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**Maritime Services in NSW:  
Issues for Reform**

by

**Vicki Mullen**

**Briefing Paper No 1/95**

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**Vicki Mullen**

**NSW PARLIAMENTARY LIBRARY RESEARCH SERVICE**

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## CONTENTS

1.	Introduction . . . . .	3
2.	Reform of public utilities: Recommendations of the National Competition Policy (the Hilmer Report) . . . . .	4
3.	The Maritime Services Board: current functions and powers . . . . .	6
4.	The structure of the MSB and the Port Authorities: recommendations for reform . . . . .	8
5.	The exposure draft Marine (Port Corporations and Administration) Bill 1994 . . . . .	13
6.	Rationalisation of maritime legislation - the exposure draft Marine Safety Bill 1994 . . . . .	19
7.	Conclusion . . . . .	19

## 1. Introduction

On 15 August 1994, the Deputy Premier and Minister for Public Works and Ports, The Hon Ian Armstrong MP announced that the Maritime Services Board ('MSB') would be abolished to be replaced with three autonomous port authorities created under the *State Owned Corporations Act 1989* and a new State Marine Authority that would be 'responsible for regulatory matters including marine administration and safety'.<sup>1</sup>

On 17 November 1994, the Hon Ian Armstrong MP further announced that the 'Hunter, Sydney/Botany and Illawarra ports would be corporatised by the start of next financial year' and that draft legislation was to be made available for comment.<sup>2</sup>

For an outline of the operation of the *State Owned Corporations Act 1989*, please refer to the Library's *Bills Digest* of the Water Board (Corporatisation) Bill 1994 of October 1994 (No 30/94), by Vicki Mullen.

The process to increase the operational efficiency of the MSB has been in place since 1984 (see below). However the reforms announced would bring maritime services in NSW further in line with the micro-economic reforms recommended by the National Competition Review (the Hilmer Report) for public utilities. It has been stated that

Public utilities play a large and important role in our national economy. They account for over 10 per cent of our gross domestic product. They are of direct as well as indirect importance to the standard of living of consumers. They provide the infrastructure upon which much of the economy depends and, as a source of costs to business, *they affect Australia's international competitiveness* (emphasis added).<sup>3</sup>

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<sup>1</sup> Deputy Premier of NSW and Minister for Public Works and Ports, 'New commercial structure for ports', *Media Release*, 15/8/94.

<sup>2</sup> Deputy Premier of NSW and Minister for Public Works and Ports, 'Date set for new port corporations', *Media Release*, 17/11/94.

<sup>3</sup> Fels, Prof A, 'Utilities, Hilmer and the benefits of competition for consumers', *Passing on the benefits: Consumers and the reform of Australia's utilities*, Papers from Trade Practices Commission Conference, March 1994, p 8.

## 2. Reform of public utilities: Recommendations of the National Competition Policy (the Hilmer Report)<sup>4</sup>

The need for a national competition policy has been recognised due to the

increasing acknowledgment that Australia is for all practical purposes a single integrated market. The economic significance of State and Territory boundaries is diminishing rapidly as advances in transport and communications permit even the smallest firms to trade around the nation. ... Business and the community generally are impatient for much more rapid progress by governments in reforming our infrastructure and regulatory systems.<sup>5</sup>

The Hilmer Report considered competitive conduct rules under the *Trade Practices Act 1974* (Cth) as well as additional policy elements relevant to 'building a more competitive economy' including the restrictions on competition through government regulation and the need for structural reform of public monopolies:

The Committee recommends that all Australian Governments adopt a set of principles aimed at ensuring that, as part of reforms to introduce competition to a market traditionally dominated by a public monopoly, the public monopoly be subject to appropriate restructuring. The principles deal with:

- the separation of regulatory and commercial functions of public monopolies;
- the separation of natural monopoly and potentially competitive activities; and
- the separation of potentially competitive activities into a number of smaller, independent business units.<sup>6</sup>

The Hilmer Report also recognised the need to assure competitors in a particular market of access to essential facilities (being facilities that cannot be duplicated economically), the need to have price surveillance where there is a

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<sup>4</sup> For a detailed summary of the Hilmer Report, see the Library's *Briefing Note*, 'National Competition Policy, Report by the Independent Committee of Inquiry' (No 1/94) by Jan Newby.

<sup>5</sup> Independent Committee of Inquiry, *National Competition Policy*, AGPS, Canberra, 1993, p xvii-xviii.

