07/02/2022

Dear Commissioners and Staff,

My name is Dr. Greig Taylor and I am an academic at UNSW Business School. Along with my colleague, Dr. Matthew McDonald, we recently completed a two-year study of contemporary port reform in Australia. The research was based on a series of interviews with a variety of port stakeholders, from port authorities to exporters, and MUA representatives to road haulage associations. This was complemented by a content analysis of twenty years of government, ACCC and other reports. You can find the first output from the project attached below (currently under review in an internationally-recognised journal). For your convenience, I have prefixed the paper with a summary of the main findings and recommendations. I hope the research contributes to an informed and balanced report on the sources of inefficiency in Australia's maritime supply chain.

(Corresponding author Greig Taylor. The views expressed below are those of the authors alone and are not officially endorsed by UNSW)

Summary: Issues regarding efficiency in the maritime supply chain

- There are issues with the way the government and associated bodies measure 'productivity'. Labour productivity at Australia's container ports has risen significantly and cost per box has fallen for shipping companies but the 'crane rate' has remained relatively constant, despite capital investment in automated equipment and systems. State/Federal government-steered port reform over the last 15 to 20 years, largely centred around privatisation of port authorities and increasing intra-port competition, has failed to improve the 'crane rate' measure of productivity.

- Privatisation of the port authority function at major container ports, partly incentivised by the Federal government through the Asset Recycling Scheme, has contributed to increasing costs across supply chains. Undertaken on a 'lease' basis, terms are typically between 50 and 99 years. However, leases have often priced either well above or well below market estimates. In the case of the former, this has led to escalating rental costs for stevedores as private investors seek return on investment, which are in turn passed down the supply chain. Where significantly under-priced, privatised port authorities are reaping excessive profits, with leases proving poor value for money for taxpayers and state governments. The international academic literature demonstrates that port authority privatisation contributes little towards port efficiency and can often be vulnerable to hedge fund profiteering.
- The 'third stevedore' policy at three of the five major container ports has failed to produce competition-driven efficiency gains, particularly in the 'crane rate' measure. Hutchison Ports Australia's (HPA) unsuccessful tender at Melbourne has perpetuated the dominant cargo-handling duopoly (DP World and Patrick), since the company do not compete on a level playing field in the 'big three' ports.
- Stevedore companies have also contributed to rising levels of cost inefficiency in the supply chain by introducing, then exponentially escalating, 'terminal access' or 'infrastructure' fees to unwarranted levels. These fees are the result of quayside customers (international shipping lines), who hold significant leverage over stevedores, seeking lower pricing and placing downward pressure on revenues; increased rents because of port authority privatisation; and a desire to maintain recent levels of profitability to satisfy shareholders.
- The deal which privatised the port authority in NSW contained a number of highly inhibitive clauses which have compromised the possibility of inter-port competition

and related productivity/efficiency improvements in the state for the duration of the lease (99 years). These arrangements have already been the subject of a failed challenge by the ACCC in a Federal Court. The NSW state government (among others) have pursued high lease returns at the expense of other considerations and stakeholders.

- Greater automation has largely been ineffective in improving cargo handling efficiency/productivity at container ports in Australia, according to BITRE and ACCC statistics relating to the 'crane rate' measure.
- Lack of coordinated national policy on the maritime supply chain is hurting Australian consumers, exporters and the economy more broadly.
- Although the influence of the Maritime Union of Australia (MUA) and Enterprise Bargaining Agreements (EBAs) are often blamed for inhibiting managerial prerogative and highlighted as a source of inefficiency in supply chains (particularly by stevedoring companies and some sections of the press), their impact is minor compared with the structural problems and poor port policy decisions outlined above.

Conclusions and recommendations

- PBLIS at Port Botany should demonstrate to policy makers that regulation can be instrumental in markedly improving elements of maritime supply chain efficiency.
- State regulation and oversight should be introduced without delay to limit privatised port authorities implementing rent rises for stevedoring companies above a reasonable market rate (to be calculated by the regulatory body), particularly at the 'big three' container ports.
- State regulation and oversight should be introduced without delay to stifle the continued unsustainable escalation of 'terminal access' and 'infrastructure' charges

levied by stevedores on landside customers, which add to cost inefficiencies in the maritime supply chain.

- A Federal review/inquiry should be undertaken to attempt to bring some centralised coordination to port policy in Australia. Such a review should also consider regulation of international liner shipping, since conglomeration has increased the market power of big shipping companies and had a reciprocal effect on the introduction and escalation of 'terminal access' and 'infrastructure' charges by stevedores to make up the shortfall in revenue. The review should consider the establishment of a publicly controlled container liner to assure a minimum level of services.
- Attempts by privatised port authorities and/or stevedoring companies to acquire downstream/auxiliary businesses in the supply chain should be closely monitored to avoid further concentration of market power by dominant players at both 'wet' and 'dry/intermodal' ports.

In practice and in principle: 'Free market' discourses and port policy in Australia

Journal:	*Politics & Policy*
Manuscript ID	Draft
Manuscript Type:	Original Article
Keywords:	Australia, ports policy, competition, privatisation, efficiency, Normative Political Theory < Political Theory
Region:	Australasia

Abstract: In the 1980s, consecutive Australian governments began to pursue a program of microeconomic restructuring, taking their lead from the developing 'free market' reform projects underway in the United States and the United Kingdom. One of the prominent features of the emerging liberalisation agenda was the commercialisation and privatisation of publicly held companies. In keeping with this trend, over the following decades a series of changes have been introduced to Australia's ports aimed at improving their productivity and efficiency. Drawing on a series of interviews and analysis of governmental reports, the purpose of this study is to examine how port policy has unfolded 'on the ground' in Australia. The paper considers some of the 'common sense' economic maxims expounded for reform in relation to actual outcomes for industry stakeholders, concluding that principles and practice have diverged significantly and that many of the assumed benefits have failed to materialise.

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In practice and in principle: 'Free market' discourses and port policy in Australia

Abstract

In the 1980s, consecutive Australian governments began to pursue a program of microeconomic restructuring, taking their lead from the developing 'free market' reform projects underway in the United States and the United Kingdom. One of the prominent features of the emerging liberalisation agenda was the commercialisation and privatisation of publicly held companies. In keeping with this trend, over the following decades a series of changes have been introduced to Australia's ports aimed at improving their productivity and efficiency. Drawing on a series of interviews and analysis of governmental reports, the purpose of this study is to examine how port policy has unfolded 'on the ground' in Australia. The paper considers some of the 'common sense' economic maxims expounded for reform in relation to actual outcomes for industry stakeholders, concluding that principles and practice have diverged significantly and that many of the assumed benefits have failed to materialise.

Keywords: Australia; political economy; public policy; competition; efficiency; privatisation; neoliberalism

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1. Introduction

In the early 1980s, consecutive Australian governments began to pursue microeconomic restructuring in the shape of deregulation, tax reform, privatisation, and labour market reorganisation, referred to as the turn towards 'economic rationalism' in Pusey's (1991) seminal

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research. The impetus for this came from the developing political and economic reform agenda in the United States and the United Kingdom, which incorporated the rising primacy of 'free market' economics as part of a sea-change in mainstream western political orthodoxy, now commonly (though contentiously) described as the emergence of neoliberalism (Barnes et al. 2018; Cahill 2007). In Australia, the Hilmer Report (1993) provided further urgency to the reform agenda and one of the prominent features of unfolding economic liberalisation policies was the transformation of key sectors and industries where the state had previously played a role. Commercialisation and privatisation of hitherto publicly held companies became politically paradigmatic and thereafter the dominant wisdom among policy makers was that 'everything feasible should be privatised' (Hilmer quoted in Coorey and Khadem 2014). This program extended to utilities (Cahill and Beder 2005; Chester 2015; Quiggin 2010a), prisons (Harding 1998; Love et al. 2000), airports (Graham 2011; O'Donnell et al. 2011; Hooper et al. 2000), roads (Cannadi and Dollery 2005; Cardew 2017; Searle 1999), telecommunications (Campbell 2000; Walker and Walker 2000), banks (Fairbrother et al. 1997; Quiggin 2001), and even national heritage areas (Darcy and Wearing 2009), becoming the subject of much academic attention.

