

## 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.

The date of the filing of the document is determined pursuant to the Court's Rules.



Form 59  
Rule 29.02(1)

**AFFIDAVIT**

No. VID420 of 2025

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

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

First Plaintiffs and First Cross-Respondents

**ONESTEEL MANUFACTURING PTY LTD (ADMINISTRATORS APPOINTED) ACN 004 651 325**

Second Plaintiff and Second Cross-Respondent

**WHYALLA PORTS PTY LTD (ADMINISTRATORS APPOINTED) (RECEIVERS AND MANAGERS APPOINTED) ACN 153 225 364**

First Defendant and Cross-Claimant

And

**GOLDING CONTRACTORS PTY LTD (ACN 009 734 794)**

Second Defendant

Affidavit of: **Raphael Yehudah Leibler**  
Address: Level 21, 333 Collins Street, Melbourne VIC 3000, Australia  
Occupation: Solicitor  
Date: 13 June 2025

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| 1               | Affidavit of Raphael Yehudah Leibler affirmed on 13 June 2025.  | N/A       | 1-10   |
| 2               | Annexure "RYL-2", being a paginated bundle of documents annexed and shown to the deponent at the time of affirming. |           | 11-114 |

Filed on behalf of: the Plaintiffs and Cross-Respondents  
Prepared by: Leon Zwier  
Law firm: **ARNOLD BLOCH LEIBLER**  
Tel: 9229 9999 Fax: 9229 9900  
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Address for service: Level 21, 333 Collins Street, Melbourne, VIC 3000

Ref: 011929197

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I, **RAPHAEL YEHUDAH LEIBLER** of Level 21, 333 Collins Street, Melbourne, Victoria, 3000, solicitor, affirm:

- 1 I am a Partner at Arnold Bloch Leibler (**ABL**), the solicitors for the Plaintiffs and Cross-Respondents. I have the care and conduct of this matter, together with Leon Zwier and Genevieve Sexton.
- 2 Except where I otherwise indicate, I make this affidavit from my own knowledge. Where I depose to matters from information and belief, I believe those matters to be true.
- 3 I am not authorised to waive legal professional privilege. Nothing in this affidavit should be construed as a waiver of privilege. To the extent that anything in this affidavit may be so construed, I withdraw and do not rely on that part of this affidavit.
- 4 Exhibited and shown to me at the time of affirming this affidavit is a bundle of documents to which I refer in this affidavit that are paginated and marked "**RYL-2.**" Where I refer to a document within **Annexure RYL-2**, I do so by referring to the page number within the bundle.
- 5 I make this affidavit in support of the Application by the Plaintiffs and Cross-Respondents to set aside the Notice to Produce served by the First Defendant and Cross-Claimant, Whyalla Ports Pty Ltd (**Whyalla Ports**) dated 30 May 2025 (**Notice to Produce**).

**Enactment of the *Whyalla Steel Works (Port of Whyalla) Amendment Act***

- 6 On 22 May 2025, the *Whyalla Steel Works (Port of Whyalla) Amendment Act (Amending Act)* received royal assent and was enacted into law. Its passage has given rise to the Plaintiffs and Cross-Respondents filing a notice of discontinuance in this Proceeding, and is the subject matter of the documents sought by Whyalla Ports under the Notice to Produce. I set out below the process by which the Amending Act came into effect.

*Legislative Process in the Parliament of South Australia*

- 7 The Parliament of South Australia has a bicameral legislature consisting of the House of Assembly (lower house) and the Legislative Council (upper house). The House of Assembly has 47 members, and the Legislative Council has 22 Members. In order for a bill to be passed into law by the Government of South Australia, it must receive a

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majority of votes (i.e. more than half of the Members present need to vote in favour of the bill) in both the House of Assembly, and the Legislative Council.

