

Transport & Logistics

As Australia is a country of vast distances, isolated by sea, the transport sector is of critical importance to its economy and trade. The transport sector represents 14% of the Australian economy and employs over 460,000 people nationally. Transport touches all other sectors in Australia and has seen significant long-term growth across all modes since the 1970s.

Transport Infrastructure construction has grown at a remarkable rate – particularly in the area of private infrastructure for public use. Government sponsored/privately funded projects have proliferated over the past 10 years and the Australian Government has recently committed a further A\$35.8 billion dollars for transport infrastructure development under its Nation Building Program running up to 2014.

Despite all this development, transport infrastructure is being stretched with demand exceeding capacity across a range of areas. Ports and Rail infrastructure supporting Australia's immense energy and resources sector and considerable international trade in mineral exports is now fully committed, and a range of major expansion and new development projects are in tow.

The Transport sector faces many challenges. In addition to broad economic factors, the transport sector is sensitive to input costs (primarily fuel and labour costs) and demand, seasonality and pricing factors affecting its many and varied clients. Similarly, security, occupational health and safety, industrial relations, environment/climate change, public safety and competition policy are among the many issues that have particular significance and implications for the transport sector in Australia.

Of course, transport is not one sector, but many. Aviation, Airports, Shipping, Ports, Passenger Rail, Freight Rail, Road Freight and Logistics are just some of the many faces of Transport in Australia – in addition to providers of inter modal transport services, the users of those services and the many regulators, government agencies and peak bodies who regulate those services.

Our Transport & Logistics team

Clayton Utz has a significant presence in the Australian transport sector. Our practice is characterised by the strength and depth of our client base interacting with all of the major transport modes in Australia.

We represent transport and logistics service providers, infrastructure owners, regulators and government interests across all sectors. As a result, we offer our clients the advantage of knowledge and experience gained from working across the transport and logistics chain.

We have the benefit of experience, depth of legal knowledge and a sophisticated understanding of the issues and trends across each of the primary logistics market areas of road, rail, aviation, airports, ports and shipping.

We also enjoy excellent working relationships with key regulators and government departments which oversee transport planning, regulatory and operational matters.

Our Aviation expertise

The aviation industry is undergoing a period of significant change. International air services agreements are being liberalised; new security and liability regimes are being introduced; and increasing demands are being placed on airlines to address climate change concerns.

These changes are occurring amidst a period of economic volatility which will no doubt see airlines and airports restructure and reorganise to align their services with a changing market.

Meeting the legal needs of the aviation industry demands a sophisticated understanding of these and many other domestic and international issues together with specialised expertise across a wide range of areas.

Why choose us?

Clayton Utz has been closely involved in a wide spectrum of aviation matters for over 40 years. Our leading position is based on our expertise in key areas of aviation law as well as the full range of commercial law. Members of our team are ranked highly among the world's leading aviation lawyers in international directories.

A vital element of our capability with airlines, airports and other aviation industry participants is an in-depth understanding of public sector processes as well as the interplay between the private and public sectors. Our expertise in this regard has been developed through extensive legal dealings with major public and private sector clients. This depth of knowledge is critical in the aviation area where regulatory and commercial issues intersect.

Our lawyers have worked extensively throughout the aviation industry, both in Australia and internationally, and this penetration of industry networks is an essential part of being able to offer informed, wide-ranging, strategic advice. Our experience enables us to provide a level of understanding and expertise unmatched by any other firm. For example, we recently acted for IATA and won a significant victory in the High Court of Australia which upheld the validity of the IATA Clearing House Regulations.

Our Aviation experience

Aircraft finance and structured leasing

- recent ECA supported transactions both refinancing existing aircraft and financing new aircraft;
- US cross-border leasing transactions, including C-FSC, O-FSC, LILO, Pickle-Dole and ETI transactions;
- Japanese operating lease transactions;
- chattel mortgages;
- various secured debt transactions, including section 128F issues and secured loan-note facilities; and
- the unwind and restructure of various US, Japanese and Australian lease structures.