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The justifications and logic for commercialisation and privatisation have remained unchanged since their emergence as hegemonic economic policy in the 1980s and 90s, centred around principles of efficiency. For example, the premise that private entities are always more efficient than public ones because of market pressures; that competition always results in increased efficiency; that the efficiencies gained from privatisation/increased competition will lead to lower prices for users and consumers. Budgetary reasons are also pontificated – that funds derived from the sale of state-owned assets represent value for money for the public purse and reduce government debt/interest repayments, or increase credit worthiness; that funds generated from

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sales would be better spent on alternative projects, usually infrastructure (Aulich and O'Flynn 2007; Mitchell and Butz 2019; Letza et al. 2004; Quiggin 1995; Walker and Walker 2000). However, evidence from some industries in Australia, and those in similar countries across the world, have demonstrated that these assumptions can be problematic if reform is not managed carefully (see, for example: Abbott and Cohen 2014; Araral 2009; Bowman 2015; Hall et al. 2005; Letza et al. 2004; O'Donnell et al. 2011; Powell and Yurchenko 2020; Quiggin 2010a; von Weizsacker et al. 2006).

In keeping with the trend towards economic liberalisation, since 1989 a series of changes have been introduced to Australia's ports aimed at improving their productivity and efficiency. Ports are a fundamental node in national trade infrastructure, particularly important for an island nation such as Australia. In fact, 98 per cent of Australia's trade depends on sea transport, and between 2017 and 2019 the combined value of Australia's seagoing international imports and exports was over $600 billion (Australian Government 2018; Australian Naval Institute 2020; Ports Australia n.d.). While the earliest port reforms were aimed at workforce and labour process rationalisation, the most significant contemporary developments have involved the construction of new terminals and introduction of additional stevedoring companies at existing container ports with the intention of encouraging greater competition (and concomitantly improved efficiency), alongside the long-term lease of responsibility for port administration through the privatisation of port authorities. However, one of the key issues with the privatisation and commercialisation of ports more broadly surrounds the existence of a natural monopoly at the port authority level and potential monopoly or duopoly at the cargo-handling (stevedoring) level, with implications for prospective rent fixing and price gouging by incumbents. Port reform needs to be managed prudently to ensure that political expediency and private profit do not take precedence over

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sustainable growth and economic benefit to the community, industry and national economy at large.

To these ends, the purpose of this study is to examine how port reform in Australia has unfolded 'on the ground'. It considers some of the moribund justifications expounded for reform in relation to actual outcomes for industry stakeholders, ranging from port authorities to stevedores, haulage companies to port workers, and exporters to consumers. While detailed analyses of developments at Australia's major ports have already been partially provided elsewhere from a port administration or governance perspective (see, for example: Chen et al. 2017; Everett and Robinson 2007; Tull & Reveley 2001), there is a distinct lack of commentary on how successful these have proven, and less still on the repercussions for industry stakeholders (Brooks 2007; Brooks and Pallis 2008; Vaggelas 2019). The empirical research for this study is based on a series of in-depth interviews with various stakeholders and content analysis of government and regulator reports relating to developments in the Australian port industry, supplemented by relevant newspaper articles.[1] It concludes that the principles and practice of reform have diverged significantly and that many of the assumed benefits have failed to materialise. Before a narrative and analysis of these developments is presented, attention should turn to a critical exploration of the provenance of the 'common sense' market-related discourses that underpinned the policy decisions of state and federal governments alike regarding port reform in Australia.[2]

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[1] Data for the study was collected from 18 in-depth interviews with a range of industry stakeholders including port management (4), port workers and their representatives (6), haulage company representatives (5) and exporters (3). Supplementarily, it draws on secondary data on port reforms and privatisation from a series of reports published by the Australian Competition and Consumer Commission (ACCC), the Bureau of Infrastructure, Transport and Regional Economics (BITRE), the Productivity Commission, federal and state governments, trade unions and NGOs, as well as related articles in the popular press.

[2] Australia has a highly federalised political structure. Each of the six states and two territories have their own constitutions, governments, parliaments and laws, with a high degree of autonomy in local decision-making. Ports fall under the jurisdiction of individual state/territory governments.

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2. Common sense economics? Competition, privatisation and efficiency discourses

'Neoliberalism' is a controversial and nebulous term describing 'an oft-invoked but ill-defined concept' (Mudge 2008: 703). It was originally coined to articulate the profound changes occurring in the political and economic orthodoxy of developed nations from the late 1970s onwards. In contemporary parlance, neoliberalism has increasingly become a pejorative label used to critique the current state of advanced globalised capitalism and/or the economic and social inequalities or injustices of the modern world. Under this interpretation, neoliberalism is conceived as a premeditated and overarching project, an attempt by a global capitalist class to redefine economy and society on its own terms. However, this perspective has been strongly criticised as fantastical for a number of reasons, not least that neoliberalism 'can only ever exist as a thought-abstraction… because 'it' only ever exists in articulation with actors, institutions and agendas' (Castree 2006: 2), that overgeneralisation and imprecision render the concept of neoliberalism bereft of explanatory power (Dunn 2016), or, more starkly still, that 'there is no such thing as neoliberalism!' (Barnett 2005: 9). Meanwhile, advocates of market-led economics 'roundly deny the existence of any such well-defined thought collective, and stridently resist the label of neoliberalism' as akin to a conspiracy theory (Mirowski 2018: 118).

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Despite difficulties surrounding its deployment as an explanatory model or metanarrative, more sophisticated exponents emphasise the diverse strands related to researching and understanding neoliberalism. For example, Ward and England (2007) frame research on neoliberalism as comprising one or more of four distinct approaches – as an ideological hegemonic project; as policy and program; as a state form; as governmentality; a conceptualisation also supported by Springer (2012). Similarly, Birch (2015) and Cahill et al. (2018) identify seven key analytical approaches to studying neoliberalism – through Foucauldian governmentality, Marxism,

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ideational analysis, history and philosophy of economics, institutional analysis, state/regulation theory, and human geography. Some advocates, principally human and urban geographers, emphasise the polycentricity of neoliberal restructuring, which is 'produced within national, regional and local contexts defined by the legacies of inherited institutional frameworks, policy regimes, regulatory practices, and political struggles', preferring to highlight locally-embedded processes of 'neoliberalisation', rather than neoliberalism as a distinct hegemonic project (Brenner and Theodore 2002: 351; see also: Peck et al. 2018).

Notwithstanding the controversy and complexity surrounding neoliberalism as a definable concept, it is difficult to deny that certain economic maxims dominate the political economy of developed (and developing) nations (Temple et al. 2016). The tendency towards market primacy has gradually proliferated through right-leaning think tanks, consultancy firms, and supra-national monetary institutions such as the World Bank and the IMF, to become elevated to the status of an unquestionable wisdom about the nature of the economy and, indeed, society (Gezmiş 2018). This 'common sense' comprises a bundle of 'widely held beliefs – about the benefits of unfettered markets and the dangers of interventionist states, about the importance of market competition and 'competitiveness', about the necessity of liberalizing reform' (Schmidt 2018: 69). A process of 'policy contagion' has cascaded into 'an adaptive matrix of market-oriented and pro-corporate regulatory norms' and the 'colonization of commonsense understandings', crowding out alternatives (Peck et al. 2018: 4-5). Attempts to challenge this status quo draw accusations of returning to 'the bad old days' of inefficiency, sluggish or flat growth, and disproportionate worker influence in organisations (Taylor and McDonald 2021). As Cahill and Humphrys (2019) and Humphrys (2018) have documented, these precepts cut across the political spectrum in Australia, and elsewhere, to become a universally accepted economic model.

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Many of the assumptions that underpin these dominant discourses exist only in an idealised abstraction of how 'the market' *should* work. In reality, practice and principle often diverge significantly. Privatisation is one of the hallowed tenets of modern political and economic discourse, deemed to be intrinsically positive. If approached in a pragmatic manner, where the merits are carefully considered on a case-by-case basis, some public assets or companies might benefit from being run on a more commercial footing by a private entity, primarily in terms of profitability (Dewenter and Malatesta 2001). However, such is the pervasive nature of the prevailing orthodoxy, privatisation is often overtly *systemic* in nature (Aulich and O'Flynn 2007), adopting an 'everything must go' or 'yellow pages' approach which is 'less about the genuine application of the economic theory of efficiency, but more about winning a political and ideological struggle' (Letza et al. 2004: 160; see also, Knafo et al. 2019).