- 8 The composition of the House of Assembly and the Legislative Council is recorded on the Parliament of South Australia Website. The composition of the House of Assembly is recorded at <https://www.parliament.sa.gov.au/en/House-of-Assembly/Members>. The composition of the Legislative Council is recorded at <https://www.parliament.sa.gov.au/en/Legislative-Council/Members>. A print out of these webpages as at 13 June 2025 is at pages 105 – 111 of RYL-2.
- 9 Based on my review of that website, as at the date of this affidavit, the House of Assembly is composed of the following members:
- a. 28 Members from the Australian Labor Party (the **Labor Government**);
  - b. 13 Members from the Liberal Party of Australia (the **Liberal Opposition**); and
  - c. 6 Members who are independent.
- 10 As at the date of this affidavit, the Legislative Council is composed of the following members:
- a. 9 Members from the Labor Government;
  - b. 7 Members from the Liberal Opposition; and
  - c. 6 Members on the crossbench, including 4 independents, one Member from the Greens and one Member from the party 'SA-Best'.
- 11 To my knowledge, the composition of the House of Assembly and the Legislative Council has not changed since the Black by-election which occurred during November 2024.

*Passage of the Whyalla Steel Works (Port of Whyalla) Amendment Bill through the South Australian Parliament*

- 12 On 13 May 2025, at approximately 2:04pm, the Premier of South Australia, the Hon P.B. Malinauskas (**Premier**) made a ministerial statement regarding access to the Port of Whyalla, and foreshadowed the introduction of the *Whyalla Steel Works (Port of Whyalla) Amendment Bill (Bill)*. In that statement, the Premier said:

*The state has seen fit to clarify the status of the land subject to the purported lease, of which OneSteel is the registered proprietor, for the purposes of*

*operating the Port of Whyalla. That is why my government will give notice to the South Australian parliament that we will introduce the Whyalla Steelworks (Port of Whyalla) Amendment Bill 2025 to provide this clarity. The bill amends the Whyalla Steel Works Act 1958, formerly the Broken Hill Proprietary Company's Steel Works Indenture Act 1958, which approves and ratifies an indenture between the state of South Australia and OneSteel relating to the operation of it steelworks in Whyalla.*

*...The bill has been drafted out of an abundance of caution to clarify the effect of the failure to obtain prior consent and make it clear that the purported lease agreement granted by OneSteel to Whyalla Ports never had legal effect from the beginning. The bill also clarifies that the creation of an interest in the tramways, railway and other infrastructure constructed on the port facilities, other than by and for OneSteel, is void and that the infrastructure forms part of the land and is not personal property.*

A copy of the ministerial statement made by the Premier on 13 May 2025 is contained in the Hansard transcript for the House of Assembly on 13 May 2025, and is at pages 49 to 50 of RYL-2.

- 13 On 14 May 2025, at approximately 2:54pm, in the House of Assembly, Mr Patterson, a member of the Liberal Opposition, questioned the Hon A. Koutsantonis about the Proceeding and the foreshadowed Bill. A copy of the relevant portion of the Hansard transcript from the House of Assembly dated 14 May 2025 is at page 52 of RYL-2.
- 14 On 14 May 2025, at approximately 4:17pm, the Hon A. Koutsantonis introduced the Bill into the House of Assembly, at which time the first two readings of the Bill were conducted. However, the debate was adjourned on the motion of Mr Patterson. A copy of the relevant portions of the Hansard transcript from the House of Assembly dated 14 May 2025 is at pages 53 to 54 of RYL-2.
- 15 On 15 May 2025, at approximately 12:09pm, the Bill was again discussed in the House of Assembly. The Liberal Opposition expressed concerns about the Bill, and a motion was carried that the Bill be referred to a select committee pursuant to Joint Standing Order No 2. A copy of the relevant portions of the Hansard transcript from the House of Assembly dated 15 May 2025 is at pages 56 to 63 of RYL-2.
- 16 Subsequently, the Select Committee prepared a report which was received in the House of Assembly on 15 May 2025 at 3.43pm (**Report**). The Report recommended "That the Whyalla Steel Works (Port of Whyalla) Amendment Bill be passed by the

