The Corporatized Australian Port System: Are there Legislative Constraints upon the Effective Operation of the Model?

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Submitted in fulfillment of the requirements for the degree of Doctor of Philosophy
(May 2014)

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Summary of Thesis

Many of Australia's government-owned port corporations operate under legislation that creates a corporatized business framework which aims to distance government from the daily operations of ports. Effective corporatization requires legislation which creates a framework that will allow government-owned port corporations to emulate the commercial conduct of private sector firms and be competitive and profitable. There is no uniform port corporatization framework existing in Australia because the frameworks in place have been customized to the needs of the governments in each particular case. As a result, a number of different versions have been implemented across the jurisdictions of Victoria, Tasmania, New South Wales, South Australia, Queensland and the Northern Territory.

Whilst each state and the Northern Territory has enacted its own legislation and created its own port governance frameworks, these are all variations of two models: the Statutory State-Owned Company (SSOC) and the Government-Owned Company (GOC). SSOC port corporations are subject to the requirements of the specific legislation that created them. GOC port corporations are created subject to the requirements of the *Corporations Act 2001* (Cth) which regulates Australian corporations. The SSOC and GOC models differ in the extent of the powers granted to each port corporation and its Board of Directors, as well as the role and degree of influence permitted to shareholding government Ministers. Under the SSOC model the responsibilities of government are embedded within the legislation and potentially allow more scope for political interference than with the GOC model where the scope for overt political interference is generally minimal.

There has been little research undertaken from a legal or empirical perspective evaluating and measuring the function and role of government upon the operation of Australian ports. There is a real need to examine whether there are any constraints imposed by the legislation on port corporations. This thesis fills this gap by investigating whether the legislation in place has provided an appropriate framework

that will enable each port corporation's business and commercial objectives to be fully realized.

Statement

I certify that the work in this thesis entitled "The Corporatized Australian Port System: Are there Legislative Constraints upon the Effective Operation of the Model?" has not previously been submitted for a degree nor has it been submitted as part of the requirements for a degree to any university or institution other than Macquarie University.

I also certify that this thesis is an original piece of research and that it has been written by me. Any help and assistance that I have received in my research work and the preparation of the thesis itself have been appropriately acknowledged. In addition I certify that all information sources and literature used are indicated in this thesis.

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Student ID: 41014065
Date: 21 May 2014

This thesis is dedicated to

Harold Ernest Pettitt

(1913-2002)

&

John Anthony Pettitt

(1945-2014)

Acknowledgments

I was working as a research assistant when it was suggested to me that I might like to consider undertaking a PhD. It was not something that I had ever considered and in fact I knew very little of what was involved. I accepted the challenge and now, despite various ups and downs, trials and tribulations, I can say that overall I have enjoyed the experience. To those who suggested that I embark on the task I shall be forever grateful.

There are plenty of people whom I would like to thank for their support and assistance along the way.

I would like to thank my two supervisors Professor Tyrone Carlin and Professor Guy Ford, now both of the University of Sydney. I am very thankful to Tyrone Carlin for reading many drafts of my thesis and for providing very detailed feedback and advice on it, as well as for coming down to Melbourne from Sydney to meet with me in person from time to time. I am very thankful to Guy Ford for giving me endless help in the process, particularly in relation to the submission process and examination process.

I would like to thank my mum, dad and brother for their support during the whole process which no doubt appeared endless. They did eventually learn to stop asking me as to when my thesis would be finished. I would also like to thank my dad for his invaluable assistance with the calculations in Chapters Six, Seven and Eight. I would also like to thank other family members and my friends both here and overseas for their support and encouragement. I understand that to many my thesis seemed to be a never-ending project. I do regret however that my late paternal grandfather was not around to read my thesis or that my dad did not live to see me graduate.

I would also like to thank my work colleagues at Monash University Caulfield for sharing their experiences as PhD students with me. They reassured me that every drama that I was experiencing was perfectly normal and similar to what they had experienced. Lastly I would like to thank my faithful canine Jock who sat next to me or by my feet during the many hours that I spent working on this thesis.

CHAPTER ONE – INTRODUCTION

Over the last few decades Australian governments at both the Commonwealth and state levels have undergone intensive economic reform programs. This has been part of a government microeconomic reform policy which aimed to make Australian government-owned businesses commercially viable and competitive (Jones 1994; Webb 2004). An important sector of government-owned businesses are Australia's ports which have long-been viewed as an intrinsic part of Australia's trade industry and economy (Goss 1997).

Australia has a long history of protecting its producers by way of quota systems and tariff protection (Quiggin 1996). From the late 1970s and early 1980s onwards, however it was widely recognized that to improve productivity, reform was required at the micro-economic level as long-standing tariff protection in the past had led to complacency and in-built inefficiencies at production levels (Jones 1994). One of the areas that faced early reform was the maritime sector (Feaver, McNamara, Poglio and Wheatsone 1990). In 1983 the new Commonwealth Hawke government developed a policy to revitalize Australian flag shipping (Crawford 1982). As will be examined in this thesis, an intensive period of shipping and port reform followed which resulted in the restructure of waterfront labour (Feaver, McNamara, Poglio and Wheatsone 1990).

From the 1980s onwards, queries regarding the efficiency of Australia's port authorities began to arise (Goss 1987). These intensified especially after the release of the Inter-State Commission (ISC) Report in 1989 on the performance of Australia's port sector (Inter-State Commission 1989b). The ISC argued that the impediment to efficient shipping and port operations may not be the only result of an inefficient labour market, but that inefficiencies in ports could be exacerbated by monopolistic port authorities (Inter-State Commission 1989b). In that report the ISC also raised the issue of whether there was an effective and legitimate role for government in the running of ports, and if so what that role should be (Inter-State Commission 1989b).

The Industry Commission (IC) in its 1993 report argued that if port authorities were to continue to exist, serious restructures were necessary (ICICPA 1993). The report coincided with emerging speculation about the role of government in commercial operations more generally. The IC took the issue of government involvement in ports further and recommended that port authorities should be granted independence from government and bureaucratic interference (ICICPA 1993). The IC in fact argued that the role of port authorities should be that of a landlord and that commercial operations in the ports were best left to the private sector (ICICPA 1993). Other commentators stressed the importance of the landlord model whereby the port leased out its operations to private operators (Goss 1987).

From British settlement in 1788, Australia's ports were gradually established by the six separate colonial governments. After Federation in 1901 when the colonies formally united to become the nation of Australia, the responsibility for port ownership and operations were transferred to Australia's state and territory governments (Goss 1987). These governments also received the power to make legislation in relation to the operation of the ports within their jurisdiction under the Australian Constitution (*Commonwealth of Australia Constitution Act 1900* (UK)). As will be examined later in this thesis, most of Australia's ports remain in government ownership today. When the Australian port reforms of the 1980s and 1990s were enacted, they occurred under state and territory legislation with corporatization being the most commonly implemented method of reform (Reveley and Tull 2008).

This thesis will argue that effective corporatization requires legislation that provides an appropriate framework that will permit a port corporation to operate a business that achieves the aims of corporatization. It has long been recognized by governments and many scholars that effective port reform requires the distancing of government from the daily operations of the nation's ports which is an outcome that corporatization seeks to achieve (Bottomley 1994; Everett 2003b; Farrar and McCabe 1995). The ongoing presence of government in port operations has long been viewed as the cause of port inefficiencies (Everett 2003a; Everett and Pettitt 2006). This thesis will evaluate this proposition by examining the existing literature and port documentation.

The aim of corporatization is to emulate private sector company practices so that corporatized entities such as ports can be competitive and respond to market forces (Jones 1994; King 1994-1995; Bottomley 1997; Grantham 2005). Corporatization transforms port authorities into corporations and enables the ports to remain as government-owned entities whilst acting as businesses competing in the marketplace with private businesses (Jones 1994; Bottomley 1997; Jane and Dollery 2006). As this thesis will demonstrate in later chapters, most states and the Northern Territory have adopted some form of corporatization for their ports. The focus of this thesis is corporatization and it will examine the frameworks created by legislation within which the port businesses can operate. The legislative frameworks existing in Australia are variations of two fundamentally different models: the Statutory State-Owned Company (SSOC) and the Government-Owned Company (GOC). As will be discussed in later chapters, significant differences between these models exist which relate to accountability and the role of government in the port businesses.

The SSOC port corporation is created by a customized statute generally unique to that SSOC. The SSOC is subject to the provisions of the legislation under which it was enacted and is a model in which the role of government Ministers remains pivotal to daily operations (Everett 2003a). The GOC port corporation has been created subject to the requirements of a general incorporation statute, such as the *Corporations Act 2001* (Cth) which establishes most Australian public and private corporations, whilst dictating their regulatory regimes (McDonough 1998).

Considerable research has been undertaken in respect of structural reform of the public sector and corporatization in general (Bottomley 1990; 1994; 1995 & 1997; Farrar and McCabe 1995; Grantham 2005; King 1994-1995; Thynne 1998b; Wettenhall 1995a; Wettenhall 1998). Research and analysis on the performance of ports following corporatization has also been undertaken by various organizations including the Australian Productivity Commission, the Council of Australian Governments and various state governments. However there has not been much research undertaken on the legislative SSOC and GOC port corporatization frameworks in Australia and the effects that they have had on port performance. There has been even less research on

whether the legislation that creates those frameworks permits the port corporations to operate as businesses that are competitive, responsive to the forces of the market and ultimately profitable.

This thesis will examine these issues and attempt to fill in the gaps in the literature using the SSOC Port of Melbourne and the GOC ports in Tasmania as case studies. In particular it will examine this issue by analyzing the available literature and port documentation, as well as port performance figures from 1988/89 to 2010/11 for the Port of Melbourne and from 1995/96 to 2010/11 for the Tasmanian ports.

1.1 THESIS RATIONALE

This thesis examines the Australian corporatized port system and focuses on the legislative frameworks that the models operate within. It will also focus on the legislative issues and identify any constraints embedded in the legislation to determine whether they are an impediment to the operation of Australia's port corporations.

The objective of corporatization has been to distance government from the daily operations of government-owned businesses. Effective corporatization is dependent upon legislation that creates an appropriate business framework that allows a port business to operate on a commercial basis.

This thesis will contribute to the research from a legal perspective using two case studies: the Port of Melbourne in Victoria where the SSOC model has been implemented and the ports of Tasmania which operate under the GOC model.

The thesis will examine the benefits and problems of both models. This has relevance in determining not only an appropriate port model but also other government-owned commercially-oriented businesses.

1.2 OUTLINE OF THE THESIS

In structuring this thesis the concern is twofold. The first is to examine analytically the nature of port reform and the legislation under which the corporatization frameworks and models have been created. The second is to demonstrate the relationship between the models of corporatization and effectiveness of reform.

Chapter Two will review some selected literature from legal, economic, policy, government and academic sources. It will examine developments and research from overseas and the impact of these in Australia. It will conclude by stating the research questions to be addressed in this thesis.

Chapter Three will provide an examination and justification of the methodology used in this thesis. It will discuss the multiple case study method and provide a justification for why it was used in this thesis.

Chapter Four will discuss the historical background of port reform. It will examine what led to reform and examine these developments within the context of a newly emerging paradigm of Economic Rationalism and a revival of Neo-Classical Economics.

Chapter Five will focus on port reform in Australia and will discuss the rationale of port restructure within the context of privatization and corporatization. There will be a particular focus on corporatization which has been the dominant framework implemented to manage Australian ports. This chapter will also examine the two variations of the corporatization framework in place in Australia.

Chapter Six provides the first of two case studies. This chapter will discuss the reforms implemented at the Port of Melbourne which was corporatized as a SSOC in 1996. It will then use the Port of Melbourne case study in order to address the first of the two research questions for the SSOC model.

Chapter Seven provides the second case study. It will focus on the reforms of Tasmania's ports which were corporatized as GOCs in 1997 and later merged into one

GOC port company in 2006. This chapter will use the Tasmanian corporatization model as a case study to address the first of the research questions for the GOC model.

Chapter Eight will assess the success of corporatization in reference to its aims. This chapter will raise the question of whether corporatization is an appropriate model for the operation of government-owned ports. In particular it will address the second research question by examining whether corporatization enables the creation of an effective business framework for either model.

Chapter Nine the concluding chapter, will summarize the arguments presented in this thesis.

CHAPTER TWO - LITERATURE REVIEW

2.1 INTRODUCTION

Chapter One examined the political and economic circumstances that led to the implementation of corporatization in Australia and the port corporatization models used to manage the nation's ports. It then provided an outline of this thesis' structure and concluded by providing a rationale for this thesis. This Literature Review chapter will explore and analyse the development of corporatization worldwide by reviewing the existing literature on corporatization. It will identify the issues that have been established and accepted within the literature and then identify some significant gaps in that literature. This chapter will present the rationale for this research and conclude with the research questions to be addressed in later chapters.

2.2 WHAT IS CORPORATIZATION?

As a starting point it is necessary to define the term corporatization, identify its elements and what it aims to achieve. The existing literature establishes a working definition for corporatization which will be used in this thesis. Corporatization is generally accepted as being a process that constitutes a legislative and corporate restructure of a government-owned entity, such as a port, with the aim of making it more efficient, competitive and accountable (McDonough 1998; Everett 2003a; Grantham 2005; Tull and Reveley 2008). These entities often operate government-owned businesses. Corporatization is a concept that was developed out of micro-economic policies introduced over previous decades in the twentieth century, most notably in the United Kingdom, the United States of America and New Zealand (Jones 1994; Kelsey 1995; Farmer 2005).

The corporatization process begins by first identifying a government-owned entity in need of reform that reviews have shown is not achieving its commercial goals or benchmarks (Goss 1987; Kelsey 1995; King 2002). The entity is then corporatized by being converted into a company (also known as a corporation) with the government being the sole or major shareholder (McDonough 1998; Jane and Dollery 2006). This ensures that government retains the control of the operation of the entity and other

elements such as its profits (King 2002). Whilst some parts of the entity may be sold to the private sector, the government will retain some or all shares in it (Wiltshire 1994). This is in direct contrast to privatization, a very common method of micro-economic reform, in which a government-owned entity is sold in its entirety (King 1994-1995; De Monie 1995a). Corporatization is usually preceded by a change in legislation to create an appropriate business framework, often based on private sector business management principles, in order to achieve the desired goals of efficiency and competition (Farrar & McCabe 1996). In the absence of competition and with long-standing monopoly practices, over time many government-owned entities became inefficient as there was little, if any, incentive to operate competitively (King 1994-1995). To counteract this trend, many government-owned or public entities were corporatized both in Australia and overseas, including banks, universities, postal services, ports and railways (Kelsey 1995; Jane and Dollery 2006; Shi 2007).

As this chapter shows, corporatization is a process that is not neatly defined beyond the objective of emulating private sector business practices. It can also be described as a structural reform process which places government-owned enterprises, as far as possible, on an equal footing commercially with their private sector competitors in a competitive environment (McDonough 1998; Tull and Reveley 2008). This allows the government to continue to provide broad direction by setting key financial and non-financial performance targets and community service obligations (King 2002).

The key here is the placing of the port corporation in market conditions similar to those faced by its private sector competitors (Jones 1994; King 2002). Corporatized ports must be allowed to operate and compete in the marketplace in order for the effectiveness of their business framework to be tested (Tull and Reveley 2008). It is important that government-owned corporations receive recognition from their government recognition that their work has significant public value: this justifies their public-ownership and provides a strong argument for why they should remain in public hands (Thynne (1998b). The implication here is that the port corporations are too valuable to the government to be lost. Public ownership also ensures that there is accountability to the public for the performance of the port corporations through the requirement of the port

having to report to parliament for its activities and outcomes (Mantziaris 1998).

Corporatization therefore involves ensuring that a business framework is established that creates a model for corporatized entities enabling them to operate more commercially in order to make the public sector more efficient (Farrar and McCabe 1996; Paton 1994-1995; Conde 2005). It would then be expected that the corporatized entity's performance would be improved compared to its pre-corporatized version (Hooks and Van Staden 2007). Such a business framework and model requires clear objectives, managerial autonomy so that the entity's management has the necessary responsibility and authority to achieve its commercial aims, and some form of performance evaluation in order to increase accountability to the government (McDonough 1998; King 2002). Corporatized entities are intended to operate at an arm's length from the government and manage their own affairs within the boundaries imposed by legislation (Aronson 1995; King 1994-1995; McDonough 1998; Bartos 2004).

A key objective of a corporatized entity is to conduct its business in a similar manner as its private sector counterparts; therefore they need to be placed on a firm financial footing, be permitted to purchase assets from the government at a negotiated price, and be able to achieve an appropriate rate of return (Wiltshire 1994; Quiggin 2002). Corporatization lends itself to government activities, such as ports, which are business-oriented, routine in nature, self-contained in administration, heavily focused on service delivery, and physically easier to separate (Wiltshire 1994). In some countries corporatization has been a precursor to privatization. In Australia, that has not necessarily been the case although in some instances privatization has followed corporatization: the commercial ports in South Australia for example, and more recently the Port of Brisbane in Queensland (Bottomley 1997; Reveley and Tull 2008; Queensland 2 June 2009).

Corporatization is one of three methods of reform used overseas and in Australia in recent decades to reform economies (Jones 1994; Kelsey 1995; Bottomley 1997). The other methods are privatization and commercialization. Privatization involves the transfer of public assets, usually by means of a sale, to the private sector or the transfer

of provision of services from public services to a private enterprise (Wiltshire 1994; Notteboom and Winkelmans 2001a; Fairbrother, Paddon and Teicher 2002; Tull and Reveley 2008). The result is that the government no longer has any ownership in a privatized entity (King 1994-1995). Privatization has been the ultimate intended outcome of many corporatization programs across the world, most notably in New Zealand in the 1980s (Duncan and Bollard 1992; Kelsey 1995; Nuttall and Wells 1999).

Commercialization, in contrast, involves government retaining ownership and control of one of its entities, such as ports, but commercial principles are introduced into the way a port manages its business (Farrar and McCabe 1995; Tull and Reveley 2008). It involves the application of private sector management techniques and structures to government departments, government trading enterprises and statutory corporations which were previously subject to rigid central control (Farrar and McCabe 1995). Commercialization is less common and has frequently been a precursor to either corporatization or privatization. The ports in Western Australia for example, were commercialized prior to corporatization and many of the state government rail operations were commercialized prior to corporatization and ultimately, full privatization. Unlike corporatization, commercialization does not require a change of legislation. Commercialization strategies had been widespread across the world and preceded the introduction of corporatization.

2.3 THE EVOLUTION OF CORPORATIZATION: THE PICTURE OVERSEAS

As Australia was not the first nation to implement corporatization as a method of micro-economic reform. The introduction of corporatization across the world is generally accepted and not disputed in the existing literature. This section will explore developments overseas and then discuss its implementation in Australia.

Worldwide, seaports have been acknowledged for their importance in generating trade growth and their contribution to a nation's economy (Baird 2004). It is widely agreed by governments across the world that an efficient port and maritime system is essential to maximise a country's competitive position (De Monie 1995a; Goss 1987; Quiggin 2002). This has made political leaders begin to critically review the performance and

service quality of their national transportation networks, including the role and operating results of their ports (De Monie 1995b; Goss 1987). In turn, this has led to a rapid restructuring of port organizations that began in the mid-1980s and saw the increased involvement of the private sector in the management and operation of port facilities (De Monie 1995a; Notteboom and Winkelmans 2001a; Verhoeven 2009). In some countries such as France and Italy, local economic forces helped to shape changes in national port reform schemes (Debrie, Lavaud-Letilleul and Parola 2013). During the 1980s many policy makers and researchers across the world saw a critical need for port reform which led to a move to make ports more efficient (Robinson 2002; Baird and Valentine 2007). The drive for increased transport efficiency has fundamentally affected ports around the world and led to many reform programs being introduced (Kelsey 1995; Juhel 2001; Notteboom and Winkelmans 2001a; Baird and Valentine 2007). Increasingly the strategic role of ports has been recognized over time, particularly in relation to how they can drive growth and shape networks in their regions (Cahoon, Pateman and Chen 2013). This has often been aided by ports having links to government and stakeholders that use the port facilities (Cahoon, Pateman and Chen 2013).

The introduction of micro-economic reform took place most notably in the early 1980s in the United Kingdom under Prime Minister Margaret Thatcher and in the United States of America under President Ronald Reagan (Rowthorn 1989; Niskanen 2002). Both of these governments were influenced by the New Right political movement which advocated that the size of government must be reduced in order to stimulate an economy's growth, typically via the deregulation and privatization of state-owned industries, and that there should be a strong reliance upon market forces (Williams 2003; Jones 2004). The New Right emerged as a force opposing the growth of governments viewing governmental imposition as a direct threat to individual freedoms (Woodward 2005).

2.31 United Kingdom: Reform under Prime Minister Thatcher

In 1979 the Conservative Party, led by Margaret Thatcher formed a new government in the United Kingdom that would last until 1991. Thatcher's government inherited a nation that was financially weak, experiencing social fragmentation, high levels of

unemployment and inflation (Rowthorn 1989). One of the new government's agendas was to reduce inflation and prepare for an economic recovery (Jessop, Bonnett, Bromley and Ling 1988; Rowthorn 1989). Reform in the United Kingdom under the Thatcher government in the 1980s involved a widespread privatization program of many state-owned industries including British Telecom and British Gas (Wiltshire 1987; Jessop, Bonnett, Bromley and Ling 1988). The government believed that privatization would lead to improved performance as the private sector was generally perceived to be more efficient at handling those resources than the public sector (Hartley, Parker and Martin 1991; Goss 1997). The United Kingdom pioneered privatization in 1979 which was widely accepted globally (Notteboom and Winkelmans 2001a).

Between 1977 and 1987, 13 billion shares were sold in the United Kingdom under privatization programmes resulting in the raising of twenty five billion pounds from the sales (Hyman 1989; Quiggin 2002). The rationale for this was to rid government of inefficient, uncompetitive and unprofitable operations, and to pursue efficiency improvements by exposure to the forces of the market (Wiltshire 1987; Rowthorn 1989; Veljanovski 1989b). The prevailing view was that state intervention and ownership was a barrier to achieving efficiency and profits and therefore privatization was seen as the solution enabling the forces of the market to correct the problem (Quiggin 2002; Jones 2004).

Other aims for the United Kingdom emerged later which included increasing private ownership in Britain and reducing government involvement in the decision-making of enterprises (Wiltshire 1987; Vickers and Yarrow 1988). In order to increase competition, the government used other measures such as contracting out, competitive tendering by local authorities, and removing barriers to competition in nationalized industries (Vickers and Yarrow 1988). The United Kingdom's port privatizations were about removing port assets from public ownership, but unlike in other nations such as Australia, they were never about creating new and improved port infrastructure and facilities to benefit the economy (Baird and Valentine 2007).

Corporatization was implemented in the United Kingdom's ports after the 1970s when its trust ports became self-financing bodies with their own labour forces and equipment (Thomas 1994). These ports became independent self-governing statutory bodies created under individual Acts of Parliament and were governed by independent boards (Thomas 1994). This trust port model is not too dissimilar from the statutory authority model existing in Australia in the past and, to a lesser extent, the Statutory State-Owned Company (SSOC) model adopted in many Australian states as part of the country's micro-economic reform program. The United Kingdom's trust ports had been established in the late 19th and early 20th century for quite different reasons, such as taking over from private dock companies experiencing problems developing or maintaining adequate port facilities (Thomas 1994).

2.32 United States of America: Reform under President Reagan

The socially conservative government of President Ronald Reagan also sought reform when it came to power in 1980. Reagan's presidency lasted until 1988. Inflation and interest rates were rising at the time and oil prices had reached historically high levels (Farmer 2005). Like the Thatcher government, Reagan's administration sought to reduce the size and influence of the state by deregulating state-owned industries in order to achieve economic growth and competition (Niskanen 2002). There was a strong reliance on the power of the market forces and the Reagan administration viewed excessive state intervention as an impediment to the success of capitalism (Williams 2003). Reagan was once quoted as saying that government was not the solution to the nation's problems, but the problem itself (Farmer 2005). The preceding Carter administration (1976-1980) had begun this reform process, but it intensified under Reagan which led initially to the deregulation of financial services, transportation and communication industries (Nadler 1993; Niskanen 2002). The impact of reform on the ports has been significant – at the present time for example, the United States has 360 commercial ports, 210 of which are privatized. The remaining 150 ports are governed by 126 seaport agencies of state and local governments that in turn are administrated by an elected or appointed port commission (AAPA 2010). This is a very similar structure to the corporatized ports operating in other parts of the world.

2.33 New Zealand: From 1984 to the present

When the Australian government embarked on its reform program it was influenced significantly by the principles and drivers of the New Zealand model. However the New Zealand framework ultimately differs markedly from those implemented in Australia (Duncan and Bollard 1992; Reveley and Tull 2008). The New Zealand ports while categorised as corporatized entities are more akin to one of privatization with port ownership being held in the form of shares (Everett, Weston and Pettitt 2007; Tull and Reveley 2008). New Zealand's regional councils hold some of the shares and any remaining shares are listed on the stock exchange. Under this model the regional councils' ownership can vary from full ownership to partial ownership depending on the port in question (Everett, Weston and Pettitt 2007).

Corporatization in New Zealand also differs from what was developed in Australia as it was not always intended to be an end in itself – in Australia, initially at least; corporatization was an end in itself (Farrar and McCabe 1995). After 1984 the New Zealand Treasury's ultimate reform goal became privatization and corporatization constituted a step towards achieving this goal (Duncan and Bollard 1992; Jolly 2000). Kelsey (1995) reported that initially many economists in New Zealand considered corporatization a short-term measure on the path to privatization. Taggart (1991) expands on this suggesting that firstly corporatization transformed public trading enterprises into corporate form and often into a profitable operation, which in turn made them more attractive when they were sold at a later date.

In New Zealand, corporatization was introduced with little debate as the public sector was perceived as inefficient and in need of serious reform (Carter 1993; Kelsey 1995). In 1984 the newly-elected Lange government opted for a hands-off approach to governance and a market-led strategy for economic development (Nuttall and Wells 1999). This model did not have widespread public support in New Zealand although in time corporatization and privatization models came to bring efficiency gains by way of exposure to market disciplines (Kelsey 1995; Nuttall and Wells 1999).

In New Zealand, successive governments have taken the view that the overriding objective of the reform process has been to improve efficiency within the economy rather than to increase the wealth of the government (McKinlay 1998). Corporatization has been treated as part of a process of deregulation to encourage competition as far as possible on a level playing field basis (McKinlay 1998; Nuttall and Wells 1998). In New Zealand the company form was used for activities involving commercial businesses producing goods and services for sale in a competitive market, including many of the government's major trading undertakings (Carter 1993; McKinlay 1998). New Zealand used similar corporatization frameworks and models to those later used in Australia: the Government-Owned Company (GOC) which have an incorporated legal status and are owned by the government as creator and shareholder, and the Statutory State-Owned Company (SSOC) which are notionally owned by the government as creator (Thynne 1998a). The benefit of being incorporated is that they are corporate entities with a distinct legal personality enabling them to enter into contracts, buy and sell property, sue and be sued, separately from the government (Thynne 1998a).

2.34 Europe

The public sector continues to dominate the management of Europe's ports (Verhoeven 2009). In Europe, as in Australia, each jurisdiction has responsibility for its own ports (Roe 2009). Many European publicly-owned ports are becoming more commercially-focused and policies in Europe have encouraged this (Notteboom and Winkelmans 2001a). In October 2007 the European Commission published a new paper on European Ports Policy which reinforced this direction (Verhoeven 2009). Over the last two decades in particular, Europe's ports have undergone a process of change that has required many port authorities to redefine their role (Verhoeven 2009). This has resulted in many national, regional and local governments facing challenges and instituting reform programs which have adapted the institutional framework in which port authorities operate (Roe 2009; Verhoeven 2009). At a time when globalisation is becoming a reality, Europe needs modern and efficient ports as they are important tools for facilitating and encouraging trade and development - ports are no longer just a place for cargo exchange (Juhel 2001).

Historically the public sector has been in charge of port ownership because ports have been considered to be of great value in terms of trade and defence (Notteboom and Winkelmans 2001a). The implication of this is that governments have been reluctant to lose ownership of their ports (Baird 2004). It has also been suggested that in Europe large and complex public port organizations are inefficient by nature and that efficiency is the challenge each time (Notteboom and Winkelmans 2001a). There is also a trend for governments in continental Europe, such as those of Spain, Belgium and Italy, to turn to corporatization and commercialization as they relinquish much of their control over ports and seek a legal framework that permits efficiency (Notteboom and Winkelmans 2001a).