<sup>6</sup> *Ibid*, p xxx-xxxi.

legislated or natural monopoly and the need for competitive neutrality where government business enterprises may enjoy certain advantages in competition with private firms.<sup>7</sup>

While it has been recognised that the opportunities for competition between the port authorities in the States and Territories may be limited due to geographic constraints (see below), the Hilmer Report recommendations and the general push for increased commercialisation leading to efficiency gains are equally relevant to the international competitiveness of Australia's ports. With respect to NSW, the Government has stated that

. . . corporatisation would give a new 'hard edge' to the marketing effort at NSW ports, creating a distinct goal of boosting trade performance...opportunities ranging from the Olympics bid win to emergence of Asian economies gave NSW ports an unprecedented chance to become key trade links to the world.<sup>8</sup>

The principal objectives of a State Owned Corporation in NSW sit well with the Hilmer recommendations for a national perspective on competition policy. Section 8 of the *State Owned Corporations Act 1989* states the principle objectives of a State Owned Corporation to be

- (a) to operate at least as efficiently as any comparable businesses; and
- (b) to maximise the net worth of the State's investment in the corporation; and
- (c) to exhibit a sense of social responsibility by having regard to the interests of the community in which it operates and by endeavouring to accommodate these when able to do so.

With respect to the issues of competition and public benefit, it was stated in the Hilmer Report that

Competition policy is not about competition *per se*. Rather, it seeks to facilitate effective competition to promote efficiency and economic growth while accommodating situations where competition does not achieve efficiency or conflicts with other

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<sup>7</sup> See *ibid*, pp xxxi-xxxv.

<sup>8</sup> Deputy Premier of NSW and Minister for Public Works and Ports, 'New commercial structure for ports', *Media Release*, 15/8/94.

social objectives.<sup>9</sup>

### 3. The Maritime Services Board: current functions and powers

The Maritime Services Board ('MSB') was established in 1935 under the *Maritime Services Act 1935* in order to remove the

overlapping and duplication of the activities of departments administering the maritime services. Those two departments are the Sydney Harbour Trust and the Department of Navigation. ... Side by side these two large organisations carry out activities that are identical, except that the Navigation Department is the sole pilotage authority for New South Wales and administers the navigation laws of the State.<sup>10</sup>

In 1984, the Board of the MSB was reconstituted according to the *Maritime Services (Amendment) Act 1984* for the purposes of bringing its structure 'into line with modern management practice. In essence, this will be achieved by separating the board's operational administration from its long-term policy development functions.'<sup>11</sup> On 17 August 1989, the *Marine Administration Act 1989* and the *Maritime Services (Amendment) Act 1989* commenced operation, and combined to 'modernize the Maritime Services Board's structure and increase its commercial orientation' by

placing greater emphasis on local port autonomy, fairer cost-recovery, strategic and corporate planning and the facilitation of private sector involvement in the ownership and development of port and waterway facilities and in the provision of related services.<sup>12</sup>

The key features of the 1989 reforms were the establishment of the subsidiary port authorities (the MSB Sydney, Hunter and Illawarra Port Authorities), the establishment of the MSB Waterways Authority 'with broad responsibility for the control of the recreational use of boats and the waterways, and for relevant registration and licensing', reform of the pricing policies for MSB facilities and services so as to place them 'on a more commercial footing', the facilitation of private sector involvement with respect to certain activities and services and the clearer identification of functions with a view to the potential

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<sup>9</sup> Independent Committee of Inquiry, op cit note 4, p xvi.

<sup>10</sup> *NSWPD*, 10/10/35, p 623.

<sup>11</sup> *NSWPD*, 16/5/84, p 872.

<sup>12</sup> *NSWPD*, 4/5/89, p 7492.



corporatisation of the MSB.<sup>13</sup>

The current functions and powers of the MSB are outlined in Part 3 of the *Maritime Services Act 1935* and Part 2 of the *Marine Administration Act 1989* as well as in the collection of marine legislation which includes, for example, the *Navigation Act 1901*, the *Commercial Vessels Act 1979* and the *Marine Pollution Act 1987*. Division 2 of Part 2 of the *Marine Administration Act 1989* generally outlines the functions of the MSB. Section 5 lists the general functions to include such port and waterways management functions and other functions as are conferred or imposed on it by or under the marine legislation or any other legislation. Section 6 lists the miscellaneous functions of the MSB to the effect that it may

- (a) conduct any business, whether or not related to its port management or waterways management functions, and for that purpose use any property or the services of any staff of the Board; and
- (b) acquire any land and develop any land; and
- (c) acquire or build, and maintain or dispose of, any vessels, vehicles, plant, machinery or equipment; and
- (d) make and enter into contracts or arrangements for the carrying out of works or the performance of services or the supply of goods or materials; and
- (e) appoint agents, and act as agent for other persons.