Aircraft operating leases

- the interaction of and due diligence on operating leases with various lessors;
- structured operating leases for various types of aircraft;
- moving onshore multiple leases of aircraft into Australia; and
- the recovery of leased aircraft assets from airline administrators.

Airline industry insolvency, restructuring and workouts

- restructuring operating and cross border leasing arrangements in relation to aircraft and other assets integral to the operation of start-up carriers;
- negotiating terminal access for proposed new carriers; and
- advising on the operation of the IATA Clearing House (ICH) and the effect of the ICH Regulations on airlines following the appointment of administrators.

Aircraft sale, purchase and maintenance

- sale and purchase of individual aircraft as well as airline fleets on foreign and Australian registers;
- purchase of new aircraft from manufacturers and assignment of aircraft slots before delivery;
- import and export of aircraft; and
- aircraft maintenance (including engine maintenance) and service agreements.

Airports

- airport sale transactions including advice on sale structures, drafting and negotiating tender and sale documentation; and managing vendor due diligence and data room processes;
- Australian and international airport privatisations;
- advice on IATA Standard Ground Handling Agreements (multiple versions); and
- representation and advice on liabilities arising from airport operations, including accident litigation and exposures arising from increasing security obligations on airports and service providers worldwide.

Airline industry and regulatory expertise

- registration and deregistration of aircraft;
- air operator's certificates including the preparation of applications and associated compliance manuals for submission to the Civil Aviation Safety Authority;
- preparation of and securing international airline licences;
- applications for landing rights in Australia for scheduled and chartered operations;
- contracts of carriage and advice on carrier's liability;
- interline, codeshare and frequent flyer agreements; and
- interpretation and operation of and compliance with international aviation conventions from the Chicago Convention to the Warsaw and Montreal Conventions.

Our Road & Rail expertise

Dramatic changes are occurring in the road and rail industries, with the Australian government committing to significant investment and infrastructure plans to ensure Australians will benefit from faster, safer and more efficient road and rail transport. Our lawyers are at the forefront of these developments, offering advice which is both informed and strategic.

Our expertise encompasses all aspects of road and rail movements and logistics handling, including transactions on operational areas, infrastructure and structured finance projects, third-party access to railway infrastructure and related services. Our clients include transport operators, infrastructure owners, financiers, government and regulators.

Clayton Utz offers the very best legal advice combined with in-depth industry knowledge and a genuine commitment to understanding how these issues will impact on your business operations, strategies and profits.

Road

New contracting structures and increasingly complex integrated supply chains in the road transport industry require highly specialised legal advice. Clayton Utz provides expert advice in areas ranging from regulatory change to sub-contracting arrangements.

Rail

Privatisation, technological advances and demands for increasingly sophisticated transport solutions require very specialised legal advice. Access regimes and access agreements are of particular importance and our firm has extensive experience in these areas.

Why choose us?

Clayton Utz has a significant presence in the Australian transport sector and is acknowledged as one of Australia's leading law firms for advising on road and rail matters. Our reputation is firmly based on two critical factors: an unsurpassed depth of legal and industry knowledge and a commitment to building an authentic relationship with our clients.

Our Road & Rail experience

Our road and rail clients include Australia's largest rail, road and inter modal service providers and infrastructure owners and providers. We also enjoy close working relationships with key regulators and responsible government departments which oversee road and rail operators and infrastructure development in Australia.

