

NOTICE OF FILING

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(ADMINISTRATORS APPOINTED) ACN 004 651 325
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

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Form 59
Rule 29.02(1)

Affidavit

No. VID420 of 2025

Federal Court of Australia
District Registry: Victoria
Division: Commercial and corporations list

SEBASTIAN DAVID HAMS, MARK FRANCIS XAVIER MENTHA, LARA LUISA WIGGINS AND MICHAEL ANTHONY KORDA IN THEIR CAPACITY AS JOINT AND SEVERAL ADMINISTRATORS OF ONESTEEL MANUFACTURING PTY LIMITED (ADMINISTRATORS APPOINTED) ACN 004 651 325

First Plaintiff

ONESTEEL MANUFACTURING PTY LIMITED (ADMINISTRATORS APPOINTED) ACN 004 651 325

Second Plaintiff

WHYALLA PORTS PTY LTD ACN 153 225 364

Defendant

Affidavit of: **Theunis Jacobus Victor**
Address: Level 34, 50 Bridge Street
Sydney NSW 2000
Occupation: Director
Date: 17 April 2025

Contents

Document number	Details	Paragraph	Page
1	Affidavit of Theunis Jacobus Victor affirmed on 17 April 2025	N/A	1
2	Exhibit "TV-1"	N/A	10

Filed on behalf of (name & role of party) the Defendant
 Prepared by Laura Johns
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 (include state and postcode)

I, Theunis Jacobus Victor affirm:

1. I am a director of the Defendant, Whyalla Ports Pty Ltd (ACN 153 225 364) (**Whyalla Ports**). I have been a director of Whyalla Ports since 7 September 2023. I am also a director of OneSteel Manufacturing Pty Limited (administrators appointed) (ACN 004 651 325) (**OSM**) and have been in this role since 7 September 2023.
2. Both Whyalla Ports and OSM (together, the **Companies**) were, at the time of their incorporation, subsidiaries of OneSteel Limited (ACN 004 410 833) (**OSL**). OSL changed its name to Arrium Limited (ACN 004 410 833) (**Arrium**) on 2 July 2012.
3. I joined Arrium in May 2006 as the Manager Steelmaking. I have been involved in operational aspects of the business of the steelworks conducted at Whyalla in many different roles since that time and I have personal knowledge of many aspects of its operations. I held operational and management roles until 2018, and thereafter I have held executive roles.
4. I am authorised to make this affidavit on the Defendant's behalf.
5. I make this affidavit in respect of proceedings brought by the voluntary administrators of OSM to seek orders regarding their purported termination of the Lease Agreement executed on 29 June 2018 between Whyalla Ports and OSM (the **Lease**) and their purported re-possession of the land the subject of the Lease (**Leased Land**), and use of equipment and property of Whyalla Ports situated on the Leased Land, without the consent of Whyalla Ports.
6. I make this affidavit from my own knowledge save where otherwise indicated from my review of the books and records. Where statements are not made from my own knowledge, I have set out the source of the information upon which those statements are made. The statements in this affidavit are true to the best of my knowledge, information and belief. This affidavit has been signed and affirmed by audio-visual link.
7. Shown to me at the time of affirming this affidavit and exhibited to this affidavit is a paginated bundle of documents marked 'Exhibit TV-1'. Throughout this affidavit, I make reference to documents which appear at TV-1.

Port Operations

8. The incorporation of Whyalla Ports occurred in connection with upgrades to the port facilities in the period 2012-2014. Specifically, it was the function of Whyalla Ports to support the increased mining capabilities of the Arrium business via the port facility and concomitantly, to procure and own property and equipment forming part of the port upgrades.
9. In late 2010 or early 2011 I was appointed to the role of Executive General Manager (**EGM**) for Whyalla Steelworks, which at the time, included management of the port operations. At some time in 2011, my recollection is that Matthew Reed was appointed as EGM of Mining and Ports and responsibility for port operations shifted to him. Later, in 2017 I was appointed to Executive Managing Director (**EMD**) for Liberty Primary Steel.
10. Following the incorporation of Whyalla Ports as a discrete legal entity, I was no longer directly responsible for port operations. However, in practice, as related companies which formed part of

a shared corporate network, the Companies managed the Whyalla Ports. In the period following the incorporation of Whyalla Ports and the appointment of Matthew Reed as EGM of the Mining and Ports Operations, I continued to be closely involved with the operations at the Ports. OSM interacted with Whyalla Ports as a customer and relied on Whyalla Ports to facilitate steelworks exports and as the supplier of various services which were defined by contractual agreements.