Division 3BB of the *Maritime Services Act 1935* deals with the powers of the MSB with respect to installations used by trading vessels. Division 3C outlines the additional powers of the Board with respect to such matters as the general vesting of lands (section 13K), the granting of leases and licences (section 13L), the construction of works and the provision of services (section 13M), the improvement of navigable waters (section 13N), the power to make contracts for works to be carried out (section 13O), rescue and fire-extinguishing operations (section 13S), speed limits of vessels within navigable waters (section 13SA) and obstructions and encroachments in waters (section 13T).

The management of the MSB is provided for by sections 7-16 of the *Marine Administration Act 1989*. Section 7 provides that the Board of Directors is to consist of a Chief Executive and 4-7 directors appointed by the Minister

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<sup>13</sup> Ibid, p 7492-7494.

according to their managerial or other qualifications considered necessary by the Minister. Section 11 provides for Ministerial control of the Board. Section 15 notably states that any function of the board may be exercised by a subsidiary authority or in a partnership, joint venture or other association with other persons or bodies.

Part 3 of the *Marine Administration Act 1989* provides for the subsidiary authorities of the MSB. The three port authorities (The MSB Sydney, Hunter and Illawarra Port Authorities), are established as statutory corporations according to section 17. In addition to any delegated functions, the three subsidiary port authorities are responsible for advising the Board on any matter relating to port management. 'Port management' is defined in section 3 to mean the 'control and regulation of trading ports'.

Section 21 establishes the MSB Waterways Authority as the statutory corporation responsible (in addition to any delegated functions) for advising the Board on any matter relating to waterways management. 'Waterways management' is defined in section 3 of this Act to mean 'the control and regulation of vessels in the navigable waters of the State.' 'Navigable waters' are defined in section 3 to mean

all waters that are from time to time capable of navigation and are open to or used by the public for navigation, whether on payment of a charge or fee or otherwise[.]

#### **4. The structure of the MSB and the Port Authorities: recommendations for reform**

A port authority has been defined as

any organisation providing 'core' services to a specific port or group of ports. Port authorities control the use of the waters and lands within port boundaries; provide safe access to and harbouring for ships; and plan, provide and allocate port infrastructure such as channels, breakwaters, navigation aids and berths. But the services and activities provided by many Australian port authorities extend well beyond those core activities - and many port authorities have both a facilitative and regulatory role.<sup>14</sup>

In 1988, the Minister for Transport, the Hon B Baird MP, commissioned an inquiry into maritime administration in NSW with a view to achieving 'the

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<sup>14</sup> Industry Commission, *Port Authority Services and Activities*, Report No 31, AGPS, Canberra, 1993, p 1.

most economically efficient system for delivery of port and navigation services as the prime criterion and secondly, the greatest possible local participation in the decision-making process.<sup>15</sup>

The five main issues of the inquiry were identified as follows:

- the fairness of the MSB's pricing policies and the adequacy of its services,
- the efficiency of the MSB,
- whether an independent Port of Newcastle (or any other port) would necessarily be more efficient if it remained under MSB control,
- in Newcastle and Port Kembla, the very strongly held belief that independent port managements would find significant additional container cargoes for their ports,
- the relationship between port operations and the regulatory and other activities of the MSB.<sup>16</sup>

With respect to the issue of port ownership structure, the inquiry reached the conclusion that

Whilst the ports of Newcastle or Port Kembla could readily function as independent public corporations, the benefits of such a change, compared with other possible improvements in MSB management and promotion of those ports, would not merit the upheaval caused by the change.<sup>17</sup>

The issue of port autonomy was related to the incidence of cross-subsidies between the three major ports (in particular Sydney and Newcastle) and it was further concluded that

This concern can readily be resolved by ensuring that no traffics are handled at prices less than their marginal costs, and that Head Office expenses are minimised.<sup>18</sup>

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<sup>15</sup> Joy, S, *Maritime Administration in New South Wales*, Report to the Minister for Transport, 31 October 1988, Appendix 1.