Our team is able to draw upon significant expertise in both the road and rail sector to advise on:

- regulatory, competition and third party access issues;
- supply chain and distribution restructuring and related change management issues;
- supply chain management and sourcing and procurement contracts;
- logistics, transport and supply chain outsourcing tenders;
- technical engineering specification issues;
- complex outsourced 3PL and 4PL agreements for warehousing, distribution and transport services;
- express and freight consolidation services agreements;
- network and traffic management issues;
- interface issues;
- long-term bulk haulage, off-take and freight agreements in relation to a wide range of commodities including iron ore, export coal, alumina, bauxite, gypsum, limestone, mineral sands, salts, dangerous goods, grain, flour, sugar and inter modal export containers and refrigerated containers;
- complex infrastructure agreements for the provision of facilities for multiple users; and
- management agreements for the operational, upgrade, maintenance and repair of rail networks, freight terminals and other facilities.

Our Ports expertise

International shipping has remained the main mode of transporting exports and imports in Australia. Sea freight accounts for approximately 99.9% of Australia's international trade in commodities. Australia's sea trade will continue to grow positively over the next 20 years, largely due to a positive economic outlook for Australia and its trading partners.

Significant changes are occurring in the Ports and Shipping sector and our lawyers are at the forefront of developments, offering advice which is both informed and strategic.

Clayton Utz offers the very best legal advice combined with in-depth industry knowledge and a genuine commitment to client needs.

Why choose us?

Over the years our team has handled numerous matters involving the interests of Australian ports and waterfront operators covering a wide variety of corporate, commercial, operational and strategic issues. We have a clear understanding of issues affecting the port and maritime industry around Australia, and make it a priority to keep up to date with news, trends and developments concerning our port clients and waterfront matters in general.

Our significant involvement with port work has given us a sound understanding of the unique political and commercial framework within which ports operate. This enables us to provide quick and more effective solutions and service.

Our Ports experience

We offer a suite of services designed to meet the full spectrum of needs of ports industry participants, including:

Port infrastructure and procurement

- new port and wharf facilities agreements: negotiating, structuring and drafting numerous complicated infrastructure agreements for the provision of new port wharf and jetty facilities;
- terminal leasing and pipeline corridor contracts: structuring advice, drafting and negotiations relating to leases, easements and caveats over port land;
- maritime precinct projects: advising on the development of port land for commercial purposes, joint venture scenarios, viable ownership structures, leasing and financing options;
- port leasing: advising, negotiating and structuring numerous complex port leasing arrangements;
- stevedore infrastructure agreements: contract preparation, negotiation, structuring and advice; and
- preparation of standard form port consultancy terms and conditions and associated tender documentation.

Port service contracts and licenses

- stevedoring: preparation of standard terms and licence conditions for stevedoring;
- towage, pilotage, lines and mooring: preparation of standard terms and licence conditions for towage, pilotage, lines and mooring operators;
- quarantine and waste management: preparation and negotiation of quarantine licences and terms;
- labour supply: tender preparation and advice, structuring and drafting documentation for contracted supply of port labour;
- bulk handling agreements, off-take and freight agreements: drafting, structuring and negotiation of complex long-term bulk handling off-take and freight contracts in relation to grain, ore, gas, sulphur and other commodities; and
- ship agent terms: advising on shipping agent terms and conditions.

Port operations

- berth licences: negotiation and preparation of long-term berth licences and protection terms and conditions;
- berth access and facility usage: drafting and structuring standard terms for port users including internet-based paperless contracts;
- vessel arrests for unpaid charges and fees: advice on and co-ordinating arrest of vessels;
- port operation and management agreements between the State and private port operators: drafting, structuring and negotiation;
- security: advising in relation to various issues concerning new Australian port security legislation;
- insurance cover review projects: reviewing port insurance contract terms and identifying gaps and inadequacies and advising on areas for consideration, advising on protection strategies in relation to port blockage, negotiating terms with insurers and reinsurers;
- common user berths: negotiating access regimes for common user berths and drafting and structuring best practice common user terms and conditions; and
- ship owner incentive contracts: advising on competition law aspects of proposed incentive offers and "preferred customer" offers to ship owners and agents, structuring ship owner incentive contracts and advising on alternative structures;