2.35 Canada

In Canada port reform has involved a process of legally restructuring ports as private business enterprises under Canada's company laws, such as the *Canada Marine Act 1998* with ownership remaining with the government (Ircha 1999). The *Canada Marine Act 1998* provides a governance structure for the management of Canadian port authorities which requires them to be commercial and completely self-sufficient with no funding from the Canadian government (Ircha 2008). As with Australia, port reform in Canada was instituted to improve efficiency and to reduce costs (Ircha 1997). There has been a recorded trend towards the devolution of government-owned entities, including ports, over the last two decades with the aim to make them more commercially-driven (Baltazar and Brooks 2001). This has been a deliberate move by governments following the belief that social welfare will be improved by this course of action (Brooks 2001). The intention of this move was to secure the benefits of commercially-driven business decision-making in organizations that were previously run by governments, while at the same time, securing compensation for prior taxpayer investments (Brooks 2001). It has been acknowledged that for any devolution program to succeed, the government must create suitable governance structures and processes for the devolved entity (Brooks 2001).

2.36 Asia

In Asia, with the main exception of the People's Republic of China, there is a trend towards increasing private sector participation in the ownership and operation of ports (Cullinane and Song 2001). Many Asian ports still experience a number of problems relating to efficiency, such as inefficient management and operations and the result has been a move towards encouraging private sector participation to alleviate the efficiency problems (Cullinane and Song 2001). This is in contrast to China, where there have been moves to increase public involvement through corporatization (Tomasic and Fu 2006; Shi 2007). Studies of Asia, including China, have shown that unlike in Australia, port ownership does not appear to be linked to efficiency (Cullinane and Song 2001; Tomasic and Fu 2006; Shi 2007).

Irrespective of the fact that ports must be owned or operated by either the public sector, the private sector, or by both sectors in a joint venture, few Asian ports can be described as either purely public or private (Cullinane and Song 2001). There is also a great variation in the forms of jurisdiction that cover ports: for example the Port of Singapore was corporatized on 1 October 1997 which consisted of the conversion of the Port of Singapore from its status as a government body to an independent and private (but still government-owned) entity in which a wholly-owned subsidiary of the Singaporean government, Temasek Holdings Pte Ltd, owns all of the Port of Singapore Authority's shares (Cullinane and Song 2001).

China, with a population and economy larger than its regional competitors, is one of the major players in the Asian port region. It is one of the few Communist nations in Asia and so has a state-controlled port sector, as privatization is generally opposed by Communist ideology (Tomasic and Fu 2006). China's ports operate under a corporatized company model, similar to that of Australia, with the aim of improving management and therefore efficiency (Clarke 2003). Due to its government's policies against private ownership, China has been very guarded about any moves to privatize its ports and is reported to have only partially privatized some of them (Shi 2007). Privatization has been implemented in some of China's other industries but not to a great extent (King 1994-1995). China has begun to move towards a market economy but this

has continued to create ideology issues especially in relation to private property (Lo 2007). There has been a reticence in China to allow private ownership and control of what have been viewed as strategic assets such as ports.

China's aim in adopting corporatization was to replicate western private sector company models and to attract outside investment. In addition it sought to separate ownership from management in an effort to increase operational efficiency (Clarke 2003; Tomasic and Fu 2006; Lo 2007). One major issue noted in China but which has also occurred elsewhere is that because the state is the controlling shareholder, decisions in relation to the management of the companies may be determined by political requirements rather than shareholder value (Clarke 2003; Tomasic and Fu 2006). This problem is not unique to China and to a certain extent it has led to the development of this research – the State as the controlling shareholder, has the power to dominate and control the board and operations of the port companies (Shi 2007).

2.4 CORPORATIZATION IN AUSTRALIA

The implementation of corporatization is not the first type of reform introduced to make Australian ports more competitive and responsive to the marketplace (Goss 1997). The policy to privatize and corporatize ports in Australia has a long history (Feaver, McNamara, Poglio and Wheatsone 1990). The corporatization policies that have subsequently emerged in Australia have been an essential part of various governments' microeconomic reform strategies (Quiggin 2002). The mechanisms that have been introduced to attempt to make the ports more responsive to the marketplace have been diverse particularly following the enactment of in 1995 of the National Competition Policy (MacFarlane 2006).

As noted above Australia has been influenced by reform particularly in the United Kingdom, the United States of America and New Zealand (Jones 2004). Although as Grantham (2005) points out corporatization in Australia differs from models introduced elsewhere. In the United Kingdom for example, the difference is in terms of permanence as corporatization was a stepping-stone in the path to full privatization (McKinlay 1987; Duncan and Bollard 1992). In Australia on the other hand,

corporatization was generally viewed as the final product and an end in itself (Wiltshire 1994; Kelsey 1995; McDonough 1998; Seddon and Bottomley 1998; Jolly 2000). Australian governments in the early stages of reform were reluctant to relinquish control of essential infrastructure such as ports (King 2002).

From the 1980s onwards Australian governments introduced reform programs aimed at reforming government businesses (Wiltshire 1994; Jane and Dollery 2006; MacFarlane 2006). This period witnessed the Australian governments embracing a number of different but closely-related strategies: corporatization, privatization and commercialization (Reveley and Tull 2008; Tull and Reveley 2008). These processes involved the application of private sector management techniques and structures to government departments, statutory authorities and other government businesses (Farrar and McCabe 1995; Jane and Dollery 2006).

In the 1980s the Australian Prime Minister Bob Hawke (1983-1991) embarked on a microeconomic reform program with the argument that Australian institutions needed to be restructured if they were to become internationally competitive (Hawke and Howe 1990; Beckett 1995). Fundamental to achieving that objective was 'the obtaining of more from any given level of human or capital resources through microeconomic reform' (Hawke and Howe 1990; Beckett 1992). The Australian Federal Government subsequently initiated an extensive labour market reform program both in shipping and on the waterfront (Quiggin 2002).

In response to these initiatives the Inter-State Commission (ISC) argued that inefficiencies in ports could be exacerbated by inefficient and monopolistic port authorities (Inter-State Commission 1989). The ISC questioned whether there was an effective and legitimate role for the public sector in Australia's ports (Inter-State Commission 1989). In 1993 the Industry Commission (IC) argued that port authorities, if they continued to exist, should be granted autonomy from government and bureaucratic interference (Industry Commission 1993). The IC stated that the role of the port authority should be that of a landlord and that commercial operations were best left to the private sector (Industry Commission 1993). This speculation about the role of

port authorities and governments in ports coincided with the review of the role of governments in commercial operations more generally and on the efficiency and cost effectiveness of government business enterprises in particular (Everett and Robinson 1998a).

Reform in the early 1980s initially focused on the private sector (Goss 1987; MacFarlane 2006; Everett and Robinson 2007). It was somewhat later that public organizations and governments in general came under pressure to commercialize their businesses, including those in the transport sector such as ports and railways (Wettenhall 1983; Quiggin 2002). This was formalised following the enactment of the National Competition Policy (NCP) in 1995, which was chaired by Professor Fred Hilmer (King 2002). Under the NCP particular attention was devoted to public sector monopolies providing commercial services (ICICPA 1993a).

Although the NCP found privatization a viable option, it warned that where the incumbent firm had developed into an integrated monopoly during its protection from competition, structural reforms were required to dismantle excessive market power and increase the contestability in the market (ICICPA 1993a; Quiggin 2002). The NCP found that privatizing these firms was a simplistic notion and would mean the transfer of monopolies from the public to the private sector (ICICPA 1993a). Under the broader umbrella of NCP, particularly within the area of government business enterprises, corporatization, privatization and commercialization became widely accepted reform strategies (Tull and Reveley 2008). The rationale was that by employing those strategies, government enterprises would be exposed to the market conditions and competitive forces required to make them efficient (Jones 1994). The NCP formalised and extended the corporatization process for government-owned entities because it stated that they should be forced to mimic private firms and not be allowed to have any competitive advantage simply due to their government-ownership (King 2002).

The rationales put forward in Australia, especially in New South Wales and Victoria for implementing corporatization were efficiency gains and increased competition (McDonough 1998; Fairbrother, Paddon and Teicher 2002; Webb 2004). Australian

ports had a history of inefficiency characterised by poor work practices and management (Webb 2004). As Australia is an island continent situated some considerable distance from many of its trading partners, the economic efficiency of its ports has always been very important (Goss 1987). Several writers have stated that the object of corporatization was to create an operating environment for appropriate public sector enterprises that replicated the internal and external conditions of successful private enterprises (Everett 2003a; Jane and Dollery 2006). The main reason that Australia opted for corporatization and not privatization was that bureaucrats and politicians strongly adhere to the concept of a strong public sector and have not been prepared to accept a diminished role for government (Tull and Reveley 2008). Corporatization enables governments to maintain the ultimate management role of ports (Farrar and McCabe 1995).

The objectives of port reform were also part of a broader government agenda aimed at reforming the public sector performance more generally (Everett 2003b; Webb 2004). In the 1980s shipping reform was seen as only a partial solution to the problems that existed in Australia's uncompetitive and costly shipping industry; an inefficient waterfront also had a direct impact upon the efficiency of shipping operations (Everett 1995a). These port inefficiencies led to delays in shipping, long ship queues, slow turnaround times and other related problems (Ircha 1999). They were also recognized as chronic loss-makers and it became policy for the Victorian government to shed loss-making operations, and to improve the state's finances by selling off government assets (Everett 1995a). Ircha (1999) suggests that port reform would be able to address more effectively the monopolistic practices of waterfront labour which had contributed significantly to the low productivity and had created the perception of general unreliability. This was further exacerbated by a lack of effective inter-port competition as a consequence of long distances between ports. This had led to clearly defined hinterlands (Ircha 1999). In general an inefficient port environment had been created.

In Australia corporatization was implemented with the enactment of either a specialised Act of Parliament or an existing incorporation statute, such as the *Corporations Act 2001* (Cth) (Grantham 2005). The Act of Parliament created a framework which

determined details of the port corporation's business, structure of the organization, responsibilities of members and a mode of operation. In most instances a private sector business structure was emulated and ports were established essentially as landlords – a model in which all commercial operations were privatized (Everett and Robinson 2007; Tull and Reveley 2008). This model of corporatization ensured that a public presence was maintained whilst replicating market disciplines (Productivity Commission 2002a). The legislative rationale for corporatization was to improve the efficiency of the ports, improve service performance, reduce loss-making and/or increase financial returns to the government shareholder whilst maintaining them in public ownership (Bartos 2004). Efficiency improvements, it was believed, would flow from distancing government from the daily operations which was the element that was widely recognized to be a major cause of inefficiencies. Despite these reforms, the problem remains that there has been an intensification of central government controls with reform driven almost exclusively by central government bureaucrats (Ircha 1999).

2.5 GAPS IN THE LITERATURE

The above discussion indicates that corporatization models are diverse although the reform objectives were generally similar. The discussion also establishes what has been accepted in the literature. There is little discussion in the existing literature as to whether the objectives of corporatization and reform have been met. Since the establishment of its first ports in the eighteenth century, Australia has had many port policies that have changed over time. Most have had the general aim of making the ports more competitive and profitable than previous policies. The corporatization of Australian ports is the most recent method employed to reform Australian ports. This thesis examines aspects of whether these reforms have been effective.

2.51 The Concept of Effectiveness

As has been argued, the effectiveness of the corporatized port models is a contentious issue that has attracted little agreement. Most studies and government decisions focus on the efficiency aspects of port reform, leaving any question of effectiveness unaddressed or only partially explored (Brooks and Pallis 2008). Another problem is that many studies do not examine or compare port performance data. This makes those

studies merely theoretical as they provide little empirical evidence to support any findings (see McDonough 1998, Everett 2003a and Grantham 2005). The main studies examined that have used performance data have been very limited in their approach and have used them merely to demonstrate performance and operational efficiency (Everett and Robinson 2007; Tull and Reveley 2008). Efficiency performance measures relate to physical quantities of items, levels of effort expended to convert resources into products and services (Talley 1994; Brooks and Pallis 2008).

The concept of effectiveness focuses on how well a port uses its strategies and resources to achieve its aims (Talley 1994; Brooks and Pallis 2008). It is not true that a privatized entity will always be a more competitive or efficient entity than a corporatized one, or vice versa. This is because much depends on the circumstances in which the entity competes and operates, including how the policies were implemented and how they apply in real-life circumstances (Notteboom and Winkelmans 2001a). Isolating out the element of effectiveness and what achieves it is not straightforward as there may be many elements within a port entity's legislative framework that determine whether a port will be commercially successful.

To add further complication, there are many elements beyond a port's entity's legislative framework that determine effectiveness in achieving its aims such the state of the local and global economies, the supply and demand equations for goods, and the economics of other transport methods available (Tull and Reveley 2008). Notteboom and Winkelmans (2001a) argue that public companies and therefore public ports are not inefficient by nature, despite common perceptions to the contrary. Many public companies that operate in a competitive market environment without any government protection have been known to outperform private enterprises in the same industry as public ports are not inevitably on the path to failure or less efficient than private ones when faced with the same environmental and organizational structure (Notteboom and Winkelmans 2001a). It can be problematic to isolate the effect of any these elements and it is well beyond this thesis to examine all of those aspects.

2.52 The Effectiveness of Corporatization

The starting point then is to examine why it has been alleged that the Australian corporatization models are not effective and do not achieve their intended aims. Whilst there is agreement that there are problems with achieving the sought after aims of efficiency and profit, there is no clear agreement on what causes those problems (Tully and Reveley 2008). In the literature some writers have argued that whilst corporatization has improved port operations in Australia, the various corporatization frameworks and models being utilized have failed to achieve the results sought and increase efficiency (Aronson 1995; Hirst 2000; Meyrick 2004a; Brooks and Pallis 2008). Other writers have argued that whilst corporatized ports are far more responsive to customer needs and are prepared to work more closely with their customers to obtain better transport solutions, there are many disadvantages with the corporatized structure that persist despite the reforms (Hirst 2000). The main element identified in the literature as being problematic is the potential for ongoing bureaucratic and political interference that is permitted by the legislation because it could be used by shareholding Ministers to suit their own short-term political and governmental needs perhaps at the expense of port operations, such as by preventing them from realizing their commercial objectives by delaying projects and the delivery of capital required (Coates 1990; Wettenhall 1995; Hirst 2000; Everett 2005b).

Other writers have argued that the fundamental problem of corporatization may not lie with the business frameworks and models themselves but with the legislation under which ports were corporatized; it is the legislation that permits ongoing political interference (Coates 1990; Farrar and McCabe 1997a). In fact it has been extensively argued that the problem with the Australian corporatization models is that the Minister's involvement can potentially interfere with the attainment of private sector outcomes, such as achieving maximum business returns (Coates 1990; Mantiziaris 1998; Everett 2003a; Everett 2005b). Much depends on the extent to which the Minister chooses to exercise the power. The potential for interference for example, by giving directions to the port corporation's board of directors that may not be in its best interests remains. It is very important to note that none of these studies have relied on port performance indicators to support their arguments – they have merely stated that if the Minister is

permitted to interfere in a port's operations the outcome will be negative for the port corporation.

Juhel (2001) argued that by simply devising a reformulation of national port development strategies such as corporatization the issue may not be remedied as any reformulation must be accompanied by corresponding reform in the legislative and institutional structures relating to port planning and regulation. Furthermore it is crucial that the legislation is such that it enables the creation of an effective business framework independent of political directions. Clearly then one of the main challenges to port policy makers is to be able to establish an appropriate legislative framework that guarantees an efficiency-oriented approach that achieves the goals sought (Notteboom and Winkelmans 2001a). In Europe it has been suggested that central governments should adopt the role of a facilitator to provide incentives to stimulate and increase accountability, autonomy and efficiency for port authorities (Notteboom and Winkelmans 2001a). A major difference between the Australian and European experience is that most European nations do not require their government-owned businesses and entities to have the same degree of parliamentary involvement and accountability as is required in Australia under the Westminster System of Responsible Government.

Another problem which may arise from Ministerial involvement is that the Minister may issue directions to the port corporation which may favour that Minister's short-term political goals at the expense of the port corporation (Coates 1990; Wettenhall 1995; Hirst 2000). Again these studies do not rely on empirical evidence to support their arguments, relying instead on anecdotal evidence or hearsay. As Australia's corporatized port corporations are government-owned, the Minister is accountable to the parliament for government-owned entities such as corporatized ports (Mantiziaris 1998). This concept does not exist in Australia for private sector companies. This government involvement is mandated by the Westminster system of government which has been adopted in Australia from the United Kingdom. In Australia the Ministers of Parliament are at the head of government departments, such as the Department of Ports in each jurisdiction.

The doctrine of Responsible Government is a tenet of the Westminster system and seeks to impose individual responsibility of Ministers to the Parliament for the administration of their departments (and everything within them) and the collective responsibility of the Cabinet to the Parliament for the entire conduct of the administration (Emy 1976; Turpin 1994). Under this doctrine, port corporations are accountable to the appropriate government department, to the Minister who is responsible for that department, the Cabinet and ultimately to the Parliament (Wettenhall 1983; Mantziaris 1998). In Victoria, this has been enacted into legislation under Section 85 of the *Public Administration Act 2004* (Vic) which states that the board of a public entity, such as a port corporation, is accountable to the Minister responsible for that entity and in turn that Minister is responsible to the Parliament for the actions of the entity. Section 85(2)(b)(ii) establishes that the Minister has the power to give directions to the entity.

2.6 THE AUSTRALIAN MODELS: STATUTORY STATE-OWNED COMPANIES AND GOVERNMENT-OWNED COMPANIES

As will be examined in detail in later chapters, two corporatization models exist for ports in Australia under the various port corporatization statutes: the Statutory State-Owned Company (SSOC) and the Government-Owned Company (GOC). Legislation creates the framework within which the port businesses can operate under these two models. It will be argued in later chapters that the models in each jurisdiction were developed on a needs basis and implemented without consultation with the other states or the Northern Territory. Therefore the legislation in each state and the Northern Territory is specific to that jurisdiction. Tasmania and Queensland opted for the GOC model whilst the other jurisdictions have implemented some form of the SSOC. Although the state government of Queensland initially adopted a version of the SSOC model, this was amended in 2007 when the Queensland ports were transformed into GOCs.

2.61 The Differences between the Models

There are some fundamental differences between the SSOC and GOC legislative frameworks which many writers, as argued above, report impact on their ability to produce the desired outcomes of increased competitiveness and efficiency. A SSOC is created by specific legislation which means that there is the potential for some degree of

parliamentary input and scrutiny in their creation (Bottomley 1994; Reveley and Tull 2008). Therefore a SSOC can have tailor-made provisions such as those relating to accountability and ministerial control which can be built into the legislation (Bottomley 1994). Legislation for a SSOC model will include the port's constitution which deals with issues relating to accountability and ministerial control. Therefore the potential for political intervention is inherent in the legislation.

A GOC on the other hand is a body corporate that is incorporated either under *Corporations Act 2001* (Cth) or one of the state or territory general incorporation statutes, and in which government has a controlling or substantial interest (Bottomley 1997; McDonough 1998). Under this legislative framework a GOC is no different from any private sector company as it is subject to identical regulatory and legal requirements for the governance of companies (Paton 1994-1995). However the GOC framework still permits the government as the sole shareholder to have indirect input into the operation of the port corporation.

As will be argued in later chapters, the distinction between the two models is potentially significant as they create different legislative frameworks and the freedom to pursue objectives other than those articulated by the Portfolio Minister or the parliament. Under the SSOC model, which allows specific legislation to be created, distance from government intervention is difficult as the legislation can be drafted to give shareholding Ministers the power to determine major areas of policy (Everett and Pettitt 2006; Reveley and Tull 2008). In contrast under the GOC framework Ministerial input is much reduced because accountability is not only to the parliament and government as shareholder, but as a GOC entity it is subject to the provisions of the *Corporations Act 2001* (Cth) and accountable to the Australian Securities and Investment Commission (ASIC) (McDonough 1998; Grantham 2005). The provisions of the *Corporations Act 2001* (Cth), as will be discussed in later chapters, are very rigorous and do not permit excessive input by shareholders.

It is a matter of debate in the literature as to whether the GOC model is more preferable to the SSOC model or vice versa (Pitkin and Collier 1999; Everett 2003b; Grantham

2005). Pitkin and Collier (1999) argue that although the GOC is a preferable model for a company pursuing commercial objectives, some problems of accountability occur because a GOC must still retain some accountability to the parliament because they are government-owned. This means that a GOC that is created under the *Corporations Act 2001* (Cth), such as those in Tasmania, is accountable to a number of regulators including ASIC. This means that government has less scope for imposing its requirements and its controls (Bottomley 1997). At the same time as it is government-owned, it is accountable to the Minister and parliament. In contrast, a SSOC is not subject to ASIC but to any provisions within its enabling Act, that is, the Act of Parliament under which it is created. The SSOC model as a result and potentially at least provides the government with the scope of interference as embedded in the legislation (Everett and Pettitt 2006). The literature however is not conclusive on whether the differing needs for accountability in the SSOC and the GOC actually affect performance.

The adoption of an incorporated company framework was accompanied by controversy during the 1980s when corporatization was first considered (Wettenhall 2003a). One Labor Government Finance Minister indicated that incorporation under company legislation (a GOC) should generally be avoided particularly because it is less satisfactory in terms of proper accountability to the Parliament (Wettenhall 2003a). At the same time however the literature reveals that the then Minister for Transport and Communications adopted an opposing position arguing that 'an incorporated company structure is appropriate for those enterprises in direct competition with private sector competitors, or for enterprises which serve no explicit social objectives and have a well-developed commercial structure' (Wettenhall 2003a). As will be argued in Chapter Five, at the state government level, the preferred model has been the SSOC and as a result the majority of Australia's trading enterprises are statutory corporations of various forms (Bottomley 1994).

2.62 Is There Agreement on an Appropriate Legislative Framework?

Robinson (2003) questions whether a corporatized port is likely to have in place an effective business framework that creates a competitive government-owned business.

This is a key question that will be addressed in later chapters. The existence of the Convention of the Westminster system inherited from the United Kingdom and its requirement for mandatory parliamentary involvement may make this difficult to achieve in theory – the writer does not provide any empirical evidence to support this contention (Mantziaris 1998). Whilst there appears widespread agreement that the transformation to corporatized entities has resulted in considerable productivity improvements and increased efficiency, dissatisfaction still exists because the factor of potential governmental intervention has not been removed and because ongoing political interference is reported to continue to frustrate and impede the realization of commercial objectives (Coates 1990; Wiltshire 1994; Wettenhall 1995; Bottomley 1997; Everett 2003a; Everett 2003b). These studies are merely theoretical as they do not provide empirical evidence to support their contentions.

Hirst (2000) also identified this problem and suggested that whilst corporatized ports are usually more responsive to customer needs than their non-corporatized counterparts, they also suffer the disadvantage of potentially being primarily used by the Minister to satisfy short-term political agendas. This makes the assumption that the potential for political interference will automatically result in negative outcomes for port businesses and that any Minister exercising such a power will use it for their own personal gains. Later chapters will investigate to what extent the Ministers do exercise their powers of intervention, and whether intervention does result in a negative outcome for the ports.

Some writers claim that the failure to achieve corporatization's commercial aims was due to the legislative frameworks implemented and not the implementation process itself (Everett 2003a; Robinson 2002; Everett and Pettitt 2006). This will be investigated later in this thesis. Meanwhile Meyrick (2000) argued that discontent with the government was one of the port industry's common themes and that government often "poked their noses" into operational aspects of port management while appearing to be indifferent to broader strategic issues.

According to Taggart (1991) some economists have stated that by merely imitating the corporate form, government business enterprises will not be able to replicate the benefits

of private enterprise. This is because the monitoring mechanisms used for private enterprises do not exist (or are at least less effective) for government business enterprises: for example shares are not transferable, there is no share price (meaning takeovers are impossible), and there is no likelihood of insolvency (Taggart 1991; Doyle and Moller 1999). Taggart (1991) also differentiates between private enterprise and public enterprise by stating that public enterprise is not the same as private enterprise simply because of the fact of public ownership – it appears that more is expected of the State (and presumably therefore the public enterprise) than of the private sector. Public authorities must act within the bounds of their enabling legislation which often states they must act reasonably and upon lawful and relevant grounds (Taggart 1991).

2.7 WHY IS THIS RESEARCH REQUIRED?

The above review of the literature shows that there is no consensus on which legislative framework could achieve the aims of corporatization or whether such a legislative framework exists. The review does however reveal several dominant themes which are:

(i) There are some serious flaws in the existing corporatization frameworks. This is substantiated by the fact that in a number of Australian states there has been significant amendment to the corporatization models;

(ii) The latent potential for the shareholding Minister to interfere in the operations of the port corporation such as by giving directions on how it should act may adversely impact a port corporation's performance;

(iii) The differences in the accountability requirements between the SSOC and GOC models are also likely to impact on a port corporation's performance;

(iv) Few studies in the literature rely on empirical evidence such as performance data to support their contentions; and

(v) Most of the existing literature does not examine the legislation behind the corporatized port businesses, especially in relation to comparing whether there is

an actual difference in performance between the SSOC and the GOC models.

The research in this thesis is therefore required to fill in these gaps. It will examine the legislative frameworks of corporatization in Australia with a specific focus on the frameworks under the existing legislation. It will use port performance data to investigate whether the latent potential for political interference does adversely impact port performance of the ports and whether the SSOC or GOC model effectively creates a business framework that allows the port corporation to respond to the forces of the market. The reality is that corporatized ports still exist in Victoria, New South Wales, Queensland, Tasmania and the Northern Territory. This may indicate that despite the problems with the model reported in the literature, corporatized ports are producing financial returns which are acceptable to their respective governments. An examination of the port performance data in Chapters Six, Seven and Eight will examine this issue further.

2.8 RESEARCH QUESTIONS TO BE ADDRESSED IN THIS THESIS

The discussion and examination of the above literature gives rise to many questions that remain unanswered. Not all of those questions can be addressed in this thesis as not all are measureable within the scope of this work and not all can be answered even with thorough investigation.

What has been established in this chapter is that the fundamental objective of corporatization has been to create a market-focused government-owned business. Using the above review of the existing literature, the following research questions will be addressed in this thesis for the two corporatization frameworks, the SSOC and the GOC:

(1) Does the legislation under each framework distance government from the daily operations of port corporations and free them from political control?

(2) Does the legislation under each framework provide the conditions which create an effective legislative framework that enables the port corporation to respond to the forces of the market?

Both questions will be analysed and answered for each framework relying on legislation and port performance data to determine whether in fact the effect of corporatization can be measured and its impact determined.

In the next chapter, the methodology and sources used in this thesis will be examined and justified. It will also contain a discussion centring on the case studies and provide an explanation for why they were chosen.

CHAPTER THREE - METHODOLOGY

3.1 INTRODUCTION

The primary aim of this study is to examine whether Australian port legislation creates a business framework that frees port corporations from potential political control and allows them to respond to the forces of the market in order to be competitive. As argued in Chapters One and Two, this thesis will rely on the examination of two case studies, the Port of Melbourne Corporation and the Port Corporations of Tasmania (TasPorts), in order to gather and analyse data to answer the research questions and reach conclusions. These two case studies will provide an example of the two legislative models used to run port authorities in Australia: the Statutory State-Owned Corporation (SSOC); and the Government-Owned Corporation (GOC).

In this chapter, the methodology and justification for the use of case studies will be analysed and argued. This chapter has six sections: Introduction; The case study as a research method; Selection of case studies; Method and data collection; Data analysis; and Summary.

3.2 THE CASE STUDY AS A RESEARCH METHOD

This thesis involves the analysis of two case studies within a real-life context. The use of case-studies is an increasingly popular form of research (Gerring 2007; Thomas 2011). This thesis did not employ more common research methods such as interviews, experiments, surveys or archival/historical analysis. Case studies are a form of qualitative research and are intensive analyses and descriptions of a single unit or system bounded by space or time (Hancock and Algozzine 2006). Case study analysis can be defined as an intensive study of a single unit or a small number of units with the aim to generalise across a larger set of units (Gerring 2004; Flyvbjerg 2006). It has also been defined as a choice of a defined unit or item to be studied which has clear boundaries, as opposed to a topic or focus such as a single community, group or person (Merriam 2009).

A case study can be limited to the examination of one case, such as an event, a nation-state or an organization, especially in very intensive studies (Swanborn 2010). Typically large amounts of data are collected and analysed for a case study, preferably from many sources (Creswell 1998). This can mean that case studies can take a long time to complete. Case studies often provide multiple perspectives on an issue, especially when large amounts of data are analysed (Duff 2008; Crasnow 2011). Case studies examine questions of "how" and "why" and they remain an effective research technique especially when investigators have little control over events and the contemporary, as opposed to historical phenomena is within a real-life context (Yin 2009). In the research in this thesis, a multiple-case study method was used so that two examples of corporatized port systems could be compared.

As argued in the previous chapters, corporatization is a structural reform process which attempts to place government-owned entities on an equal commercial and competitive footing with private enterprises. In the two case studies examined in this thesis, the government has retained complete ownership of the corporatized port corporation in question. The Port of Melbourne Corporation is an example of a SSOC and has the most far-reaching powers of a SSOC port in Australia. TasPorts operates Tasmania's commercial ports and is an example of ports corporatized under the GOC model. As this thesis will demonstrate, the SSOC and GOC are two very different models of management created by legislation.

