

Ports

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.

Our Ports team

We have a dedicated and experienced national Port Services team comprising a group of partners and lawyers throughout Australia who specialise in assisting port authorities, private port and terminal operators and port users. Our team provides our clients with a focused and co-ordinated approach to handling the diverse and often complex nature of port legal work.

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 Major Clients

Our Port Services Group client list includes port authorities, private ports, terminal operators and container and bulk stevedores, around Australia.

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 transactions. Our team has a reputation for entrepreneurial and innovative thinking which we believe sets us apart from other firms.

Our Ports expertise

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 stevedors;
- **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 coordinating 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 decision 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;
- **trade practices compliance generally:** advice on Trade Practices Act compliance with particular emphasis on requests for tender and restrictive trade practices;
- **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.

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 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 ports industry projects and transactions in the Australian market.

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



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