<sup>16</sup> *Ibid*, p 7.

<sup>17</sup> *Ibid*, Summary.

<sup>18</sup> *Ibid*.

It was generally concluded that there would be no need to break up the MSB into separate ports if the pricing and efficiency issues could be resolved, appropriate management was put in place, port operations were protected from the effects of other MSB activities and effective communication was established with the local bodies and the users of each port.<sup>19</sup>

Also in 1988, the New South Wales Commission of Audit released its report 'Focus on Reform: Report on the State's Finances', which included a review of the operation of statutory authorities including the MSB. The report discussed key problems and options for change for the MSB which included the following recommendations with respect to the structure and pricing practices of the organisation:

- the establishment of the MSB as a corporation to be managed by a board of directors modelled on commercial lines;
- the operation of individual ports as autonomous business units with the merits of the establishment of completely separate port authorities to be reviewed for possible implementation as the next step;
- the establishment of a separate authority for the recreational boating function; and
- the review of pricing policies and the reduction of current cross-subsidies.<sup>20</sup>

The 1989 reforms (see above) largely adopted the recommendations of these reports. With respect to the structure of the MSB it was stated that

a major initiative of this reform package will be the establishment of subsidiary port authorities with increased responsibility for local port matters. ... The legislation will provide for the devolution of responsibility to these port authorities by the Minister, following consultation with a newly-appointed Maritime Services Board. The port authorities will initially be subject to broad oversight by the board of directors of the Maritime Services Board but will have considerable

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<sup>19</sup> Ibid, p 7-8.

<sup>20</sup> NSW Commission of Audit, *Focus on Reform: Report on the State's Finances*, July 1988, Appendix A.3, p 3.

delegated authority to set prices and incur expenditure.<sup>21</sup>

In March 1989, the Inter-State Commission released its final report covering its conclusions and recommendations with respect to its waterfront investigation. The investigation was chiefly concerned with the need for industrial relations reform<sup>22</sup> and the improvement of work and management practices within the industry, however the lack of competition and the 'abuse of monopoly power, reflected particularly in port authority pricing and investment policies'<sup>23</sup> were recognised as problems relevant to the overall strategy for reform. As part of its investigation, the Inter-State Commission undertook a number of special studies which 'examined in some detail a number of areas that are important if the efficiency of the waterfront industry is to be improved.'<sup>24</sup> In particular, a study was commissioned on the potential for increased competition on the waterfront generally in an effort 'to identify factors relating to the degree of competition between terminals and between stevedoring firms which lead to and protect inefficiency'.<sup>25</sup> The important point was made with respect to competition between ports that

Australia's geography limits a major source of waterfront competition found overseas: competition between ports. This is because inland transport costs cause most cargoes to have only one least-cost port of entry or export. The additional inland transport cost of using an alternative port means that the nearest port to origin or destination can impose the costs of a wide range of inefficiencies before it risks losing a traffic.<sup>26</sup>

In May 1993, the Industry Commission released its report which specifically looked at port authority services and activities. In the overview it was stated

This inquiry is an integral part of the maritime industry reform process which has been underway since 1984 for shipping and 1989 for the waterfront. It focuses on improving efficiency - on the appropriate institutional framework for port authorities and

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<sup>21</sup> *NSWPD*, 4/5/89, p 7492.

<sup>22</sup> For further information concerning industrial relations reform on the waterfront, see Turnbull, PJ, 'Waterfront Reform in Britain and Australia - In Practice and in Principle', *The Journal of Industrial Relations*, Vol 34, No 2, June 1992, p 229.

<sup>23</sup> Inter-State Commission, *Waterfront Investigation: Conclusions and Recommendations*, AGPS, 1989, Vol 1, p xv.

<sup>24</sup> Inter-State Commission, *Waterfront Investigation: Special Studies*, AGPS, 1989, Vol 1, Foreword.

<sup>25</sup> *Ibid*, Vol 2, p 257.