11. In relation to the upgrade of the port facilities referred to above at paragraph 8, Whyalla Ports entered into an agreement with Kerman Contracting Pty Limited (ABN 72 008 987 988) (**Kerman**) entitled "*Whyalla Port Expansion Project, Tip Pocket, Export Sheds, Reclaim and Shiploader, Formal Instrument Agreement*" and dated 30 November 2011 (the **Kerman Agreement**). Under the Kerman Agreement, Kerman agreed to carry out certain works for the benefit of Whyalla Ports, and in exchange Whyalla Ports agreed to pay \$102,744,623.00 exclusive of GST. A copy of the Kerman Agreement appears at pages 1-175 of TV-1.
12. Located on the Whyalla Port Site is rail infrastructure consisting of a narrow-gauge ore rail line, a standard gauge ore rail line and a realigned standard gauge line (the **Railways**). These Railways are referred to in a document entitled "*Declaration of Trust*" dated 30 March 2012, between OSM as trustee and Whyalla Ports as beneficiary (the **Trust Deed**) which governs the agreement between the parties for the construction of the Railways near the port at Whyalla. In accordance with the terms of the Trust Deed, OSM, as trustee, was responsible for constructing the Railways, and beneficial ownership was vested in Whyalla Ports. The Railways were to be used for transporting iron ore and other materials. A copy of the Trust Deed appears at pages 176-183 of TV-1.
13. The Trust Deed referred to OSM having entered into an agreement with a contractor in which they contracted to engineer, procure and construct certain railway works in South Australia (the **Railway Works**). The Trust Deed provides that Whyalla Ports as beneficiary would be the beneficial owner of the Railway Works, and that accordingly OSM would declare that it will hold all its rights, title and interest in the Railway Works on trust for Whyalla Ports (**Trust Property**). These rights were limited to assets and property subject to the Railway Works and did not include any other asset or property located in South Australia as at the date of the Trust Deed. Under clause 2.2 of the Trust Deed, OSM may not deprive Whyalla Ports of the rights of beneficial ownership (including the right of possession) of the Trust Property, and OSM declares they have no beneficial interest whatsoever in the Trust Property.
14. As reflected in the terms of the Trust Deed, OSM entered into a contract entitled "*General conditions of contract for engineering procurement and construction – Whyalla Port Expansion Project – Rail Network Extensions*" (the **Rail Network Extensions Contract**) dated 9 February 2012, with OSM as principal and Leighton Contractors Pty Limited (ABN 98 000 893 667) (**Leighton**) as contractors, in relation to the Railway Works. A copy of the Rail Network Extensions Contract appears at pages 184-386 of TV-1.
15. The extensions contemplated in the Rail Network Extensions Contract are depicted in a map published in an ASX release of Arrium dated 4 October 2012, which included a presentation



providing an update on the mining and port expansion on page 28 of that document. A copy of the ASX release dated 4 October 2012 appears at pages 387-438 of TV-1.

