properly be the subject of orders restricting disclosure and use.

Confidentiality orders achieve due administration of justice

39 I also consider that orders of the kind now sought by CMA do no more than is necessary to achieve the due administration of justice. I do not consider that there will be an infringement of the requirement of open justice if I make orders in the terms now sought by CMA.

40 First, the redacted statements and data which would be the subject of the orders restricting disclosure and use, were not referred to in my judgment disposing of the substantive proceedings (*Caroona Coal Action Group Inc v Coal Mines Australia Pty Ltd and Minister for Minister for Mineral Resources (No 2)* [2010] NSWLEC 1;

(2010) 172 LGERA 25) or, for that matter, in my judgment on costs (*Caroona Coal Action Group Inc v Coal Mine Australia Pty Ltd v Minister for Mineral Resources (No 3)* [2010] NSWLEC 59).

41 The Caroona EOI was only potentially relevant to the applicant's first claim that EL6505 was a grant of an expl (NSW) but that essential preliminaries to the grant of such an exploration licence had not been complied with. Hov and the judgment on costs, this first claim fell away at the hearing. The Minister and CMA did not contend that EL6505 was the grant of an exploration licence under Pt 3 of the Mining Act. Rather, their case was that it was the product of a partial transfer of A216 under Pt 7 of the Mining Act. There was, therefore, no utility in addressin the applicant's first claim of challenge and I did not do so. Accordingly, any evidence that was tendered of potenti relevance to the applicant's first claim was not considered by me in determining the applicant's challenge.

42 For these reasons, it is not necessary for any member of the public who wishes to understand either my substan judgment or my judgment on costs to look at the Caroona EOI. In this respect, the principle of open justice is not infringed.

43 Secondly, the particular statements and data in respect of which orders restricting disclosure and use are now sought by CMA, were not referred to by the applicant, the Minister or CMA in their submissions. Only general reference was made to the Caroona EOI by the Minister and CMA, but the particular statements and data in questi were not singled out. The contents of the particular statements and data were not read out in open court. According any member of the public does not need to inspect the particular statements or data in the Caroona EOI in order to understand the submissions made or the evidence read out in open court. In this respect also, the principle of open justice is not infringed.

44 Thirdly, it is by no means clear that any member of the public who might have been sitting in court listening to the hearing could inspect the exhibits received in evidence in the case: see *British American Tobacco Australia Ser Ltd v Cowell* [2003] VSCA 43; (2003) 8 VR 571 at [36] citing *R v Waterfield* [1975] 1 WLR 711 at 713-715 and

The Herald and Weekly Times Ltd v The Magistrates' Court of Victoria [1999] 3 VR 231 on appeal (2000) 2 VR 3

45 In any event, however, a confidentiality order may still be made in respect of material that is in evidence and is upon. Hence, the fact that the Caroona EOI was received in evidence, without either objection or an order under r 21.7 of the UCPR being sought at the time, does not prevent the Court now making such an order.

Conclusion and orders

46 For these reasons, I conclude I should make an order restricting disclosure and use of the redacted statements a data in the Caroona EOI with the consequence that unrestricted access should be allowed only to the Redacted EO and not the Caroona EOI.

47 It is also necessary to make an order restricting access to the Schedule of Submissions in relation to Expression of Interest Document which helpfully sets out in a tabular form each of the requested redactions in the Third Furth Amended Notice of Motion and each of the party's submissions on the requested redactions. As I intend to make an order restricting disclosure and use of the requested redactions, it is necessary also to make an order restricting disclosure and use of the schedule of submissions which sets out the requested redactions.

48 Accordingly, the formal orders of the Court are as follows:

1. (a) Access to the BHP Billiton document incorporated in the Tender Bundle titled "Caroona Coal Exploration Area December 2005" ("Caroona EOI Extracts"), is limited to the applicant's legal advi only, except for the Caroona EOI Extracts contained in the document titled "BHP Billiton Redacted Sections of Expression of Interest" ("Redacted EOI").
   (b) The applicant's legal advisers must not provide the applicant, any person associated with the app or any other person with any copies, notes, extracts or summaries of the Caroona EOI Extracts or

communicate any of the information in the Caroona EOI Extracts to the applicant, any person associ with the applicant or any other person. This order does not extend to information in the Redacted EO
(c) Pursuant to Pt 21, r 21.7(2) of the Uniform Civil Procedure Rules 2005, the use and disclosure of the documents referred to in order 1(a) above be restricted to uses and disclosure for the purposes of these proceedings only.

2. (a) Access to the Schedule of Submissions filed by the first respondent on 21 April 2010 is limited to the applicant's legal advisers only.
(b) The Court notes the undertaking given by the applicant's legal advisers that the applicant's legal advisers will not provide the applicant, any person associated with the applicant or any other person with any copies, notes, extracts or summaries of the Schedule of Submissions filed by the first respondent or communicate any of the information in the Schedule of Submissions filed by the first respondent to the applicant.
(c) Pursuant to Pt 21, r 21.7(2) of the Uniform Civil Procedure Rules 2005 the use and disclosure of the document referred to in order 2(a) above be restricted to uses and disclosure for the purpose of these proceedings only.
3. The first respondent is to file and serve within 7 days of the Court's orders the Redacted EOI which will be placed on the Court file.
4. The applicant pay the first respondent's costs of the motion.

Last updated 4 January 2011

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