<sup>26</sup> *Ibid*, Vol 2, p 261.

how best to deliver the various services and activities which port authorities now provide.<sup>27</sup>

The recommendations of the Industry Commission could be summarised as follows:

- the role of a port authority should be based on the 'landlord model' so that they only provide core functions and avoid the provision of services and activities that would otherwise be undertaken by private enterprise. However, the supply of core services and activities should be contracted out wherever it is cost-effective;
- port authorities should operate in a 'corporate' environment as statutory bodies separate from the departmental structure of government, with the following: an experienced and accountable board; all directions issued by government in writing and tabled in Parliament; set financial and non-financial targets and clearly specified community service obligations; liability for taxes and government charges; liability to pay dividends out of any after-tax profits; exposure to the *Trade Practices Act 1974* (Cth) and the *Prices Surveillance Act 1983* (Cth); and freedom to determine their terms and conditions of employment, not subject to the constraints of government employment policies and practices;
- to enhance competition between ports in different states, the maritime regulations should be reviewed by the Australian Transport Advisory Council for consistency;
- the responsibility of guarding against the abuse of a natural monopoly (for example, container terminal operations and towage) should rest with non-industry bodies such as the Trade Practices Commission and the Prices Surveillance Authority;
- the negotiation of licences and leases should be conducted in a commercial manner;
- as a general principle, port authority assets should return at least their opportunity cost over their useful lives;
- cross-subsidies should be eliminated and standard charging terminology should be used across Australia;
- the remaining inefficient work practices should be eliminated;

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<sup>27</sup> Industry Commission, *Port Authority Services and Activities*, Report No 31, AGPS, 1993, p xv.

- governments should consider opportunities to increase efficiency through the privatisation of ports that face competition from other ports or that are dominated by a few large bulk users;
- the Australian Transport Advisory Council should prepare and publish a comprehensive program and firm timetable for ongoing port authority reform;
- investment decisions should be the responsibility of individual port authorities acting in a fully commercial manner.<sup>28</sup>

With respect to the MSB, it was stated that it 'has gone furthest down the landlord/corporatisation road in Australia, however it still has some way to go.' The Industry Commission analysed the process of reform of the MSB and the problems and the gains from reform, which have been summarised in the charts attached as an appendix to this *Briefing Note*, which are reproduced from pages 180-181 of the Industry Commission's report.

#### **5. The exposure draft Marine (Port Corporations and Administration) Bill 1994**

The objects of this draft Bill are stated in the explanatory note to be the following:

- (a) to establish 3 commercial port corporations as State owned corporations, within the context of the *State Owned Corporations Act 1989* (which will own and operate the State's land-based commercial port facilities in the major ports);
- (b) to establish the State Marine Authority (which will exercise the marine safety and other regulatory functions under existing and proposed marine legislation);
- (c) to authorise the Port Corporations to carry out port marine safety functions in accordance with an operating licence issued by the Governor;
- (d) to continue existing port charges (but to exclude wharfage charges for cargo at private wharves);

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<sup>28</sup> Ibid, pp xv-xxiii.

- (e) to establish the Marine Ministerial Holding Corporation (which will have the title to non-port related land and wetlands of the MSB);
- (f) to establish a State Marine Fund for the purposes of the State Marine Authority and the Ministerial Corporation;
- (g) to abolish the MSB and its subsidiaries and transfer their assets, rights and liabilities to the Port Corporations, the Ministerial Corporation or the State Marine Authority;
- (h) to repeal the existing marine legislation (other than the *Marine Pollution Act 1987*) and to make consequential amendments to other Acts as a consequence of the above and of the consolidation and simplification of the marine legislation by this Bill and the cognate Marine Safety Bill.

The draft exposure Marine (Port Corporations and Administration) Bill 1994 is divided into eight parts as follows:

Part 1 - Preliminary;

Part 2 - Port Corporations;

Part 3 - State Marine Authority;

Part 4 - Port Charges;

Part 5 - Marine Advisory Council;

Part 6 - Marine Ministerial Holding Corporation;

Part 7 - Dissolution of MSB and its Subsidiaries; and

Part 8 - Miscellaneous.

The following is an outline of the key provisions concerning the powers and functions of the proposed new corporations and bodies that would, if the Bill was passed, take over the current operations of the MSB. The provisions relating to the transfer of MSB staff (other than senior executives), are also summarised below.



## *Part 2 - Port Corporations*

This Part would establish the Hunter Port Corporation Limited, the Illawarra Port Corporation Limited and the Sydney Ports Corporation Limited as State owned corporations under the *State Owned Corporations Act 1989*. In addition to the objectives under section 8 of the *SOC Act*, the principal objectives of each port authority under clause 7 would be

- to ensure that the transfer of passengers and cargo through its port facilities is carried out safely and efficiently; and
- to ensure that port marine safety and other functions that it is required to carry out under the marine legislation are carried out properly.