16. In an email from Sanjay Bhartia, who I know at that time was the Chief Financial Officer of Liberty Primary Metals Australia (ACN 31 112 573) (**LPMA**), to the South Australian Government on 9 July 2021 (the **SA Government Email**), Mr Bhartia stated "Beneficial owner of standard gauge rail leading from the ARTC (public) rail line to the inner harbour tip pocket, and narrow gauge rail leading to the inner harbour tip pocket, under a Declaration of Trust. (The trustee holding legal title is Onesteel Manufacturing Pty Ltd.)". The email was prepared to answer the Government of South Australia's questions about the financial position of **Whyalla Ports** and the assets it holds. To the best of my knowledge, the position articulated in this email has not changed. A copy of the SA Government Email appears at pages 439-442 of TV-1.
17. I am not aware of any agreement to alter the trust arrangements in respect of the Railways.
18. On 19 April 2012, Leighton and Whyalla Ports entered into an agreement entitled "*Formal Instrument of Agreement*" (the **First Leighton Agreement**). Under the First Leighton Agreement, Leighton agreed to carry out certain works for the benefit of Whyalla Ports, and in exchange Whyalla Ports agreed to pay to Leighton \$2,693,038 exclusive of GST. A copy of the First Leighton Agreement appears at pages 443-611 of TV-1.
19. Also, as part of the upgrade of the port facilities referred to above at paragraph 8, Whyalla Ports entered a document entitled "*Formal Instrument of Agreement*" dated 25 June 2012 between Leighton as the contractor and Whyalla Ports as wholly owned subsidiary of OSL as the principal (the **Second Leighton Agreement**). Under the Second Leighton Agreement, Leighton agreed to carry out certain works for the benefit of Whyalla Ports, and in exchange Whyalla Ports agreed to pay to Leighton \$17,982,693 exclusive of GST. A copy of the Second Leighton Agreement appears at pages 612-793 of TV-1.

Relationship between Whyalla Ports and OSM

20. From time to time, the Companies contracted with each other for logistics and operational services, reflecting their expansive and complex commercial relationship.
21. From 6 October 2011 to 2 October 2012, a "*Limited Agency Agreement*" dated 13 October 2011 between Whyalla Ports and OSM (the **Limited Agency Agreement**) was in place. Under the Limited Agency Agreement, Whyalla Ports authorised OSM to operate and maintain its assets. An internal business record of Whyalla Ports, entitled "*Port Intercompany Contracts*" dated 20 September 2018 (**Port Intercompany Contracts Summary**) indicates that Whyalla Ports and OSM agreed to extend the terms of the Limited Agency Agreement from 2 October 2012 to 31 August 2017. A copy of the Limited Agency Agreement and the Port Intercompany Contracts Summary appear at pages 794-805 of TV-1 and 806 of TV-1 respectively.
22. On 12 April 2016, four partners of KordaMentha were appointed to act as administrators of the Arrium network of companies which included OSM and Whyalla Ports (the **Arrium Administrators**). In August 2017, ownership of the shares of OSM and Whyalla Ports was

transferred from Arrium to the GFG Alliance (**Share Sale Transaction**). OSM and Whyalla Ports remained under the control of the Arrium Administrators until the Share Sale Transaction.

23. During the Arrium administration, several third-party reports were prepared to assist the Arrium Administrators to understand various aspects of the Whyalla Ports operations. These included a report prepared on 12 July 2016 by Argonaut Capital Limited (ABN 18 099 761 547), a consulting group, entitled "*Whyalla Port & Associated Infrastructure: Stage 1 Report*" (the **Argonaut Report**). A copy of the Argonaut Report appears at 807-913 of TV-1. Page 16 of the Argonaut Report (page X TV-1) provides that:

"OneSteel Manufacturing Pty Ltd owns the land on which are below port assets are located while the buildings, fixtures, plant and equipment are owned by Whyalla Ports Pty Ltd or One Steel Manufacturing Pty Ltd".