3.21 Why Use the Case Study Method in this Study?

Case studies are not used often for research projects because they usually involve more work and analysis than more familiar methods. The reason for using the case-study method in this thesis must be justified before it can go further. Traditionally, theses have used data-gathering methods such as interviews, experiments and surveys (Thomas 2011). Conducting interviews using surveys is a very common method of undertaking a thesis (Creswell 1998; Wisker 2008). This method would have been difficult to adopt in this present study as one of the major problems would have been designing questions that would obtain all of the information sought. This could have given rise to the risks of leaving out useful findings or creating unintended biases. Surveys require a random

sample of a population to be used as an indication of the characteristics of that larger population (Hijmans and Wester 2010). They are intended to describe the facts and characteristics of a given phenomenon or a relationship between events and the phenomenon (Merriam 2009). The whole population being studied is usually too large to all be interviewed or surveyed, so the sample must be carefully selected in order to be as representative of that population as possible (Merriam 2009).

Experiments attempt to determine what causes particular events and they try to predict similar events in the future (Merriam 2009). They require a large degree of control by the researcher, such as the exclusion of factors or location that may otherwise influence the results (Hijmans and Wester 2010). The risk therefore is that an artificial setting may be created that may not represent a real-life setting or the wrong factors may be excluded, thus producing unrepresentative results. Using experiments and surveys would create problems as they would require variables to be controlled or excluded which would be difficult for this study as it relied upon the analysis of documentation. If the researcher wants to be able to predict future events or behaviour, then an experiment would be desirable (Gray 2009). In contrast, if a description of events or facts is needed, then a survey may be necessary (Hijmans and Wester 2010).

Arguably, the case study method is more appropriate when there are research questions being posed and a holistic result is sought (Merriam 2009). Unlike surveys and experiments, they are conducted in the context of real life occurrences and usually do not seek to control factors about the case being studied (Hijmans and Wester 2010). Sometimes this is because it is unclear as to which variables should be controlled, particularly if the research is exploratory (Yin 2009). The possibility, as in this study, to observe events or behaviour makes the case study a useful method for studying contemporary phenomena (Swanborn 2010). Another major strength of using case studies is that it provides an opportunity to use many sources of evidence which in turn adds to the robustness and reliability of the results obtained (Simons 2009; Yin 2009). In-depth case studies are also useful for studying complex issues as they allow a large amount of data to be gathered and analysed, which again increases the robustness and reliability of the results (Flyvbjerg 2006).

In this particular study the effectiveness of the SSOC and GOC models was being examined in their context, primarily by the analysis of documents such as legislation, government reports and literature from the port corporations. This made the case study method the most appropriate option. The aim of using case studies is to gain an in-depth understanding of situations and meaning for those involved (Hancock and Algozzine 2006). It is often the best method for examining and observing contemporary events where manipulation cannot be undertaken (Humphries 2008; Yin 2009). A case study methodology also provides additional evidence for causal relationships and claims (Crasnow 2011). As was the situation for this thesis, case studies are often defined by interest in individual cases, such as port corporations, and not by methods of enquiry (Holliday 2007). Other more common methods of research such as interviews, experiments and surveys tend to be more inquisitive as to occurrences and allow researchers more input into results (Holliday 2007).

3.22 Criticisms of the Case Study Method

Despite the reasons for using the Case Study method, over time many criticisms of it have arisen. These criticisms must be considered here as part of the justification of the use of this method in this present study.

One notable criticism of using case studies is that the cases observed may not be a perfect representation or example of the general population at large meaning that it is likely that no generalisations can be drawn from the findings (Gerring 2007; Humphries 2008). If small numbers of studies or case studies are involved, questions may arise as to how generalised the results are and whether they can be used to draw conclusions (Duff 2008). If results are not generalised, then it will be hard to relate the results to similar cases or studies (Moriceau 2010). This would particularly be the case in large nations where there were many port corporations in operation under both port models and only a couple of ports are used as case studies. Some researchers dispute this criticism stating that it depends on the quality of the chosen case studies so extreme care must be taken when choosing case studies (Flyvbjerg 2006; Taylor, Sturts Dossick and Garvin 2011). This is why in this thesis the case studies of the Port of Melbourne and the ports of Tasmania were chosen as they were considered the more appropriate

examples available for the SSOC and the GOC models.

This however logically leads the researcher to consider how many case studies would be needed in order to find any generalisations. The problem that arises here is that it depends on the context and circumstances of the study and so this issue may not be able to be definitively answered. In relation to the research in this thesis, there were not many examples from which to choose to construct case studies. Australia is a large nation comprising of six state governments and one territory which each have jurisdiction over their respective ports. In the initial phase of reform most governments corporatized their ports as either SSOCs or GOCs.

Although there are other corporatized SSOC ports in Australia, the Port of Melbourne was used as a case study because it is Australia's largest and busiest container port. It was also considered to be of interest as the Port of Melbourne Corporation has undergone three further changes following its initial corporatization. These reforms will be discussed in Chapter Six and were driven by the perception that the model in place was not meeting reform objectives. The four Tasmanian ports were selected as they were at the time, the only ports in Australia corporatized as GOCs. It must be noted that the ports of Queensland were converted from SSOCs to GOCs in 2007 before being privatized in 2010. There is, therefore, insufficient data to compare the SSOC and GOCs models in Queensland. However as there are four Tasmanian ports which have been operating under the GOC model for over a decade, they are able to provide a clear example of the operation of port GOCs in Australia. This may in fact make the results of this thesis more reliable than if there were many examples from which to choose.

The use of two or more case studies enables a cross-case analysis to take place that would not be possible if only one case were examined (Stake 2006; Yin 2009). In relation to this problem, other research methods can face the same criticisms: for instance the same accusation could be made about experiments because many would also need to be conducted to acquire more acceptable results. As will be presented in the Data Analysis section of this chapter, the method of data analysis used in this present study was data triangulation. This form of analysis uses multiple sources of data to

reach the one conclusion and produce stronger results than if fewer sources were used (Simons 2009; Swanborn 2010). By undertaking case studies, the goal is to expand and generalize existing theories (Flyvbjerg 2006; Yin 2009). Added to this is the problem that by choosing to use case studies, a bias may affect the results due to the subjectivity of the researcher in choosing what documents or sources to analyse and study (Merriam 2009).

In this present study the risk of overlooking material information was minimised because many documents were accessed and examined from many sources, including government and parliamentary reports, legislation and documentation from the port corporations. There was no deliberate exclusion of documents. It is more likely that a bias could be created by using other design methods such as experiments, which seek to limit variables, and surveys and interviews which can also limit the information obtained from participants as only a finite number of questions can be asked (Crasnow 2011; Swanborn 2010). This accusation of bias can be countered by stating that case studies are not a method, unlike interviews and experiments, which seek to limit or eliminate what cannot be discounted (Merriam 2009). Case studies instead use available documents from which to draw conclusions.

Another related problem with using case studies is that they can lead to accusations that the findings lack of rigour: in other words, they do not stand up well to scrutiny or close-examination (Yin 2009; Taylor, Sturts Dossick and Garvin 2011). This criticism overlaps with the previous criticism that case studies do not allow generalizability. This issue typically arises because there may be too much reliance placed upon one or few sources, documents may be misinterpreted, or a researcher may allow their own biases to infiltrate the findings (Flyvbjerg 2006; Humphries 2008). Again however, case studies would appear to be a more thorough method of obtaining information than the others discussed above because they appear to be less limiting on the nature and diversity of the data that is obtained and analysed. They also provide valuable data on real-life experiences and events, compared to theories (Flyvbjerg 2006; Taylor, Sturts Dossick and Garvin 2011). In this particular study, which relied on real-life events, the several hundred sources that were available were analysed which attempted to avoid the

problem of reliance on too few sources. The more data that is analysed the more robust the findings are likely to be.

Another common criticism is that case studies may also not be an accurate representation of the phenomena that they seek to explore as they depend on the accuracy of the reporting in the first instance (Humphries 2008; Yin 2009). They may also contain the biases of the reporter and the researcher, or the data may have been recorded using insufficient precision and rigour (Taylor, Sturts Dossick and Garvin 2011). These two matters can be addressed by using a wide range of sources for each case study as was done in this study; however this in turn is reliant upon there being a wide range of sources available to the researcher who must objectively use the sources and avoid giving too much weight to some over others. With there being hundreds of sources being available for this study, every measure was taken to avoid this problem. In relation to the financial data used that was collected by the port corporations, this was audited prior to release so it can be assumed that it is accurate. In the two case studies used in this thesis this appears to not have been a problem because of the volume and variety of information available for analysis.

3.3 SELECTION OF CASE STUDIES

Why were the cases of Melbourne and Tasmania chosen when there were several port corporations in Australia? Although Tasmania's ports provided the only example of long-running GOC ports, Melbourne was not the only example of a port SSOC, as similar ports exist elsewhere in Victoria, New South Wales, the Northern Territory and have also previously existed in Queensland.

A case study is a unit of human activity that occurs in the real world which can only be studied in a specific context (Gillham 2000; Yin 2003). It is also an in-depth exploration from multiple perspectives of the complexity of a particular project in a real-life context in order to obtain a detailed understanding of a specific topic (Simons 2009). Case studies are often conducted, as in this study, by using multiple case studies and a method of cross-case analysis to increase the robustness and the validity of the findings (Yin 2003). In relation to this thesis, the effectiveness of the legislation implemented to

govern port corporations can only be examined in the real life context of how the ports operate, and not just by examining the words of legislation. It is crucial that in order to be able to address the research questions, analyses of how the legislation has been implemented within the port corporations must be examined and in particular, ongoing the legislative amendments which led to further changes in the port environment and operations.

Case studies provide an opportunity to look at several cases which all represent variations of examples of the issues in question for the research (Wisker 2008). As has already been argued, they are an excellent method to adopt if real-life phenomena are being examined (Flyvbjerg 2006). The use of multiple sources of evidence, as done in this thesis, is a key characteristic of case study research (Gillham 2000). The use of more than one case allowed for a cross-case analysis and therefore the more cases that are examined the more likely it is that the conclusions will be reliable and valid, especially when compared to studies using fewer cases (Gillham 2000; Wisker 2008). Merriam (1998) stated within a multi-case project there are two stages of analysis. The first is the "within-case" analysis where each case is treated as a comprehensive case in and of itself which will allow a researcher to learn about any variables within that case. The second state of analysis is the comparison of the two case studies, which allows comparisons between the two cases and conclusions and explanations to be drawn across them (Merriam 1998).

Stake (2006) identified three main criteria for selecting cases for a case-study analysis:

(1) Is the case relevant to the phenomenon being studied?
(2) Does the case provide diversity across contexts? and
(3) Do the cases provide good opportunities to learn about the complexity and the context of the phenomenon?

These criteria were used to choose two case studies used in this thesis. In relation to the first criterion, both cases were relevant to the phenomenon being studied, which was the effectiveness of corporatization, because they were examples of Australian corporatized

ports created by legislation. In relation to the second criterion, the case studies were sufficiently different enough from each other to warrant their use because they are representatives of the different models. The Port of Melbourne Corporation runs and manages the Port of Melbourne under the SSOC model and the Port Corporations of Tasmania which runs and manages the ports of Hobart, Devonport, Launceston and Burnie operates under the GOC model.

The third criterion was satisfied because there was a wealth of information available that was collected to analyse. Both the Port of Melbourne and the Tasmanian ports have been in operation as corporatized entities for over a decade so there was plenty of information in documentation available for analysis. The documentation available was quite vast and included annual reports, legislation and other parliamentary documentation, as well as journal articles, books and management consulting reports.

It has already been argued as to why two case studies, and not more, were used. Querying the use of only two case studies is a natural query about any case study design as it leads directly to the accusation that the results of the study may not be rigorous or generalised enough to make a valid contribution to the area (Flyvbjerg 2006). This criticism is strongest against the study of the Port of Melbourne as it is not the only SSOC port in Victoria or Australia. The State of Victoria, where the Port of Melbourne is located, has implemented the most far-reaching and expansive port corporatization legislation in Australia. The *Port Management Act 1995* (Vic) allows the Victorian Minister for Ports to have powers over the Victorian ports that are far more expansive and potentially interfering than the other states. The Port of Melbourne is a very good example to examine why there needed to be so many legislative changes when the SSOC port model was hailed in 1995 as the solution for the Port of Melbourne. It was believed therefore that the Port of Melbourne would provide the best example of the effectiveness of the corporatized model.

In relation to the GOC model, the four ports of Tasmania, run collectively by TasPorts, are Australia's only examples of long-running GOC model ports. The exceptions are the ports of Queensland which became GOCs from 2007. However there is not enough data

at present in order to be able to carry out an extensive study. The GOC model implemented in Tasmania provides the Tasmanian port corporations with more autonomy than that of the SSOC ports because it provides the Tasmanian government ministers with less opportunity and rights to interference in the operation of the port authority. This model was compared in this thesis with the SSOC as it has been claimed to be a more effective model than the SSOC to place a government-owned entity on an equal footing with privately-owned entities which do not have the requirement of ministerial intervention.

3.4 METHOD AND DATA COLLECTION

The purpose of a methodology is to explain how and why the way of carrying out this research was required by the context and purpose of this thesis (Clough and Nutbrown 2002). Methodology requires researchers to justify the reasons for their research decisions from the beginning to the conclusion of the research and to examine why a particular method or way of doing the research was used (Wisker 2008). A large part of this involves justifying the validity of the research and the case studies chosen (Gerring 2007; Thomas 2011).

In this thesis, the research questions were devised after a thorough literature review was undertaken. The literature review began by locating books and journal articles from Australia and overseas on port corporatization. From that point the search was expanded to websites of Australia's port corporations for information on their operations, policies and governance, as well as the website of each Australian state and territory parliament to obtain government reports on ports, legislation governing port operation and background parliamentary documentation on that port legislation. The literature search was an ongoing process as new sources were constantly being produced and as the process progressed, various sources were being found and analysed at the same time.

3.41 Sources, their Probative Weight and Reliability:

At this point there must be an examination of how the references used were sourced, their probative weight and reliability. This helps to determine the robustness of the results of this thesis. If the references used had little probative weight and were

unreliable, then this may make the results obtained not very robust, and in turn place the value of the whole study under criticism.

(1) Books:

The starting place was to find books on corporatization and company law in order to obtain background theory information as a starting point. These books were obtained using online university library catalogues. The reference section of each book was examined in order to be able to find more books and resources.

The probative value of the books obtained was high as the books tended to be written by experts in the subject area, including lawyers and academics. The problem with using books is that they do not always contain the most up to date information on a topic as it can take time for them to reach publication once they have been written. At times also the bias of authors was present, particularly in books written by scholars, so this had to be taken into account when using these sources.

(2) Journal articles:

The next source obtained were journal articles on corporatization and port corporatization. These were obtained by accessing online journal databases. This gave a thorough background on corporatization in general as well as how it was implemented to run and manage ports in Australia and around the world. The reference section of each article was examined in order to find further journal articles and sources and in some cases, journal database searches were conducted on some authors in order to find their other works.

The probative value of these journal articles was high as they mostly written by those in the port industry and academics studying and writing in the area. The advantage that journal articles have over books is that they tend to reach publication much quicker and can be more topic specific because each article in a journal is a separate work, whereas chapters in a book tend to be all related, except where a book is a collaboration of articles which was the case with some of the books used. Most of the articles used came from journals that were peer-reviewed which contributed to the quality and value of the

article. That value lessened with some articles if authors appeared to have no link with the practical aspects or application of their topic. However as with the books used there did tend to be a high level of author bias as many of the journal articles expressed an opinion or a view in one direction or another. Overall the level of bias was higher in journal articles than in books as most of the articles were argumentative pieces. The journal articles used also advanced the knowledge of the researcher.

(3) Legislation, parliamentary documents and government reports:

As this thesis required an analysis of legislation, the next sources consulted were legislation and related parliamentary documents such as the Explanatory Memoranda for each piece of legislation which gave the researcher insight into its purpose and meaning; and the Hansards which were the records of the parliamentary debates of the legislation when they were bills (or when there were proposed amendments to them) which also gave an insight and further information as to purpose and meaning. There were also related documents from the government providing information such as background information and performance targets. These sources were obtained via the websites of each jurisdiction.

Legislation and its related documents have a high probative value as they are the source of law which allows port corporations to have the powers that they have and to operate. They do require the researcher however to have skills in reading and interpreting legislation. These documents allowed the researcher to have an understanding of the laws under which port corporations operate. Likewise many of the government reports have a high probative value because they have been prepared by government which is often the only source of such information.

Some pieces of legislation and related parliamentary and government documents did have a bias in favour of the government of the day, but this was not influential upon the use of these sources. Such bias just contributed to a greater understanding of these sources. Legislation in the relevant jurisdictions is regularly updated via the parliamentary processes and those updates are promptly provided on the internet so it therefore was not often out of date. The websites of the jurisdictions used are regularly

updated.

(4) Websites/Internet:

Each of the port corporations and jurisdictions in which those port corporations operate has their own website. These websites were consulted often in order to obtain information and documentation that was used and relied upon in this thesis. The internet is a very useful source of information and readily accessible.

The probity of websites used depends on the content they contain. Materials such as legislation, parliamentary documents, government reports and documents from port corporations have a high level of probative value, but care needs to be taken with other materials on the web that do not come from such official sources. There is a risk that these documents possess some bias which must be considered in context with all other documents examined.

(5) Port corporation websites/sources:

This thesis required an examination of the port corporations themselves which in turn meant that the content of their websites was accessed. These websites contained information describing the port and its surrounds, and more importantly to this study, documentation relating to the governance of the port such as annual reports, which contained the performance data used in this thesis as well as details about each port's Board of Directors. The websites were found via some of the other sources used as well as through internet search engines.

These websites held a high probative weight as they were factual as to each port and its operations. Some of the websites did contain government documentation and information as they were government-owned corporations and some of this government documentation may have contained biases, which had to be taken in context with the other information used. If any of the information contained observations or reports of events, then those documents may have had their probity and reliability reduced because they could be subject to the recollection and biases of the reporter. Generally however most of the sources used were factual and not composed of observations or reports.

3.42 Use of Multiple Sources

The above discussion about the sources used in this thesis lead to the question of whether there was any benefit in using these multiple sources of evidence. The above sources and research led the researcher to find that there were many criticisms and questions about corporatization and its application to ports. Studies that use only one or a few sources of information create a risk that the results generated are very narrow and may not be reliable or robust because other sources not used may provide alternate views that cannot be considered. Using such a limited range of sources also makes it hard to corroborate findings. If a study uses information from various sources, those sources can help to corroborate findings and reduce concerns about validity of the results (Bhatnagar 2010). In this study hundreds of individual sources were used and this hopefully increased the validity and reliability of the findings in this thesis.

Using multiple sources of information however can pose problems in the analysis of that information. One such problem is when two or more sources conflict or create confusion about an issue. This type of must be dealt with and not ignored as it has an impact on the analysis and findings in a study. This problem was encountered several times in this study and dealt with in different ways depending on the scenario. The first question asked by the researcher when a conflict or confusion arose was what was the nature of that conflict or confusion? Was it to do with facts or an opinion? If it was to do with facts then it was considered whether the two sets of facts could stand side by side to complement each other. If they could not, then the source of the facts was examined and the fact from the most recent source was adopted unless the earlier source was using a more reliable reference such as a government member as opposed to a journalist or scholar. At all times if the conflicting sources referred to earlier sources, then those earlier sources were found in order to remove or reduce the conflict or confusion. The aim was at all times to remove or reduce any conflicts or confusion in order to make the findings of this study as reliable and as valid was possible. It was at this point that the research questions could be generated because by this stage, the researcher had a thorough understanding of the subject and its contexts. This is an important characteristic of using case studies (Gillham 2000).

An examination of the available documentation led to the conclusion that effective corporatization requires legislation that creates an appropriate and effective business framework in which the port corporation must operate. A judgment could only be reached on this issue after a thorough examination and consideration of all of the sources used and described above. According to much of the documentation examined, it has been long recognized that effective port reform requires the distancing of government from the daily operations of Australia's ports. A review of the existing literature in Chapter Two of this thesis revealed that many writers held that the ongoing presence of government in port operations was the cause of the perceived inefficiencies in the port industry. This factor has been the major motivation for ongoing port reform from the early 1990s up to the present. Corporatization was perceived to be the panacea to this problem as by distancing government from the operations, ports would be able to emulate private sector company practices to enhance competitiveness and responsiveness to market needs rather than political and government forces.

This does however lead to another issue. How could the researcher be sure that the evaluation of the evidence was consistent throughout the study? This is a crucial thing because the researcher had to give each source a thorough examination in order to ensure that evidence or sources were not missed out or overlooked. To maintain consistency, the researcher had to constantly refer back to each source when writing up the results of this study. It was a painstaking process, however with each review of the sources, the researcher became more familiar with each source and was able to evaluate its weight and include it in the study and results if it was relevant. To determine relevancy, this same process was adopted for consistency. Part of this process also involved considering where each source came from. Sources from government or parliament held a high weighting and had to be considered as this study involved an examination of the effect of legislative regimes. If journal articles were written by academics not familiar or expert in the area they were writing in, then such articles could be given less weight than those produced by industry fellows and academics familiar or experienced in the area they were writing about.

This leads on to how the data was analysed. This will be discussed in the next section.

3.5 DATA ANALYSIS

With the multiple sources used in this study there was much information to be analysed so a reliable method had to be used. To do this, the method of data analysis used for this thesis was data triangulation (Yin 2009; Taylor, Sturts Dossick and Garvin 2011). Data triangulation involves using different sources of data, different methods and different case studies in order to prove the same result or outcome. It uses these to address questions of validity and to ensure quality and reliability (Duff 2008; Lunenburg and Irby 2008). In other words, it is a method employed to reduce as far as possible any instances of bias or unreliability of the results. The data itself was collected so it could be combined and compared in order to reach the same result or outcome (Gray 2009). In this study the researcher compared all the different sources of information collected in order to generate the results presented in Chapter Eight.

The rationale for using so many different sources of data is the inference is that the more sources that are used, the more reliable and credible the findings of the study are likely to be. Reliability examines the extent to which the results obtained would be reproduced if the study was repeated (Ward and Street 2010). Data triangulation can also contribute to the robustness of results (Simons 2009) and is often used because it has been found to give a more thorough picture of the phenomenon to be studied than by using only one form of data or method (Humphries 2008). This leads one to conclude that the more sources of evidence used, the more reliable the outcome. The use of multiple sources of data allowed the development of converging lines of inquiry which is a process of triangulation and corroboration of evidence, as well as findings that are likely to be more convincing and accurate than if they were based on one source of data (Yin 2009). If data cannot be seen to be valid or robust, then the findings of a study will be called into question because they lack validity.

As explained earlier in this chapter, two case studies chosen were considered to be the most appropriate examples of corporatized SSOC and GOC port models. Research for this thesis relied on data being collected from many sources, including governments and port corporations, in order to obtain as broader picture as possible to answer the research questions.

3.6 CONCLUSION

This chapter restated the purposes of this research applying a case study approach to investigate reform at the Port of Melbourne and at the commercial ports in Tasmania. It also provided a rationale for the selection of these case studies. The data used and relied upon in this thesis was collected from documents included in the bibliography at the end of this thesis. The methods of data collection were examined in this thesis including the wide variety of sources used and a justification was provided as to why they were used. The method of data analysis was data triangulation which addresses validity by using a wide range of data. The results of the data analysis and the outcome of the research addressing the research questions can be seen later in this thesis.

In Chapter Four the development and history of corporatization will be examined. This will include a discussion of the context of corporatization and microeconomic reform. This will provide the background and context for the discussion of the two case studies in later chapters.

CHAPTER FOUR – THE HISTORY OF REFORM

4.1 INTRODUCTION

In Chapter Two there was a critical examination of the existing literature on port corporatization as well as the development of the research questions for thesis. In this chapter the history of port reform in Australia will be investigated within the context of wider economic reforms that have occurred since the 1970s.

Australia's ports have undergone extensive reform in recent decades after the sector was assessed as being too costly, inefficient and uncompetitive (Goss 1987; Feaver, McNamara, Poglio and Wheatsone 1990; Webb 2004). In the 1980s Australian governments within that context began implementing widespread microeconomic reform measures (Jones 1994; Wiltshire 1994). This reform was not targeted exclusively at the transport sector but was part of a push to reform under-performing government-owned businesses generally and to expose them to increased competition (Wiltshire 1994; Productivity Commission 2005a). The corporatization and privatization of Australia's ports has been part of this wider reform program (Goss 1987; McDonough 1998). As previously argued in this thesis, the aim of port reform and corporatization was to increase efficiency and create a more competitive environment, whilst ensuring that the ports remained under government ownership and control (Seddon and Bottomley 1998; Grantham 2005; Reveley and Tull 2008).

After reviewing the existing literature in Chapter Two, it is now apparent that after more than a decade of port reform, many writers assert that the original objectives of port corporatization have not been fully achieved (for example Aronson 1995; Coates 1990; Hirst 2000; Brooks and Pallis 2008). In July 2007, less than twelve years after initially introducing corporatization in Victoria, the Essential Services Commission, which regulates Victoria's ports was calling for a further review of the amended 2003 model. No major changes to the model resulted from that review. However this brings into question the success of reform so far, especially in circumstances where a review was called for so quickly. However as corporatized ports still exist in Victoria, New South Wales, Queensland, Tasmania and the Northern Territory it may be that despite the

problems with the model reported in the literature, corporatized ports are producing financial returns which are acceptable to their respective governments. It could also indicate that governments have not found an alternative operating framework that produces more favourable results. As Chapter Two established, there have been very few studies that have evaluated operational port data and there has been little investigation into this issue.

Despite the criticism of the corporatized framework, some efficiency improvements were discernible early on in the reform process. Hayes (1995) argued that the commercially-focused restructured port model in New South Wales had addressed efficiency issues and had improved productivity and efficiency significantly even before corporatization of that state's ports was implemented. Indeed he argued that this was not a consequence of corporatization *per se* but a product of commercialization strategies generally which included downsizing, outsourcing and/or closing down unprofitable port assets which had all led to increased efficiency in the ports of New South Wales (Hayes 1995). Furthermore, the introduction of a more equitable accounting system, a more efficient pricing structure with community service obligations now funded by Treasury and the selling off of unprofitable operations had all led to improvements in the bottom line in New South Wales (Everett 2003b).

This chapter will examine the background, reasons and mechanisms of port reform in Australia. It will also examine the two corporatization models currently in operation, as well as investigate port reform methods overseas and the impact those developments had on Australia's ports.

4.2 HISTORY OF REFORM

4.21 Paradigm Changes

In the early twentieth century paradigms of economics and market forces rested on the theory of *laissez-faire* – that the market had cyclical rises and falls which were regarded as inevitable and ultimately self-correcting (Galbraith 1999). It was accepted that competition would lead to some products being favoured through increased demand

which would automatically lead to an increase in price for those items and a corresponding decline in demand and prices for others (Galbraith 1999). However when the markets did not self-correct and unemployment rose to around thirty percent after the economic depressions after World War One and in the 1930s, the *laissez-faire* philosophy began to be seriously challenged (Keynes 1920).

In the mid-1930s there was the beginning of a paradigm shift when the leading British economist John Maynard Keynes argued that the market was not self-correcting and that government had a clear role to intervene in the market on an ongoing basis to prevent such variations (Conley 2009). As the century proceeded, Keynes' view was increasingly supported as it was perceived that the national economy was too important to be determined by the forces of the markets and that government intervention would reduce increasing market volatilities (Milbourne 1997; Galbraith 1999). The adoption of the principles of welfare economics by the British government led to it taking greater responsibility for many areas of the economy such as increased social welfare, extensive regulation of the market and the nationalisation of the mining industry in the late 1940s (Conley 2009). The goal of governments became the stabilising of their economies to prevent the volatilities of the early twentieth century (Galbraith 1999).

Under this paradigm change dramatic growth occurred in the public sector and governments became responsible for areas which had previously been outside their jurisdiction (Conley 2009). Other industrialised nations such as Australia subsequently followed Britain's example which led to rapid expansion of the public sector (Conley 2009). This expansion did not cause a problem initially, particularly during post-war reconstruction in the 1940s and 1950s when the economy was buoyant. However with the emergence of inflation in the late 1960s and stagflation from the 1970s, governments in many industrialised nations came under financial pressure to impose reforms (Conley 2009).

The recession of the late 1970s soon led to a switch in government focus from macroeconomic issues to the micro-economy (Everett and Robinson 2007). The financial problems that emerged from this recession resulted in not only a decline in

economic growth but also an increase in government spending associated with the recession itself, such as unemployment relief, welfare assistance and assistance to industry (Quiggin 2002). This government spending escalated to such an extent that by the middle of the 1980s, government spending began to exceed government revenue (MacFarlane 2006). The impact of this was that by 1985-1986, Australia's foreign debt represented thirty percent of the gross domestic product compared with seven percent at the beginning of the 1980s (Beresford 2000). This led to the Australian government introducing changes in fiscal and monetary policies to resolve the crisis (Kearney 1997).