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*House of Assembly as soon as possible and that it be sent to the Legislative Council for its consideration". A copy of the Report is at pages 91 to 104 of RYL-2.*

- 17 After the Report was received in the House of Assembly, the Bill was discussed in Committee. The Committee reported the Bill without amendment. The Bill was then read a third time, and was passed by the House of Assembly at approximately 5:14pm on 15 May 2025. A copy of the relevant portions of the Hansard transcript from the House of Assembly dated 15 May 2025 is at pages 64 to 80 of RYL-2.
- 18 On 15 May 2025 at approximately 5:23pm the Bill was received into the Legislative Counsel from the House of Assembly and the first and second reading occurred. The Bill passed the Committee Stage without amendment, before being read a third time and passed at approximately 6:13pm. A copy of the relevant portion of the Hansard transcript from the Legislative Counsel dated 15 May 2025 is at pages 82 to 90 of RYL-2.
- 19 On 22 May 2025 the Bill received royal assent from the Governor of South Australia, making the Bill an act of Parliament.

**Notification to the Court of the *Whyalla Steel Works (Port of Whyalla) Amendment Act***

- 20 On 16 May 2025, ABL sent an email the chambers of Justice O'Callaghan, being the docket Judge of these proceedings, copied to Norton Rose Fulbright (**NRF**) and King & Wood Mallesons (**KWM**). In that email, ABL notified the Court of the Bill and its potential implications on the Proceeding, and sought an urgent case management hearing. A copy of the email from ABL to the chambers of Justice O'Callaghan dated 16 May 2025 is at pages 12 to 13 of RYL-2.
- 21 On the same day, the Court listed a case management hearing. At the case management hearing, Mr Zwier appeared for the Plaintiffs and Cross-Respondents. I attended the case management hearing remotely. At the hearing, Mr Zwier informed the Court that the Bill may affect the conduct of the proceeding. The transcript of the hearing records Mr Zwier stating (at 5:19–26):

*Your Honour, I think the preliminary view is that the application is going to be pressed. It's a preliminary view because this legislation ought to be an answer, and as your Honour might – if your Honour has read the press, there has been some suggestion that the legislation when it was being foreshadowed was going to be able to create certainty for the administrators to transact and complete. We need to be satisfied that's right. So it's not likely to go ahead, and*

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*part of the reason we wish to draw to your attention earlier is to make sure that your Honour was not inconvenienced if the trial incurred.*

A copy of the transcript of the case management hearing is at pages 14 to 19 of RYL-2.

- 22 Based on my recollection of the case management hearing, the transcript incorrectly records Mr Zwier as stating that *"the preliminary view is that the application is going to be pressed"*. My recollection is that Mr Zwier stated: *"the preliminary view is that the application is not going to be pressed"*.

**Correspondence exchanged between the parties**

- 23 On 24 May 2025, the then solicitors for Whyalla Ports, NRF, sent a letter to ABL in which, amongst other matters, NRF requested that the Plaintiffs and Cross-Respondents confirm whether they would seek to discontinue their claim. NRF also notified ABL that Whyalla Ports was *"weighing seeking an order that the professional costs incurred by it in defending the proceedings be paid by the first plaintiffs"*. The letter then stated:

*A relevant factual question that would inform this decision is whether and to what extent any or all of Sebastian Hams, Mark Mentha, Lara Wiggins, or Michael Korda, or their employees, at any stage prior to the Bill being introduced in the South Australian House of Assembly on 14 May 2025:*

- 1. knew, or had received information, advice or representations to the effect, that the Bill would be introduced; and / or*
- 2. made representations to the South Australian government requesting or alerting them to a need for an amendment of this nature to be introduced."*

(the **NRF Questions**). A copy of the letter from NRF to ABL dated 24 May 2025 is at pages 20 to 21 of RYL-2.