24. From 1 September 2017, the commercial relationship between the Companies was governed by two alternative contractual agreements:
- (a) The document entitled "*Management Services Agreement*" dated 1 September 2017 between Whyalla Ports and OSM trading as SIMEC (the **Management Services Agreement**), under which Whyalla Ports engaged OSM to maintain the port assets. A copy of this agreement appears at pages 918-930 of TV-1.
- (b) The document entitled "*Administrative Services Agreement*" dated 1 September 2017 between Whyalla Ports and OSM trading as SIMEC (the **Administrative Services Agreement**), under which OSM was granted some rights to use Whyalla Ports' property and equipment. A copy of this agreement appears at pages 931-946 of TV-1.
25. It is my understanding that on 29 June 2018, OSM and Whyalla Ports executed the Lease. A copy of the Lease appears at pages 947-987 of TV-1.
26. The Lease was executed by Matthew Reed on behalf of the Companies. I am aware that Matthew Reed held the role as EMD of SIMEC Mining at that time, having worked with him for a long period. A copy of a screenshot that I recognise to be from the GFG Alliance HR system relating to Matthew Reed's employment appears at page 988 of TV-1.
27. The Lease on its terms applies retrospectively from 1 January 2012, reflecting the arrangements in place from 2012 that:
- (a) Whyalla Ports was financially and operationally (through its third-party contractors) responsible for the upgrade of the port facilities referred to above at paragraph 8 from that time until those works were completed in July 2013; and
- (b) Whyalla Ports was the beneficiary of the works the subject of the upgrade of the port facilities referred to above at paragraph 8.

28. Clause 2.2 of the Lease provides Whyalla Ports with an option to renew the Lease for a further term. Having undertaken a search of the books and records of Whyalla Ports, I have not identified evidence that the option under clause 2.2 was or has been exercised.
29. Clause 2.3 of the Lease contains provisions relating to holding over, by which Whyalla Ports enjoys the right to remain in occupation of the Leased Land with the express or implied consent of OSM, after the expiration of the Lease as a tenant for a period of 2 years (**Holding Over**). Clause 2.3(d) provides:
- “for the avoidance of doubt, if the Lessee continues to occupy the Premises after the expiry of the initial 2 year holding over period under this clause 2.3 with the consent of the Lessor (express or implied), the Lessee will be entitled to a further 2 year tenancy or holding over period every 2 years until either the Lessor or Lessee terminate this Lease under clause 2.3(c).”*
30. Whyalla Ports remains subject to the Holding Over in accordance with clause 2.3.
31. This position was confirmed in writing in the SA Government Email. The email indicates that:
- “Whyalla Ports occupies land on which its assets (described above) are located, pursuant to the terms of a Lease between OSM and Whyalla Ports. Whyalla Ports is holding over under the terms of that lease.”*

To my knowledge, this position has not changed. A copy of the SA Government Email appears at pages 439-442 of TV-1.

Third Party Relationships - Suppliers

32. From 2018 onwards, Whyalla Ports increasingly became the relevant entity within the GFG network responsible for contracting with third parties for port-related operations.
33. From 2018 onwards Whyalla Ports became party to various agreements by which it paid subcontractors for services associated with operating the ports (**Subcontractor Arrangements**).
34. Qube Ports Pty Ltd (ABN 46 123 021 492) (**Qube Ports**) and Whyalla Ports entered into the agreement entitled “*Stevedoring Services Agreement*” executed 8 June 2018, as amended from time to time (the **Qube Ports Agreement**). A copy of the Qube Ports Agreement along with executed variations dated 1 July 2019 and 1 September 2019 appear at pages 997-1044 of TV-1. Under the Qube Ports Agreement, Whyalla Ports engaged Qube Ports to provide logistic services.
35. Qube Bulk Pty Ltd (ABN 13 138 868 756) (**Qube Bulk**) and Whyalla Ports entered into an agreement entitled “*Services Contract Export Facilities*” on 6 August 2024 (**Qube Bulk Agreement**). A copy of the Qube Bulk Agreement appears at pages 1045-1145 of TV-1. Under the Qube Bulk Agreement, Whyalla Ports engaged Qube Bulk to provide vessel loading services. The Qube Bulk Agreement commenced on 1 July 2024 and has an initial expiry date of 30 June 2027, with options to extend.