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There is also related controversy surrounding how the sale of public assets is approached – for example, whether the selling price of an enterprise reflects value for money for the taxpayer on future revenue or whether it is being under-priced. Quiggin (1995, 2010b) has argued that future returns are extremely tricky to calculate, and that under-pricing is endemic, tantamount to 'selling the family silver to pay the bills'. Asset pricing has proved a topic of some controversy in Australia where the federal government encourages systemic privatisation by offering asset recycling premiums to state governments, with ports a particular target (Al-Daghlas et al. 2019; Richardson 2015).[3]

Underpinning the 'private good, public bad' dichotomy is the idea that the private sector is always more efficient than the public because of market forces, '*ownership and efficiency*

[3] The Asset Recycling Fund (ARF) was introduced on 1 July 2014. It was created to provide an incentive to states and territories to privatise assets and use the proceeds to fund infrastructure. The incentive takes in the form of a financial contribution of 15 per cent of the assessed sale value of the asset used to fund infrastructure. The measure was budgeted at $5 billion over five years (Source: Parliament of Australia n.d.).

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outcomes are perceived to be inextricably linked' (Everett and Robinson 1998: 41, emphasis their own). Conflation of mode of ownership with efficiency is subterfuge, however – private companies, like their public counterparts, can also be run inefficiently. There is significant debate amongst economics scholars whether, where market forces are brought to bear and the broader economic climate is considered, 'government firms are intrinsically no less efficient than private firms' (Dewenter and Malatesta 2001: 320; see also: Kole and Mulherin 1997; Letza et al. 2004; Martin and Parker 1995). Moreover, in a sector such as the port industry, where monopoly is virtually unavoidable at the port authority level and accompanied by the opportunity for possible vertical integration into cargo-handling duties, privatisation of the port authority function, if introduced, needs to be properly managed and regulated. Indeed, even the most strident exponents of 'free market' economics caution against the 'evil' of a private monopoly (Friedman 1982: 31).

Competition is another defining discourse of the market liberalisation model, usually credited with forcing efficiency upon market players. However, while competition 'might be viewed as an ideal that emanates from the market, it is not something that real-world markets will safeguard if left to their own devices… Businesses, individuals and entrepreneurs are just as likely to form cartels, avoid competition or seek to suppress it, and this provides the state with an important regulatory and legal function' (Davies 2018: 276). Yet, despite the potential anti-competitive tendencies of market players, regulation is often juxtaposed as antithetical to efficiency (O'Keeffe 2018; see also, Hilmer et al. 1993; McKinsey Australia 2014). This has special implications for the port industry, where duopolistic cargo-handling arrangements have historically prevailed and difficulties in fostering meaningful inter and intra-port competition are commonplace, particularly in a geographically dispersed country such as Australia (De Langen and Pallis 2006). Regulation has been conspicuously lacking as a counterweight to the market

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power of privatised port authorities and stevedoring incumbents at Australia's ports and the implications of this are discussed throughout the paper.

Both privatisation and competition are regarded as levers to increase efficiency in a sector or industry, with gains passed on to the consumer, or resulting in some broader benefit to the economy and society. However, using a stakeholder perspective, some commentators challenge the efficiency paradigm as fundamentally good. Pusey (2003) has highlighted that policies undertaken in the name of efficiency have undermined, rather than improved, the wellbeing and living standards of middle-class Australia. Beer et al. (2016) argue that worker protection and job security have suffered generally because of cost savings related to efficiency gains in organisations, while O'Keeffe (2018: 29-30) contends that, far from adding value beyond the organisation to the general public, efficiency is 'pursued *in spite* of society' and is often detrimental to 'the needs and values of its citizens' (emphasis his own). There are also serious questions surrounding whether efficiency-driven port reform in Australia has benefitted consumers at all.

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The contradictions apparent in the application of contemporary market-led economic theory to real-world situations have been described as 'actually existing neoliberalism', characterised by 'discrepancies between the utopian idealism of free-market narratives and the checkered, uneven, and variegated realities of those governing schemes and restructuring programs variously enacted in the name of competition, choice, freedom, and efficiency' (Peck et al. 2018: 3; see also: Brenner and Theodore, 2002). Such is the deviation between theory, practice and outcomes that a cadre of IMF economists recently declared that policymakers 'must [now] be guided, not by faith, but by evidence of what has worked' (Peck 2018: xxiii; see also: Colford 2016). This study seeks to examine the veracity of these deified and uniformly applied economic maxims in relation to developments in the Australian port industry. It will emphasise that port

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commercialisation and privatisation in Australia has been pursued in a systemic and ideological, rather than pragmatic, manner, resulting in a series of undesirable consequences. Attention will now turn to an overview of international trends in port restructuring before contemporary developments in Australian port reform are presented alongside a narrative of the outcomes for industry stakeholders, considered in relation to 'common sense' economic maxims.

3. Port restructuring

3.1 International trends

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The World Bank Port Reform Toolkit (2007) outlines four typical port administration structures: service ports, tool ports, landlord ports, and private serviced ports.[4] In each of these models, port authority functions are distributed depending on the degree of private sector involvement (see Table 1 below). From a port governance perspective, experts are divided over whether privatisation of the port authority has a positive influence over efficiency (see, for example: Baird 2013; Brooks 2007; Caldeirinha et al. 2018; Cullinane et al. 2005; Cullinane and Song 2002; Tongzon and Heng 2005). Early analysis of the UK's program of port privatisation in the 1990s, albeit an extreme manifestation, found it to be a case of 'private profit, public loss', with reforms

[4] *Service ports* are publicly administered. The local or central government acts as the port authority and is responsible for all functions and services (including cargo handling), maintaining its own directly-employed workforce to these ends. The port owns, maintains, and operates every asset. *Tool ports* are similar to *Service ports*, except that quayside cargo handling is usually carried out by private stevedoring companies with their own workforces (or sometimes drawing on a centralised labour pool system), although port assets (such as quay cranes and other mechanical aides) are usually operated by port authority employees. *Landlord Ports* are the most common port governance model. Here, the port authority is publicly administered by the local or central government and acts as landlord and regulator, where quay space and some port infrastructure are leased to private cargo handling companies who are responsible for the entirety of the cargo handling process within the port boundaries, using their own manpower (or sometimes drawing upon a centralised labour pool system). These terminal operators (also called stevedore companies in Australia) are also responsible for installation and maintenance of their own cargo handling equipment (e.g. cranes etc). Port authorities are usually responsible for dredging, upkeep of waterways etc. *Fully privatised ports* are rare, proliferating mainly in the UK (although as will be discussed in due course, Australia has partially adopted this approach). Under this model, port land is transferred to the private sector and, in the case of the UK, the regulatory function was transferred as well. Ports become self-administering and self-regulating and local/national government has little involvement (Source: World Bank 2007).

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proving 'costly… ineffective, and in many respects counter-productive' (Saundry and Turnbull 1997: 332; see also: Liu 1995).[5] This initial assessment is supported by more recent research that has highlighted the fully privatised model to be increasingly vulnerable to hedge fund involvement, and as such prone to a series of undesirable consequences such as 'a primary focus on high profits, a lack of investment in creating new port assets, high debt levels… high related interest payments'. In turn, this inevitably leaves 'little or nothing left from port surpluses which might have contributed towards investments in future new port infrastructure and capacity' (Baird 2013: 164), leading to calls for a national ports regulator to be introduced in the UK (Baird 2016; Monios 2017; 2019).

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Turnbull and Weston's (1992: 403) comparison of major European ports observed that developing a 'complementary system of employment regulation and state intervention generated a virtuous circle of industrial concentration, employment security, economic growth and greater economic efficiency', suggesting that an unfettered free market approach is unsuitable for the sector, regardless of geographical location. In New Zealand, the standard-bearer of efficiency where Australian policy makers were concerned (Productivity Commission 1998), a model has

[5] The UK can be considered an extreme case because of the complete privatisation of many major ports there. This involved the permanent (not leased) sale of port authority responsibilities and all associated land/assets.