Division 3 of this Part provides for the transfer of assets, rights and liabilities of the MSB or a subsidiary, by order in writing from the Minister, to a specified Port Corporation. Section 9 of Division 4 prohibits the sale of shares in a Port Corporation, except to eligible Ministers within the meaning of the *SOC Act*. Therefore, if this Bill is passed, the Port Corporations could only be privatised with parliamentary approval through legislative amendments.

A link may be maintained between the separate and otherwise wholly independent Port Corporations, with provision, under clause 11, that the Minister may establish a joint forum of Port Corporations to

ensure adequate liaison between each Port Corporation and between the Port Corporations and other government agencies on issues of mutual interest relating to commercial ports.

Clause 13 of the exposure draft Bill applies the *Freedom of Information Act 1989* to a Port Corporation as if it were a public authority.

## *Part 3 - State Marine Authority*

The State Marine Authority would be established according to clause 14 as a statutory corporation, subject to the control and direction of the Minister (clause 17), with general responsibilities with respect to marine safety (clause 19) including:

- (a) the safe operation of recreational and commercial vessels; and
- (b) the safety of navigation in ports and other navigable waters; and

- (c) the protection of the environment in connection with the use of vessels in State waters (within the meaning of the *Marine Pollution Act 1987*).

‘State waters’ are defined according to section 3 of the *Marine Pollution Act 1987* to mean

- (a) the territorial sea adjacent to the State;
- (b) the sea on the landward side of the territorial sea adjacent to the State that is not within the limits of the State; and
- (c) other waters within the limits of the State prescribed by the regulations for the purposes of this definition.

Clause 20 outlines the additional specific functions of the proposed SMA as follows:

- (a) to provide any departmental advice requested by the Minister on government policy and other matters relating to the administration of the marine legislation (including advice on strategic commercial port development);
- (b) to provide or arrange for the provision of marine safety services in accordance with the marine legislation (such as navigation aids for navigable waters, vessel traffic control within ports, moorings in ports for vessels, pilotage services within ports, the maintenance of dredged navigation channels and hydrographic services);
- (c) to provide or arrange for the provision of emergency environment protection services for dealing with pollution incidents in State waters (within the meaning of the *Marine Pollution Act 1987*) (see above);
- (d) to manage land or other assets vested in the Ministerial Corporation as required by the Ministerial Corporation;
- (e) to manage commercial port facilities not managed by a Port Corporation as required by the Ministerial Corporation or other State authority in which the facilities are vested (and to establish committees to advise it on the management of those facilities).

Clause 21 provides that the SMA may delegate to an authorised person any of the functions of the Authority (other than the power of delegation). ‘Authorised

person' is defined to include a Port Corporation. Clause 22 provides for the port marine safety functions to be carried out by Port Corporations in accordance with the operating licence, to be issued to the Port Corporation by the Governor. An operating licence may (clause 22)

- (a) provide for the accreditation of the Port Corporation by the State Marine Authority to provide relevant services;
- (b) provide for a quality assurance program for the provision of relevant services;
- (c) require the Port Corporation to use assets provided by the State Marine Authority for the purpose of providing relevant services;
- (d) require the Port Corporation to pay to the State Marine Authority a fee for the use of those assets;
- (e) in connection with pilotage services, provide for any matter for which provision may be made in a contract with a private contractor under section (clause) 23.

Clause 23 enables the State Marine Authority to enter into a contract, with the approval of the Minister, with a private contractor for the provision of pilotage services at any port. Clause 23(5) sets out the requirements of such a contract.

#### *Part 5 - Marine Advisory Council*

Clause 56 would constitute a Marine Advisory Council to advise the Minister and the State Marine Authority on the following matters (clause 58):

- (a) the safe operation of recreational and commercial vessels;
- (b) the safety of navigation in ports and other navigable waters;
- (c) the protection of the environment in connection with the use of vessels in State waters (within the meaning of the *Marine Pollution Act 1987*);
- (d) the marine legislation;
- (e) strategic commercial port development;

- (f) any other matter relating to marine safety or administration that the Advisory Council considers appropriate.

According to clause 57, the Advisory Council is to consist of the Chief Executive of the SMA (who is to be the chairperson of the Advisory Council) and members appointed by the Minister.