36. CSL Australia Pty Ltd (ABN 24 080 378 614) (**CSL**) and Whyalla Ports were parties to multiple agreements including:
- (a) The agreement entitled "*Harbour Towage Licence Agreement*" (**CSL Agreement**) dated 27 August 2021. A copy of the CSL Agreement appears at pages 1146-1179 of TV-1. Under the CSL Agreement, Whyalla Ports agreed to grant CSL a non-exclusive licence to provide tugboat services at the Port of Whyalla.
 - (b) The agreement entitled "*Amendment and Novation Deed to the Transshipment Agreement*" (**CSL Novation Deed**) between OSM, Whyalla Ports and CSL dated 7 September 2021. A copy of the CSL Novation Deed appears at pages 1297-1365 of TV-1. The CSL Novation Deed novated the transshipment agreement dated 2 September 2016, as novated 20 April 2018 (**Previous Transshipment Agreement**) as between OSM and CSL to Whyalla Ports and CSL (with the effect of OSM transferring all of its rights and obligations under the Previous Transshipment Agreement to Whyalla Ports). A copy of the Previous Transshipment Agreement appears at pages 1180-1296 of TV-1. Under the terms of the CSL Novation Deed, it was agreed that CSL would provide the following services to Whyalla Port (**Transshipment Services**):
 - i. CSL operates tug boats and other vessels to transport cargo railed and loaded by Whyalla Ports from the Port to an offshore floating barge operated by CSL; and
 - ii. CSL further transports the cargo from the offshore floating barge to a designated transshipment point (defined as a point further out at sea).
 - (c) The agreement entitled "*Transshipment Agreement*" (**Transshipment Agreement**) between Whyalla Ports and CSL dated 30 January 2024. The Transshipment Agreement operates concurrently with the CSL Novation Deed and permits CSL to operate the bulk carrier, MV Whyalla, in connection with the Transshipment Services. A copy of the Transshipment Agreement appears at pages 1366-1502 of TV-1.
37. On 16 May 2022, a slide deck entitled "*Whyalla Port Operating model, commercial and regulatory summary*" summarising the operating arrangements for the port at Whyalla was prepared (the **Whyalla Port Presentation**). A copy of the Whyalla Port Presentation appears at pages 989-996 of TV-1. On page 3 of the Whyalla Port Presentation (page 991 of TV-1), the operating model of Whyalla Ports is described as managing port facilities and providing port services.

Third Party Relationships - Customers

38. From 2023 onwards Whyalla Ports became party to various agreements by which third parties paid fees to it for use of the port facilities (**Port Fee Arrangements**).
- 1. Oz Minerals Services Pty Ltd (ABN 34 629 461 481) (**Oz Minerals**) and OSM entered into the agreement entitled "*Port and Logistics Services (OZL) Agreement*" (**OZL Agreement**) dated 2 December 2019. An unsigned internal reference copy of the OZL Agreement appears at pages 1503-1557 of TV-1. Under the OZL Agreement, OSM provided port and logistics services to Oz Minerals. On 18 November 2023, OSM trading

as SIMEC Mining wrote to Oz Minerals requesting that OSM's rights under the OZL Agreement be novated to Whyalla Ports (**the Oz Minerals Letter**). In the Oz Minerals Letter, OSM indicated that Whyalla Ports was the owner of the majority of the assets used in the performance of services under the OZL Agreement. The Oz Minerals Letter also confirms an extension of the terms of the OZL Agreement until 14 March 2025. A copy of the Oz Minerals Letter appears at pages 1558-1559 of TV-1.

2. On 20 March 2023, Australia Ocean Logistic Pty Ltd (ACN 626 546 807) (**AOL**) and Whyalla Ports entered into the agreement entitled "*Whyalla Port Export Services Agreement*" (**AOL Agreement**). A copy of the AOL Agreement appears at pages 1560-1615 of TV-1. Under the AOL Agreement, Whyalla Ports agreed to provide AOL access to Whyalla Ports' premises, port services and capacity to facilitate AOL transporting its product.

Intercompany charges

39. Item 10 of the "Reference Schedule" contained in the Lease provides that there was nil rent payable for the period between 1 January 2012 and 31 August 2017 (the **Retroactive Period**). From 1 September 2017, the Item 10 of the Reference Schedule specifies a rental payment of \$12,000 per annum payable in advance in calendar monthly instalments of \$1,000 together with GST. The Reference Schedule appears at page 7 of the Lease (page 954 of TV-1).
40. It is my understanding that transactions like rent under the Lease would ordinarily be documented as intercompany charges. It is my understanding that records of intercompany charges are under the control of OSM.