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eventually emerged where the majority of shares in listed port authorities are in the hands of local government at all of the country's commercial ports (Pyvis and Tull 2017; NZIER 2010; Tull and Reveley 2001). The inappropriateness of port authority privatisation is further bolstered by evidence from some of the most efficient 'Asian tiger' ports, where the state retains control over port authority functions because of concerns surrounding monopolisation, foreign ownership and national security (Cullinane et al. 2005; Lee and Lam 2017; Reveley and Tull 2008; Song and Cullinane 2006).

In their early review of Australian port restructuring, Everett and Robinson (2007: 260) observed that 'understanding port reform cannot be divorced from the prevailing economic/political/ideological environment that framed these policies'. There have been a series of developments at Australian ports since then, yet the notion remains the same – that reform is strongly influenced by the dominance of market-based economic orthodoxy. Despite evidence from economically similar countries that privatisation of the port authority function does little to improve efficiency, Australian state and federal governments alike have pursued short-term windfalls from these strategically important assets. The model that has prevailed in four of the five major Australian container ports has been the privatised service model, albeit with the port authority and land 'leased', rather than sold, to the private sector for terms of between 50 and 99 years.[6] As will be revealed in due course, reforms implemented since 2013 have delivered limited improvements, a number of unintended consequences, and episodes of political and judicial intervention.

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[6] NSW has retained a stripped-down state-wide port authority, but it is only responsible for minor ancillary services. Rents are set by the privatised port authority, NSW Ports.

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4. Port reform in Australia - Competition, privatisation and efficiency discourses

4.1 Competition

Relative inefficiency at Australia's ports was attributed to two elements of the way the industry was organised.[7] Primarily, there was little choice for shipping lines and exporters because geographic scale made inter-port rivalry, the standard driver of competition-related efficiency improvements at ports elsewhere, problematic. Lack of inter-port competitive pressure was compounded by the existence of stevedoring monopolies or duopolies at most locations, that is only one or two terminal operators involved in cargo-handling at any given major container port (ACCC 2011). Since improvements in inter-port competition were difficult to harness, the Australian Competition and Consumer Commission (ACCC) recommended that intra-port competition should be encouraged by introducing a third terminal operator to several of the major ports. As it stood, incumbents enjoyed high operating profits because 'players do not face appropriate incentives to invest in a more efficient, productive service', to the detriment of the broader national economy (ACCC 2011: vi).

From 2005 onwards, major global stevedoring players were invited to tender to build and operate additional terminals at the three largest of the five major Australian container ports.[8] At the ports of Brisbane and Botany, the Hong Kong-headquartered global terminal operator (GTO) Hutchison Ports won the tender to construct new-build terminals on greenfield sites and cargo handling there began in 2013 and 2014 respectively. At the Port of Melbourne, Hutchison was unsuccessful in the tender, which was instead awarded to Victoria International Container

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[7] Despite a number of reforms being introduced between 1989 and 2000, including workforce rationalisation and changes in working practices stemming from the 1998 waterfront dispute, the Productivity Commission's (2003) international benchmarking study found that the performance of Australia's major container ports still lagged many of their regional and international counterparts, turning attention towards further reform of the industry. For more information on the 1998 dispute see: Dabscheck (2000); McConville (2000).

[8] Port Botany (Sydney), Port of Melbourne and Port of Brisbane are the three largest container ports in Australia by throughput.

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Terminal Ltd (VICT) (ACCC 2014).[9] These terminal operators joined Patrick and DP World in handling containerised cargo at the three largest container throughput ports in Australia.[10] At the new greenfield terminals, a significant proportion of the cargo handling process is automated, while other stevedores at these ports have also introduced similar technology.

Despite being championed as the silver bullet for enduring competition and productivity issues, the introduction of the third stevedore has not been as effective as initially hoped. Since beginning operations at Botany and Brisbane, Hutchison Ports Australia (HPA) has struggled to gain a foothold in the market. In an attempt to prise custom away from DP World and Patrick, HPA began to aggressively undercut what its competitors charged to quayside customers per container.[11] However, two years into commencing operations, HPA had managed to capture only a paltry three percent market share (Stevens 2015), while quayside revenue per container lift fell by over twenty percent industry wide (ACCC 2019; ACCC 2017).[12] The loss of quayside revenue across the industry has had a reciprocal effect on the proliferation of 'port access' fees for landside customers, something that will be discussed in detail in due course. A further five years on, Hutchison's current Australian market share stands at six percent and, as such, the third stevedore strategy has done little to foster competition at Brisbane and Botany, although VICT has fared

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[9] VICT is a joint venture comprised of another GTO, Philippines-based International Container-Terminal Services, and Australian-based propriety Anglo Ports.
[10] P&O Ports sold its stevedoring interests in the Australian port industry to DP World in 2006 (Source: ACCC 2006; Hughes 2006).
[11] 'Quayside customers' is the term commonly used to describe shipping lines which have been engaged by cargo owning exporters to transport their cargo. Shipping lines enter into agreements of variable length (though usually 2 to 5 years) with a particular stevedoring company for cargo to be loaded/discharged at their terminal at a specific port. 'Landside customers' comprise importers/exporters and the transport companies they engage to move their cargoes to/from these terminals, by rail or, more commonly, by road. Transport companies and cargo recipients are bound to patronise whichever terminal the shipping line is contracted to visit, as per the shipping line's stevedoring agreement. Each stevedore is the sole provider of landside access to its respective terminal (Source: ACCC 2019).
[12] HPAs quayside price reductions were matched by the other stevedores, encouraging a race to the bottom and resulting in this significant fall in revenue from that portion of stevedores' operations.

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somewhat better at Melbourne, now responsible for fifteen percent of container lifts at the port (ACCC 2019).[13]

There are several reasons why, despite significant industry experience and presence, HPA has failed to provide effective competition. Primarily, its failure to win the tender for the third terminal at Melbourne left it at a disadvantage when attempting to attract quayside customers (Author's interview with haulage representative #2, 2020; Author's interview with port management #2, 2020).[14] Moreover, at Brisbane in particular, questions remain whether container throughput volumes were large enough to sustain additional competition from a third stevedore (Author's interview with port management #2, 2020; Author's interview with port management #3, 2020). HPA's initially collegial approach to industrial relations was also perceived in some quarters as placing it at a competitive disadvantage to its counterparts in the industry (Hewett 2015; Stevens 2015; Author's interview with union representative #3, 2020). All these factors led to HPA's CEO informing industry stakeholders that 'the third operator policy is not viable in the immediate future but hopefully we can work with all stakeholders to ensure the viability of the container terminal industry on the east coast over the longer term' (ACCC 2016; Hewett 2015).

HPA's failure to obtain a meaningful market share has had a series of direct and indirect effects on other port stakeholders and the industry more broadly. Firstly, and most obviously, industrial relations have been adversely affected, as labour costs form over half the total overheads for stevedoring companies (ACCC 2016). On 6 August 2015, HPA sacked 97 of its 224-strong Australian dock worker (wharfie) labour force overnight by text message and email (Australian

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[13] VICT's ability to attract custom is only differentiated from HPA's because its terminal at Webb dock is able to accommodate larger container vessels (up to 8000 TEUs), which its competitors at Melbourne cannot due to height restrictions of the West Gate bridge (ACCC 2016).
[14] Shipping lines are said to prefer stevedores which can provide a 'national' service across the three major east coast ports, which the pre-existing incumbents could.

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Broadcasting Corporation 2015). A three-and-a-half month-long dispute ensued, the longest in Australian waterfront history, causing significant disruption to both HPA terminals as ships were diverted to competitors. After extended negotiations between the MUA and the company at the Fair Work Commission, voluntary redundancy was offered to all HPA wharfies at Botany and Brisbane, yielding sixty applicants (Author's interview with union representative #3, 2020; Hannan 2016).[15]

The introduction of the third stevedore has had other implications. As previously noted, new terminals were built on greenfield sites, meaning existing agreements with the union did not apply, and both HPA and VICT built technologically advanced terminals incorporating a significant degree of automation of cargo-handling. The commercial advantages that this allegedly presents new entrants, particularly in relation to manpower costs, have contributed to encouraging incumbents Patrick to semi-automate their Botany operations while, during current enterprise bargaining, DP World have refused to give guarantees that they will not seek to automate their operations in the future (Author's interview with union representative #1, 2019; Marin-Guzman 2019). This has resulted in tortuous bargaining negotiations between stevedores and the union, prompting rolling industrial action and uncertainty for both workers and port customers (Author's interview with union representative #3, 2020; Karp 2020; Marin-Guzman 2020). The impact of automation on port efficiency will be discussed later.

