

The Politics of Port Competition: The Case of New South Wales Port Reform

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The Politics of Port Competition

- New South Wales is Australia's oldest state. It was first established as a British colony in 1788
- New South Wales has three commercial ports:
 - Sydney
 - Newcastle (regional port)
 - Port Kembla
- New South Wales' ports have always been owned and operated by the New South Wales government

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- Until 1936 the ports were run by individual harbour trusts which were responsible for services such as pilotage, navigation and safety
- In 1936 the Maritime Services Board took over responsibility for running the ports.
- Neither the harbour trusts or the Maritime Services Board operated New South Wales' ports as competitive commercial entities

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- The Maritime Services Board continued to run the ports until the 1980s but by this stage the ports were inefficient and unprofitable
- Australia's other ports were experiencing similar problems at the same time and there were many calls for reform
- In response, in 1995 New South Wales introduced corporatisation as a reform method for its ports

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THE 1995 REFORMS

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- This corporatisation program involved retaining public ownership of the ports, while re-establishing the port authority as a landlord with commercial operations being left to the private sector
- The reforms were driven by the need to increase competition and efficiency in the port sector
- The ports were to be run as private-sector businesses whilst being publicly-owned

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- Corporatisation was introduced by the New South Wales government to reform its ports. Similar reforms were occurring in other Australia states
- It was important to the New South Wales government that port ownership remain in public hands with ports run as private sector businesses with minimal interference from government and politicians
- Government interference was seen as an impediment to efficiency

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- The ports were corporatised under one Act of Parliament, the *Ports & Maritime Administration Act 1995* (NSW) (the “Ports Act”)
- This Act abolished the Maritime Services Board and created a port corporation to run and operate each port:
 - Sydney Ports Corporation: Ports of Sydney & Botany Bay
 - Newcastle Port Corporation: Port of Newcastle
 - Port Kembla Port Corporation: Port Kembla

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- The Ports Act explicitly states that the promotion of competition is one of its principle objectives
- The Ports Act seeks to make New South Wales' ports more competitive by removing them from the direct control of the government and the Minister for Ports
- This aims to have to allow them to operate more freely in the marketplace like private-sector competitors

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- Section 9 of the Ports Act states:

The principle objectives of each Port Corporation are:

- (a) to be a successful business and, to this end:
 - (i) operate at least as efficiently as any comparable business;*
 - (ii) to maximise the net worth of the State's investment in the Port Corporation, and**
- (d) to promote and facilitate a competitive commercial environment in port operations, and*
- (e) to improve productivity and efficiency in its ports and the port-related supply chain*

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- Since the 1995 reforms, there have been consistent complaints that corporatisation has not allowed the ports to be as competitive as first desired
- Public ownership is the element that is blamed for this – each port has two Ministers of Parliament who have the right to intervene in the running of the Port Corporations
- This dissatisfaction led to several reviews of port competition

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**THE REVIEWS OF
PORT
COMPETITION**

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- There were three reviews that impacted on New South Wales' ports:

Review of Port Competition and Regulation – 2007

The main finding of this report commissioned by the New South Wales government were that the existing regulatory frameworks achieved an appropriate balance between promoting competition and ensuring viable port operations. It also found the current objectives and functions of ports corporations under the Ports Act did not support the competitive environment that was sought by the government

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Independent Pricing and Regulatory Tribunal (IPART) Review 2008

The review found that landside service competition should be increased, by decreasing congestion at the port. It also found that increased economic regulation was not warranted unless voluntary co-operation did not achieve the anticipated increase in performance.

As with the 2007 review, it found that the current objectives and functions of port corporations under the Ports Act did not support the competitive environment that was sought by the government

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NSW Maritime Better Regulation Statement – September 2008

This was a proposal to enhance the contribution of New South Wales' ports to the state's economy by improving competitive outcomes. It too concluded that it was the objectives and functions of the Ports Act that was the impediment because they did not support a competitive environment. It also advocated giving the Minister increased powers of direction and to make further regulations

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THE 2008 CHANGES

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- In response to these reviews, the New South Wales government amended the Ports Act to increase competition
- The reforms amended the Ports Act's objectives and functions controversially by increasing the powers of the Minister for Ports
- The most controversial section was Section 10A

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- Section 10A gives the Minister for Ports the power to issue written directions to the three port corporations about any of their functions in relation to promoting and facilitating a competitive commercial environment, and in improving its productivity and efficiency
- Under Section 10A the Minister could issue and confirm the directions even if any of the port corporations objected to the direction, potentially giving the Minister unfettered powers of direction because there is no opportunity for independent review of the directions

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- The amendments also contain a schedule that allows the Minister to set mandatory standards in relation to performance and use of services, as well as access to facilities and services, etc.
- The Minister is NOT required to consult with the port or port users before setting the mandatory standards
- If the standards are breached, port users face financial penalties without the right of recourse or defence

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- These amendments attracted far-reaching criticism from many parties including port users, operators and opposing political parties
- The government gave no explanation as to why it made this amendment to increase Ministerial powers
- Increasing the opportunity for Ministerial interference goes against the aims of corporatisation and threatens the independence of the port corporations

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- This raises many questions as to the New South Wales' government's eventual intentions for its port corporations:
 - Does it intend to return to the pre-corporatisation times when port corporations were merely extensions of Ministerial portfolios?
 - Why does the Minister have the power to intervene to give directions without first receiving any requests from the port corporation?
 - Why does the Minister not have to consult port corporations and port users before setting mandatory standards that must be followed?
 - Why is there no system of checks and balances upon the Minister's powers?

What is the future of corporatisation in New South Wales?