Australia was not alone in the 1980s as other national governments such as those of the United Kingdom and the United States came under severe financial strain, experiencing stagflation and high debt levels (MacFarlane 2006). It became a widespread phenomenon particularly in western economies and industrialised nations and eventually led to the deregulation of many economies (Jones 1994; Quiggin 2002). Many first world governments began to restructure their business enterprises and their assets at this stage (Jones 1994; Everett, Weston and Pettitt 2007). Competition emerged as a concept that was seen as an instrument of change (Galbraith 1999).

These developments soon led to a revival of classical ideals of liberalism and theories of neo-classical economics (Nevile 1997; Woodward 2005). This new orthodoxy, initially proposed by economists such as Friedrich von Hayek and Milton Friedman, was rapidly adopted by countries such as the United Kingdom, the United States of America, Australia and New Zealand (Milbourne 1997; Nevile 1997; Conley 2009). Proponents in Australia argued that the country was over-governed, over-taxed and over-regulated and that deregulation and drastic reductions in government spending were required (Jones 1994; Everett and Robinson 2007). It was furthermore argued that the private sector could carry out most functions more efficiently than government and that commercial operations should be undertaken primarily by the private sector (Jones 1994). In Australia the current account balance increased from 3.8% of the gross domestic product in 1987-88 to 6% in 1989-90 (Kearney 1997). The Australian government's intervention by implementing fiscal and monetary policies helped to reduce this balance to 3.8% in 1992-93 (Kearney 1997).

Australia did not develop its port reform policies in isolation, but followed the policies of two western nations in particular which had also implemented reform measures to improve their ailing economies - the United Kingdom and New Zealand. While the drivers of reform were similar, the objectives and rationales differed. In the United Kingdom and New Zealand, for example, reform was introduced in order to reduce public debt, whilst in Australia it was introduced to reform the public sector and increase economic efficiency (Everett and Pettitt 2006).

4.22 Reform in the United Kingdom and the United States of America

The British Thatcher Government in the 1980s introduced an extensive programme of privatization to reform the United Kingdom's increasingly ailing economy (Rowthorn 1989; Veljanovski 1989b). The objectives of the Thatcher government were influenced by the New Right, an economic rationalist policy that advocated deregulation, dismantling of the welfare state and the privatization of national industries (Hartley, Parker and Martin 1991; Jones 2004). Proponents of the New Right argued that the market was a superior resource allocator, and that government interference and ownership were the reasons that government businesses were inefficient and needed to be sold (Wiltshire 1994). There was also the ongoing belief that government should not have an overwhelming role in the decision-making of national enterprises and that the private sector was better equipped to manage these entities so that they could be efficient (Vickers and Yarrow 1988; Hartley, Parker and Martin 1991). The British Government responded to these pressures in part by implementing a widespread privatization regime that witnessed the privatization of many national utilities such as British Gas and British Telecom (Notteboom and Winkelmans 2001).

At the same time, similar New Right policies were being adopted in the United States of America by the Reagan government where the New Right pushed for strict limits on government intervention in the nation's economy (Niskanen 2002). Inflation rates were rising and oil prices were reaching record levels (Farmer 2005). In response, the Reagan administration pursued policies of deregulation in the belief that if the private sector was strengthened, the national economy would prosper (Williams 2003).

The United Kingdom reforms, as in Australia, were based mainly on the concept of competition with its port privatizations occurring in two distinct phases (Rowthorn 1989; Baird and Valentine 2007). The first phase involved the sale of state-owned ports and railways in the early 1980s; the second phase implemented the disposal of major trust ports which were independent statutory bodies governed by their own legislation and managed by an independent board (Baird and Valentine).

4.23 Reform in New Zealand

The New Zealand reforms began in 1984 following the election of the Lange government with a strong commitment to liberalising the country's economy (Duncan and Bollard 1992; Jolly 2000). New Zealand's government embarked on a process of converting its state-owned enterprises into profitable business corporations which included the corporatization of its ports (Carter 1993; Farrar and McCabe 2005).

The term corporatization is not a generic one. The New Zealand model differs markedly from that adopted in Australia which will be discussed later this chapter. Corporatization in New Zealand has been defined as 'the activity of requiring a publicly owned agency to behave as if it were a private corporation' (Easton 1997). Emulating private sector business frameworks, models and practices has also been an essential feature of corporatization objectives in Australia (Grantham 2005). The passing of the *Port Companies Act 1988* (NZ) led to the abolition of the Harbour Boards which owned the ports at the time, and replaced them with publicly-listed port companies (Everett, Weston and Pettitt 2007). The single system of government in New Zealand led to a uniform approach in port reform although the ultimate ownership structure of the ports differed (Table 4.1). Port companies were created as publicly-listed companies with regional councils in many instances being the majority government shareholders (Reveley and Tull 2008). The equity held by the New Zealand government in each of its port differs: under this model, eighty percent of the shares in the Ports of Auckland, for example, were initially held by Infrastructure Auckland representing the Auckland Regional Council and the remaining twenty percent of shares were traded on the New Zealand stock exchange – at the time of writing however, full ownership of the port was vested in the Auckland Regional Council (Everett, Weston and Pettitt 2007).

Table 4.1: Port Company Ownership in New Zealand

Port	% Regional Council Ownership	% Stock Exchange Trade
Northland Port Corp (Whangarei)	Northland Regional Council 72%	28%
Auckland	Auckland Regional Holdings 100%	0%
Tauranga	Quayside Securities (Top 20 shareholders 55%)	45%
Gisborne	Gisborne District Council 100%	0%
New Plymouth (Taranaka)	Taranaka Regional Council 100%	0%
Napier	Hawkes Bay Regional Council 92% Manawatu/Wanganui Regional Council 8%	0%
CentrePort Ltd (Wellington)	Wellington Regional Council 77% Manawatu/Wanganui Regional Council 23%	0%
Marlborough	Marlborough District Council 100%	0%
Nelson	Tasman District Council 50% Nelson City Council 50%	0%
Lyttelton	Christchurch City Council 66% Ashburton City Council 4%	30%
Timaru	Timura District Council 50% Nelson City Council 50%	0%
Port Otago Ltd (Dunedin)	Otago Regional Council 100%	0%
Southport NZ (Bluff)	Southland Regional Council 69%	31%

Source: Tull and Reveley (2001).

The New Zealand model therefore is demonstrably different from that later implemented in Australia. Corporatization for the Australian port experience is defined as government retaining full ownership of the port with the role of the port corporation being essentially that of a landlord with most commercial operations are privatized (Goss 1987; Grantham 2005). The one exception is the Port of Gladstone in Queensland where the port corporation is responsible for coal-loading facilities; New Zealand's port companies, on the other hand, are operators and provide stevedoring services (Everett, Weston and Pettitt 2007).

4.24 Reform in Australia

It is within this background that the port restructures and ownership changes in Australia will be examined. The 1970s saw the beginning of a long process of reform that continues to the present day (Quiggin 1996). Under the Commonwealth Whitlam government (1972–1975) initial policies of reform included cutting taxes on imports, also known as tariffs, by twenty-five percent which proceeded to scale back over seventy years of protectionism of the Australian economy (Conley 2009). This led to the deregulation policies of the 1980s implemented by Commonwealth Hawke government (1983-1991) (Jones 1994; Quiggin 2002). Tariff protection policies had shielded Australian producers and manufacturers from international competition to allow them to prosper (Shaw and Hughes 2002). This was important in the 1970s as the threat of competition was emerging from the newly developing countries in Asia and there was a growing belief that a free-market in Australia could combat this threat (Quiggin 2002).

The policy of reducing tariffs was seen as a means of raising efficiency and productivity levels at the manufacturing level as tariff protection led to complacency in Australian production processes and work practices (Jones 1994). It was also thought that tariffs had been a constraint on efficiency which in turn impeded free trade and constrained the growth of the Australian economy (Quiggin 1996). Reducing tariff protection was important for successive governments as it recognized that competition would strengthen the economy (Emy 1993).

Reform in Australia was undertaken in a number of stages including labour market reform, the commercialization of government-owned businesses, as well as ownership and corporate restructures (Emy 1993; MacFarlane 2006). These were followed and formalised by the enactment of National Competition Policy (NCP), which will be discussed in detail later in this chapter. As a result of the NCP, policies of corporatization and privatization became essential features of the broader policies of microeconomic reform.

4.3 REFORMING THE MARITIME SECTOR

Pressure for economic reform intensified under the Commonwealth Hawke Labor Government (1983–1991) which introduced reforms into the macro-economy, including deregulation, floating the Australian dollar on the Australian Stock Exchange, and further tariff reduction (Hawke and Howe 1990). In order to enhance efficiency and productivity levels thus creating a competitive environment comparable with Asian producers, the Hawke government embarked on a program of microeconomic reform particularly focusing on the labour market (Conley 2009). A microeconomic reform program was initiated with a focus on a labour market reform agenda with the aim of improving the Australian economy and making it more competitive at both in Australia and overseas (Quiggin 2002). At first this concentrated on the maritime sector with policies to revitalise Australian flag shipping being introduced (Goss 1987). A program aimed at the revitalisation of Australian flag shipping was introduced which included reductions of crew levels, multi-skilling of crews, and reductions in numbers by way of voluntary redundancies (Everett 1990).

Shipping reform was closely followed by waterfront reform as it was recognized that high crew numbers was not the sole cause of inefficiencies and that if reform took place, Australian exports would become more competitive and reduce Australia's current account deficit (Quiggin 2002). An inefficient waterfront was considered to be a major cause of inefficiencies in shipping, which in turn could lead to port delays and other problems (Hawke and Howe 1990). The waterfront, and in particular waterfront labour, was subsequently reformed along the lines recommended by the Inter-State Commission (ISC) (Inter-State Commission 1989b). This reform led to the deregulation of the labour

market (Everett and Robinson 1998b).

The aim of the ISC was, in effect, to create a more competitive environment where labour market reform enabled firms to more effectively control the costs and conditions of their labour input and, consequently, improve efficiency and raise productivity levels (Everett and Robinson 1998b). The ISC also raised the issue of the efficiency of port authorities as it recognized that the impediment to efficient port and shipping operations may have been caused by inefficient and monopolistic port authorities (Inter-State Commission 1989b). It in fact raised questions about whether or not there was an effective and legitimate role for the public sector in ports and, if so, what that role should be (Everett and Robinson 1998b).

The issue was investigated further by the Industry Commission (IC) in 1993 which suggested that there was a role for government in the operations of a port, but that port authorities should be granted autonomy from government and bureaucratic interference (Industry Commission 1993). The IC was established to give credence to the Commonwealth government's commitment to transport reform and development (Jones 1994). It encouraged the development of international competition and recommended that the role of the port authorities should be essentially that of a landlord and that commercial operations should be privatized (Jones 1994).

The Commonwealth Hawke government also began to reform many Commonwealth statutory authorities by converting them to government-owned businesses (Wettenhall 2000). At the same time some areas of government business were transferred from government departments to statutory authorities (Wettenhall and Beckett 1992). These conversions were driven by the belief that government should not have input into daily operations of commercially-focused businesses and can be seen as setting up these businesses for later corporatization, as occurred with many of them (McDonough 1998; Grantham 2005). As this thesis will argue later in this chapter and in Chapter Five, this philosophy came to be adopted by most state and territory governments in relation to their ports which in time led to the widespread corporatization reform strategies being implemented in all ports.

4.4 MICROECONOMIC REFORM AND THE NATIONAL COMPETITION POLICY

As has been extensively argued in this thesis, microeconomic reform and restructure by way of corporatization, privatization and commercialization over the past two decades has been undertaken to attempt resolve the issues in the port sector (McDonough 1998; Grantham 2005; Reveley and Tull 2008). Reform was driven by a general principal seeking to improve efficiency and productivity in Australian industries by exposing government-owned entities to competitive forces (Jones 1994; MacFarlane 2006). It was perceived that the private sector, which was generally exposed to market forces and the resulting competition, was more efficient and that commercial operations of government should be exposed to competition (Galbraith 1999). The rationale therefore was that if government opted to retain ownership of its entities, private sector business practices should be adopted and replicated to improve the performance of the public sector (Jones 1994; King 1994-1995; Jane and Dollery 2006).

The port reforms and restructure that followed were within the framework of the National Competition Policy (NCP) which will be discussed in the next section. The NCP recommendations did not specify privatization as such, although it was recommended that if government ownership was to be retained, corporatization was the preferred model (ICICPA 1993).

The reform of government-owned businesses and the creation of a competitive environment were pursued further by the Commonwealth Keating government (1991-1996) (Conley 2009). Under the Keating government the National Competition Policy (NCP) was drafted by a committee led by Professor Fred Hilmer and the resulting report is known as the "Hilmer Report" (ICICPA 1993). In 1995 the NCP was formalised when it was incorporated into amendments to the *Trade Practices Act 1974* (Cth) (ICICPA 1993a). At the time of writing, the NCP is still in effect.

The NCP formalised and extended the reform process to government-owned entities. It was recommended by the Hilmer Committee that private sector structures and practices should be applied to the government sector and that government-owned entities should

be forced to mimic private firms and not be allowed to have any competitive advantage simply due to their government-ownership (King 2002). NCP also identified that a key factor in the achieving performance improvements for government-owned entities such as ports was the development of effective governance arrangements (Productivity Commission 2005a). The Hilmer recommendations were intended to encourage competition in the public sector by exposing them to competitive forces which would be an incentive for them to act efficiently (Jones 1994; King 2002). Competition is necessary to achieve efficiency in the marketplace, as without it entities will not have the incentive to set prices at an efficient level or ensure that management is acting efficiently (King 1994-1995). Prior to the NCP, reform had initially focused on the private sector, the automobile industry and the mining sector for example, but with the release of the NCP the public sector, including ports also came under scrutiny (Quiggin 2002). It focused in particular on public sector monopolies especially those providing commercial services such as ports and railways. Whilst the Hilmer recommendations did not recommend privatization or corporatization *per se*, it did indicate that in event that government retained control of the operation, reform with the introduction of a corporatization model would be the most effective means of introducing competition (King 2002; Everett and Robinson 2007).

The NCP recommended the restructure of government-owned businesses in order to expose them to competitive forces and recommended that if they were to remain government-owned, corporatization was the preferred method (King 2002; Quiggin 2002). It cautioned against policies of privatization because there was a risk that, without appropriate restructuring, the anti-competitive structure of the former public sector monopoly could be transformed into a private sector monopoly (Everett and Robinson 2007).

4.5 RESTRUCTURING AUSTRALIAN PORTS

Australia's state and territory governments have the jurisdiction over ports under the trade and commerce power in Section 51(i) of the Australian Constitution (*Commonwealth of Australia Constitution Act 1900* (UK)). This differs from the structure in the United Kingdom and New Zealand where the central national

government has jurisdiction over ports and other transport infrastructure and the power to make laws in relation to them. Under the Australian Constitution, Australia is a Federation, with its law-making powers split between the Commonwealth parliament and those of the states and territories. This means that the Australian states and the Northern Territory have jurisdiction over this infrastructure and each has used these powers to create their own models of corporatization and reform.

This means that Australia's state governments and that of the Northern Territory, under severe economic pressures in the 1980s and early 1990s, came under significant pressures from port users to either make the ports profitable and efficient, or otherwise withdraw from those commercial activities (Goss 1987). In this context, ports which had previously provided a public utility function would be restructured into efficient, profitable and competitive businesses via privatization and corporatization (Everett and Robinson 2007).

As will be demonstrated in detail in Chapter Five, each of the jurisdictions has its own corporatization model. Prior to reform, ports were established as statutory authorities with responsibilities for basic port functions such as pilotage, pollution control, and marine safety. In some instances port authorities also had responsibility for some commercial operations such as coal and grain loading facilities, and until the 1980s many had ownership and operation of some container terminals as well. As indicated in Table 4.2 each jurisdiction implemented its reform strategy implementing a number of reform models. Some ports were privatized although the preferred model in most Australian states has been that of corporatization. Each government enacted legislation implementing its own corporatization framework. Corporatization meant that the ports were restructured as landlords, and under this framework each port's commercial operations were privatized. One of the few exceptions to this is the Port of Gladstone in Queensland where the port corporation owns and operates the port's coal loaders.

As state governments and the Northern Territory have corporatized their ports under their own legislation, there is no uniform port corporatization framework or model in place in Australia (Reveley and Tull 2008). Corporatization models, however, can be

Table 4.2: Reform Models in Australian States

State	*Corporatization*	*Privatization*
Victoria		
Melbourne	*x*	
Geelong		*x*
Portland		*x*
Hastings	*x*	
New South Wales		
Sydney	*x*	
Newcastle		*x*
Port Kembla		*x*
Port Botany		*x*
Queensland		
Brisbane		*x*
Gladstone	*x*	
Bundaberg	*x*	
Rockhampton	*x*	
Mackay (Hay Point)	*x*	
Townsville	*x*	
Cairns	*x*	
South Australia		
All ports sold to		
Flinders Ports Pty Ltd		*x*
Northern Territory		
Darwin	*x*	

Source: Everett, Weston and Pettitt (2007).

divided into two types, the Statutory State-Owned Company (SSOC) and the Government-Owned Company (GOC) (Everett 2003b). These two models will be discussed further detail in later chapters in this thesis, in particular Chapter Five. In summary, SSOCs are created under a specific statute such as the *Port Management Act 1995* (Vic) and GOCs are created under existing incorporation statutes, such as the *Corporations Act 2001* (Cth).

The main focus of both models is to create government-owned ports in which private sector business structures and practices are adopted and applied (Grantham 2005). As previously argued, one of the major objectives of both corporatization models has been the distancing of government from the daily operations of the ports: that element widely recognized in the literature as reviewed in Chapter Two as the cause for inefficiencies (McDonough 1998; Everett 2003a; Tull and Reveley 2008). These models will be discussed in more detail in later chapters of this thesis. Distancing government from day to day operations within its jurisdiction itself presents some problems.

The accountability of government-owned ports to the parliament is required under the Westminster Convention of Responsible Government. This is enshrined in Section 61 of the Australian Constitution which stipulates accountability to the parliament for all government-owned entities. This concept is discussed in further detail in Chapter Five. It is important to note at this stage that this creates an anomaly as the objective of corporatization seeks to distance government from daily operations, but it does not entirely remove the element of government from the operation of ports. The government remains the sole shareholder and owner of the entity. The concept of Responsible Government requires that the parliament remain accountable to the public (generally via the involvement of at least one parliamentary Minister) for the operations and financial performance its entities (Mantziaris 1998).

Not all ports were corporatized as shown in Table 4.2. Victoria privatized its two regional commercial ports Geelong and Portland. The Victorian government initially resolved to privatize the Port of Melbourne in 1994 but due to fierce opposition from users, the public and industry, this strategy was revised and the Port of Melbourne was

subsequently corporatized (Crisp 1994a; Crisp 1994b; Crisp 1995a). In South Australia the government corporatized its ports in 1994 as a precursor to privatization in 2000 with the enactment of the *South Australian Ports (Disposal of Maritime Assets) Act 2000* (SA). This legislation prescribed the sale of all of South Australia's commercial ports and in 2001 South Australia's ports were privatized and sold off to the private company, Flinders Ports Pty Ltd. More recently, the Queensland government sold the corporatized Port of Brisbane in 2010 in an attempt restore that state's budget surplus and the New South Wales government sold Port Botany and Port Kembla in 2013 on a 99 year lease for similar reasons.

4.6 THE 1990s AND BEYOND

Despite several changes in government at the Commonwealth level the NCP has remained in force and microeconomic programs have continued to be implemented. This period has seen an ongoing restructure of Australia's ports and at the meeting of the Council of Australian Governments (COAG) on 10 February 2006, the Prime Minister, the State Premiers and Chief Ministers of the Territories signed the Competition and Infrastructure Reform Agreement (CIRA). This is a commitment from all governments requiring each jurisdiction to undertake a review of port competition and regulation in their own jurisdiction.

The main objective of the agreement was to establish simpler and more consistent regulation of significant infrastructure in Australia (Council of Australian Governments 2006). In relation to Australia's ports, a major part of the review is that the states and the Northern Territory agree to undertake a review of port competition and regulation in their particular jurisdiction (Council of Australian Governments 2006). For instance, the agreement states that the parties agree that ports should only be subject to economic regulation where there is a clear need for it in the promotion of competition in markets or to prevent the misuse of market power (Clause 4.1(a)) (Council of Australian Governments 2006). At the time of writing each jurisdiction has commenced these reviews and with the exception of the ports of Brisbane, Port Kembla and Port Botany corporatization has remained in place.

In 2005 the Commonwealth government expressed concern at the states' ability to manage growing demand on the state ports following the resources boom (Murphy and Maiden 2006; Pettitt 2007a). Shipping queues and congestion at ports led the Commonwealth government to briefly consider assuming responsibility for the regulation of Australia's ports, before the idea was abandoned (Breusch 2005; Gordon 2005). Responsibility for ports remains with the State and Northern Territory governments which have always vehemently opposed Commonwealth interference with the running of Australia's ports (Taylor 2005; Wong and Ludlow 2005).

4.7 CONCLUSION

The reform of Australia's ports can be seen as part of an ongoing process of microeconomic reform. For a long time Australia's maritime sector was seen as costly and inefficient, which led to reforms being introduced across the nation mainly in the form of the corporatization and privatization of the nation's ports. These port reforms began to be introduced from the early 1990s and are part of an ongoing process to have the ports striving for efficiency and a more competitive environment in order to maximise profits.

In the next chapter the corporatized port models implemented in each state and the Northern Territory will be examined and discussed. The chapter will be divided into two parts, with Part One examining and discussing the corporatization models in use in each jurisdiction, and Part Two will look at the two most common models of corporatization in place in Australia.

CHAPTER 5 – THE CORPORATIZATION FRAMEWORKS

5.1 INTRODUCTION

In Chapter Four the history and reasoning behind the economic reform of ports was examined. In this current chapter the privatization and corporatization of Australia's ports and the frameworks implemented in each jurisdiction will be examined. This chapter is divided into two parts. Part One will examine the models in place in the states and the Northern Territory, whilst Part Two will examine the two most common models of corporatization, the Statutory State-Owned Company (SSOC) and the Government-Owned Company (GOC).

Ports in Australia fall within the jurisdiction of state and territory governments and a number of diverse models have been implemented. Each government has followed the reform objectives and either privatized or corporatized their ports.

5.2 PRIVATIZATION, CORPORATIZATION AND COMMERCIALIZATION FRAMEWORKS IN PLACE

A great deal of confusion exists in the terminology of privatization and corporatization. They are obscure terms and require some definition before proceeding.

5.21 Privatization

Privatization involves the transfer or sale of publicly-owned (also commonly called government-owned) assets to the private sector (Aronson 1995; McDonough 1998). It is a common method of deregulation and it remains a central part of deregulation programmes worldwide, including Australia, the United Kingdom and New Zealand. In recent years several of Australia's commercial ports have been privatized: in 2001 South Australia's ports were privatized under one port corporation whilst in the last few years the Port of Brisbane, the Port of Newcastle, Port Kembla and Port Botany. It has also been mooted that the Port of Melbourne may be up for the sale in the near future. A number of diverse privatization models have been adopted by governments worldwide,

which include the outright sale of assets, partial privatization, such as the selling of shares or parts of an asset or service, and the privatization or contracting out of commercial operations within a publicly-owned port (Rowthorn 1989; Wiltshire 1994; Jolly 2000; Reveley and Tull 2008). Under these varied models responsibility for the operations are transferred to the private sector (King 1994-1995).

Privatization is a key tenet of Neoliberalism. Neoliberalism is an economic movement which promotes the decentralization of government control, deregulation of the market and the promotion of the private sector (Woodward 2005). Neoliberalism advocates the transfer of the ownership and control public enterprises to the private sector in the belief that it will result in a more efficient and competitive entity and thus improve its performance (Woodward 2005). Concepts of Neoliberalism were championed by the New Right, as an economic rationalist policy which advocated deregulation and the privatization of national industries under the Thatcher government in the United Kingdom and the Reagan administration in the United States of America (Williams 2003; Jones 2004). Advocating privatization is not a recent concept: in his 1776 dissertation "The Wealth of Nations", Adam Smith stated that private ownership would improve an entity's efficiency and performance as it would expose it to competition which in turn would encourage the individuals operating it to want to surpass their competitors (Smith 2012).

Typically if a government is less concerned about control and regulation and either believes that one of its entities is better placed in the private sector it may decide that privatization is a more appropriate option than retaining the port in public ownership. If a government is in need of funds to finance debts or future projects, it might also consider privatization as a method by which to raise those funds. There are many considerations involved in the decision to privatize government assets and it has been suggested that the privatizations of the economically successful ports of Brisbane, Port Botany and Port Kembla were motivated by the need for their states to reduce debt and fund infrastructure projects (Hanna and Moore 2009; Whitbourn and Wiggins 2012). A similar justification was provided for the potential sale of Victorian public assets including the Port of Melbourne (Gordon 2012). It is very noteworthy that there was

no suggestion at any stage in these cases that their respective governments were seeking to rid themselves of poorly performing assets.

The United Kingdom deregulated many aspects of its economy under the Thatcher government in the 1980s which had inherited a flailing economy when it won the 1979 General Election. This deregulation led to the privatization of many public industries such as British Telecom in 1984 and British Gas in 1986 (Jessop, Bonnett, Bromley and Ling 1988). Britain's ports were not overlooked in Thatcher's privatization drive. The enactment of the *Transport Act 1981* (UK) allowed for the privatization of Associated British Ports Holdings Ltd (ABPH) which owned and operated several major ports in the United Kingdom including Hull and Cardiff. Forty-nine percent of ABPH's share capital was sold to the public in 1983 and the government sold its remaining holding in 1984 (Butcher 2011). ABPH was sold again in 2006 to private interests along with the twenty-one United Kingdom ports that it owned and operated.

In 1991 the United Kingdom began a process of privatizing many of its large trust ports including Tilbury, Ipswich and Clyde which had all been operated by independent self-governing local trusts since the nineteenth century. Nearly twenty years later in 2009, the United Kingdom government advised its remaining trust ports that it required them to review their corporate structure. The government proceeded to nominate the Port of Dover located in South-East England as target for privatization. The Port of Dover has been a key English trading port since Roman times and for many centuries together with Dover's white cliffs and the imposing Dover Castle, provided a strong defence against foreign invaders. Dover is also Britain's closest point to the European continent: the nearest point in Europe is Calais which is located thirty-three kilometres away in Northern France.

The Port of Dover is a high-performing port and Europe's busiest passenger port handling over 13 million passengers and five million vehicles per year (Neate 2012). Therefore it was not because the Port of Dover was a poor performing port that saw it earmarked for sale, but its excellent performance which the government anticipated

would attract buyers and raise around £290 million (Lea 2012). The Port of Dover was one of a number of public assets that the government considered privatizing for the purpose of reducing its £830 billion national debt and funding other government projects (Allen 2010). At no stage were any other justifications put forward for the proposed sale.

One year after the nomination of the Port of Dover as a privatization target, the chief executive officer of the port's operator, the Dover Harbour Board announced that the port had made an application for voluntary privatization with the likely buyer being located in France (Butcher 2011). The Port of Dover had been English-owned and operated since 1606 when it was formed by Royal Charter. When the plans to privatize the Port of Dover and sell it to French owners were made public, the local community was very vocal in expressing its outrage and opposition. Neither the Dover Harbour Board nor the government had anticipated the degree of opposition and hysteria that the proposed sale generated. In total 773 written submissions opposing the sale were made by individuals and organisations including the Dover Town Council, Kent County Council and the Dover Chamber of Commerce (Department of Transport (UK) 2012). There were also three separate petitions signed by over 6,500 people against the sale (Neate 2012). The publicity attracted the support of Dame Vera Lynn, the darling of Britain's World War Two troops and the singer of "The White Cliffs of Dover" which only increased the public's opposition (Stratton 2011). The main reasons for opposing the sale contained in the submissions were concerns about national security and the easing of border controls, the rising number of British assets being sold to foreign interests, and concerns about the level of community involvement allowed in the port after the sale (Department of Transport (UK) 2012).

After much consideration the Minister of State for Transport Simon Burns delivered the government's decision on the sale in December 2012. Noting the high level of community opposition and outrage to the sale, he announced that the sale would not proceed. He highlighted that the two main reasons for rejecting the sale were that the proposed scheme did not ensure a sufficient level of enduring community participation

in the port, and that there were other options available to secure the funding for the redevelopment of the port's Western Docks and other precincts (Department of Transport (UK) 2012). This last statement did not conceal the Dover Harbour Board and the government's original motivations that the port be sold to generate badly-needed revenue to fund public projects in the future and not because its management model had failed.

In New Zealand the government began to reform its public sector after the election of the Lange government in 1984. Corporatization was regarded as an appropriate method of deregulation for New Zealand as it removed government from the central control of public entities and encouraged competition as far as possible in the marketplace (McKinlay 1998). Unlike Britain's Thatcher government, the New Zealand government did not institute wide scale privatizations in order to obtain reform. Instead, the Lange government had a strong commitment to liberalizing the economy and converting New Zealand's public enterprises into profitable government-owned corporations (Farrar and McCabe 1995). The enactment of the *Port Companies Act 1988* (NZ) resulted in the abolition of the existing harbour boards which owned New Zealand's ports and replaced them with publicly-listed port companies (Everett, Weston and Pettitt 2007). In most cases under the corporatization reforms, New Zealand's regional councils retained ownership of each port in its entirety, such as in the case of the ports of Auckland and Wellington (Table 4.1).