FIGURE 1 INSERT HERE

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[15] Those 97 workers compulsorily terminated in August were reinstated.

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4.2 Privatisation

From 2010 onwards, several of Australia's state governments began to tender for the long-term lease of port authorities to private entities.[16] This was undertaken with considerable encouragement and financial incentive from the federal government, part of the broader centralised asset recycling strategy outlined earlier (Coorey 2013; Richardson 2015). At the three largest container ports in the country, leases of between 50 and 99 years were sold to private interests, composed of pension, hedge and foreign investment funds (Menezes 2013; MUA 2015a). The standard justifications for privatisation of the landlord function were expounded – that the proceeds would reduce state budget deficits and related interest payments, that the funds raised could be used to finance other infrastructure projects, and that the state should offload risk to the more efficient private sector (Chester 2015; Quiggin 2018; Walker and Walker 2000).

The privatisation program has already created a number of issues and concerns across the Australian port industry. As previously outlined, in the rush to recycle state assets and release funds for infrastructure projects, calculating a just price for port leases can be problematic. A prescient example of this is provided by the case of Flinders port. As the first port in Australia to be privatised, some ten years earlier than its counterparts in other states, it could be regarded as a precedent. A 99-year lease was sold for $186 million in 2001, yet in the 2013/14 financial year alone, the port recorded a profit of $97.8m and paid dividends of $22m to shareholders (MUA 2015a).[17] Clearly, the original price paid for the lease severely underestimated future revenue at the port and represents poor value for the state government and, ultimately, the communities of

[16] With the exception of Flinders Ports (Adelaide), which was sold in 2001.
[17] Profit before taxation, depreciation and amortisation.

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South Australia. Whether the lease income received by other states for their ports constitutes a fair price is too soon to discern. However, it is notable that the Port of Brisbane made a profit of $139m in 2018, before tax, depreciation, amortisation and finance costs (Port of Brisbane 2019). The 99-year lease sale price was $2.3bn, making it logical to forecast that investors will make a handsome return. At the other extreme, the bumper amount paid for the Port of Melbourne ($9.7bn for a 50-year lease) would indicate that it is inevitable that port rents will need to rise steeply to represent value for money for investors, a trend that has already began to materialise.

As landlord, the port authority is responsible for setting rents for quay space for stevedoring companies involved in cargo handling, placing it in a position of natural monopoly. Where port authorities pass into the hands of private entities, these can exercise formidable market power and have no real responsibility to broader stakeholders beyond shareholders. This has manifested itself in large rent increases for stevedores at several of the major ports. For example, at the ports of Botany and Melbourne, Patrick claimed that its rent had increased 140% since privatisation (ACCC 2017).[18] DP World, also reported a 60% increase in rent at its Melbourne terminal when due for renegotiation in 2018, with rents per square metre for all stevedores increasing 15% on average in 2018-19 alone compared with the previous year (ACCC 2019; Stevens 2017). Meanwhile, in the three-year period immediately proceeding privatisation at the Port of Brisbane, the port authority, Port of Brisbane Holdings Pty, reported revenue from rent had increased by 59% (Port of Brisbane 2014).

Escalating rents have had a series of consequences for other port stakeholders. Stevedoring companies have considerable leverage over their landside customers, whose patronage is dictated by the cargo owner and shipping line. Stevedores have been accused of using

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[18] This assertion was contested by NSW Ports, which claimed that the port's performance (productivity) based rent pricing remains unchanged from Sydney Ports Corporation's pre-privatisation model, see: NSW Ports (2017).

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increased property overheads as justification to introduce disproportionate fees for terminal access, and in turn these are passed down the supply chain. For example, since Patrick introduced the industry's first 'terminal infrastructure levy' at the Port of Brisbane in 2010, the price has ballooned by over two thousand per cent, from $4.95 to $110 per container. This is mirrored at its Melbourne terminal, where the charge has increased from $3.50 at its inception in 2014 to $125 as of June 2020. Meanwhile, DP World's 'terminal access charge' at Botany has increased almost six-fold since privatisation in 2017, from $21.16 to $112 per container (ACCC 2018, 2020; DP World 2020; Patrick Stevedores 2014; 2020). This exponential trend is shared across the three largest container throughput ports (Botany, Melbourne, Brisbane), with the two dominant stevedores generally matching each other's fees and rises.[19] Vehicle Booking Surcharges (VBS) of between $18 and $45 are exclusive of the access fees, meaning that the average supplementary charge levied on each imported container which passes through the terminals of DP World, Patrick and VICT at Australia's largest ports is currently between $148 and $162.[20] The final amount can be even higher because transport companies often add an 'administration' mark up to cargo owners of between 10 and 20 percent. Indeed, 'some [haulage] operators like the charges because they can pass larger increases on to their customers' (Author's interviews with road haulage representative #2, 2020). In total, stevedoring companies generated $256.4m in revenue from infrastructure/access charges in the year to June 2020, a 51.9% rise on the previous year (ACCC 2019; 2020).

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[19] HPA's access fees are generally lower than its competitors, part of its drive to increase market share. However, VICT's fees are the highest in the industry, see Footnote 16.

[20] The upper price of $162.38 per imported container is charged at VICT Melbourne, comprised of $131.03 terminal access fee, goods and services tax of $13.10, and VBS of $18.25. The lower end of the range is charged at DP World Brisbane, comprised of $109.50 access fee + $10.95 GST and $28.45 VBS (Source: ACCC 2020; Freight and Trade Alliance 2020b; Victoria International Container Terminal 2021; McKay 2021).

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Unsurprisingly, the proliferation of port infrastructure/access fees has attracted heavy criticism. Aside from newspaper reports that characterise them as detrimental to the good of state and national economies (see, for example: Lucas 2018; Stevens 2019; Wiggins 2019), other industry stakeholders are apoplectic. One haulage representative described the charges, and the frequency at which they are raised, as 'wholesale price gouging', enabled through 'golden cages' created by the 'captive market' that stevedores enjoy (Author's interview with road haulage representative #2, 2020). Another criticised state government inaction in regulating terminal access prices to prevent transport companies, importers and exporters 'being charged for things or services that don't exist' (Author's interview with road haulage representative #4, 2020). The general feeling across the haulage industry is that 'transport operators are held at ransom and forced to pay a surcharge to collect and deliver containers, with no ability to negotiate price or service' (Whelan 2020a).

Importers and exporters bear ultimate responsibility for the port access and infrastructure charges levied by stevedores. Kingspan, a major exporter of insulation products, conducted a benchmarking survey across ports it used worldwide and 'found that Melbourne was… one of the most expensive ports in the world for terminal handling and port service charges', also complaining that it 'could not compete against overseas rivals until charges were cut' (Kingspan Insulation Australia 2018). Kingspan's concerns are shared by other major Australian exporters such as Bega, Visy and K-Mart (ACCC 2018). In fact, the mounting port access fee furore has encouraged the Victorian state government to commission an independent review with a view to regulation, while the ACCC has allegedly put stevedoring companies 'on notice' of action if anti-competitive behaviour is suspected (Essential Services Commission 2020; Wiggins 2019).

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Ultimately, importers and exporters are 'forced to pass this on to the consumer through higher prices in the shops' (Author's interview with importer/exporter #1, 2020).

In an effort to head off mounting criticism, as of March 2020 DP World and Patrick have renamed the fees and lowered the cost for export containers by around 20% to 'recognise the significant challenges faced by our exporters' due to bushfires and Covid-19 (DP World 2020; Patrick Stevedores 2020). However, stevedores have otherwise defended their access/infrastructure fees. In addition to higher rents, local taxes and utility costs, they face sustained pressure on the quayside, where a series of shipping line conglomerations and increased competition between stevedores lend considerable leverage to quayside customers. The result is falling revenue from this portion of their business which, they say, needs to be recouped. They also cite previous and future investments in quayside and landside facilities and infrastructure as drivers of fee hikes (ACCC 2019; Patrick Stevedores 2020).