Golding Security Interest


41. Golding Contractors Pty Ltd (ACN 009 734 794) (**Golding**) has provided mining services to OSM under a Mining Services Agreement since 2017.
42. Golding is a substantial trade creditor of OSM.
43. On 22 November 2024, OSM and Golding negotiated an agreement by which, relevantly, Golding would not enforce its rights in respect of the unpaid debt, in exchange for the granting of security rights over shares in and property of Whyalla Ports (**Standstill Agreement**). A copy of the Standstill Agreement appears at pages 1616-1740 of TV-1.
44. On 6 December 2024, Whyalla Ports entered into a General Security Agreement with Golding. The General Security Agreement grants Golding a security interest in all the Grantor's present and after-acquired property. A copy of the General Security Agreement appears at pages 1741-1779 of TV-1.

Impact of repossession

45. On 27 March 2025, the Administrators, issued a letter to Whyalla Ports advising that Whyalla Ports' right of occupation of the Leased Land had been terminated with immediate effect (the **Notice**).

46. The Notice and subsequent re-possession of the Leased Land harms Whyalla Ports' interests in the following ways:
- (a) Whyalla Ports is no longer able to provide services to its customers under the Port Fee Arrangements.
 - (b) Whyalla Ports is no longer able to comply with its contractual obligations to service providers under the Subcontractor Arrangements.
 - (c) Whyalla Ports has debts to subcontractors arising from the Subcontractor Arrangements that it will be unable to pay.
 - (d) Whyalla Ports is deprived of access to its personal property on the land the subject of the Lease being property defined in the Lease as Lessee's Improvements and owned by Whyalla Ports (**Assets**).
47. I am very concerned and apprehend that the same harm as I have set out above at paragraph 46 will be inflicted upon Whyalla Ports (and, by extension, its secured creditor Golding and unsecured creditors), in the event that the South Australian government acts - either under existing legislation or by enacting new legislation which empowered that government - to compulsorily acquire or otherwise dispossess Whyalla Ports (directly or indirectly) of the Leased Land and the Assets. I am aware that the South Australian government has previously, in a similar manner, intervened to dispossess OSM of the land and property comprising the Whyalla Steel Works by enacting, on 19 February 2025, without any notice to OSM whatsoever, the *Whyalla Steel Works (Charge on Property) Amendment Act 2025*, and simultaneously appointing the First Plaintiffs as voluntary administrators of OSM.

Affirmed by the deponent)
 By audio-visual link)
 on 17 April 2025)
 Before me:)



 Signature of deponent



 Signature of witness

Laura Johns, Solicitor



Exhibit Certificate

No. VID420 of 2025

Federal Court of Australia
District Registry: Victoria
Division: Commercial and Corporations List

IN THE MATTER OF ONESTEEL MANUFACTURING PTY LIMITED (ADMINISTRATORS APPOINTED) ACN 004 651 325

SEBASTIAN DAVID HAMS, MARK FRANCIS XAVIER MENTHA, LARA LUISA WIGGINS AND MICHAEL ANTHONY KORDA IN THEIR CAPACITY AS JOINT AND SEVERAL ADMINISTRATORS OF ONESTEEL MANUFACTURING PTY LIMITED (ADMINISTRATORS APPOINTED) ACN 004 651 325

First Plaintiff

ONESTEEL MANUFACTURING PTY LIMITED (ADMINISTRATORS APPOINTED) ACN 004 651 325

Second Plaintiff

WHYALLA PORTS PTY LTD ACN 153 225 364

Defendant

Exhibit "TV-1"

This is the exhibit marked "TV-1" referred to in the affidavit of Theunis Jacobus Victor affirmed over audio-visual link on 17 April 2025 and is an electronic copy of the original document.

Before me:

Signature of witness: 

Name of witness: Laura Johns

Address of witness: Level 5, 60 Martin Place, Sydney, NSW 2000

Capacity of witness: Solicitor

Dated: 17 April 2025