However in other instances the New Zealand model of corporatization differed from the Australian model and more closely resembled the United Kingdom's position as it privatized some of its shareholding in individual ports; for example the Northland Regional Council retained a 72% share in the Port of Whangarei, whilst the remaining 28% interest was privatized via the New Zealand stock exchange (Table 4.1) (Tull and Reveley 2001; Everett, Weston and Pettitt 2007). Unlike the original intention in Australia, corporatization was never intended to be an endpoint in New Zealand but a step towards privatization in each case (Farrar and McCabe 1995). One interpretation of the New Zealand situation is that corporatization transformed public enterprises into a

corporate form with often profitable operations with the intention of making them attractive to private buyers at a later date (Taggart 1991).

5.22 Corporatization

As previously discussed in earlier chapters, corporatization involves a corporate restructure of a publicly-owned port authority whereby the statutory authority that ran the port is replaced by a government-owned entity which undertakes landlord functions (McDonough 1998; Thynne 1998b; Grantham 2005). The commercial facilities of the port, such as the berths, are privatized under the landlord model which has been used extensively in Australia including at the Port of Melbourne and in Tasmania (Everett 1995a). The restructure involves a change in legislation but the entity remains government-owned with the aim being to make the corporatized entity more efficient and competitive than the statutory authority it replaced (Quiggin 2002).

In the Acts of Parliament establishing corporatized ports entities in Australia, the term corporatization has been defined in only one jurisdiction, Queensland. The *Government Owned Corporations Act 1993* (Qld) defines it in section 13 as:

> *A structural reform process for nominated government entities that –*
>
> *(a) changes the conditions and (where required) the structure under which the entities operate so that they operate, as far as practicable, on a commercial basis and in a competitive environment; and*
>
> *(b) provides for the continued public ownership of the entities as part of the process; and*
>
> *(c) allows the State, as owner on behalf of the people of Queensland, to provide strategic direction to the entities by setting financial and non-financial performance targets and community service obligations.*

This is a useful legal definition for the term corporatization as it is the one generally in use across Australia and in the literature as evidenced in Chapter Two.

In Australia corporatization was in most instances intended to be an end in itself; the exceptions as discussed previously being the ports of South Australia and the Port of

Brisbane in Queensland (Wiltshire 1994; Queensland 2 June 2009). This differs with the experience in other countries, the United Kingdom and New Zealand, for example, where corporatization was frequently a precursor to privatization (Duncan and Bollard 1992; Everett, Weston and Pettitt 2007).

5.23 Commercialization

Commercialization is also microeconomic strategy used worldwide to reform government-owned businesses (Tull and Reveley 2008). It is similar to corporatization as the entity being reformed such as a port authority remains government-owned and the main purpose is to create a commercially-focused business (Farrar and McCabe 1995). The difference that it has to corporatization is that it does not involve a change in legislation, the port authority remains as a statutory authority, and commercial concepts are implemented into the way that the port manages its business (Farrar and McCabe 1995). Western Australia's operate under a commercialization model.

5.3 PORT RESTRUCTURE IN THE STATES

The section will discuss the strategies and models implemented in Australia's ports. As previously argued, many of Australia's ports have been corporatized under two models – the Statutory State-Owned Corporation (SSOC) and the Government-Owned Corporation (GOC) model. The locations of Australia's ports are shown in Figure 5.1. The current governance arrangements for Australia's ports reflect a series of reforms to improve port performance and to expose them to competition (Productivity Commission 2005a). Discussion on these models and their differences and implications are dealt with in Part Two of this Chapter.

5.31 Victoria

Victoria's ports have undergone several episodes of reform since the nineteenth century. The state has four commercial ports: the Port of Melbourne which is Victoria's major container port, and the regional ports of Geelong, Hastings and Portland.

Prior to the 1995 reforms, Victoria's four commercial ports were operated by separate port authorities established under individual legislation. The ports of Melbourne and Hastings were operated by the Port of Melbourne Authority, whilst the ports of Geelong and Portland were operated by their own individual port authority. In 1877 the Melbourne Harbour Trust was created as a statutory authority to operate the Port of Melbourne. This administrative framework persisted until the *Port of Melbourne Authority Act* 1958 (Vic) recreated the Melbourne Harbour Trust as the Port of Melbourne Authority (the PMA) a statutory authority to consolidate the many laws relating to activities in the port area (Russell 2001). In August 1994, the Victorian government began a consultation with the ports industry and other players in order to determine a suitable method of reform for the industry (Office of State Owned Enterprises 1995). These consultations contributed to the reforms which began to be implemented in 1995 with the passing of the *Port Services Act 1995* (Vic), later re-named *Port Management Act 1995* (Vic) (the 1995 Port Act).

In 1995 the Victorian government implemented some of the most major reforms in the history of Victoria with the passing of the 1995 Port Act. This Act amongst repealed the previous Acts that established the old port authorities and set in place corporatization. The Port of Melbourne was corporatized as a landlord SSOC, whilst with the Port of Hastings a dual approach was set in place whereby the government retained ownership of the port whilst outsourcing its operation and management functions to private enterprises. The 1995 Port Act created two new port corporations - the Port of Melbourne Corporation (PoMC) to manage the Port of Melbourne and the Port of Hastings Corporation to run the Port of Hastings. The Act ensured the privatization of the ports of Geelong and Portland.

In 2003 further reforms took place after reviews of the 1995 reforms found that they were not achieving the results envisaged. Amendments were made to the 1995 Port Act which legislated for the abolition of the MPC and the creation of the Port of Melbourne Corporation (the PoMC). The new PoMC would provide land, waters and infrastructure

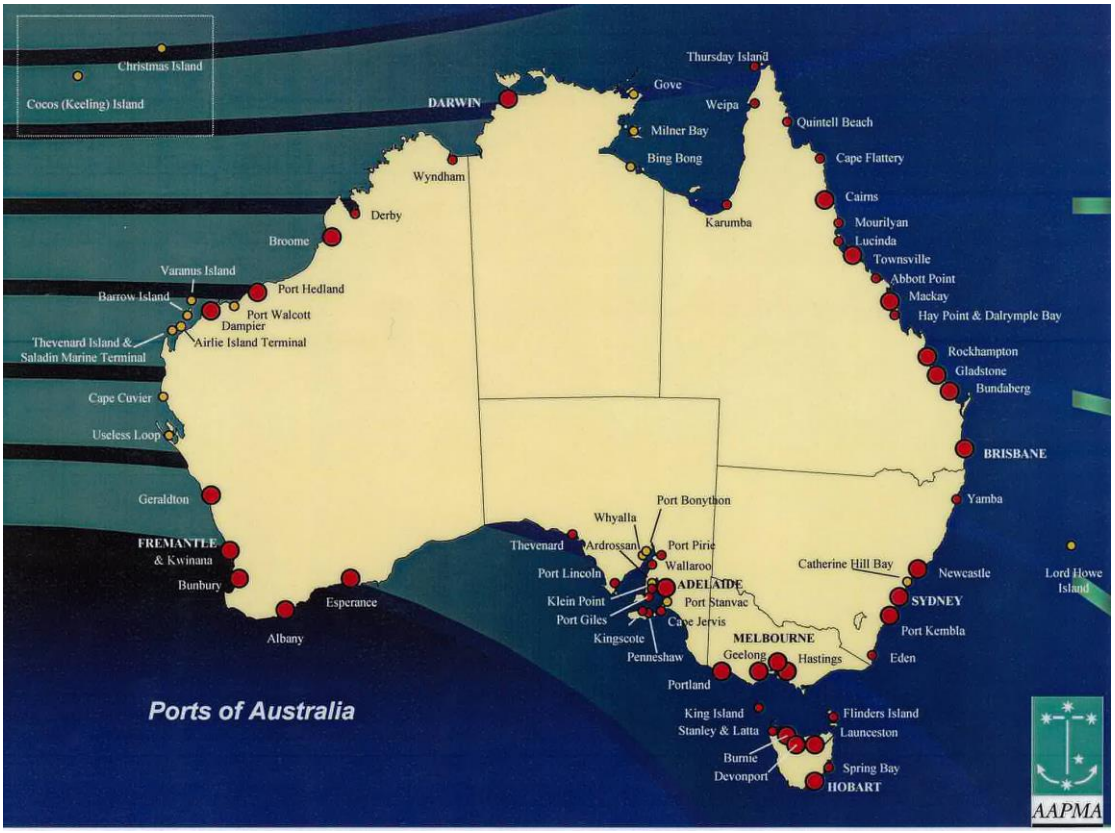

Figure 5.1 The Ports of Australia

Source: Ports Australia (2010). Copyright to this image is owned by Ports Australia.

necessary for the development and operation of the Port of Melbourne. These were roles the previous MPC did not have. The Port of Hastings remained unaffected by the changes. In 2010 most of the governance for the Port of Melbourne was transferred from the 1995 Port Act to the *Transport Integration Act 2010* (Vic) (the 2010 Transport Act) which put all modes of transport under one Act in an attempt to consolidate their management within the Department of Transport. The 1995 Act still covers issues for the Port of Melbourne such as port licence fees, regulation of port services and towage services.

Under the 2010 Transport Act the PoMC has been categorized as a Transport Entity. Section 141B(2) of this Act ensures that the PoMC is to be the same entity that was established under the 1995 Port Act. Therefore the PoMC is still a corporatized entity

operating as a SSOC with a Board of Directors which is still subject to directions from the Minister for Ports. One notable change is that the 2010 Transport Act has removed the Treasurer's right to issue directions to the Board, which the Treasurer could do under the 1995 Port Act.

Legislation & Governance:

Until the 1990s Victoria's statutory authority port authorities provided a 'do everything for everybody' framework for port development that conformed well to the notions of what a public utility should do and how it should do it (Robinson 2005). As time progressed, the statutory authority model in place was becoming increasingly dysfunctional in a competitive, market-oriented, economic rationalist microeconomic reform context (Robinson 2005). The port authorities were also found to lack both a commercial focus and satisfactory performance standards (Skilbeck 1998).

The 1995 Port Act created a distinctively commercial function for the PoMC under Section 12 which stated that the PoMC must manage and develop the Port of Melbourne in an economically, socially and environmentally sustainable manner, whilst ensuring that the essential port services were cost-effective. This commercial focus was further stressed in Section 13(2) where it is expressly stated that the PoMC must manage its functions in a manner that is, among other things, effective, efficient and commercially-sound. The 2010 Transport Act has retained this focus.

Under the 1995 Port Act there were two ministers involved in the operation of the PoMC, being the Minister for Ports and the Treasurer. Under Section 30(1) of the 1995 Port Act, the Minister for Ports had a general power of direction, discretion and control over the PoMC which is not present in the port legislation for any other state or the Northern Territory. This gave the Minister for Ports the potential in theory to exercise a large degree of political interference in the PoMC's operations. However under that section any direction given could not be inconsistent with the PoMC's objectives or the 1995 Port Act. The Minister for Ports also had the power to approve the acquisition or disposal of land by the PoMC and the power to appoint directors to the Board as well

as to determine the terms and conditions of those appointments. The Minister for Ports powers have been retained under the 2010 Transport Act. The major change in relation to ministerial intervention in the operations was for the Treasurer who had the power of direction in relation to non-financial matters under Section 38. The 2010 Act has removed this power so now only the Minister for Ports has the power to issue directions to the PoMC, but under Section 163(1)(a) any direction can only be given with the Treasurer's approval. Therefore the Treasurer now has an indirect involvement in the operations of the PoMC.

The Port of Melbourne will be discussed further as a case study for this thesis in Chapter Six.

5.32 Tasmania

Prior to 1997 each of Tasmania's ports were operated by Marine Boards established in the nineteenth century. Each Marine Board was powerful in its own right, governing the ports within its jurisdiction. Over the past four decades there has been widespread recognition that the Tasmanian port system required considerable reform.

Reform began with the enactment of the *Port Companies Act 1997* (Tas) (the First Ports Act), which until its repeal in 2006, covered the operation of Tasmania's port authorities. This Act corporatized Tasmania's ports as GOCs in accordance with the *Corporations Act 2001* (Cth) and created four port companies: the port companies of Hobart, Launceston (Bell Bay), Devonport and Burnie.

Despite the 1997 reforms, it eventually became clear that further reforms were needed. One problem that was emerging was that due to Tasmania's small size, there was an expensive doubling-up of infrastructure, and the ports were competing against each other in the same markets, often at the expense of efficient performance. It was decided that if the ports were merged under the one port company, the ports could specialise in different areas and work together to achieve better outcomes. Following further

reviews, Tasmania's four port companies were merged into one port corporation under the *Tasmanian Ports Corporation Act 2005* (Tas) in 2006 (the Tasmanian Ports Act). The new port corporation was called the Tasmanian Ports Corporation (TasPorts) and remains corporatized as a GOC subject to the *Corporations Act 2001* (Cth) with its headquarters in Devonport.

Legislation & Governance:

TasPorts is subject to two Acts of Parliament: the Tasmanian Ports Act and the *Government Business Enterprises Act 1995* (Tas) (the GBE Act). According to Section 5(1) of the GBE Act, these two Acts must be read together. The Tasmanian Ports Act has several aims under Section 3 which include being to provide for matters relating to the control of TasPorts, and to transfer the assets and liabilities of the four port companies to TasPorts. The Act also specifically states that TasPorts is to remain a GOC and be subject to the *Corporations Act 2001* (Cth) (Section 3(a)). Section 31 expressly abolishes the four port companies and repeals the First Ports Act.

The Tasmanian parliament's intention was that TasPorts was to be a commercial operation and this is expressly stated in the Tasmanian Ports Act. The principle objectives of TasPorts are to facilitate trade for the benefit of Tasmania, and to operate its activities in accordance with sound commercial practice (Section 6). This has not changed from the First Ports Act, which had an identical section. These objectives are mirrored in the GBE Act which states that the principle objectives of TasPorts must be to act as a successful business operating in accordance with sound commercial practices as efficiently as possible, and to a achieve a sustainable rate of return (Section 7(1)).

TasPorts has two shareholding Ministers, the Portfolio Minister (the Minister for Ports) and the Treasurer (Section 8). The Board of Directors are appointed by the two shareholding Ministers in accordance with TasPort's constitution (Section 12). The Ministers have very restricted powers compared to those of the SSOC port corporations in Australia's other states, because TasPorts, being a GOC is subject to the rules of the

Australian Securities and Investment Commission which regulates companies subject to the *Corporations Act 2001* (Cth).

The GBE Act, which governs many of Tasmania's government-business enterprises and not just TasPorts, creates TasPorts as a commercially-focused business (Sprott 1998). The GBE Act provides a framework for accountability for TasPorts and stresses its commercial focus under Section 7(1) by stating that TasPort's principle objectives are to operate as a successful business in accordance with sound commercial practices and achieve a sustainable rate of return.

The GBE Act also elaborates on the shareholder Ministers' powers, stating that the two Ministers must provide TasPorts with a Ministerial Charter which sets out the Ministerial Policy expectations, which must be consistent with both the GBE Act and the Tasmanian Port Corporations Act.

The ports of Tasmania will be discussed further as a case study for this thesis in Chapter Seven.

5.33 South Australia

In contrast to the scenarios in Victoria and Tasmania, South Australia's seven major commercial ports are privately-owned by a private listed company. One of these ports, Adelaide is an urban port whilst the other six are located in regional areas. Prior to being sold by the South Australian government in 2001, the ports operated as statutory authorities until 1994 when they were corporatized. As in Tasmania, South Australia's ports were corporatized under one port corporation, the South Australia Ports Corporation (SAPC) and under one Act of Parliament, the *South Australian Ports Corporation Act 1994* (SA) (1994 SAPC Act). This was significant as a major objective of the South Australian reforms was to create inter-port competition, but it has more recently been stated that the placing all of that state's ports under one governing port corporation could potentially restrict competition (Chen and Everett 2014).

In any event this corporatized arrangement lasted less than a decade. In 2000 the South Australian government announced its intention to privatize the SAPC under the *South Australian Ports (Disposal of Maritime Assets) Act* 2000 (SA) (the Disposal Act). The Disposal Act provided for the dissolution of the SAPC, the disposal of its assets, and the repealing of the SAPC Act. It was hoped that the sale would increase the profitability of South Australia's ports. This suggests that in the case of South Australia, corporatization did not achieve the desired results. South Australia became the first Australian state to have all of its commercial ports owned and operated by the one owner. Tasmania became the second state to have all of its commercial ports operated by the one entity when TasPorts was created. However unlike in South Australia as discussed and examined at Part 5.32, Tasmania's four commercial ports remain owned by the Tasmanian Government.

The reasons for the sale of South Australia's ports included to:

- Encourage economic development through expanded freight service business and investment opportunities;
- Encourage improved services for exporters and importers through reduced fragmentation of the supply chain towards the concept of 'total supply chain management'; and
- Remove risks to government from competition in the ports' business and from the potential for significant lost business opportunities that would be inappropriate for the Government to pursue
  (South Australia, 4 May 2000).

In 2001 all commercial ports in South Australia were privatized upon their sale to Flinders Ports Pty Ltd (Flinders Ports). Flinders Ports is a publicly-listed company and is subject to the provisions of the *Corporations Act 2001* (Cth). Flinders Ports acquired the port infrastructure which included a 99 year lease and port operating license for the Port of Adelaide and the six regional ports of Port Lincoln, Port Pirie, Port Giles, Klein Port, Thevenard and Wallaroo (Flinders Ports Pty Ltd 2014). As these ports are privately-owned they are not subject to the overriding control of government, although they are subject to government regulatory regimes identical to other companies in the

private sector.

South Australia's ports handle a variety of commodities with all ports equipped to handle a wide variety of bulk and break bulk cargoes (Flinders Ports Pty Ltd 2014). For example Port Adelaide handles sixteen different types of commodities which include grains and seeds, petroleum products, iron and steel, livestock and ore; Port Lincoln handles grains and seeds, petroleum products and fertilizers; Port Giles handles grains and seeds; and Port Pirie handles ore, coal and general cargo (Flinders Ports Pty Ltd 2014). The ports are assisted in the movement of cargo by an extensive road and railway system which extends across South Australia, New South Wales and Victoria.

5.34 New South Wales

Prior to corporatization, the ports of Sydney, Newcastle, Port Botany and Port Kembla operated as statutory authorities under the umbrella body of the Maritime Services Board of New South Wales. Corporatization was first considered by the New South Wales Greiner government in 1988. The objective was to create efficiency by distancing the government from the daily operations of the port. The model envisaged for New South Wales' ports was that a GOC subject to the *Corporations Act 2001* (Cth).

A Bill to create port GOCs was drafted and tabled in the NSW parliament, but before the bill was passed, a State government election resulted in a change of government. The newly elected Labor government, reluctant to relinquish control of the ports, amended the Bill so that the port corporations would be SSOCs and passed the *Ports & Maritime Administration Act 1995* (NSW) (the 1995 Ports Act). This meant that the ports were corporatized by special legislation, and as such, were subject to the provisions of that statute and not the *Corporations Act 2001* (Cth).

The 1995 Ports Act created three corporatized port corporations: the Sydney Ports Corporation which is responsible for Sydney's two ports (the Port of Sydney and Port

Botany), the Newcastle Port Corporation, and the Port Kembla Port Corporation.

Legislation & Governance:

In New South Wales the ports of Sydney, Newcastle, Port Botany and Port Kembla were corporatized with the passing of the *Ports & Maritime Administration Act 1995* (NSW) (the 1995 NSW Ports Act). New South Wales' ports are also governed by the *State Owned Corporations Act 1989* (NSW) (the 1989 SOC Act). The 1995 NSW Ports Act is explicit in stating its aims and functions. These include operating port facilities, waterways management, marine safety functions, port charges, pilotage and other marine matters.

Although the New South Wales ports were corporatized, it is important to note that neither of these Acts defines the term corporatization. There is a strong focus in the 1995 NSW Ports Act on the ports being efficient and competitive

Under Section 9 of the 1995 NSW Ports Act, the responsibility of the ports is to act as successful competitive and efficient businesses and the principle objectives include:

(a) to be a successful business and, to this end:

(i) operate at least as efficiently as any comparable business;

(ii) to maximize the net worth of the State's investment in the Port Corporation; and

(iii) 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; and

(b) to promote and facilitate trade through its port facilities; and

(c) to ensure that its port safety functions are carried out properly, and

(d) to promote and facilitate a competitive commercial environment in port operations, and

(e) *to improve productivity and efficiency in its ports and the port-related supply chain.*

The intention to be a successful business is also expressly stated in the 1989 SOC Act in Sections 20E(1)&(2) and it was repeated in the visions and aims of the three port corporations. The 1989 SOC Act deals with governance issues such as the establishment of the Board of Directors and the internal governance of the port corporation. There is no independence from the government in the appointment of the directors as under that Act as they are appointed on the recommendation of the shareholding Ministers by the Governor. The port corporations are to have a Board of Directors to consist of not less than 3 (but no more than 7) directors appointed by the Governor on the recommendation of the Treasurer and Minister as voting shareholders (Section 20J). It is the Board that has the power to make all decisions in relation to the operation of the port corporation (Section 20L).

The Parliament also has a large input into the direction and management of the port corporations through the shareholding Ministers, who, as with the other corporatized port entities in Australia, are the only shareholders. Under the 1989 SOC Act port corporations are to have two equal shareholders (and no more) at any one time, and those shareholders are to be the Treasurer and another Minister (Section 20H). In reality, the other Minister is the Minister for Ports, as that Minister is the Portfolio Minister (Section 20I).

In May 2011 and June 2012 the NSW government announced plans to privatize the port and assets of Port Botany and Port Kembla respectively. The government acknowledged that the purpose of the intended sales was to fund future infrastructure projects in NSW. To enable the sale of the two ports and their assets the *Port Assets (Authorised Transactions) Act 2012* (NSW) was passed. This Act allows for the sales of each port and its assets but not the land on which each port sits. The land remains under the ownership of the NSW government. In April 2013 the assets of the two ports were sold

for a total of $5.07 billion on a 99 year lease by the NSW government. At the end of the lease it is intended that the assets of the two ports will revert back to the NSW government. In June 2013 the NSW government announced plans to privatize the Port of Newcastle and its assets on a 99 year lease under the same terms used for the sales of Port Botany and Port Kembla. In November 2013 it was announced that the lease would be completed by mid-2014. It remains to be seen as to whether similar plans will be announced for the Port of Sydney.

5.35 Queensland

Corporatization was first raised as a possibility for implementation in 1992 when options were examined to ensure that Queensland's resources were being used as efficiently as possible (McDonough 1998). The port authorities of Queensland were first corporatized in 1994 and 1995 under *the Government Owned Corporations Act 1993* (Qld) (the 1993 GOC Act).

The driving force in Queensland was similar to that in other states and sought to place public enterprises on an equal footing with private sector businesses (McDonough 1998). As in other parts of Australia, corporatization was introduced in an attempt to make the public sector more efficient, accountable and responsive to user needs (McDonough 1998).

While the Queensland model is commonly referred to as a GOC, most of Queensland's port authorities were initially created as *Statutory Government-Owned Corporations* (SGOCs). SGOCs, like a SSOC, are created under a specific statute and not the *Corporations Act 2001* (Cth). The other model in use in Queensland is the *Company Government-Owned Corporations* (CGOCs), which are GOCs and subject to the *Corporations Act 2001* (Cth).

In early 2007 further reforms were introduced as Queensland legislated to abolish its SGOCs and convert them all to CGOCs (Queensland 7 March 2007a; Queensland 7 March 2007b; Queensland 7 March 2007c). In mid-2007 Queensland's two major port

corporations, the Ports Corporation of Queensland Limited and the Port of Brisbane Corporation Limited were converted to CGOCs. The remaining port corporations were all converted by July 2009. The reasoning behind the legislative change was that the government believed that CGOCs can be more efficient and compete with the private sector more efficiently and successfully than SGOCs. In 2010 the Queensland government privatized the Port of Brisbane after passing legislation in 2009 to allow the sale (Queensland 2 June 2009). The justification provided for the sale was that Queensland needed to be restored to the position of having a budget surplus – at no stage was there a statement that Queensland would be abandoning corporatization for its other ports or that corporatization was no longer deemed appropriate for its port businesses (Queensland 2 June 2009).

Legislation & Governance:

The 1993 GOC Act establishes Queensland's SGOCs and CGOCs and sets out the terms of their operation. The 1993 GOC Act also covers government entities, government-owned companies and corporatization in Queensland. It is a generic Act that aims to provide for the corporatization of nominated government entities and for related purposes. As stated above, this is the only Act in Australia that defines the term "corporatization" and it defines it in Section 13 as structural reform process for nominated government entities that changes the conditions and structure under which they operate so that they function as much as possible as commercial competitive entities in a competitive environment. It also allows for the entities to remain in public ownership and for the state of Queensland to continue to provide them with directions. Queensland has not expressly or implicitly stated as to why it chose to legislatively define the term, but it is similar to the corporatization strategies adopted in Australia's other states and the Northern Territory.

The 1993 GOC Act goes further and in Section 14 states that the objectives of corporatization are:

> *to improve Queensland's overall economic performance, and ability of the Government to achieve social objectives, by –*
>
> *(a) improving the efficiency and effectiveness of GOCs; and*
>
> *(b) improving the accountability of GOCs.*

The 1993 GOC Act under Section 78 allows the government to maintain the ownership of the port authorities through Shareholding Ministers and to set the overall strategic direction (Queensland Ports 2006). In Queensland, those Ministers are the Treasurer, and the Minister for Transport & Main Roads (Queensland Ports 2006).

Queensland's ports corporations are also subject to the *Transport Infrastructure Act 1994* (Qld). This Act abolished port authorities existing prior to corporatization and under Section 275 sets out the functions and powers of the current port authorities. Those functions and powers are to establish, manage, and operate effective and efficient port facilities and services in its port; to make land available for the establishment, management and operation of effective and efficient port facilities and services in its port by other persons; and to provide other services incidental to the performance of its other functions or likely to enhance the usage of the port.

As with other corporatized entities, Queensland's port authorities have a Board of Directors. Each Board has eight directors, appointed on the recommendation of the two shareholding Ministers. Therefore, as in the other states and the Northern Territory, the Board is a political appointment and therefore not independent of the parliament. The Board's role, under Section 88 of the 1993 GOC Act includes responsibility for the GOC's commercial policy and management. CGOCs, by virtue of their being subject to the *Corporations Act 2001* (Cth), are less subject to political and therefore Ministerial, involvement than SGOCs as the parliament has less room for involving Ministers in the running and operation of the corporation.

5.36 Western Australia

Port reform in Western Australia proceeded differently from the other jurisdictions as Western Australia chose to commercialize its ports. The eight major ports in Western Australia play a major role in Australia's trade - handling nearly 50 percent of Australia's exports by volume and almost 30 percent by value (Department for Planning and Infrastructure 2006).

Prior to the 1990s, Western Australia's ports were operated by port authorities that had their own Act of Parliament detailing the duties, functions and powers of that port authority. Over time though these Acts become outdated, making it difficult for the Boards and management of each port authority to facilitate trade in a commercial manner, especially as the port authorities also had to comply with numerous maritime Acts (Western Australia 18 June 1998).

In moves to reform the state's port authorities, Western Australia's port were commercialized under the *Port Authorities Act 1999* (WA) (the WA Port Act) with the aim of making them responsive to market forces (Department of Planning and Infrastructure 2006). As previously argued, commercialization does not usually involve a change in legislation; it was the choice of the Western Australian government to pass new legislation to support the reforms.

The commercial focus of the port authorities is expressly stated in Section 34 of the WA Port Act which says that the port authority is under express duty to act on commercial principles and in performing its functions, it must act in accordance with prudent commercial principles and endeavour to make a profit.

Legislation & Governance:

The WA Port Act explicitly sets out the functions of a port authority under Section 30(1) & (2) as including to:

> *(a) facilitate trade within and through the port and plan for future growth and development of the port; and*
>
> *(b) undertake or arrange for activities that will encourage and facilitate the development of trade and commerce for the economic benefit of the state through the use of the port and related facilities; and*
>
> *(c) control business and other activities in the port or in connection with the operation of the port.*

The WA Port Act ensures that the port authorities are under strict governmental control and are accountable to Parliament through government Ministers. The Ministers responsible for the port authorities are the Portfolio Minister, being the Minister for Planning and Infrastructure, and the Treasurer. The port authorities are responsible for the daily operation of the ports with an increasing management autonomy and authority.

The Portfolio Minister has a large role in the running of the port authorities and must appoint the port authority's Board of five directors under Section 7(1) of the WA Port Act. This means there is a direct political influence over the composition of the Board. Section 8 of the same Act states that the Board is the port authority's governing body and is to perform the functions, determine the policies and control the affairs of the port authority. The Portfolio Minister may also give directions to the port authority in writing with respect to the performance of its functions (either generally or in relation to a particular matter) and the port authority is to give effect to any such direction. Therefore the Portfolio Minister has direct influence over the actions of the Board; in other words, the legislation enables and permits political interference and influence in actions of the port authority.

