

New South Wales' convoluted port privatisation saga

The complex port privatisation situation in New South Wales has moved one step closer to a resolution, Paul Zalai of FTA/APSA writes

A SIGNIFICANT LEGACY OF THE

former NSW government was the 1 March 2023 announcement that the Independent Pricing and Regulatory Tribunal (IPART) had been appointed as the independent valuer under the *Port of Newcastle (Extinguishment of Liability) Act 2022*. This was the latest development in Port of Newcastle's quest to diversify its trade with the introduction of large-scale containerised sea freight services.

There has been much debate over the years as to whether port privatisation is a good idea or not. Some have argued that by privatising ports we run the risk of monopoly assets being used to force excessive pricing on tenants and the trade sector to maximise returns for shareholders.

Others see merit in having the private sector in control of these assets by providing a long-term vision for ports for the duration of the lease in contrast to control by a turnstile of state governments and ministers.

Whatever your view is, the reality is most of our containerised ports across Australia have been privatised with state governments (and arguably citizens) benefitting from significant financial windfalls.

PORT BOTANY, KEMBLA AND NEWCASTLE DEALS

In NSW, we witnessed Port Botany and Port Kembla privatised as a part of a combined deal to NSW Ports in 2013 and the Port of Newcastle privatised in 2014.

This coincided with the *NSW Container and Port Policy* that set out to utilise capacity at Port Botany before building additional capacity at another port (once Port Botany nears capacity, the next container terminal will be developed at Port Kembla).

To meet this policy and to maximise the financial return to the state for the Port Botany and Port Kembla lease, a restrictive cap was placed on the number of containers that could be handled by

the Port of Newcastle. Any handling of import or export containers above this cap would attract a fee that would be paid to the state, who in turn would make an equivalent payment to NSW Ports as a form of compensation.

Putting aside the view of the Australian Competition and Consumer Commission, which sees these arrangements as being uncompetitive (a position dismissed in late February by the Full Federal Court), the fact is that both consortia agreed to leases on the above terms.

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WHAT HAS CHANGED?

Wind the clock forward to 8 November 2022, the passing of the *Port of Newcastle (Extinguishment of Liability) Bill 2022* via the NSW lower house altered previously established arrangement and policies.

The subsequent *Port of Newcastle (Extinguishment of Liability) Act 2022* provides Port of Newcastle with the option to request determination of compensation. In essence, instead of paying transactional fees for each container movement above the cap, an upfront compensation payment can be made to the state.

The arrangements between NSW Ports and the state will remain unchanged; the state will still be required to compensate NSW Ports the established fee for every container handled by the Port of Newcastle above the cap.

WHERE TO FROM HERE?

It will be fascinating to see the outcome of the IPART deliberations and the quantum of the upfront compensation payable by

the Port of Newcastle to the state. It may be the case that the compensation payment is cost prohibitive, meaning that we will be left with status quo.

If the Port of Newcastle commits to making the compensation payment and proceeds with large-scale containerised cargo handling, it leaves the question as to where this leaves the decade-old state government *NSW Container and Port Policy*. Furthermore, what does this uncertainty do in terms of much needed private and public infrastructure investment?

Clearly the intent of the above convoluted legislative outcome is to create an environment where the Port of Newcastle can compete with NSW Ports for containerised trade. There is no doubt that competition is the most effective way to meet customers' needs and keep a lid on costs. Whether this will offset the arguments to maximise use of existing assets is to be determined.

We look forward to constructive engagement with the newly elected state government to gain a clear understanding of policy and their broader logistics plan for New South Wales. ■



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