#### *Part 6 - Marine Ministerial Holding Corporation*

Clause 59 would constitute this statutory corporation with, in addition to functions conferred by or under the marine legislation or any other legislation, the following functions (clause 61):

- (a) to hold on behalf of the State, retain, transfer and dispose of assets, rights and liabilities transferred to it under this Act;
- (b) to acquire, exchange, lease, dispose of and otherwise deal with property;
- (c) to develop and manage land transferred to it under this Act or otherwise acquired by it;
- (d) to carry on any activity or business that relates to the assets, rights and liabilities transferred to it or that is incidental or ancillary to the assets, rights and liabilities transferred to it.

'Marine legislation' is defined under clause 3 of this draft Bill to include this draft Bill, the draft exposure Marine Safety Bill 1994 and the *Marine Pollution Act 1987*.

#### *Transfer of former MSB staff (other than senior executives)*

Clause 69 states that Schedule 2 has effect, which sets out the provisions concerning the transfer of former MSB staff, excluding senior executives (see clause 68). Clause 2(1) of this Schedule states

The Minister may, by order in writing, provide that such former MSB staff as are specified or described in the order are transferred to a Port Corporation specified in the order.

Clause 3 of this Schedule deals with the remainder of staff not transferred to a Port Corporation and states any such staff are entitled to be appointed to a position in the Public Service, including the State Marine Authority or any

other Department or Administrative Office.

The rights of former MSB employees to leave entitlements and superannuation are preserved (see clauses 2 and 3).

Clause 4 of this Schedule preserves the MSB enterprise agreement which applies to all staff (other than executive service officers and marine pilots) and which took effect on 13 December 1993 (see the definition in clause 1 of this Schedule).

It has been announced that

The current enterprise agreement will remain in place until December 1995, guaranteeing no involuntary redundancies, and after this the management, staff and unions will be free to further decide their future through the enterprise agreement negotiating process.<sup>29</sup>

**6. Rationalisation of maritime legislation - the exposure draft Marine Safety Bill 1994**

It has also been announced that the 'Marine safety legislation would also be consolidated from the existing 10 Acts into a single new Act, removing outdated and irrelevant clauses.'<sup>30</sup>

The Acts (and associated regulations) to be consolidated according to the draft Marine Safety Bill 1994 are as follows:

*Marine Administration Act 1989;*

*Maritime Services Act 1935;*

*Navigation Act 1901;*

*Navigation and Other Acts (Validation) Act 1983;*

*Commercial Vessels Act 1979;*

*Pilotage Act 1971;*

*Marine Port Charges Act 1989;*

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<sup>29</sup> Deputy Premier of NSW and Minister for Public Works and Ports, 'New commercial structure for ports', *Media Release*, 15/8/94.

<sup>30</sup> *Ibid.*

*Marine (Boating Safety - Alcohol and Drugs) Act 1991;*

*Seamen's Act 1898;* and

*Sydney Harbour Trust Act 1900.*

## 6. Conclusion

The need to make the NSW port authorities more internationally competitive has been called for as

Australian ports lacked customer focus and were the most expensive in the world, BHP Australia Ltd's group general manager transport, Mr Lance Hockbridge warned the port industry yesterday. According to an 'apples with apples' comparison of 21 ports conducted by BHP International Marine Transport, the cost of a 24-hour stopover in Melbourne or Sydney at \$34,582 was about four times more than Port Chalmers, New Zealand, and more than twice the charges in the United States ports of Richmond and Oakland.<sup>31</sup>

The announcement to have autonomous port authorities established as State Owned Corporations is in line with the general national trend towards greater operational and managerial efficiency of public utilities through exposure to greater competitive forces and commercial regulatory schemes such as the *Corporations Law* and the *Trade Practices Act 1974*. It is significant that the corporatisation of the port authorities will occur while remaining in public ownership '[i]n sharp contrast with the Victorian Government's radical plan to privatise all of the State's port operations...'<sup>32</sup>

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<sup>31</sup> 'BHP survey finds ports the world's most expensive', *The Australian*, 11/10/94.

<sup>32</sup> 'Reforms mean end of MSB', *The Australian Financial Review*, 16/8/94.

## APPENDIX

Source: Industry Commission,  
*Port Authority Services and Activities*,  
Report No. 31, AGPS, 1993, pp.180-181.