For their part, privatised port authorities have either challenged the veracity of the stevedores' claims or attempted to justify the increased rents that partially prompted the proliferation of these access charges. The Port of Melbourne maintains that the way it sets rents for tenants is 'fair and reasonable and so represent[s] market-based prices' and that its 'processes for setting and reviewing market rents… clearly demonstrate that there has not been a misuse of market power' (Port of Melbourne 2020). This is echoed by the Port of Brisbane which maintains that 'we are very astute about how we do our pricing and valuation… over the last 10 years we have charged a low stable rent calculation that provide long term leases for stevedores' (Author's interview with port management #2, 2020). NSW Ports has gone as far as to deny rent increases have even occurred, simultaneously embarking on a PR campaign that emphasises their ownership structure as benefitting 'over six million Australian superannuation fund members' (NSW ports

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n.d.).[21] Nevertheless, in the cases of Botany and Melbourne, escalating rents could be construed as a predictable outcome of the inflated prices paid for leases.

In addition to surrendering monopoly control over rent increases to the private sector, privatisation of port authorities also presents leaseholders with the opportunity to consolidate further market power by 'acquiring an established stevedoring or downstream business; entering into a joint venture with an existing stevedoring business or commencing its own stevedoring or downstream operation' (Asciano 2015: 7). Although not the only instance, the most conspicuous example of vertical integration at Australian ports is at Flinders, where the privatised port authority first entered into a joint venture to provide stevedoring services at the port's only container terminal, then bought out their partners in 2012, presenting serious concerns regarding market entry for future competitors.[22] In 2010, Flinders Ports also set up a stevedoring and logistics company, Flinders Logistics, in direct competition to incumbents Patrick and Qube in the bulk and general cargo areas of the port, again raising concerns that the port authority could use its position as landlord to engage in unfair practices and gain an advantage over rival cargo-handling firms (Asciano 2015; DP World 2015).[23]

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[21] A 2017 NSW Ports press release stated that rents at the Port of Botany were productivity-based and that 'stevedore rental structures… were in place prior to privatisation. NSW Ports had no involvement in the development or agreement of the stevedore rental arrangements' (NSW Ports 2017, p. 1).
[22] In 2009, Flinders Port Holdings, the privatised entity which owns the port authority lease, entered a joint venture with DP World to run the only container terminal in South Australia, the Adelaide Container Terminal (ACT). Three years later, and amidst some rancour, it bought out DP World's sixty percent stake and became the sole operator of the terminal (Flinders Port Holdings 2012). The ACCC sought assurances from Flinders Ports in the form of a legally-binding undertaking that, while container volumes were too low presently to encourage a new entrant to the market, it would not use its vertically-integrated market power to 'discriminate in favour of ACT and raise barriers to entry for a third party to operate a second container terminal in competition with ACT and Flinders Ports' (Flinders Port Holdings 2011, p. 2).
[23] Even where refraining from overtly anti-competitive conduct, the capacity to engage in preferential behaviour remains, with accusations that Flinders Ports focuses its capital investments on areas of the port which it owns and operates, neglecting those rented by its tenants-cum-competitors. The closure of Port Thevenard in 2017, one of the bulk and general terminals of the port, was allegedly due to under-investment in preventative maintenance and could be regarded as an example of this. (MUA, 2015b; Author's interview with union rep #2, 2020).

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Elements of vertical monopolisation are not restricted to privatised port authorities acquiring downstream businesses, however. Despite protestations from stevedoring companies about vertical integration, they too are engaged in developing or purchasing ancillary businesses. For example, Patrick Rail provides import and export rail access to all container terminals in the Port of Melbourne. Cargo Link, another Patrick owned company, provides empty container storage and distribution at Port Botany and elsewhere. Qube Holdings, which owns 50% of Patrick, is also the sole developer and operator of an import-export rail terminal (IMEX) at the new Moorebank Intermodal site which will serve Port Botany. The tender process which facilitated the deal with the federal government has drawn the attention of the ACCC and the Australian National Audit Office (ACCC 2019; Wiggins 2018). Although IMEX is the subject of 'open and non-discriminatory access obligations' (Moorebank Logistics Park n.d.), there are still questions surrounding the wisdom of permitting one company to act as terminal operator *and* competitor to third party users.

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Aside from rent hikes, the introduction of infrastructure charges, the appropriateness of lease prices, and the potential for vertical monopolisation, there have been other issues related to privatisation of port authorities. One of the most high-profile of these involves the terms of the lease to the ports of Botany and Kembla. In the year before the ports were privatised in 2013, the state-owned Sydney Ports Corporation recorded a $53m profit and the price for the leases was initially mooted as $3bn (Sydney Ports Corporation 2012; The Australian 2012). The final sale fetched a combined $5.07bn, a price which 'seemed extraordinary… no-one could work out why' (Author's interview with port management representative #1, 2019).[24] A year after the

[24] The terms and conditions of the sale, beyond lease duration, were not made public, although the final price was widely lauded in the media, providing a boost to public perceptions of the federal and state governments' asset recycling strategy (see, for example: MacDonald and Chessell 2014; Owens 2013).

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Botany/Kembla deal, a 98-year lease to the Port of Newcastle, another New South Wales port predominantly used for coal exportation, was sold for $1.75bn. Newcastle had previously been proposed as a viable option to develop a container terminal to serve New South Wales (NSW Government 2003).[25]

Three years after the deal was completed, the terms of the Botany/Kembla leases were thrust into the spotlight when it was leaked to the press that they contained a clause preventing Newcastle's development as a container port (Kirkwood 2016).[26] It now became evident why the lease price for Botany/Kembla was significantly above market expectations – the NSW government had surreptitiously installed a strictly confidential and anti-competitive clause into the deal to artificially inflate the price, without divulging this publicly or submitting the terms to parliamentary scrutiny (NSW parliament 2019). The development of Newcastle as a container port offered a rare opportunity to introduce future inter-port competition, yet it is alleged that the state government deliberately inhibited this. Packaging Port Botany and Port Kembla together also removed another potential competitor to Botany and a further opportunity to foster future inter-port competition.[27] Indeed, 'the idea that privatisation was introducing productivity and enhancing competition was exposed as being a ruse for the consolidation of a monopoly operation at Port Botany' (Author's interview with port management representative #1, 2019). The fall-out from

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[25] Newcastle had been considered as an alternative or supplementary container port for NSW because of practical restrictions on further expansion at Botany, such as lack of available, affordable development space and saturated local infrastructure capacity, both typical of urban 'city' ports (NSW government, 2003). The issue of the accommodating the latest Ultra-Large Container Vessels (ULCVs) also mitigates against further development of Port Botany. This latest generation of container ships are up to three times larger and would require significant and prohibitive dredging of existing channels and investment in facilities

[26] The clause stipulated that if Newcastle moved more than 30,000 TEUs of containers through the port per annum, it would be liable to pay a charge of roughly $100 per container to the state government, which would then pass this on as compensation to NSW Ports, the privatised port authority at Botany. The amount due was calculated using a relatively complicated formula and $100/container is the rough estimate made in the press (see: Kirkwood 2016; Rabe 2019). For the complete 'Port Commitment Deed' document, detailing the formula see: https://cdn.fairfaxregional.com.au/iKQx4aiD4Q7fvCgDvFeGgz/c4faa7cc-efd5-4795-b0cb-ea5c263b7026.pdf

[27] Port Kembla is located approximately 90 kilometres south of Sydney, near the city of Wollongong in the state of New South Wales.

the controversial deal continues. The ACCC unsuccessfully challenged the legality of the Port Botany/Kembla lease in a Federal Court (ACCC 2021; Australian Competition Law n.d.) and it is now expected that the federal government will attempt to broker a settlement between the concerned parties (Author's interview with port management representative #1, 2021). The taxpayer will likely be forced to foot the bill of the eventual resolution, adding to the $125m that has already been paid to the consultancy firms advising on the Newcastle and Botany/Kembla lease sales (Humphries 2017; Kirkwood 2018).