- 24 On 26 May 2025, ABL sent a letter to NRF stating that the Plaintiffs and Cross-Respondents intended to discontinue the proceeding. In relation to the issue of costs raised in NRF's letter of 24 May 2025, the letter stated *"the decision to enact the Amending Act was and is a decision of the Parliament of South Australia. Once the Amending Bill was before Parliament, the Administrators suggested that the parties ought to act responsibly by ceasing to incur further legal costs until the scope and impact of the Amending Act was better understood by all parties."* The letter also noted

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that all parties had been aware since at least 19 February 2025 of the State's broad powers to enact legislation and the possibility of further legislation following the appointment of the First Plaintiffs on 19 February 2025. A copy of the letter from ABL to NRF dated 26 May 2025 is at pages 22 to 23 of RYL-2.

- 25 Between 28 May 2025 and 1 June 2025, ABL and the solicitors for the Second Defendant, KWM, exchanged correspondence regarding the question of costs, and whether the Second Defendant would consent to the Plaintiffs and Cross-Respondents filing a notice of discontinuance in the Proceeding. A copy of the emails between ABL and KWM between 28 May 2025 and 1 June 2025 are at pages 24 to 31 of RYL-2.
- 26 On 30 May 2025 NRF sent a letter to ABL, noting that ABL had not responded to the NRF Questions, which NRF described as "*critical to the determination of [Whyalla Ports'] position regarding the recovery of its costs*". The letter stated that, "*in the absence of a satisfactory response*" Whyalla Ports was not able to agree to case management orders proposed by the Plaintiffs and Cross-Respondents, or consent to an order that each party bear its own costs. The letter then attached a notice to admit (**Notice to Admit**) and the Notice to Produce. A copy of the letter and enclosures from NRF to ABL dated 30 May 2025 is at pages 34 to 41 of RYL-2.
- 27 On 2 June 2025 ABL sent an email to NRF, which maintained that the NRF Questions were irrelevant to the issue of costs, and sought that the Notice to Produce and Notice to Admit be withdrawn. The email further explained:

*The Administrators cannot and did not cause the South Australian Government to enact legislation, nor can the Administrators cause the South Australian Opposition or cross benches to support, oppose or not oppose that bespoke legislation. The question misunderstands the workings of government and the Parliament.*

*Notwithstanding that our clients are not under any obligation to provide any further response to your requests for information which the Administrators maintain is irrelevant please note on a reservation of all rights basis the following timeline in relation to the passage of the Amending Act:-*

1. *On 13 May 2025 the South Australian Premier made a Ministerial Statement that said inter alia .. " The state has seen fit to clarify the status of the land the subject to the purported lease ....That is why my government will give notice to the South Australlan Parllament that we will introduce the ...(Amending Act)".*

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2. *On 13 May 2025 after the release of the South Australian Premier's Ministerial Statement and media about it, the lawyers for the State of South Australia provided ABL a copy of the Bill on the basis that we could only provide a copy of the Bill to the legal advisers to the Administrators.*
3. *On 14 May 2025 NRW was placed in a trading halt.*
4. *On about 14 May 2025 NRW released an ASX Announcement dated 14 May 2025 following the South Australian Premier's Ministerial Statement.*
5. *On 15 May 2025 the Bill was received by the Legislative Council from the House of Assembly and read a first time.*
6. *On 22 May 2025 Royal assent was granted.*

*The Administrators and their employees and lawyers did not know or receive any information about the Amending Act (or Bill) until 13 May 2025 after the Ministerial Statement.*

A copy of the email from ABL to NRF dated 2 June 2025 is at pages 42 to 44 of RYL-2.