5.37 Northern Territory

The Port of Darwin is the Northern Territory's only commercial port. It was originally established in 1983 under the *Darwin Port Authority Act 1983* (NT) as a statutory body. In 1999 the port authority underwent reform and was corporatized as a SSOC under the *Darwin Port Corporation Act 1999* (NT) (the DPC Act). It is operated by the Darwin Port Corporation under a legislative commercial charter and Board of Directors under the DPC Act. The port handles cargoes such as the export of livestock and functions as a supply base for onshore and offshore oil and gas projects (Port of Darwin 2006).

Legislation & Governance:

In 2002, the Northern Territory government announced that the Darwin Port Corporation would be converted to a GOC by January 2003, and thus subject to the *Government Owned Corporations Act 2001* (NT) (the NT GOC Act), an Act which was established to provide for improved performance of the Northern Territory's GOCs (Darwin Port Corporation 2005). GOC status would require it to focus predominately on commercial outcomes so that it could contribute to the Northern Territory's long-term economic success. In fact under the NT GOC Act, such bodies are similar to the SGOCs found in Queensland as they are not subject to the *Corporations Act 2001* (Cth), but to the Act that created them. Section 6(1) of the GOC Act expressly excludes the application of the *Corporations Act 2001* (Cth) to its GOCs.

In 2004, the decision was made not to convert the Darwin Port Corporation to a GOC and that its status would be reviewed in 2007. The reason for not converting it to a GOC at the time was because the turnover was not large enough (Northern Territory Government of Australia 2004). At the time of writing, the matter has not been resolved and the port is still under the SSOC model and not subject to the NT GOC Act.

The role of the Darwin Port Corporation is to control, develop and manage all waters and land within the port and to facilitate marine related activities and industries in the port (Port of Darwin 2006). The port corporation must act commercially and must have

regard to government strategic objectives including trade development (Section 17A of the DPC Act).

As with the other corporatized ports across Australia, the Darwin Port Corporation has a Board of Directors that comprises up to seven members (Section 27 A(1)) with each one being appointed for not more than three years (Section 27E). The Board is expected to adopt a commercial approach but must have regard to government strategic objectives such as trade development (Section 27B(3)). The expectation is a commercial focus, the DPC Act expressly states that in performing its functions, the corporation is subject to the directions of the Minister (Section 15(1)), who also has the power to give the corporation written directions to act in particular manner, including a non-commercial manner (Section 15(2)).

The next section of this chapter will discuss in some detail the two corporatization models adopted in Australia and the differences between them.

5.4 THE MODELS

This part of the chapter will discuss in some detail the two port corporatization models in place in Australia, the Statutory State-Owned Company (SSOC) and the Government-Owned Company (GOC). This section will examine their legal status, legislative structure, the rationale for their creation, as well as why different jurisdictions chose to implement one model over the other.

Australia's ports initially were part of government departments, operating as statutory authorities which allowed them some independence from governmental interference into their daily operations (Wettenhall 1998a). Despite this, in practice they remained closely monitored by the government and under ministerial control (Wettenhall 1998a). Although they were statutory authorities they were not incorporated or created by an Act of Parliament because their role was generally advisory: for example as will be examined in Chapters 6 and 7 of this thesis, prior to corporatization Victorian ports

were managed under the broad advisory body of harbour trusts, and Tasmania's ports were managed by marine boards.

Under corporatization legislation SSOCs and GOCs have been created with independent legal existence from government (Bottomley 2000). The corporatization legislation creates the framework under which these models and the business of the port corporations can operate. Corporatization has been used by all Australian governments for various government-owned entities and unlike privatization, was adopted to retain government ownership (Wettenhall and Laver 2002). This retention was driven by the belief that governments recognized the public value of government business enterprises and that therefore they should remain in public hands (Thynne 1998b).

Statutory State-Owned Companies (SSOC)

A SSOC is created by an Act of Parliament that is intended specifically for that government-owned entity or ones like it, such as the *Port Management Act 1995* (Vic) (Bottomley 2000). The Act of Parliament, also called enabling legislation, creates the framework for the port business and sets out the functions and powers of the port corporation. It is up to the parliament to create those during the parliamentary process of creating the Act (Tull and Reveley 2008). Therefore the creation of a SSOC such as the Port of Melbourne Corporation potentially allows for a large degree of parliamentary input and scrutiny, and the provisions can be tailor-made for that SSOC (Bottomley 1994). A government will create a SSOC if it wants to ensure that there is a high degree of government control over the port corporation because it can create provisions in the Act that allow for that (Bottomley 1994).

Government-Owned Companies (GOC)

In contrast, a GOC is created either under a general incorporation Act, such as the *Corporations Act 2001* (Cth), or a state or territory equivalent (McDonough 1998). A GOC will generally have its creation authorized under an Act of Parliament, but the GOC itself will be created under an incorporation Act (Grantham 2005). It is the

incorporation Act that provides the framework for the port business. A government will create a GOC if it desires there to be less parliamentary input and potential interference into the daily operations of the GOC, compared to the level of input that can occur with a SSOC because the incorporation Act will set out the requirements for the company's internal governance that must be followed (Paton 1994-1995). Most incorporation Acts dictate a rigid framework of rules and reporting requirements for corporations created under them, which means that unlike with the SSOC, the government has less scope for inserting its own clauses and requirements (Grantham 2005). The government will still have a controlling or substantial interest in the GOC, however it will be very limited (Bottomley 1997). In the case of Australian port GOCs, such those that are in Tasmania, the government has a one-hundred percent controlling interest. The creation of the Tasmanian Ports Corporation Pty Ltd (TasPorts) is authorized by the *Tasmanian Ports Corporation Act 2005* (Tas) but TasPorts is created in accordance with the *Corporations Act 2001* (Cth) which is a general incorporation Act.

While both models have been applied in different states the more common model for ports is that of a SSOC as shown in Table 4.2. In contrast, Tasmania has adopted the GOC model. Queensland initially adopted the SSOC model, but later converted its port corporations to GOCs. The legislation in each jurisdiction which creates the port business frameworks differs because it was created on a basis of need without consultation with the other jurisdictions. By using a general incorporation Act to create a GOC, a government can create port corporations quickly, as the process has been established and set-out in an existing incorporation Act (Grantham 2005). This differs from SSOCs which are created under an enabling Act that must be drafted as a Bill and proceed through the parliamentary process to become an Act of Parliament (Bottomley 1994). This process involves debating the proposed legislation in both Houses of Parliament which can make the creation of a SSOC a lengthy and time-consuming process (Bottomley 1994).

5.5 IMPLICATIONS OF THE MODELS AND THEIR LEGISLATION

The models set in place have important implications in relation to accountability to parliament. Port corporations established under either model will still be accountable to parliament, despite the differences in their accountability as argued above. As previously argued SSOCs are not removed or distanced from the government, but remain under direct governmental control because of their specific enabling legislation created by parliament (Reveley and Tull 2008). GOCs allow for a greater distance from governmental control because they are created under general incorporation Acts that set out the internal governance for all corporations created under them which generally cannot be changed by the parliament choosing to create a GOC (McDonough 1998).

Any GOC created under the *Corporations Act 2001* (Cth), such as Tasmania's port corporation, must also be registered with the Australian Securities and Investment Commission (ASIC) which is responsible for the administration and regulation of corporations created under the *Corporations Act 2001* (Cth). Once a GOC has been registered with ASIC, the government, as owner of the GOC, must lodge a constitution with ASIC which sets out all of the internal rules such as those relating to the appointment and removal of directors, of that GOC (Grantham 2005). In contrast, a SSOC does not have a constitution as all of its functions and powers are set out in its enabling Act (Bottomley 1994).

In Australia a parliament's involvement in government-owned entities such as SSOCs and GOCs is mandated by the Convention of the Westminster system of government inherited from the United Kingdom (Finn 1987). The Westminster system contains a tenet called the Doctrine of Ministerial Responsibility which imposes individual responsibility on Ministers to the parliament for the administration of their departments (and everything within them) and the collective responsibility of the Cabinet to the parliament for the entire conduct of the administration (Emy 1976; Turpin 1994). Therefore Australia's port corporations and other government-owned entities are accountable for their performance to the parliament through a Minister and the Cabinet

(Wettenhall 1983). The parliament is in turn responsible to the voting public (Mantziaris 1998).

There is much debate as to whether the concept of Ministerial Responsibility has been entrenched by Section 61 of the Australian Constitution as the matter has not been settled by legislation, academic debate or judicial scrutiny (Mantziaris 1998). Despite this debate, the parliaments of Australia have always regarded themselves as bound by the Westminster System and the Doctrine of Ministerial Responsibility (Turpin 1994). As stated earlier in this thesis, the Victorian parliament has legislated for ministerial responsibility under Section 85 of the *Public Administration Act 2004* (Vic) which states that the board of a public entity, such as a port corporation, is accountable to the minister for that entity and in turn that minister is responsible to the parliament for that activities of that entity.

Regardless of whether a port corporation is a SSOC or a GOC, what matters is the legislation that creates it as the extent of the legislation is in the hands of the parliament (Coates 1990). It is the legislation that establishes the framework for the port business including its form, purposes and powers, as well as details as to its shareholders and the extent of their powers (Bottomley 1994). It is also the legislation that creates the policy of the port corporation and its business and creates the rules under which it can act, including any prohibited acts (Bottomley 1997). The importance of the legislation cannot be stressed enough. As highlighted in Chapter Two, the existing literature has stated repeatedly that the port reforms of the 1990s have failed to bring the anticipated results not because of the way in which the legislation was implemented, but because of the frameworks established in the legislation (Everett 2003a; Everett 2003b). The main criticism is that both types of legislation potentially grant the shareholding Minister too much power to interfere in the running of the port companies, especially in terms of the power of veto over board decisions (Bottomley 1994). Therefore, based on that literature, the government and parliament is not distanced from the daily running of the port companies on either model (Everett 2003a). However as argued in Chapter Two, few of those studies in the literature have used empirical data to support their

contentions. Regardless of this factor, the necessity of the Doctrine of Ministerial Responsibility means that SSOCs and GOCs by their very nature of being in government-ownership will always have a degree of accountability to the parliament (Mantziaris 1998).

5.51 The Role of the Shareholding Ministers

The role of Ministers in a SSOC and in a GOC differs significantly. As argued above, when a government creates a SSOC or a GOC there is a link between the government, the parliament and the public who elect the parliament via the concept of Responsible Government (Bottomley 1997). The link is created by installing up to two government Ministers, typically the Portfolio Minister and the Treasurer, as shareholding Ministers of the corporation under the entity's enabling Act. Under this model they are responsible for and answerable to the Parliament for the SSOC or GOC's activities and performance (Bottomley 1997). As stated earlier, corporatized entities such as SSOCs and GOCs are created to operate at arm's length from government in order to reduce any potential political control over the entity as much as possible (King 1994-1995). They are also designed to relieve the Ministers of the responsibility of the daily operation of these bodies, although clearly the Ministers must have a role in the entity as dictated by their enabling Act (Royal Commission on Australian Government Administration 1976a).

However, clearly there is a difference in the potential degree of control that a Minister for a SSOC would have compared to that of a GOC, as has been argued above. The extent of a Minister's powers do vary across the jurisdictions with the Victorian Ministers having the most extensive powers under the *Port Management Act 1995* (Vic) for example compared to the more limited powers granted under the *Tasmanian Ports Corporation Act 2005* (Tas). Under Section 85 of the *Public Administration Act 2004* (Vic) the Minister must be involved in the operations of Victorian public entities. This section gives the Minister vast powers by permitting the minister to give the entity directions, appoint or remove directors and to control its operations. Shareholding Ministers of SSOCs generally have more potential power to intervene in the operations

of the port corporation than those presiding over GOCs. This is because SSOCs enabling legislation for example, has the ability to set out all of the powers of the corporation and thus can be self-contained (Everett and Pettitt 2006).

Under the GOC model, on the other hand, the enabling legislation is subject to a general incorporation statute such as the *Corporations Act 2001* (Cth), which in turn means that the parliament does not have the power to give a GOC shareholding Minister the extensive powers of a SSOC as many of those powers are contained in the incorporation statute (McDonough 1998). However these general incorporation statutes do permit shareholders to have a small degree of control over the company's operations such as the right to question Board members and vote on company resolutions. Compared to SSOCs, with a GOC the parliament does not have the degree of influence which occurs in the SSOCs. This will be discussed further in Chapter Seven. In general, however, the Minister's role is to set objectives, review and approve corporate plans, and to agree on financial targets (Bottomley 1997). Therefore, it is up to the enabling legislation to define or limit the Ministerial roles as much as possible. All of the port Acts, regardless of their SSOC or GOC status have a requirement under their enabling legislation to report annually to the Parliament, via the Minister, on their activities, including their financial status (Royal Commission on Australian Government Administration 1976a).

Each piece of port legislation authorizes the creation of a Board of Directors appointed by the Ministers to oversee the running of the port corporation and to be responsible for its management (Bottomley 1994). The Board's general role is to oversee the running of the port corporation, to ensure that the functions of the port corporation are carried out, and to comply with directions from the shareholding Ministers (Bottomley 1997). It must be noted that in the Acts relating to Tasmania's GOC port companies and Queensland's port corporations there is an express statement that the Board is responsible for its port corporation's commercial policy and management and that those must be carried out. This is not expressly stated or mentioned for the SSOCs, suggesting that the GOCs are intended to have a more commercial focus than the SSOCs, despite the fact that all of the SSOC Acts state that the SSOCs are to act in a commercial

manner.

The directors must act collectively as a Board and, as with any other form of company each director has a duty to act in good faith in the best interests of the port corporation, to act for proper purpose, and to act with reasonable care and diligence (Ford, Austin and Ramsay 2005). As the Board must be appointed by the Minister, there questionably is room for political bias, which may impact on the Minister's involvement in the SSOC or GOC (King 1994-1995). This will be examined more closely in the later chapters of this thesis. The legislation will also set out the powers and responsibilities of the Board and its reporting requirements, issues such as tenure and dismissal of members, as well as its responsibilities and relationship to the shareholding Ministers (Bottomley 1994). In turn, the Board has the role to develop business strategies and manage the daily operations of the government business enterprise (Bottomley 1997). Under legislation the Board will also have accountability in two directions: the first being that the management of the government business enterprise will have accountability to the Board for the performance of its functions; and the second being that the Board will have accountability to the shareholding Ministers (Jolly 2000).

5.52 The Issue of Potential Ministerial Interference

The issue of potential ministerial interference and its impact on commercial operations has been recognized for more than a century. In 1883 the *Victorian Railways Commissioners Act 1883* (Vic) (the Railways Act) was passed which established an independent board of railway commissioners that was answerable only to the Victorian parliament (Wettenhall 1983). The Railways Act was passed in response to a series of fatal train crashes in Melbourne caused, in the general view, by ministerial involvement in the design and supply of brakes, ineffective railway staffing, as well harmful ministerial intervention in the running of the railways (Wettenhall 1983). In response to the public's outrage, new legislation was drafted and enacted with the view of developing a statutory corporation to conduct government business (Wettenhall 1983). The Railways Act was a move to distance Ministers from the close running of the railways (and therefore the new statutory corporation) as they were seen as the prime

reason for the problems of the running of the railways under the previous government (Wettenhall 1983).

Whilst the literature reviewed in Chapter Two reports that the potential for ministerial intervention is a serious problem, there is no actual available empirical data on the actual extent or frequency of ministerial intervention in Australian statutory corporations (Bottomley 1997; Mantziaris 1998). The Productivity Commission has stated that around eighty percent of Australia's government-owned entities are required to publicly report ministerial directions, but that in reality formal ministerial directions are rare (Productivity Commission 2005a). As will be discussed in Chapter Six, the annual reports of the Port of Melbourne Corporation and the Victoria Government Gazette must note if the Minister for Ports for the Treasurer have issued directions to the Board of Directors under the *Port Management Act 1995* (Vic) or the *Transport Integration Act 2010* (Vic), but there is no requirement for detailed content about any direction given. In fact Mantziaris, who has studied this concept in detail, has stated emphatically that the degree of ministerial interference in Australia may not ever be measurable due to what he perceives as the "inherent methodological difficulties" in ascertaining the degree of intervention (Mantziaris 1998). The main reason for this is that some ministerial interventions can be informal communications (Mantziaris 1998). There is no requirement that these be recorded which makes them very hard to assess and regulate. Certainly the Productivity Commission interpreted the small number of formal ministerial directions as an indication that Ministers were probably passing their wishes on to the port corporation boards in an informal and non-transparent manner (Productivity Commission 2005a).

Another reason that interventions may not come to light is that they are rarely brought before the courts for arbitration, and so that those that do occur may be dealt with at the political level and therefore not recorded (Mantziaris 1998). There are no requirements that informal ministerial interventions to port corporations be recorded. One writer has suggested that it is up to a parliament to define the terms and to ensure that the Minister's powers are closely defined and made transparent (Aronson 1995).

The problem appears to be further compounded by the fact that across the jurisdictions in Australia there are no Conventions relating to ministerial intervention in Australia, so no set model has developed for this practice (Mantziaris 1998). It becomes even harder to define what informal intervention may entail, which in turn naturally makes it very hard to regulate and manage. Some insight does come from a court case heard in the Federal Court in 1997 known as *Hughes Aircraft Systems International v Airservices Australia* (1997) 146 ALR 1 (the *Hughes* Case). That case raised issues about improper communications between a Minister and the Board of a government business enterprise. The court was required to interpret the Minister's statutory powers to direct the enterprise and the extent of those powers. The Board of the enterprise in question received two letters, one from its Portfolio Minister, and one from a non-Portfolio Minister. His Honour Justice Finn ruled that the non-Portfolio Minister's letter could not be seen as a direction as that Minister had no statutory power to direct the enterprise's Board; however whilst the Portfolio Minister had a very wide power to direct the Board, his letter was not a direction as it was not formally exercised in the way that the statute had intended (Finn J in the *Hughes* Case at 75).

His Honour also gave some guidance to assist in determining whether a ministerial communication was in fact a direction. His Honour stated that if a communication could be interpreted as being akin to a direction (whether that was the stated intent or not), or it could be seen as manifesting an intent to cause a decision to be made by the Board – and it went against the statute, then it could not be interpreted as a direction (Finn J in *Hughes* Case at 75). Therefore the Minister was entitled to any and all information that the enterprise had that concerned the enterprise's affairs because this was required by the Minister in order to be accountable to Parliament (Finn J in *Hughes* Case at 74). This is a pretty broad concept and potentially opens the matter up to a lot of interpretation. In practice it appears that the Minister may intervene in the operation of the government business enterprise at any time as long as the Minister does so in a formal manner (Mantziaris 1998).

In Australia there has been no attempt to gain an overall picture of ministerial intervention in government-owned entities, no doubt because of the perceived and actual difficulties mentioned above in collecting the information. However in post-war Great Britain there was such a concern about the problem that in 1967 the British Parliament established a select committee known as the Select Committee on Nationalized Industries to investigate the issue within Britain's nationalized (public) industries. The aim of committee was to determine whether nationalized bodies were adequately responsive to Ministers (United Kingdom Parliament 1968). The report entitled "Ministerial Control of the Nationalized Industries" did reveal that ministerial intervention was a reality and it confirmed the extent of the problem (United Kingdom Parliament 1968). However it was unable to set down principles for the exercise of ministerial control and intervention, which is probably very telling as to the complexity of the problem (United Kingdom Parliament 1968; Mantziaris 1998).

The concept of Ministerial Responsibility was first examined in Australia in 1976. Although that Royal Commission related to the Commonwealth, its implications and outcomes were later adopted and implemented by the states and territories. "The Royal Commission on Australian Government Administration" was chaired by Dr Herbert C Coombs (the Coombs Report). It was a review into the national public administration and its relationship to the Commonwealth government (Royal Commission on Australian Government Administration 1976a). One of its focal points was the use of Commonwealth government statutory bodies and accountability within the Westminster system, as there was a strong concern about the use of statutory bodies including the use of GBEs, and the relationship between them and Ministers, departments and parliament (Royal Commission on Australian Government Administration 1976a; Bottomley 1994). This was the first time that there had been an examination of the use of Commonwealth statutory bodies and Bottomley (1994) wrote that the Royal Commission perceived that such bodies were created into order to deliberately create a degree of independence from the relevant minister and department (Royal Commission on Australian Government Administration 1976a).

Each Minister typically holds a few portfolios at a time, within which can be many departments and many statutory corporations, as well as other statutory bodies and non-statutory bodies. Due to this, and the fact that the Westminster system is a Convention, and not law, Parliament does not expect that Ministers have a detailed knowledge of everything that goes on within these bodies and their departments, and therefore it is not expected that Ministers have a blanket responsibility for all the decisions made or actions taken within their portfolios (Royal Commission on Australian Government Administration 1976a). It has been said that no Minister would willingly accept a blanket responsibility even it were a reality due to the impossibility of keeping such a responsibility (Emy 1976; Turpin 1994). At the very least the reality of the Convention is that Minister should keep themselves informed of the activities of and the decisions made of each statutory body within their portfolio (Wettenhall 1976). There is a protection to Ministers however, as the doctrine holds that Ministers are not responsible for the unauthorised or incompetent acts of their departments, if they could not have reasonably been aware of those activities (Turpin 1994).

It is up to the enabling legislation to define or limit the ministerial roles as much as possible (Bottomley 1994). Typically this can start at the power of direction, but in a few of the port Acts, it extends to a power of veto. In reality, it is up the individual Minister as to whether they wish to intervene in the operations of their port corporation. Some Ministers may choose to not do so, meaning that the port corporation will not experience any intervention.

All of the port Acts, as with many government bodies, have a requirement under their enabling legislation to report annually to the Parliament, via the Minister, on their activities, including their financial status (Royal Commission on Australian Government Administration 1976a). This maintains the accountability to Parliament. Often much decision-making power is given to officials within the department and some statutory bodies have the power to make decisions or rulings without intervention or contribution from the Minister. Wettenhall (1976) in his work towards the 1976 Royal Commission certainly found that in reality, often it was the officials in the statutory bodies that were

making the decisions with the Minister then being informed of those decisions so that he or she could give ministerial approval. In practice, Ministers are deemed to be responsible for any serious errors made by any department within their portfolio, or for any serious personal error made by them in the exercise of their duties (Royal Commission on Australian Government Administration 1976a).

5.53 Government and Commercial Enterprises

Grantham (2005) has questioned whether GOCs can act under the same commercial imperatives as their private sector equivalents. There are significant obstacles to replicating the sort of market-based governance devices available to the private sector as these obstacles reflect both the structural inadequacies of the SSOC and GOC models and the inherent features of the markets within which they operate. These severely undermine the extent to which these corporatized entities can deliver the sought goals of efficiency and accountability (Grantham 2005). One factor that does prevent many from operating within the same competitive forces as private sector companies is the fact that many SSOCs and GOCs are effective monopolies (Farrar and McCabe 1995; Grantham 2005). This lack of competition means that product markets have little or no disciplining effect upon the management of corporatized entities which in turn can affect their efficiency, as argued in Chapter Four (King 2002). Private sector companies, especially ones that are not monopolies are usually subject to competitive forces which are instrumental in producing efficient products or services, as well as having the tendency to lower prices (McDonough 1998).

GOCs that are created pursuant to the *Corporations Act 2001* (Cth) are not listed on the stock exchange because government is the sole shareholder and existing port legislation does not allow for the sale or trading of shares in port corporations. This is different to the situation in New Zealand where shares in port authorities have been sold to other entities while government holds a share of the port authority (Everett, Weston and Pettitt 2007). Taggart (1991) suggests that imitating the private sector corporate form may not be sufficient to capture benefits of the successful private sector operations. In a GOC, the monitoring mechanisms may not exist and shares are not transferable (Grantham

2005). Furthermore there is no likelihood of insolvency as they are owned by government and the government, in most instances, has an interest in keeping them operating (Sprott 1998). There are further differences between private enterprise and GOCs: despite the fact that the GOC model has been employed, the expectation continues to persist that more is expected of the state operation compared with the private sector operation (Taggart 1991).

5.6 CONCLUSION

This chapter has discussed the models of reform implemented in Australian ports. Corporatization has been the most widespread mechanism of port reform and persists as part of an ongoing quest by Australian governments to reform the port sector. The two main corporatization models, the Statutory-State Owned Corporation (SSOC) and the Government-Owned Corporation (GOC) were examined and investigated.

The next two chapters will comprise of the case studies: Chapter Six will examine a SSOC port corporation whilst Chapter Seven will examine a GOC. These studies will demonstrate that effective corporatization requires legislation that provides a framework for an appropriate and market-oriented business entity to be set in place in order to achieve the aims and objective of corporatization.

The next chapter contains the first case study for this thesis, the Port of Melbourne Corporation. It will examine the history, the structure and the reforms of that port within the context of economic reform.

CHAPTER SIX - THE PORT OF MELBOURNE: A CASE STUDY

6.1 INTRODUCTION

Chapter Five examined the corporatization frameworks in place in Australian ports. This chapter will examine the Statutory State-Owned Company (SSOC) model in place for Australia's largest container port the Port of Melbourne which is located in the Victoria. In particular, it will examine and evaluate the reforms that have been implemented from the 1990s and conclude by addressing the research questions.

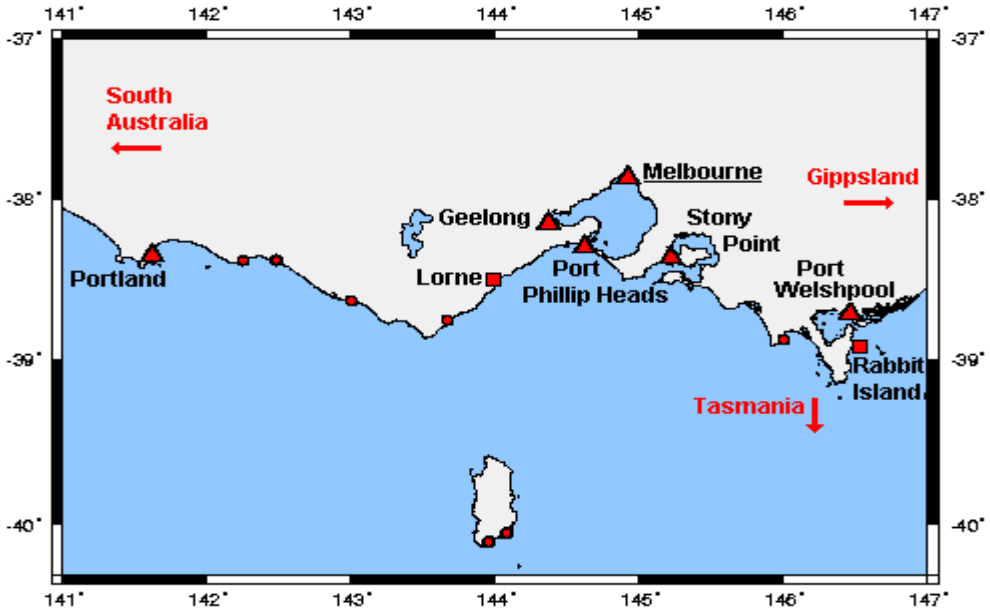

Figure 6.1 Map of Victoria showing the location of Melbourne, Geelong and Portland

Source: Australian Government Bureau of Meteorology (2013).

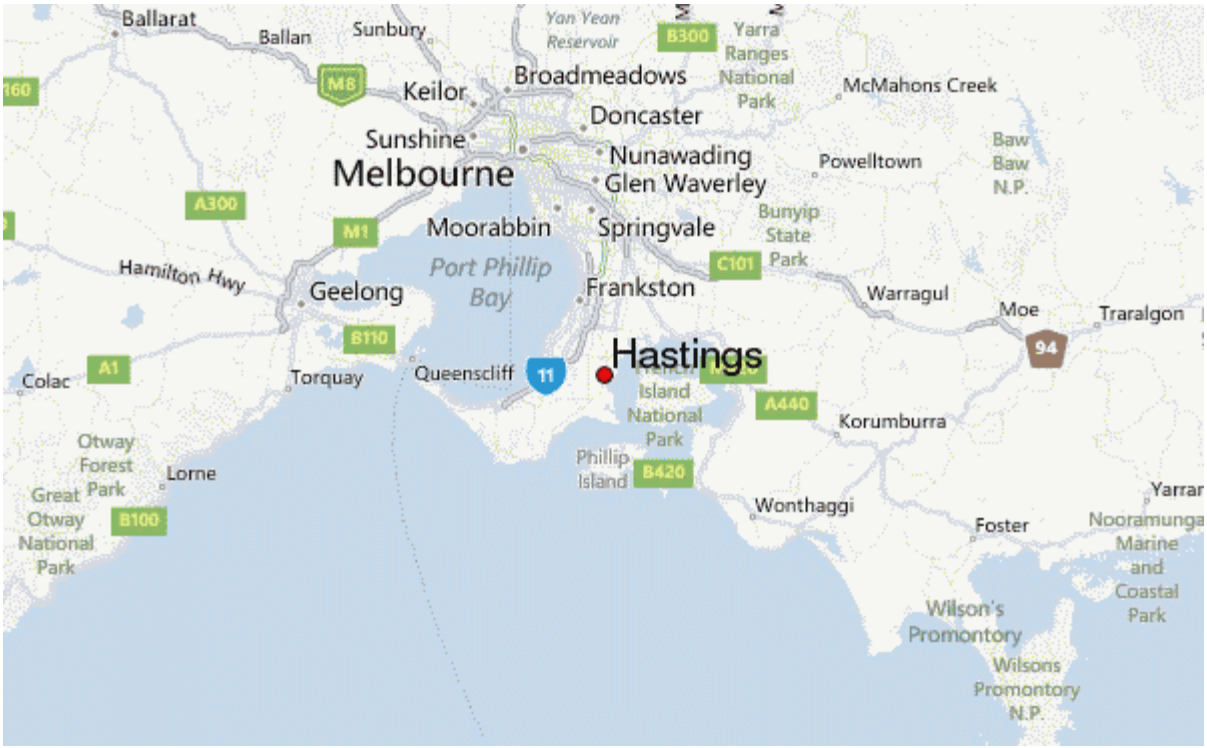

Figure 6.2 Map of Victoria showing the location of Melbourne, Hastings and Geelong

Source: Weather Forecast (2014).