4.3 Efficiency

Efficiency is the primary goal of contemporary economic orthodoxy, with competition and privatisation deemed fundamental levers to achieve improvements. Intra-port competition was regarded by policy makers as a panacea for the efficiency problems allegedly blighting the Australian port industry. However, as previously discussed, issues surrounding container volumes and the decentralised, state level award of new stevedoring tenders have meant that expected efficiency gains have largely failed to materialise. One of the other key developments stemming from the introduction of a third stevedore to the three largest container ports in the country has been increasing automation of the cargo-handling process. Automation of container terminals is ostensibly pursued to capitalise on technological innovation and improve cargo-handling productivity, but it also chimes with the efficiency paradigm that underpins dominant political and economic discourses.

Despite proclamations of stevedores that automation equates to considerably more efficient and productive cargo-handling operations, statistics indicate that gains in this area are peculiarly modest. The Port of Brisbane actually saw a significant decline in productivity in the three years

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following the opening of Patrick's AutoStrad terminal in summer 2005.[28] The introduction of automation at Patrick's terminal in April 2015 also resulted in a notable fall in productivity at Port Botany, returning to (though not exceeding) pre-automation levels in 2019, while the commencement of cargo-handling at HPA's technologically-advanced terminal in November 2013 registered no significant improvements.[29] Even at VICT, the relative success story of the reforms implemented under the auspices of competition, the introduction of the 'most advanced container terminal in the world' provided a relatively limited boost to overall quayside productivity at the container terminals of the port (Port Strategy 2019).[30]

Stevedoring companies would likely argue that negligible productivity improvements should be considered in the context of associated manpower savings, resulting in greater cost efficiency.[31] HPA and VICT have reaped some of the benefits that automation can bring in terms of a reduced labour force, with only approximately eighty wharfies deployed at the latter and 130 across the two terminals of the former, although these should be viewed in relation to the much smaller volumes that these two stevedores handle.[32] Interestingly, in the press, Patrick lauded a

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[28] The container 'crane rate', the universally-accepted measure of terminal productivity (number of containers handled per hour of elapsed crane time), fell consistently year-on-year from 27.2 to 23.1 at Brisbane, June 2005 to June 2008 and did not return to pre-automation levels until 2010 (Source: BITRE 2007; 2009; 2011). In the most recent BITRE report, the crane rate hovered between 28.6 and 30.1 in 2019-2020, demonstrating only nominal long term productivity improvements from automation (BITRE 2021). It must be noted that the only publicly available statistics regarding productivity (ACCC and BITRE reports) are provided at the aggregate port level, rather than at the individual terminal level, which stevedores record but do not share publicly. Nevertheless, they give a general insight into the impact that automation had on port-level productivity.

[29] The crane rate at Port Botany was 29.6 in the quarter preceding the introduction of automation at the port, falling to between 25.4 and 27.4 thereafter until mid-2018. Most recent statistics show the crane rate at the port fluctuating between 29.5 and 30.2, a negligible increase on pre-automation levels of productivity (BITRE 2017b; 2021).

[30] Automation at VICT is more extensive than at HPA and Patrick two AutoStrad terminals (Brisbane and Botany), where the quayside cranes only are automated. At VICT the process of shuttling of containers from the landside interface to quayside cranes is also automated. Quayside productivity at the Port of Melbourne (as measured by the crane rate) rose modestly from 29.7 to 31.0 from VICT's opening in September 2017 up to June 2019 but fell again in 2020, according to the latest available figures (BITRE 2021). However, this is still down from pre-VICT port productivity highs of between 31.6 and 32.6 in 2014 (BITRE 2017a).

[31] Stevedoring companies were the only section of industry stakeholder that refused to participate in interviews contributing to this study. Statistics and analysis relating to stevedores and their operations are instead taken from BITRE and ACCC reports.

[32] Wharfie labour force numbers at major stevedores are based on estimates provided by the MUA.

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$50m in annual labour cost savings that automation would contribute to their Botany operations and, upon its introduction in 2015, initially cut its workforce by over half to 208 (O'Sullivan 2014; Port Strategy 2014). However, just twelve months later they were forced to quietly recruit 90 additional workers and others since, meaning its current workforce stands at approximately 330 (Author's interview with union representative #1, 2019). Juxtapose this with the $350m cost of automation at Patrick Botany,[33] a lack of meaningful productivity improvements and increasing overall operating costs, and it remains to be seen if sufficient gains have been made to warrant the size of investment (ACCC 2019). This has led the MUA to claim that the automation of cargo handling at Patrick Botany terminal has been expedited as much for anti-union motives as for efficiency ones, particularly in the context of the historically tempestuous relationship between the company and the union (Author's interview with union representative #1, 2019; Author's interview with union representative #3, 2020). At the time, the deputy national secretary of the union observed 'that a motivated and engaged workforce with the right management team can deliver the same levels of productivity, if not better, at a far lesser cost', something which appears to be borne out by the productivity statistics (Saulwick 2015).

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Port reform initiatives focus primarily on quayside productivity, while the broader economic impact of inefficiency elsewhere in the supply chain is often underemphasised. Stevedores face pressure from their quayside customers, and the institutions of government, to ensure quick turnaround time for ships, however 'the land-side task may not, by itself, provide incentives for stevedores to maintain land-side connections that provide for more efficient supply chains' (ACCC 2009: 46). As previously noted, landside customers such as road haulage companies face a captive market, insofar as they have no control over which terminal they visit,

[33] This was the amount mooted in the press, although the true cost including R&D and ongoing maintenance is suspected to be 25-35% higher (Author's interview with Union rep #4).

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instead dictated by the shipping line/cargo owner. This means they have little to no influence over stevedores and are routinely treated as second class stakeholders. Prior to 2011, drivers attending Port Botany could be forced to wait up to six hours for their trucks to be serviced (Author's interview with haulage representative #2, 2020; Author's interview with haulage representative #4, 2020). Stevedores charge haulage companies extra fees when they arrive early or late to their terminals but 'there was no two-way penalty with transport, if stevedores held up transport, it was too bad for transport. Who paid for the waiting time? We did and our customers did' (Author's interview with haulage representative #1, 2020).

Lack of efficiency on the landside of port supply chains became a touchstone issue for the transport industry. In New South Wales, various road haulage interests lobbied the state government to intervene over stevedores' indifference towards issues facing landside customers. Out of this came a 2008 review by the Independent Pricing and Regulatory Tribunal (IPART), which made a series of recommendations (IPART 2008) [34], later leading to the Port Botany Landside Improvement Strategy (PBLIS) introduced in 2010, enshrining in state law many of the previously voluntary provisions recommended by IPART (NSW government n.d.). From the landside customers' perspective, improvements in efficiency at Port Botany's container terminals have 'nothing to do with privatisation… or automation', but rather regulation (Author's interview with haulage representative #2, 2020). PBLIS has been described as 'the great reform of the last 20 years in terms of creating a more efficient land side' (Author's interview with haulage representative #3, 2020). Stevedores addressed their landside inefficiencies only once legislation

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[34] IPART's review recommended that: formal performance standards should be developed; that communication and real-time reporting between stevedores and their landside customers needed to improve; that a two-tier vehicle booking system should be implemented to encourage off-peak terminal visits; and that these processes should be overseen by Sydney Ports Corporation, the state-owned port authority at the time.

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was introduced threatening penalties of $100 per hour delay in favour of transport companies.[35] Although PBLIS was legislated at the state level and hence applied solely to Port Botany in New South Wales, its effects were felt across the industry. All stevedores at Botany operate terminals at other ports and have adopted the best practices developed because of PBLIS to all operations, with an eye on averting regulatory intervention in other states (Author's interview with haulage representative #2, 2020; Author's interview with haulage representative #1, 2020). However, despite PBLIS significantly improving landside efficiency at Botany, and across the industry more broadly, issues remain for landside customers, particularly relating to Empty Container Parks (ECPs).[36]

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5. Conclusions and recommendations

Port reform in Australia was underpinned by the economic justifications that have dominated political discourse since the 1980s. Privatising public assets and commercialising sectors through increased competition are viewed as common sense economic measures that will provide universal solutions to efficiency issues. However, the port industry is unique in terms of its strategic importance and the potential for uncompetitive arrangements to proliferate at the port authority and cargo-handling levels. As a result, although 'free market' logic and reform have prevailed in other key sectors where public ownership was once dominant, concerns surrounding security, facilitation of trade, and broader economic ramifications, have, in most countries, encouraged governments to (at least) retain the landlord role at ports. Nevertheless, despite evidence from

[35] Stevedores are fined $100 for every hour trucks are kept waiting to be serviced beyond an initial 50-minute period. The $100 is credited to the transport company as compensation (IPART 2018).