- 28 On 6 June 2025, ABL sent a letter to NRF in which ABL raised concerns about the Notice to Admit and Notice to Produce.
- 29 In relation to the Notice to Produce, the letter stated that Whyalla Ports "*has not explained what it alleges the [First Plaintiffs] did prior to the introduction of the Bill into Parliament to warrant an adverse costs order. Nor has your client explained how the admissions sought, and documents requested, in the Notices would further that case*".
- 30 The letter further stated:

*"The authorities have consistently affirmed that the enactment of legislation is a supervening event for which a litigant is not responsible, and that the passage of legislation is determined by the processes of Parliament, which are inherently uncertain... The passage of the Bill through the South Australian Parliament is no exception. Hansard records that the Bill was debated in both houses of Parliament, with concerns expressed about the Bill by the Opposition in both houses. It was also scrutinised in Committee in both houses, including a Select Committee. Neither the Administrators, their employees nor legal advisors could have known, let alone controlled, whether the Bill would pass through Parliament. The relevant Hansard records are enclosed for your benefit.*

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*Given this, we cannot understand how, even speculatively, the admissions and documents sought in the Notices could be relevant to the question of costs. For example, on the terms of the Notice to Produce, a single email from any one of the Administrators, or any of its employees or legal representatives, merely "concerning" the "enactment or potential enactment" of legislation would fall for production. We cannot understand how such a document (if it exists) could establish conduct by our clients rendering them responsible for a decision taken by Parliament."*

- 31 The letter requested that NRF provide the following explanation by 4pm on 10 June 2025:
- (a) *what your client alleges was the Administrators' (or their employees or legal representatives) knowledge of, or involvement in, the introduction of the Bill to Parliament;*
  - (b) *the basis for that allegation; and*
  - (c) *how the admissions and documents sought by the Notices could have any bearing on the question of costs.*

A copy of the letter from ABL to NRF dated 6 June 2025 is at pages 45 to 47 of RYL-2.

- 32 On 6 June 2025, with the leave of the Court, the Plaintiffs filed a notice of discontinuance by which the Plaintiffs discontinued the proceeding commenced by Originating Process dated 2 April 2024. A copy of the notice of discontinuance is at pages 112 to 114 of RYL-2.

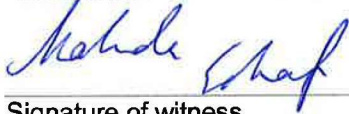
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33 As at the date of this affidavit, ABL has not received a response from NRF or any other representative of Whyalla Ports to its letter dated 6 June 2025.

**AFFIRMED** by the deponent  
at Melbourne  
in Victoria  
on 13 June 2025

Before me:



Signature of witness

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*Raphael Leibler*  
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Signature of deponent

**Kalinda Riley Scheef**  
Arnold Bloch Leibler  
Level 21, 333 Collins Street, Melbourne 3000  
An Australian Legal Practitioner  
within the meaning of the  
Legal Profession Uniform Law (Victoria)

A person authorised under section 19(1) of the *Oaths and Affirmations Act 2018* (Vic) to take an affidavit.

In accordance with section 27(1A) of the *Oaths and Affirmations Act 2018* (Vic), this affidavit was signed and sworn or affirmed by the deponent by audio-visual link, and the authorized affidavit taker has used a scanned or electronic copy of the affidavit and not the original in completing the jurat requirements. All requirements of section 12 of the *Electronic Transactions (Victoria) Act 2000* (Vic) have been met.

**CERTIFICATE IDENTIFYING ANNEXURE "RYL-2"**

No. VID420 of 2025

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

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

First Plaintiffs and First Cross-Respondents

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First Defendant and Cross-Claimant

And

**GOLDING CONTRACTORS PTY LTD (ACN 009 734 794)**

Second Defendant

Affidavit of: **Raphael Yehudah Leibler**  
Address: Level 21, 333 Collins Street, Melbourne VIC 3000, Australia  
Occupation: Solicitor  
Date: 13 June 2025

This is the annexure marked "RYL-2" referred to in the affidavit of **Raphael Yehudah Leibler** affirmed before me on 13 June 2025.



Signature of witness

**Kalinda Riley Scheef**  
Arnold Bloch Leibler  
Level 21, 333 Collins Street, Melbourne 3000  
An Australian Legal Practitioner  
within the meaning of the  
Legal Profession Uniform Law (Victoria)

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Filed on behalf of: the Plaintiffs and Cross-Respondents  
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