## Box 8.2: Reforming the Maritime Services Board (NSW)

### The process

The *Marine Administration Act 1989* specified a new-look MSB whose purpose would be to:  
*manage waterfront property suitable for port purposes and to assist ships through provision of safe and secure conditions for their stay in port.*

The MSB released a 3-year program as its first Corporate Plan in 1990. The Board then appointed a team of managers whose approach to reforming the MSB was to:

1. *Identify discrete and manageable core business segments* within each of the subsidiary authorities: MSB Hunter Ports, MSB Illawarra Ports, MSB Sydney Ports and MSB Waterways.
2. *Introduce regular reviews and planning at all levels of the organisation.*
  - a. Define corporate mission.
  - b. Analyse current activities.
    - i. Group them into core and non-core.
    - ii. Analyse profitability of each activity.
    - iii. Prioritise non-core and unprofitable activities for divestment, and focus subsidiary authorities' efforts on improving performance in core activities.  
The MSB significantly reduced or shed coal loading, stevedoring, gangways, wharf cleaning and maintenance, ship repair, major capital construction, service connections for vessels and pilotage services in Sydney Harbour and Botany Bay.
  - c. A review and planning cycle to ensure Step b continues.
3. *Prepare port business plans and integrate them into the Corporate Plan.*
4. *Restructure the subsidiary port authorities* as autonomous units with responsibility for their own assets. This involved:
  - identifying and separating out regulatory activities;
  - identifying and quantifying CSOs;
  - encouraging the authorities to focus on improving customer services through trade facilitation and marketing and Total Quality Management initiatives; and
  - reforming pricing policies according to 'user-pays' principles.

### The problems

According to the MSB, several factors caused difficulties or slowed the reform process:

- little interest from the private sector for investment in port infrastructure;
- lack of interest in sales or adaptive reuse of surplus assets (coinciding with the economic recession and generally reduced investor confidence);
- NSW Government employment policy of no forced redundancies;
- limited availability of software and systems to support and facilitate the process of regionalisation;
- the need to make a tradeoff between diverse stakeholder demands, specifically the level of return on assets paid to the Government as owner, and the price reductions available for customers; and
- the reduced cost effectiveness of implementing organisation-wide training while in a dynamic state of change due to reducing and restructuring the workforce.

Sources: Hayes 1991 and 1992, Moore-Wilton 1992, Sub. 21, MSB 1991 and further information from MSB Head Office.



### Box 8.3: Gains from Maritime Services Board (NSW) reform

#### The gains

Asset disposal and privatisation of non-core activities has reduced the MSB's asset base and improved its operating surplus. By applying the proceeds to redeem debt, interest charges have fallen, the return to the NSW Government has improved, and real charges have been reduced.

The MSB reports that reforms have contributed to its improved financial performance of the MSB—see table below. In addition, the three port subsidiaries are now profitable primarily due to the MSB withdrawing from its previous loss-making operation of the Port Kembla and Balmain Coal Loaders.

	1984-85	1988-89	1990-91	1991-92
Throughput (million revenue tonnes)	89.3	92.8	108.5	113.1
Expenditure (\$m)	215.9	266.2	230.9	194.9
Surplus (\$m)	27.5	19.9	60.1	78.2
Number of staff	3388	2998	1484	1297 <sup>a</sup>
Real port price index	100	75	65	58
Revenue/employee (\$'000)	79.5	95.6	153.2	198.9
Gearing ratio	60.7%	55.8%	50.4%	31% <sup>b</sup>

<sup>a</sup> Includes approximately 300 staff of the MSB Waterways Authority who are associated with recreational boating and foreshore property management functions. <sup>b</sup> Based on revaluation of assets.

#### The future

The NSW Government is to determine later this year the future arrangements for the four MSB subsidiaries and MSB Head Office. Options include maintaining the status quo, full autonomy for the port authorities, corporatisation and/or privatisation.

According to the MSB, other tasks will continue:

- resolving the problem of too many staff;
- sale or disposal of remaining surplus assets;
- finalising computer based management information systems;
- more customer focus training through Total Quality Management;
- progressive privatisation of non-core activities; and
- isolation of regulatory functions.

In February 1992, the General Manager, Port Co-ordination and Planning of MSB stated that:

*the momentum of change has been and will remain rapid. No attempt has been made to define an end point. This is just as well, because the process should not be allowed to end.*  
(Hayes 1992)

Sources: Hayes 1991 and 1992, Moore-Wilton 1992, Sub. 21, MSB 1991 and further information from MSB Head Office.