Port environmental issues

- contaminated sites and berth basins: advising on liability and obligations in regard to clean-up;
- EPA submissions: advice on issues and approaches in relation to submissions for and against environmental approval applications;
- EPA licences: advising on terms;
- oil spills: advising on compliance and risk management aspects of marine oil and fuel spills;
- environmental/health and safety advice: advising on potential liability and exposure under State environmental legislation and health and safety legislation as a result of loading, handling and storage operations at a port;

- contamination: advising on allocation of risk and liability exposures in dealing with soil and sediment contamination;
- stop work orders: advising on threatened EPA stop work orders in dredging projects; and
- seawater and harbour quality issues: instructing experts in investigations of seawater and harbour quality and advising on legal risk.

Trade Practices and Competition Law Issues

- stevedoring markets: advising on competition law issues;
- port access regimes: third parties;
- trade practices advice: relating to proposals for exclusive towage licences, tendering structures to avoid difficulties with competition law, advice on and preparing tender documents, briefing on the implications of various Supreme Court decisions relating to exclusivity;
- ship owner incentive contracts: advising on trade practices aspects of proposed incentive offers and “preferred customer” offers to ship owners and agents, structuring ship owner incentive contracts and advising on alternative structures;
- mooring and berthing exclusivity: advising on rights of exclusivity in relation to the provision of port services including berthing, mooring and waste collection, trade practices overview of current exclusive arrangements and risk management advice;
- preparing various submissions to the competition law regulators relating to exclusive port services licence grants and acquisitions as well as successfully dealing with a number of inquiries by regulators triggered by port users in various ports; and
- ACCC: exclusive dealing submissions on compulsory use of port cranes and prohibitions use of ship’s gear.

Logistics

- supply base service contracts: structuring, drafting and negotiation;
- offshore logistics arrangements: structuring, drafting and negotiation;
- oil and gas industry logistics arrangements: structuring, drafting and negotiation;
- mining industry logistics arrangements: structuring, drafting and negotiation;
- marine logistics: vessel services, vessel chartering, vessel management and crew arrangements;
- warehousing, storage and supply contracts: delay cost and delay liability regimes;
- offshore container hire and user contracts: structuring, drafting and negotiation;
- anchor support, tug standby and barge contracts: structuring, drafting and negotiation;

- logistics joint ventures and multi service provider contracts;
- logistics tenders and tender response strategies;
- price structuring and review mechanisms;
- port access regimes;
- fuel levies and fuel and labour cost escalation formulas;
- service delay cost and delay liability minimization regimes;
- rail service arrangements: structuring, drafting and negotiation;
- subcontractor arrangements: structuring, drafting and negotiation; and
- best practice contracting standards.

Shipping

- vessel chartering;
- maritime insurance;
- vessel design and construction contracts: structuring, drafting and negotiating.
- allocation of shipyard risk, classification societies, staged certification, foreign currency exchange risk management, foreign tax costs, vessel construction supervision, naval architect responsibilities, variation orders, sea trials, liquidated damages and security regimes, foreign jurisdiction risk and recovery issues, insurance best practice, progress payment and retention schemes and management of defect rectification;
- dry docking and slipway contracts;
- negotiating vessel refinancing arrangements and direct leveraged charter arrangements;
- foreign crew issues;
- vessel arrests; and
- vessel acquisitions, disposals and registration.

About Clayton Utz

Clayton Utz is one of Australia's largest and most successful full-service national law firms. We provide advice to some of Australia's most high-profile public and private sector organisations, and have been a key player in many of Australasia's largest and most complex transport projects and transactions. Our team has a reputation for entrepreneurial and innovative thinking which we believe sets us apart from other firms.

Our reputation for being the 'go to' firm for complex deals and our commitment to our clients is second to none. Clayton Utz is widely respected for the quality of its service and has developed an enviable reputation through its role as adviser on some of the most significant transport and logistics industry projects and transactions in the Australian market.

For more information, please contact one of our key team members.



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