[36] ECPs, as the name suggests, are sites where empty containers are stored before being returned to the relevant shipping line. Alongside the proliferation of port access fees discussed earlier, issues relating to truck turnaround time at container parks, some of which are owned by stevedoring companies, have become a primary concern for landside port customers in recent years (Author's interview with haulage representative #2, 2020; Author's interview with haulage representative #3, 2020; AI Group 2020).

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elsewhere, Australian policy makers have pursued a privatised port governance model, part of a program of systemic privatisation evidenced by the federal asset recycling scheme.

Aside from questions surrounding the appositeness of port authority privatisation, the highly devolved and fragmented nature of political governance in Australia has resulted in the absence of a coordinated ports strategy. This has created a series of problems, particularly in relation to the port authority tender awards. Individual state governments, incentivised by the asset recycling scheme, pursued high lease prices at the expense of broader economic and security considerations, despite the federal government's own competition review strongly recommending against 'maximising asset sale prices through restricting competition or allowing unregulated monopoly pricing post sale' because this 'amounts to an inefficient, long-term tax on infrastructure and consumers' (Australian Government 2015: 196). Similarly, the third stevedore policy suffered from a lack of synchronisation, its potential positive impact undermined by the tenders being split between two different operators, and further diminished by a potentially premature roll-out because of relatively modest container volumes at some ports. The ACCC, one of the champions of this policy, has been forced to concede that 'challenges remain for the industry. In recent years improvements in productivity have stagnated… DP World and Patrick continue to account for the vast majority of container volumes' and that 'it may be only the shipping lines that benefit from the additional competition between stevedores at the east coast ports' (ACCC 2018: 3-4).

Both major reforms have been poorly handled, resulting in negative outcomes for stakeholders. Recent port authority leases have either been spectacularly over-priced in relation to market estimates (see Botany and Melbourne), or, in the case of earlier privatisations, grossly under-priced (see Flinders and Brisbane), and often partially sold into foreign ownership with profits offshored. Rent rises have proliferated as privatised port authorities seek to maximise

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returns on their investment, particularly where lease prices were substantially above market estimate, while the Botany deal has also been subject to challenge in a federal court over its alleged anti-competitive nature. In turn, this has encouraged stevedores to introduce, then escalate, terminal access charges to unsustainable levels to mitigate this increase in overheads coupled with a fall in revenue from quayside customers, another consequence of the third stevedore competition policy. These charges are impacting landside customers and the rest of the landside supply chain, including consumers. Productivity gains have failed to materialise, or have done so in an extremely limited manner, undermining the *raison d'être* of the port reform program in the first place.[37] Instances of both stevedores and port authorities leveraging their market power to develop or purchase downstream businesses and enable vertical integration provokes further unease at certain ports. More polarised and antagonistic industrial relations also appear to be in the ascendency, partially a result of falling revenue and cut-throat pricing from increased competition in a relatively restricted and unbalanced market. The divergence between the justifications for reform and actual outcomes for industry stakeholders, consumers, and the national economy, are conspicuous.

What, then, can be done to ameliorate the effects of these, quite frankly, mismanaged reforms? Since port authority leases are long-term, the only realistic measure is to retrospectively introduce regulation to counter some of the more extreme examples of market power being misused. However, policy makers ideologically wedded to the present orthodoxy hesitate because government intervention is regarded as the antithesis of market-oriented economics. Overtures towards regulation have only now begun to materialise as monopolistic behaviour has become

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[37] Interestingly, the most efficient container port in Australia (as measured by the crane rate) is Fremantle, the only one whose port authority remains in public hands. However, this should be considered in relation to its relatively modest throughput volumes compared with the two largest ports, with both Melbourne and Botany handling three times more than Fremantle.

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blatant, since to do so during the sale process would have had a negative effect on the lease price (Martin and Parker 1995), arguably another consequence of the asset recycling scheme. Support for regulatory intervention is now almost unanimous amongst industry stakeholders (Author's interview with road haulage #1, #2, #3, #4; Author's interview with importer/exporter #1, #2, #3). The Chairman of the ACCC recently went on record saying 'the ports were sold, usually with no control over their pricing in order to maximise the proceeds of sale. The resulting unfettered market power of some ports is costing our nation dearly… we need a new… monopoly regulation regime that would see owners of significant infrastructure with market power subject to some form of price regulation' (ACCC 2020).

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Some states already have a price monitoring regime in place for port rents. For example, the Essential Services Commission of South Australia (ESCOSA) has been actively monitoring prices annually since Flinders port authority was privatised in 2001 (ESCOSA 2004). As pressure mounts, other states are implementing price monitoring. The Victorian Essential Services Commission recently reported following an inquiry on port rents, unsurprisingly finding that 'the Port of Melbourne's exercise of its power has caused material detriment… the requirement in the Port Concession Deed for rents to reflect a "reasonable market rent" are not sufficient to constrain the Port of Melbourne from charging rents above an efficient level' (Victorian Essential Services Commission 2020: viii). It went on to recommend legislation to introduce 'an enhanced, independently oversighted negotiate-mediate-arbitrate framework' (Victorian Essential Services Commission 2020: ix).[38] Indeed, as the ACCC (2016) noted, 'price monitoring is not sufficient for regulating monopoly infrastructure' and the situation has now worsened to the point that

[38] Regulatory oversight was originally mooted to be included in the Port Management Act that accompanied privatisation of the Port of Melbourne, but was ultimately rejected by the Victorian parliament, with potential implications for lease price again almost certainly a consideration.

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regulation must be introduced on a state-by-state basis to moderate port rent increases. In countries with experience of privatised port authorities, support for regulation is prevalent amongst port governance academics to 'protect the nation's interests… to ensure equitable development, good performance and fair charging' (Monios 2017: 87; see also: Angelopoulos et al. 2019; Baird 2016; Baird and Valentine 2007).

In addition to port rent price regulation, terminal access charges are increasingly under the spotlight. Once again, in the absence of restraint from stevedores, regulation would appear to be the only way to stifle systematic escalation of these charges. Transport companies and exporters have mounted a sustained lobbying campaign to these ends and the general mood in the press is supportive of some form of government intervention (Freight and Trade Alliance 2020c; Lannin 2021; Stevens 2017; Thomson 2021). Under the guise of the broader impact these charges have on the national economy, this could provide a useful opportunity to begin a federal review of terminal access charges and attempt to bring some form of badly needed central coordination to the current melange. Such an inquiry could advise on reasonable charges and rises on a port-by-port or industry-wide basis and facilitate the introduction of a national ombudsman with legally-binding powers to address complaints from port customers and other industry stakeholders, much like the arrangement in the telecommunications sector in Australia.

The success of PBLIS at Port Botany should demonstrate to policy makers that regulation can be instrumental in markedly improving elements of port efficiency and inhibiting misuse of market power yet, despite overwhelming evidence and appetite for intervention, reticence remains because of the pervasiveness of contemporary 'common sense' economic orthodoxy. Ideologically-driven application of free market maxims to a structurally unique industry with multiple opportunities for uncompetitive arrangements to proliferate is the source of Australia's

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port reform debacle, and continuing adherence characterised by reluctance to regulate perpetuates it. Chris Corrigan, then-Managing Director of Patrick, once justified the 1998 waterfront dispute as a required defensive action against 'the impact of waterfront rorts on ordinary Australians' (Bonyhady 2020). Ironically, the port reform process that the strike instigated has resulted in a state of affairs in which the average Australian consumer, and the Australian economy more broadly, is paying the price to a much greater extent than ever before.

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Tables and figures

Table 1: Typical port governance models

Port Type	Port Authority	Infrastructure	Superstructure	Port Labour
Public service	Public	Public	Public	Public
Tool	Public	Public	Public	Private
Landlord	Public	Public	Private	Private
Private service	Private	Private	Private	Private

Adapted from: World Bank (2007: 85)

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Figure 1: Australian container ports and terminal operators (stevedores)

(Adapted from: ACCC, 2019)