The Port of Melbourne is located in the State of Victoria and covers around 510 hectares of land. Along with the ports of Geelong, Hastings and Portland, it is one of Victoria's four commercial ports (Figure 6.1, 6.2 and 6.3). It is Australia's largest and busiest port handling around 37% of Australia's container trade and general cargo each year. The containerized cargo passing through the port includes timber, paper and iron, whilst the non-containerised cargo handled includes motor vehicles, crude oil and petroleum. The port has two purpose-built international container terminals as well as 34 general berths and several specialised berths which handle cargo such as motor vehicles and bulk liquids. The Port of Melbourne processes both imports and export cargo with China being its main import and export market, followed by New Zealand, the United States of America and Japan.

6.2 REFORMING THE PORT OF MELBOURNE

This thesis has already argued that the corporatization and privatization of Australia's ports has followed global reform trends (Everett and Pettitt 2006). The reforms to the Port of Melbourne in the 1980s and early 1990s emerged from two directions: the perceived urgency to achieve significantly improved efficiency in Victoria's ports and from the need for governments to rationalize structures and budgets. Government-owned commercial operations, such as ports, came under particular scrutiny in this period for their poor performance and financial returns (Russell 2001). In 1988/89 for example, the Melbourne Port Corporation incurred a $7.9m loss on Operating Profit before Tax (Appendix One Table A1.1). Port authorities were in a difficult position: as Victoria's cargo handling agencies they were expected to deliver operational efficiencies to their key players and stakeholders, but as statutory authorities they were expected to conform to Treasury, ministerial and parliamentary demands for financial viability (Everett and Robinson 1998a).

Victoria is located in the south-east corner of the Australian mainland and has four commercial ports: Melbourne, Geelong and Hastings which are all located around Port Phillip Bay and Portland which is located on Victoria's south-western coast close to the South Australian border. In August 1994, the Victorian government announced that these four Victorian commercial ports would be privatized (Crisp 1994b). However, following intense opposition to the proposed sale of the Port of Melbourne, the government revised its strategy by adopting a dual-policy approach whereby the ports of Melbourne and Hastings would be corporatized, whilst the ports of Geelong and Portland would be privatized (Crisp 1994a; Farynski and Crisp 1994). The implication of this policy was that the Port of Melbourne would become a public sector landlord with responsibilities for land only within the port boundary (Galbraith 1994; Everett and Robinson 1998a). Under the reforms the ports of Geelong, Portland and Hastings the onshore assets would be sold, whilst underwater assets and associated navigational controls for these ports would be retained as public property (Everett and Robinson 1998a).

In 1995 the Victorian government implemented major port reforms with the passing of the *Port Services Act 1995* (Vic) (the 1995 Port Act). In 2010 this Act was re-named the *Port Management Act 1995* (Vic). This Act both repealed the previous Acts that established the old port authorities and most importantly implemented corporatization. The Port of Melbourne was corporatized as a SSOC, the regional ports of Geelong and Portland were privatized, and at the Port of Hastings a dual approach was set in place whereby the government retained ownership of the port converting it to a SSOC and outsourced its operation and management functions to private enterprises. As a SSOC under the 1995 Port Act, the Port of Melbourne would remain fully-owned by the Victorian government but undergo a major corporate restructure, which will be examined later in this chapter.

Under its new corporatized structure, the Port of Melbourne became a landlord port, transferring its commercial operations to the private sector (Office of State Owned Enterprises 1995). Its commercial operations and facilities such as berths were leased out to private operators who ran their businesses at the port (Office of State Owned Enterprises 1995). This was markedly different from the role of the Port of Melbourne Authority, the port's previous statutory authority which had responsibility for all of the basic port functions, such as pilotage, pollution control and marine safety (Everett and Robinson 2007). Due to the fact that it became a SSOC, the Port of Melbourne and its port authority were not subject to the provisions of any general incorporation Act, such as the *Corporations Act 2001* (Cth), but to the provisions of the 1995 Port Act as passed by the Victorian parliament.

Prior to the 1995 Port Act, three Acts of Parliament regulated Victoria's four main ports - the *Port of Melbourne Authority Act 1958* (Vic) (for both the ports of Melbourne and Hastings), the *Port of Geelong Authority Act 1958* (Vic) (for Geelong), and the *Port of Portland Authority Act 1958* (Vic) (for Portland). In 1997 these three Acts were repealed by the *Port Services (Amendment) Act 1997* (Vic) which amended the 1995 Port Act so that it would cover and consolidate the running and regulation of the four ports.

Under the Guiding Principles for Victorian Port Reform an environment would be created whereby:

- Competition was encouraged and conditions where services would be provided by the most cost-effective provider;
- Asset ownership would rest with the party most able to make best use of the asset;
- The private sector would have the predominant role in commercial service provision and port investment; and
- Non-commercial activities would be separated from commercial activities.

(Department of Infrastructure 2004a).

The 1995 Port Act also divided the responsibilities of the Port of Melbourne Authority into three newly formed statutory authorities:

- *The Melbourne Port Corporation* (MPC) which would act as the landlord of the Port of Melbourne and manage its assets;
- *Channel Corp* which was responsible for the Melbourne, Geelong and Port Phillip channels, thus minimizing the risk of cross-subsidization between the onshore and channel activities. Channel Corp's responsibilities included harbour control, dredging and the provision of navigational aids; and
- *The Melbourne Port Services* which would have responsibility for the provision of ancillary services within the Port of Melbourne, such as cleaning, docking and security.

(Everett and Robinson 1998a).

The restructure meant a significant refocus for the corporation from one which included a wide range of tasks to a narrow role centred almost exclusively on property management (Everett 2003a). The reforms also created a new statutory authority, the Victorian Channels Authority (VCA) on 1 July 1995, which had responsibility for harbour control in Port Phillip and Corio Bays. Its responsibilities also included dredging and maintaining channels, as well as providing navigational aids (Office of State Owned Enterprises 1995). This meant that a port corporation was created which

was essentially a property manager.

In addition, an economic regulatory regime was established with the responsibility for the monitoring and setting of pricing, the investigation of pricing complaints, and dealing with any abuses of market power (Office of State Owned Enterprises 1995). Associated with this policy was the separation of commercial from non-commercial assets. Victoria's fourteen Associated Ports which were essentially servicing fishing and pleasure crafts would be separated from the commercial ports and in addition, non-core port assets, such as the World Trade Centre in Melbourne, would be sold (Office of State Owned Enterprises 1995).

6.3 THE NEW CHANNEL CORP AND THE PORT OF MELBOURNE: A SPLIT PORT

Whilst the Port of Melbourne's landside assets were either corporatized or privatized, government policy determined that underwater assets, such as the channels, would remain in public ownership (Office of State Owned Enterprises 1995). In relation to the ports of Melbourne and Geelong there are certain channels that provide the sole means of access to both ports (Figure 6.3). As these two ports compete for certain cargoes such as grain and containers, it was deemed inappropriate that either port operator should control the channels and have input in determining shipping movements to either of the competing ports (Office of State Owned Enterprises 1995). This necessitated the creation of the Channel Corp under the 1995 Port Act which would be an independent body to carry out this role.

The restructure of the Port of Melbourne established a port model in which the port authority was expected to emulate a private sector business in accordance with the aims of the 1995 Port Act. In effect this resulted not only in the creation of a split port, but the port authority was stripped of many traditional functions including powers of regulation and price-setting, as responsibility for other essential port services such as control of the waterside and channels (Everett and Pettitt 2006). The Office of the Regulator-General took over responsibility for price-setting and price-related issues,

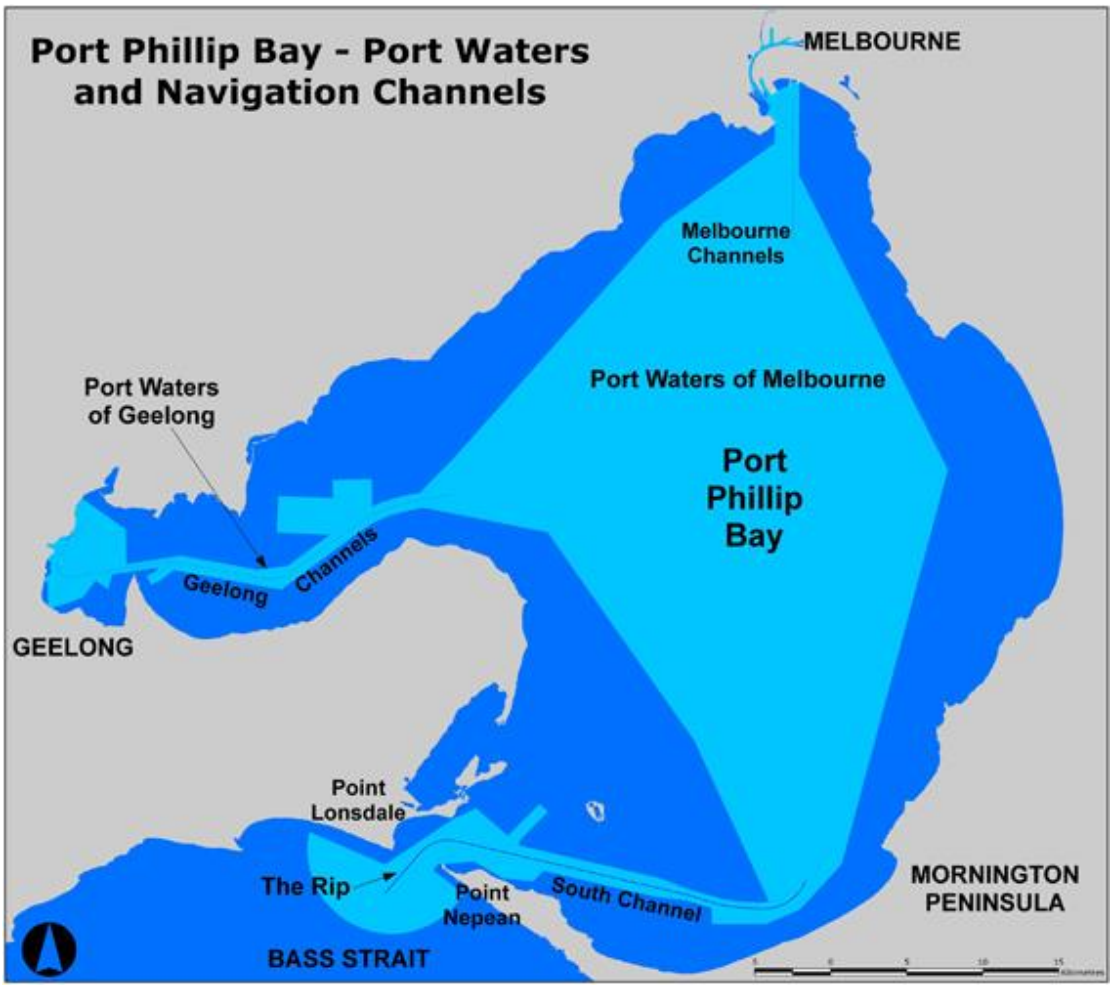

Figure 6.3 Port Phillip Bay – The Port Waters and Navigation Channels of the Port of Melbourne and the Port of Geelong

Source: Port of Melbourne Corporation (2011).

such as price monitoring, the setting of maximum price levels and facilitating third party access to the ports (Office of State Owned Enterprises 1995).

The purpose of an access regime to allow third parties access to the ports ensured access to the facility on a fair and equitable basis. On 1 January 2002 the role of the Office of Regulator-General was taken over by the Essential Services Commission (ESC) under the *Essential Services Commission Act 2001* (Vic). The ESC remains in that role at the time of writing. The Victorian Department of Infrastructure (DOI) assumed the port

planning role, whilst the Victorian Department of State and Regional Development (DSRD) assumed responsibility for trade facilitation (Russell 2001). In addition, port policy, formerly the responsibility of the Minister for Transport was transferred to the Treasurer (Everett and Pettitt 2006).

This strategy was determined as there was relatively little competition between the Victorian ports and the export transport and supply chains generally possessed relatively low levels of competition with many services such as stevedoring and towing provided by monopoly or duopoly providers (Office of State Owned Enterprises 1995). The Victorian government therefore believed that an economic regulatory regime was needed to cover much of the transport chain so that opportunities to capture excessive profits at the expense of port users were not exploited (Office of State Owned Enterprises 1995).

6.4 THE REFORM AGENDA

By the end of the 1990s questions were being raised about the effectiveness of the 1995 reforms. The MPC was proving to be too large, too inefficient and no longer focused on its business of trade due to diffusion by other responsibilities (Department of Infrastructure 2004a). The institutional arrangements under the 1995 reforms were also seen to have contributed to a neglect of strategic issues and to constrain funding for public investment (Department of Infrastructure 2004a).

In 2001 Professor Bill Russell was commissioned by the Victorian government to prepare a review of the 1995 reforms (Russell 2001). His assessment of the 1995 reforms was that '…the Port of Melbourne was in many ways constrained rather than enhanced by the previous port reforms. Public investment in the port fell away, responsibilities for management were fragmented and the human resource base eroded, safety and environmental management were downgraded and there were few structures or opportunities for public or industry input to decision-making.' (Russell 2001). He further argued that the 1995 port reforms, whilst fulfilling competition policy targets, did not deliver widespread economic, social or environmental benefits to Victorians (Russell 2001).

Russell's review made key recommendations, one of which was that there should be a single integrated port authority which also had the capacity for strategic planning, public investment in landside and waterside assets, and explicit safety and environmental responsibilities (Robinson 2005). This was the death-knell for the split port model. Other key recommendations were that the Port of Melbourne required a capable and integrated manager and facilitator of both landside and waterside aspects of the port, with an appropriate vision and charter, and the capacity to ensure that the necessary major investments in channels, landside and waterside infrastructure occurred when needed (Russell 2001). In other words, the 1995 reforms had not granted the desired outcomes meaning further reform was needed.

As already argued, as a result of the split port model, essential port functions were neglected. It was difficult under that model to determine who would benefit from particular actions and which entity had the resources to implement them. Channel deepening, for example, was seen to be essential if the Port of Melbourne was to retain its prominent position as the largest container port in Australia, capable of handling Post-Panamax size vessels. A major dilemma occurred however over the issue of responsibility under the 1995 Act. The MPC had the resources to undertake the channel deepening and the upgrade, but it did not have the authority to deliver channel deepening, as that had been transferred to the VCA (Everett 2005b). The VCA, on the other hand, did have the charter to undertake channel deepening, but neither it nor the MPC had the resources to implement the strategy, nor the means of recouping the capital expenditure (Everett 2005b). This was therefore the dilemma.

The difficulties and anomalies associated with the creation of a split port led to further reform and the enactment of the *Port Services (Port of Melbourne Reform) Act 2003* (Vic) which introduced changes to the 1995 Port Act. It abolished the MPC in July 2003 and created the Port of Melbourne Corporation (PoMC). Under this new legislation the split port model was abandoned and the land and waterside of the port were once again integrated. The PoMC remained a landlord and so would provide the land, water and infrastructure necessary for the development and operation of the Port of Melbourne (Robinson 2005). The main functions of the new PoMC were to plan for the

development and operation of the Port of Melbourne, to manage land within the port area, construct infrastructure within that area, and make that land and infrastructure available to port service providers.

The new reforms also abolished the separate authority Channel Corp and gave the PoMC control of the channels servicing the Port of Melbourne and not those of the Port of Geelong. The management and commercial navigation of the channels in the Geelong port waters was invested in a new entity, the Victorian Regional Channels Authority (VRCA) (Victorian Regional Channels Authority 2006). The VRCA had no role in relation to the Port of Melbourne or the PoMC meaning that neither port had any control over the channel waters of the other.

The revised 2003 port structure would provide and integrate land and port operation and was intended to provide many improvements including an enhanced ability to drive efficiencies across the land and water logistics chain; a greater ability to market the port as a global player; and increased efficiencies associated with reduced management overheads which would allow for the freeing up of resources for delivery of the new strategic objectives (Port of Melbourne Corporation 2004). The reforms also returned to the PoMC the charter to promote and market the Port of Melbourne. The Port of Melbourne port was no longer to be seen as an isolated precinct but an integral part of a supply chain with the responsibility to facilitate the integration of infrastructure and logistics systems in the Port of Melbourne (Port of Melbourne Corporation 2004).

6.5 THE CURRENT LEGISLATION AND AIMS

The previous sections of this chapter have discussed the practical changes that the 1995 and 2003 reforms brought. In this section, the current legislation which incorporates the 2003 changes will be examined. The PoMC is still operating under the SSOC framework. In 2010 the 1995 Port Act was amended so that most of the PoMC's regulation and operation was transferred to the *Transport Integration Act 2010* (Vic) (2010 Transport Act). This Act consolidates the control of Victorian transport under one Act. The 1995 Port Act still remains in operation and retains jurisdiction over matters such as port licence fees, the regulation of port services and the reservation and transfer

of land for port use.

Under Section 3 of the 2010 Transport Act the PoMC is defined as a Transport Corporation and Section 142 creates it as a body corporate with perpetual succession and other powers of corporations such as the power to sue and be sued and the power to acquire real property. The 1995 Port Act established the objectives and functions of the PoMC. These have been transferred to Section 141D of the 2010 Transport Act which still stresses the commercial nature of the PoMC. The objectives of the PoMC include integrating the Port of Melbourne with the Victorian transport system, facilitating the growth of trade and ensuring that the essential services of the port are available and cost-effective. The functions of the PoMC under Section 141E also stress the commercial intentions as they include planning for the development of the Port of Melbourne, promoting and marketing the port and operating in a commercially-sound manner. Therefore the 2010 Transport Act follows on from the 1995 Port Act by stressing the Victorian government's commercial intentions for the PoMC and the Port of Melbourne.

The driving objective for port corporatization has been the creation of an effective and efficient business that is commercially successful (Explanatory Memorandum, Port Services (Port of Melbourne Reform) Bill 2003 (Vic) 23). The legislative framework adopted by the Victorian government in the 1995 Port Act was radically reformed by the 2003 amendments and then continued under the 2010 Transport Act. Clearly one of the intentions behind it was to create a more efficient port corporation than had been permitted under the 1995 reforms.

Under the 2010 Transport Act the objectives and the broader charter of the PoMC continue to be solely determined by the Victorian government as they were under the 1995 Port Act. The PoMC has no right of input into these matters nor does it have any right of input into the composition of its Board. The composition of the Board is determined solely by the Minister for Ports with the Treasurer's approval. It has been argued that the PoMC is no longer structured to fulfill a public utility function, although it does continue to have social and environmental responsibilities (Everett and Pettitt 2006). It is clear however from the 2010 Transport Act that the Port of Melbourne is to

continue to operate as a commercial government-owned business.

What powers and resources does the PoMC have that enabled this to be successfully undertaken? The PoMC as a landlord operator has outsourced terminal operations to two stevedoring companies under long-term leases, and depots and Inland Container Depots in landside operations are privately-owned, as are trucking and shipping operations (Robinson 2005). It has no input into pricing and investment decisions as these are made by government agencies. In fact there is no room for the PoMC to have much input into its own operations under the 1995 Port Act or the Transport 2010 Act.

As previously argued, the objective of reform was initially to distance government and the Minister from daily operations of the PoMC. However the government is clearly still involved in the operation of the PoMC under the 2010 Transport Act, just as it was under the 1995 Port Act. The powers of intervention have been curtailed as the Treasurer no longer has the power of direction: this power is retained solely by the Minister for Ports. Under the 1995 Port Act the Minister for Ports was pivotal to the port's daily operations and this has not been changed under the 2010 Act.

In July 2007 the ESC, as the regulator of Victorian ports, announced it would conduct an enquiry into the impact of port planning on competition for container stevedoring services in Victorian ports. The Minister for Ports indicated that the review would ensure that operational efficiencies through the port were achieved at 'the appropriate use of competition in port services, particularly in relation to container stevedoring and related services' (Lloyd's List DCN Online 2007a). It was revealed that while the focus of the review would be the Port of Melbourne, the review would also consider the potential role of the Port of Hastings as a future location for container stevedoring activities. To date, despite reviews, corporatization still remains in place in Victoria.

6.6 THE ROLE OF THE SHAREHOLDING MINISTERS

The 2010 Transport Act sets out the Minister for Port's two main powers in relation to the running of the PoMC. These are the power to appoint the Board of Directors and the power to issue directions to the Board. Under Section 143 the PoMC must have a Board

of Directors, which is responsible for the daily operations of the PoMC and it must consist of between three and nine directors whose role is to manage the PoMC's affairs and exercise its powers. In accordance with Section 145 the Governor in Council appoints the members of the Board on the recommendation of the Minister for Ports after consultation with the Treasurer. Each member has tenure of three years which is renewable at the end of each term.

The Minister for Ports' powers of direction stem from two sections of the 2010 Transport Act. These powers have not changed from the 1995 Port Act. The first power of direction is established under Section 141H and it grants the Minister power to issue directions, with the Treasurer's approval, to the Board to perform functions that the Minister considers to be in the public interest, even if it causes the PoMC to suffer financial detriment. There is no evidence available that a direction has been issued under Section 141H which has caused financial detriment to the PoMC.

The second power of direction is equally as broad and is contained in Section 163. It gives the Minister the power to make directions to the Board that must be followed. The Board must follow any direction which the Minister issues to it. General directions can be made solely by the Minister. However if the Minister wants to give the Board a specific direction, the Treasurer must first approve of that direction before it is issued. The Act does not define what constitutes a general or specific direction. In order to make the giving of directions to the Board transparent, any direction given must be published in the Victoria Government Gazette and the PoMC's annual report each year along with the Board's response (Section 164(1)). The 2010 Transport Act does not state that the Minister must not make a direction that is inconsistent with its objectives or those of the PoMC. This was however stated under Section 30 of the 1995 Port Act meaning that the 2010 Transport Act provides the Minister with a wider power to issue directions. However as the Minister's directions must be included in the Victoria Government Gazette and the PoMC's annual report under Section 164(1)(a), it is likely that any direction that was inconsistent with the objectives of the PoMC or the 2010 Transport Act would face scrutiny from the Victorian parliament after it receives a copy of the annual report. The 2010 Transport Act does not state whether the direction would

stand if it were inconsistent with either of these. As will be discussed later in this chapter, there have been no instances of Ministerial Intervention under the 2010 Transport Act between its enactment and 2010/11. There have however been three instances of Ministerial Intervention under the Section 30 of the 1995 Port Act between 1988/89 and 2009/10. These interventions are detailed in Table 6.5 and show that two interventions relate to an extension of a lease over port land and that there was no content recorded for the third intervention.

The main operational change between the 1995 Port Act and the 2010 Transport Act affecting the PoMC is that the Treasurer no longer has the power of direction to the PoMC in relation to non-financial matters. Under the 1995 Port Act this power was contained in Section 38 of the 1995 Act. The main power that Treasurer has is to review any direction that the Minister for Ports issues to the Board of the PoMC, such as under Section 141H and any special direction that the Minister for Ports wishes to give to the Board under Section 163(1)(a). The Treasurer must also approve the Minister for Ports' recommendations for Board members of the PoMC under Section 145. Therefore there is only one Minister who can directly intervene in the operations of the PoMC under the 2010 Transport Act.

6.7 THE INDEPENDENCE OF THE BOARD OF DIRECTORS

The current Board of Directors is comprised of nine members with one also being the Chairperson. When considering the Board, the question arises as to how independent the members of the Board are from the Victorian government. This is particularly poignant as the Board members are appointed by the Minister for Ports after consultation with the Treasurer, both of whom are members of the government. This raises the further question of whether the government would appoint board members who appear sympathetic with the government's policies. The very fact that Board members are appointed by the government of the day arguably makes it hard to escape the conclusion that no matter how independent an individual director appears to be, they are still political appointments.

The main duty which any director has whilst serving on the Board of a port corporation is to avoid a conflict of interest between the port corporation's interests and their own personal interests (OECD 2013). The collective Board must exercise independent judgment and ideally be structured so that it has a proper understanding and ability to deal with the current and emerging issues of the business (Productivity Commission 2009). Directors are typically appointed for the skills and experience which they possess and can bring to their role as a Board member.

In order to determine the independence of an individual director, a set of guidelines or criteria must be created. Section 79 of the *Public Administration Act 2004* (Vic) provides directors of the PoMC with guidelines on how to perform their duties, but it does not provide guidelines on what constitutes an independent director. Under Section 79, a director must perform his or her functions honestly, in good faith and in the best interests of the PoMC with integrity in a financially responsible manner with a reasonable degree of skill and care. That section also requires them to act in compliance with the 2010 Port Act and any other relevant legislation or subordinate instrument. The ability to make independent decisions is a basic requirement for an effective board (Productivity Commission 2009). An independent board typically operates under a legal framework which is subject to public governance (OECD 2013).

A set of criteria has been compiled, based on those from the ASX Governance Council (2007) and the OECD (2013) to determine if any of the PoMC Board members could be considered to be an independent Board member. For the purposes of the criteria below, a related entity includes the Victorian government.

The criteria are that the Board member:

(1) Does not represent any particular stakeholder interest in relation to the PoMC or a related entity;
(2) Is not a shareholder or a stakeholder of the PoMC or a related entity;
(3) Has never been employed by the PoMC or a related entity in an executive capacity or if they have been employed so, there has been at least three years between ceasing employment and their appointment to the Board;

(4) Does not currently receive any remuneration from the PoMC or a related entity, except in relation to their duties as a Board member; and
(5) Has no contract with the PoMC or a related entity except as a Board member.

The Board is currently composed of nine directors: Mark Birrell (chairperson), James Cain (deputy-chairperson), Jay Bonningham, David Cramwell, Des Powell, Ian Robin, Meredith Sussex, Janice van Reyk and Frank Williamson. In relation to the above criteria, each of the directors satisfies (1), (2), (4) and (5). Jay Bonningham, David Cramwell, Ian Roberts, Janice van Reyk, Meredith Sussex and Frank Williamson can all be considered independent as they satisfy all five criteria. Mark Birrell can also be considered an independent appointment. Although he was an elected Liberal member of the Victorian parliament from 1983 until 2002 he has never been employed by the PoMC and his affiliations with any organizations linked to the Victorian government ended more than ten years ago.

The remaining two members James Cain and Des Powell have never been employed by the PoMC but they do have current links to Victorian government. This means that they cannot be considered to be independent from the Victorian government. James Cain is a member of the Board of VicTrack which is a state-owned enterprise and agency of the Victorian government. Des Powell is the current Victorian Commissioner for Gambling and Liquor Control which is a political appointment as the Victorian Commission for Gambling and Liquor Control is an independent statutory body of the Victorian government. He is also the Chairperson of the Alpine Resorts Coordinating Council which is also a government appointment as the Council is a statutory body which reports to the Victorian Minister for Environment and Climate Change.

6.8 PORT OF MELBOURNE CORPORATION PERFORMANCE DATA

So far this thesis has relied upon the existing literature contained in Chapter Two to examine the SSOC model. Relying solely on the existing literature is problematic as it makes little reference to any financial or operational performance data or indicators to support its many contentions. This makes it very difficult to draw any firm conclusions about the performance of ports and their corporatized port corporations.

Port entities such as the PMA, MPC and the PoMC typically record performance data on a daily basis for their business operations. The compiled data for each financial year is then reported in its annual reports. The Australian financial year runs from 1 July until 30 June each year. The main types of data recorded in the annual reports are financial and non-financial (or operational) measurements. The financial measurements recorded include Operating Revenue and Operating Profit before and after Tax. The non-financial measurements recorded include the amount of cargo in terms of the number of containers and the weight of cargo passing through the port in any given year. The data from these measures was then used to calculate performance indicators by which to gain a picture of performance and to assist in the planning for future projects.

The data which was used to calculate the performance indicators was obtained from the annual reports of the Port of Melbourne Authority (1988/89-1994/95), the Melbourne Port Corporation (1995/96-2002/03) and the Port of Melbourne Corporation (2003/04-2010/11). In this chapter the average values for each time period are presented in Tables 6.1-6.4 and 6.6-6.9. The full data for each time period in contained in Appendix One.

Whilst it is true that due to various legislative changes over time the Melbourne Port Authority, the Melbourne Port Corporation and the Port of Melbourne Corporation are not the same structural entity, the data from their annual reports can still be examined to gain an insight into the Port of Melbourne's operations from 1988/89 until 2010/11. This range of years was chosen to give a clear indication of performance in the port's pre- and post-corporatization eras. The data from the PoMC's annual reports was obtained from the PoMC's website, whilst the data for the PMA and MPC came from annual reports which were only available in hard copy format. The data for 1995/96 will not be used as the only data available was for the period 1 March 1996 to 30 June 1997, being sixteen months. That data has been retained in the tables in this chapter but is shown in bold italics to give an indication of what was recorded for that period.

It is necessary to clearly define the performance data and performance indicators that will be used in this chapter. Tables 6.1-6.4 will present the average values for each time

period for the performance data, whilst Tables 6.6-6.9 will present those for the performance indicators. The full data sets are contained in Appendix One. This thesis will use both financial and non-financial performance data to answer the research question for the PoMC.

Financial Performance Data

Operating Revenue: Revenue includes the port entity's incomes from its normal core business operations such as wharfage (charges on good passing through the port). Operating Revenue is the port entity's revenue as well as rent and licence fees, charges on channel usage, charges on berth hire and other services at the port

Operating Profit before Tax: The port entity's sales revenue from its normal core business operations before taxation amounts are deducted. Operating Profit does not include profits earned from the PoMC's investments or the effect of interest or taxes

Operating Profit after Tax: Operating Profit before Tax minus taxation

Total Assets: The sum of current and non-current assets.

Net Assets: The amount of Total Assets minus any liabilities on those assets

Total Cost Operating Revenue minus Operating Profit before Tax, Depreciation and Interest charges. This is the port entity's investment in the services that they offer to customers

Non-Financial Performance Data

TEU: The Twenty-Foot Equivalent (TEU) is the standard unit for measuring a ship's

cargo-carrying capacity or a shipping terminal's cargo handling capacity. The TEU measures the amount of cargo passing through a port in any given year and is based on the volume of a twenty-foot long container which can be transported on ships. One TEU represents the cargo capacity of a standard intermodal container (20 feet long by 8 feet wide)

Mass Tons: The measure used to represent the weight of cargo passing through the port in any given year.

From the performance data collected several performance indicators were calculated which are summarized below. They were chosen so that both financial and non-financial performance could be assessed. A **performance indicator** measures the efficiency with which an organization achieves its operational goals and helps it to assess its progress towards them (Tull and Reveley 2001). A **financial performance indicator** contains measurements of financial performance such as the financial value of the port corporation's profits, whereas a **non-financial performance indicator** contains measurements related to other aspects of the port's performance such as throughput of cargo passing through the port. Whilst financial performance indicators can give an indication of an organization's performance in any given year, non-financial performance indicators can be used to forecast future financial performance and progress towards long-term goals.

Using the performance indicators generated below was not the only possible approach available to measure the efficiency of the port corporation in achieving its operational and financial goals. However there was limited data recorded in the available material on the performance of the PMA, MPC and PoMC. This in turn meant that there were constraints on the choice of possible approaches utilized to measure efficiency in this thesis. As this thesis had a major focus on the financial performance of port corporation's performance indicators generated and used which would assist in that analysis.

Financial Performance Indicators

Return on Assets (RoA): Measures the level of return the port entity generates per unit of asset investment prior to any financial effect.

Return on Equity (RoE): Measures the level of return the port entity generates per unit of equity investments prior to any financial effect.

Non-Financial Performance Indicators

Operating Revenue per TEU/ Mass Ton: A financial efficiency measure used to measure the amount of revenue that can be generated for every TEU/Mass Ton moved.

Operating Profit before Tax per TEU/Mass Ton: An indication of the efficiency of the operations of the port entity which measures the amount of profit which can be generated from the movement of one TEU/Mass Ton.

Total Cost per TEU/ Mass Ton: An indication of the efficiency of the operations the of port entity which measures the cost to the port entity of moving one TEU/Mass Ton of cargo.

Assets per TEU/Mass Ton: A measure of the efficiency of the port entity's operations.

Price per TEU/Mass Ton: An indication of the efficiency of the operations of the port entity which measures the price of moving one TEU/Mass Ton of cargo for a port user. Price is the amount which customers must pay to purchase services such as wharfage (which allows the right for customers to pass through the Port of Melbourne). Price must exceed cost in order for the port entity to make a profit. For the Port of Melbourne price is reported in Australian dollars (AUD).

6.9 ADDRESSING THE RESEARCH QUESTIONS

The research questions to be addressed in this chapter using the Port of Melbourne as a case study are:

(1) Does the legislation under the SSOC framework distance government from the daily operations of the PoMC and free it from political control?

(2) Does the legislation under the SSOC framework provide the conditions which create an effective legislative framework that enables the PoMC to respond to the forces of the market?

These questions will be investigated separately in order to analyse and answer them both in detail. To assist in answering the questions, the performance indicators from operations at the Port of Melbourne spanning the financial years of 1988/89-1994/95 and 1996/97-2010/11 will be analysed. The raw data used is contained in Appendix One, whilst the data presented in Tables 6.6-6.9 later in this chapter contain the average values for each time period. **The data for 1995/96 will not be used as the only data available was for the period 1 March 1996 to 30 June 1997, being sixteen months. That data has been retained in the tables in Appendix One and is shown in bold italics to give an indication of what was recorded for that period. The data for 1995/96 is not contained in Tables 6.1-6.4 and 6.6-6.9.**

The MPC commenced operations on 1 March 1996 and the PMA ceased operations as per the new 1995 Port Act. As discussed in Part 6.2 of this chapter, the PMA was dissolved and divided into three new statutory authorities being the MPC, Channel Corp and Melbourne Port Services. Under the dissolution of the PMA its assets and operations were also divided up between the three new statutory authorities. The first reporting period for the MPC was the sixteen months ending 30 June 1997 as determined by the Treasurer. The implication of this is that there was no data provided for the 1995/96. Another reason why the data from that sixteen month period could not be used was because the data from the first thirteen months related to the operations of the PMA and not the MPC. A third reason to explain why the data could not be used

was that due to the division of the assets and operations of the PMA, it was not the same organisation as the MPC.

Data anomalies

An examination of the data used to obtain the average values in in Tables 6.1-6.4 reveals several anomalies. A summary of the explanations for the data anomalies from the annual reports is contained in Appendix Two. The most prominent anomaly has already been discussed, being the results for 1995/96 as no data was available specifically for that financial year. In the year 2005/06 the PoMC received an income tax benefit of $6.2m which accounted for its Operating Profit after Tax exceeding its pre-tax Operating Profit. The common reasons cited in other years for anomalies were contained in the relevant annual reports and include increases or decrease in trade, increased wharfage charges, reductions or increases in expenditure, the payment of dividends, as well as the global financial crisis. This shows that there are a variety of factors which can contribute to a port's performance each financial year, although it is impossible to determine to what extent each factor contributed. None of the annual reports cited the entity's legislative model as a factor in the variations or the results in the data. In the absence of other evidence, what can be concluded however is that as the legislative model was not mentioned it, is unlikely that any of the three port corporations considered it to be having an impact on the Port of Melbourne's performance.

Table 6.1 Average Operating Revenue, Average Operating Profit before Tax and Average Operating Profit after Tax (1988/89-2010/11)

Financial Year	Average Operating Revenue ($M)	Average Operating Profit before Tax ($M)	Average Operating Profit after Tax ($M)
1988/89-1994/95	148.8	22.5	33.9
1996/97-2002/03	83.3	32.5	20.4
2003/04- 2010/11	167.24	40.81	31.41

Table 6.2 Average Total Assets and Average Net Assets (1988/89-2010/11)

Financial Year	Average Total Assets ($M)	Average Net Assets ($M)
1988/89-1994/95	517.1	150.1
1996/97-2002/03	580.9	464.3
2003/04- 2010/11	1515.8	1040.5

Table 6.3 Average Cost and Average Total Cost (1988/89-2010/11)

Financial Year	Average Cost ($M)	Average Total Cost ($M)
1988/89-1994/95	126.33	74.84
1996/97-2002/03	50.81	37.07
2003/04-2010/11	126.43	77.13

Table 6.4 Average Volume of Cargo entering and leaving the Port of Melbourne (1988/89-2010/11)

Financial Year	Average TEU	Average Mass Tons
1988/89-1994/95	735,000	15,000,000
1996/97-2002/03	1,256,000	21,600,000
2003/04-2010/11	2,104,000	29,400,000

Since the introduction of corporatization for the Port of Melbourne in 1995, there have been several reviews conducted on its implementation and operation. One way of interpreting the need for these reviews is that the Victorian government regards the existing legislation as not providing an adequate framework for an effective business and so the reviews provide an opportunity to assess the need for amendment, such as the

reforms implemented in 2003. On the contrary it is more likely that the regular reviews could also be interpreted as good management practice as they allow the government to ensure that the Port of Melbourne, one of its key assets, is performing at optimal levels, and that any changes required can be implemented.

(1) Does the legislation under the SSOC framework distance government from the daily operations of the PoMC and free it from political control?

As highlighted in earlier chapters, after the implementation of corporatization in 1995 the Port of Melbourne and the Melbourne Port Corporation came under increased scrutiny for their poor performance and financial returns. In his independent report to the Minister for Ports, Professor Bill Russell criticised the 1995 reforms on the basis that they did not deliver the anticipated economic results to the Victorian government (Russell 2001). In particular he concluded that by assigning responsibility for sea channels and the management of land around the wharves to two separate bodies, the 1995 reforms did not provide either body with the charter or capacity to plan, finance and implement the developments that were needed (Russell 2001). As a result of his review, Professor Russell recommended that there be a single integrated port corporation for the Port of Melbourne which managed not only the port's land but could also undertake strategic planning, public investment in land or water assets.

Australian ports have had a history of poor work practices and management (Webb 2004). Government-ownership of Australian port corporations had also been repeatedly criticised as the factor which led to port corporations not achieving their commercial goals because it introduced the possibility of political interference in port operations (Bottomley 1994; Farrar and McCabe 1995; Everett 2003b). When first introduced, corporatization was heralded as the solution to these on-going problems because it was intended to emulate a private sector model by distancing the government from the port's daily operations (Jones 1994; Bottomley 1997; Grantham 2005). In practice this would mean creating a legislative framework which limited or removed Ministerial involvement in the operations of the port corporation. The implications of limiting government involvement in the operations of the port corporation would include

reducing the requirements for the Board of the port corporation to report to government ministers, and to limit the opportunity or grounds for government ministers to issue directions to the Board.

The intention was that if the PoMC was corporatized it could operate as if it were a competitive privatized business in the marketplace (Everett and Robinson 2007). However as examined in Chapter Five, the Westminster System of Responsible Government mandates that there must be a chain of accountability between the elected parliament and the voting public. This is provided for in the entity's enabling Act, such as the 1995 Port Act. In practice this accountability regime is usually implemented by appointing one or more government ministers as shareholders of a government-owned corporation and requiring the entity's Board to report to those shareholding ministers so that they in turn may report to parliament on its performance. The shareholding Ministers of the PoMC and its predecessors are the Minister for Ports and the Treasurer. In his report Professor Russell recommended that the Minister for Ports' role in the port corporation be strengthened by granting the Minister a direct relationship with the Board in order to protect their economic importance (Russell 2001). Therefore he did not view the Minister for Ports as impeding the port corporation's activities.

Under the current legislation which incorporates some of Professor Russell's recommendations, the Board of the PoMC must report to the Minister for Ports who is permitted to issue directions to the Board under Sections 141H and 163 of the 2010 Transport Act. Under the 1995 Port Act the Minister for Ports had powers of direction under Sections 30 and 38 of the 1995 Port Act, which have since been repealed and replaced by Sections 141H and 163 of the 2010 Transport Act. Through the drafting of the 2010 Transport Act, the Victorian parliament has ensured that there is less potential opportunity for ministerial intervention compared to the 1995 Port Act as the Treasurer has now been excluded from exercising any direct intervention in the operations of the PoMC.

The right of shareholders to intervene in the operations of a corporation is not unique to government-owned corporations. Under the *Corporations Act 2001* (Cth) and other

incorporation statutes, the Board of privately-owned corporations must also report to its shareholders on the corporation's performance each year and be subject to shareholder scrutiny. This is normally done by producing annual reports that contain information about the company's performance for that year including financial reports and profit and loss statements. These annual reports are presented to the company's shareholders at shareholder meetings for their scrutiny. These meetings also give the shareholders the opportunity to question the Board on the corporation's performance in the preceding financial year. The shareholders of privately-owned corporations also have the power to direct the Board to act in certain ways through their right to vote on resolutions at shareholder meetings. Therefore the shareholding ministers of government-owned corporations are not unique in their rights to have the Board report to it on performance or in having the power to direct the Board to act in a certain manner.

Do the Ministerial powers to issue directions impact upon the operations of the PoMC? In theory they do as the PoMC's Board must follow any Ministerial direction given to it whether under the 2010 Transport Act or its predecessor the 1995 Port Act. The extent to which any Ministerial Direction impacts upon the Board's operations can only be determined from the contents of an individual direction and any material available concerning it. This will be examined later in this part. Despite having the power to issue directions and intervene in the PoMC's operations, it is not mandatory that the Minister for Ports does so. It is a discretionary power for the Minister to exercise if the Minister deems it appropriate in any given situation. Therefore the two Acts only make intervention a possibility which may mean that in reality that the Minister may have a negligible influence or effect on the Board and the operations of the PoMC.

How often did the Minister for Ports or the Treasurer given directions to the Board between 1988/89 to 2010/11? Prior to 1995/96 there was no legislative requirement that Ministerial directions be recorded so only the period from 1995/96 to 2010/11 can be examined. As Table 6.5 below illustrates, there have only been three recorded incidents of the Minister for Ports issuing directions to the Board, being in 2002/03, 2003/04 and 2009/10. As required by the 1995 Port Act, these were all to be recorded in the port corporation's annual reports for the relevant years, as well as the Victoria Government

Gazette. There were no directions issued under the 2010 Transport Act during this period.

A limitation on this investigation was that little information was available beyond that provided in the PoMC's annual reports for 2002/03, 2003/04 and 2009/10. Despite Sections 30 and 38 of the 1995 Port Act stating that directions given under those sections must be recorded in the Government Gazette, a thorough search of the Government Gazettes revealed that only the 2002/03 direction was recorded (searches of the Government Gazette were conducted by the author of this thesis as well as a staff member of the Government Gazette and a librarian at the Victorian Government Library Service). No explanation was available from any source as to why the 2003/04 and 2009/10 directions were not recorded in the Government Gazette. A thorough search of the Department of Transport annual reports and Hansard revealed no further information about any of the three directions.

In 2002/03 and 2003/04 the Minister for Ports issued a direction to the Board under Section 30 of the 1995 Port Act on 14 November 2002 and on 25 October 2003. No details of the content of the direction were contained in either annual report. However a search of the Victoria Government Gazettes revealed that contents of the direction issued on 14 November 2002 were contained in the Government Gazette dated 14 November 2002 (Victoria Government Gazette 2002). In that direction the Minister for Ports directed the Board to offer to grant continuing tenure of port land (known as East Land) to Terminals Pty Ltd, extending the lease until 31 January 2005, and on request from that company the Board was to agree to extend the date for provision of a certificate or statement of an environmental audit pursuant to the lease to Terminals Pty Ltd. The Board was also directed to agree to acknowledge that the remediation works under the lease are to be carried out in accordance with a Remediation Action Plan which was submitted to the Environmental Protection Authority on 28 May 2002.

The 2002/03 annual report detailed the Board's response to the direction of 14 November 2002. The identical response was detailed in the 2003/04 annual report leading to the conclusion that the Board's actions in relation to the 2002 direction

carried over into the next year. It was reported that the Board responded to the directions by offering to grant continuing tenure to the current tenant Terminals Pty Ltd and to extend the lease until 31 January 2006. The Board also agreed, on request from Terminals Pty Ltd to extend the date for the provision of a Certificate or Statement of Environmental Audit to the PoMC pursuant to the lease, as well as take all reasonable steps to co-operate with the tenant under the lease to carry out the Remediation Action Plan over the leased port land. The degree of impact which following the direction had upon the PoMC or its operations cannot be accurately quantified, however it appears to be within the scope of the PoMC's business by requiring the Board to comply with government policy.

Table 6.5: Ministerial Directions 1988/89 to 2010/11 under the *Port Management Act 1995*

Year	Content of Direction	Issuing Minister
2002/03	Extension of lease over port land in accordance with an Environmental Remediation Action Plan (direction under Section 30 of the 1995 Port Act)	Minister for Ports
2003/04	Extension of lease over port land in accordance with an Environmental Remediation Action Plan (direction under Section 30 of the 1995 Port Act)	Minister for Ports
2009/10	Road Freight Access Charge (direction under Section 38 of the 1995 Port Act)	Minister for Ports

The direction in 2009/10 was from the Minister for Ports under Section 38 of the 1995 Port Act and dated 12 October 2009. The content of that direction was not contained in the Victoria Government Gazette. The 2009/10 annual report for that year provided no detail as to the content of that direction or the action that the Board took in response to it. The PoMC was only able to provide further details in relation to the 2009/10

direction. That direction was related to Road Freight Access Charge, which was part of the Victorian Government's freight network strategy released in 2008. The strategy aimed to ensure that Victoria's freight networks, systems and infrastructure were sustainable and they able to meet future Victorian freight demands (State of Victoria 2008). The PoMC was unable to provide any further information. Therefore the impact of this direction on the Board cannot be quantified with the limited information available. The remaining annual reports for the PoMC for 2004/05-2008/09 and 2010/11 specifically state that there were no recorded ministerial directions under either Section 30 or Section 38 of the 1995 Port Act or under the 2010 Transport Act.

It can be concluded then from the above discussion, that the 1995 Port Act and the 2010 Transport Act do not distance government from the daily operations of the PoMC and free it from political control. However based on the information available, the issuing of the three directions appears to relate only to complying with government policy. It is speculative as to how much the PoMC's operations were affective by the three directions. What can be concluded is that the directions appear to be only procedural and do not suggest that there were issued by the Minister for Ports with the aim of furthering the Minister's own interests over those of the PoMC. Therefore any allegations that the Minister's power to issue directions has had a negative effect on the Board's operations are unfounded on the available evidence.

(2) Does the legislation under the SSOC framework provide the conditions which create an effective legislative framework that enables the PoMC to respond to the forces of the market?

To assist in answering this question, the data in Tables 6.6-6.9 and Appendix One will be examined. Although Chapter Two cited literature which alleged that political interference operated negatively upon a port corporation's operations, those studies could be viewed as being speculative as they did not examine performance data in order to reach their conclusions. It is important to acknowledge that the Victorian government has not expressed any serious intention of privatizing the Port of Melbourne in recent years. This could be interpreted as the government being satisfied with the returns

produced by the port. However no conclusion can be reached without an analysis of the Port of Melbourne data for the performance indicators contained in Tables 6.6-6.9 and Appendix One.

All Australian businesses whether privatized or government-owned, are subject to the general laws regulating business and competition (Bottomley 1997). The PoMC is also subject to the provisions of the 2010 Transport Act and the *Transport Integration Act 2010* (Vic). The Australian Competition and Consumer Commission (ACCC) regulates competition in Australia and ensures that Australia's competition laws are enforced. Australia's government-owned and privatized ports, along with all other business entities in Australia must comply with these laws to ensure that the marketplace is free from anti-competitive practices. When the Tasmanian government sought to merge its four port companies it had to seek permission from the ACCC to ensure that the merger did not breach competitive laws. This will be discussed further in Chapter Seven.

The Port of Melbourne is also subject to the direction of the Essential Services Commission (ESC) which is Victoria's independent economic regulator. Australia's other jurisdictions have similar independent economic regulators. Whilst the Port of Melbourne sets its own prices for its services, it is the ESC which monitors those prices to ensure that they are fair and do not breach the ESC pricing regimes. The ESC also regulates the port's prescribed services such as the provision of shipping channels, buoys and berths in connection with the berthing of vessels in the Port of Melbourne.

Most businesses and entities operating in the marketplace today are privately-owned and unlike government-owned businesses, have no requirement that a Minister of Parliament must be a shareholder or somehow directly involved in their operation. They are however accountable to their shareholders for their annual financial performance and their shareholders can influence the operations of the corporation by voting on resolutions at shareholder meetings. It is not the purpose of this thesis to measure how these factors may affect a private corporation as opposed to a government-owned corporation which is subject to the political control discussed in Question One. It has been asserted in the literature in Chapter Two that privately-owned corporations are

better able to respond to the forces of the market than public corporations as they compete against each other on a relatively even playing field making profits, losses and in extreme circumstances, becoming insolvent (King 1994-1995). Government-owned port corporations compete with privately-owned port corporations and do not receive any benefits from their ownership status not experienced by privately-owned corporations. They must still operate competitively and provide satisfactory returns to their shareholders and respond to the forces of the market and operate in the marketplace.

The current PoMC's corporatized framework has evolved via several changes since its inception in 1995, as outlined earlier in this thesis. The first corporatized business framework, which came into operation with the inception of the 1995 Port Act, split and separated the Port of Melbourne's functions and operations between three new statutory authorities, one of which was the Melbourne Port Corporation (MPC). The aim was to create a more efficient and competitive port. On a practical level, this split made it hard to integrate the different functions of the port. Constant reporting to each authority was needed, which in turn led to potentially high time and financial costs (Russell 2001). Another problem with the structure was that the port corporation now found itself taken away from its major function of being in charge of the entire port and integrating its activities, to the very narrow role of being little more than a landlord leasing out the port's facilities. It had little input into determining pricing, policy or planning matters as these became the responsibility of other bodies. It also lost its regulatory functions to the independent government body the Office of Regulator General (later renamed the Essential Services Commission).

Many of the shortfalls of this first legislative framework were recognized and changes were made to it after a review in 2001 by Professor Bill Russell. These changes came into operation in 2003 and with amendments discussed earlier in this chapter, form the current legislative framework in operation. The main change in the 2003 amendments was that the split port model was abolished so that the land and waterside functions of the port could be integrated again. The MPC was also disbanded and the PoMC was created and given back many of the old port authority's functions including planning,

management of land and infrastructure. It was also given back control of the channels servicing the port as Channel Corp was abolished. A new body, the Victorian Channels Authority (VCA) was given responsibility for the management and navigation of the channels in the Port Geelong's waters.

Examination of Port data

At this point an analysis of performance indicators derived from the port data from annual reports from 1988/89-1994/95 and 1996/97-2010/11 must be undertaken in order to ascertain whether there is any change in performance between the pre-corporatization era compared to the post-corporatization era that may be attributable to corporatization. As detailed in Part 6.9 of this Chapter, performance and operational data for the years 1988/89-1994/95 and 1996/97-2010/11 was used to create the performance indicators which will be examined in this section. This performance and operational data is contained in Appendix One and summarized in Tables 6.1-6.4 and 6.6-6.9.

The financial performance indicators analysed in this Chapter are:

- Return on Assets; and
- Return on Equity.

The non-financial performance indicators analysed in this Chapter are:

- Operating Revenue per TEU;
- Operating Revenue per Mass Ton;
- Operating Profit before Tax per TEU;
- Operating Profit before Tax per Mass Ton;
- Total Cost per TEU;
- Total Cost per Mass Ton;
- Assets per TEU;
- Assets per Mass Ton;
- Price per TEU; and
- Price per Mass Ton.

It must be stated that due to the legislative changes between the three periods, the PMA, MPC and the PoMC are not the same entity as they are different in structure as well as name. Therefore a true comparison cannot be undertaken as the three entities were performing different activities and had different responsibilities. This means that all that can be done here is to compare the performance indicator results for the three periods. Another problem is that it is impossible to separate out or exclude various other factors that may have influenced or be influencing the performance of the PMA, the MPC and the PoMC other than the legislative model in place at each instance. Some of these factors may include global economic factors, demand for services and competition from other ports and modes of transport. As will be discussed in this section the annual reports do not mention the legislative models as having an influence on performance, but instead mention other factors that influenced performance such as asset revaluations, sale of fixed assets and disaggregation of successor bodies.

Table 6.6 Average Return on Assets and Average Return on Equity (1988/89-2010/11)

Financial Year	Average Return on Assets (%)	Average Return on Equity (%)
1988/89-1994/95	4.18	12.41
1996/97-2002/03	5.70	7.30
2003/04- 2010/11	2.84	3.96

Table 6.7 Average Operating Revenue per TEU & Mass Ton and Average Operating Profit before Tax per TEU & Mass Ton (1988/89-2010/11)

Financial Year	Average Operating Revenue per TEU ($)	Average Operating Revenue per Mass Ton ($)	Average Operating Profit before Tax per TEU ($)	Average Operating Profit before Tax per Mass Ton ($)
1998/89-1994/95	203.29	10.94	31.64	3.32
1996/97-2002/03	67.85	3.87	26.60	1.51
2003/04-2010/11	78.18	5.64	19.06	1.37

Table 6.8 Average Total Cost per TEU & Mass Ton and Average Assets per TEU & Mass Ton (1988/89-2010/11)

Financial Year	Average Total Cost per TEU ($)	Average Total Cost per Mass Ton ($)	Average Assets per TEU ($)	Average Assets per Mass Ton ($)
1988/89-1994/95	104.35	4.10	201.32	13.92
1996/97-2002/03	30.27	1.74	367.84	21.27
2003/04- 2010/11	36.64	2.62	486.35	35.07

Table 6.9 Average Price per TEU & Average Price per Mass Ton (1988/89-2010/11)

Financial Year	Average Price per TEU ($)	Average Price per Mass Ton ($)
1988/89-1994/95	203.29	10.94
1996/97-2002/03	67.85	3.88
2003/04- 2010/11	78.18	5.64

Conclusions from the data:

Four conclusions can be generated from an examination of the data in Tables 6.1-6.4 and the performance indicators in Tables 6.6-6.9.

- **There are higher volumes of cargo passing through the port over time:**

Volumes of cargo passing through the Port of Melbourne were recorded in Twenty-Foot Equivalents (TEUs) and Mass Tons for the PMA, MPC and the PoMC (Table 6.4). Data was available for TEUs for 1988/89-1994/95 and 1996/97-2010/11; however data for Mass Tons was not first recorded until 1993/94. The two measures record different aspects of the amount of cargo entering and leaving the port: TEUs are the standard unit of a ship's carrying capacity based on the volume of a twenty-foot long container transported on ships, whilst Mass Tons are a measure of cargo weight.

The data in Table 6.4 and in Appendix One Table A1.4 show a steady increase in each of the three periods of the amount of cargo passing through the Port of Melbourne for both measures, as well as for the entire time period for TEUs and for the years recorded for Mass Tons. In this total time period the TEUs increased by 1,693,000 or 242.90%

and Mass Tons by 18,300,000 or 129.79%. Each of the three time periods had an increased throughput of cargo passing through the port, compared to the previous period as follows:

First Period:

The number TEUs handled increased by 26.83% over this period which amounted to 4.41% per annum. As the PMA only began recording values for Mass Tons in 1993/94 there was not enough data available in order to calculate a meaningful result;

Second Period:

In this period the rate of increase was more than double that of the first period. TEUs increased by 62.27% or 10.38% per annum and Mass Tons increased by 33.50% or 5.5% per annum.

Third Period:

The rate of increase dropped slightly in this period as the rate of growth for TEUs increased 38.95% or 5.56% per annum and Mass Tons increased by 21.35% or 3.05% per annum.

Although the two corporatized periods had a larger throughput of cargo than the pre-corporatized period, there is no evidence from the PoMC or any other source to support the contention that the increases were due to corporatization. It is also too difficult to isolate out any one factor as influencing the rate of growth in cargo handled as there is not the information to perform such an analysis. Therefore based on the available evidence, it cannot be concluded that the corporatization model had any influence on the Port of Melbourne's performance.

What is it that could be influencing the changes? Information available from the annual reports of the PMA, MPC and PoMC reported several factors which could be interpreted as contributing to the overall increases in the amount of cargo passing through the port over the entire period. Some of the general factors were examined briefly at Part 6.9 and compiled in Appendix Two. These factors included:

(i) *Changes in local and global markets, particularly in the pre-corporatization period:* in 1989/90 and 1991/92 there was a decline in overseas imports and exports, influenced in particular by Australia's tight monetary policy settings, adverse climate conditions and reduced demand from overseas markets. The easing of the global financial crisis in 2010/11 led to a robust trading performance;

(ii) *Reductions in wharfage and other port charges:* in 1996/97 and 1998/99 the MPC reduced its wharfage charges and in June 2000 the ESC determined that the MCP's prices for prescribed services be reduced by 5.2% per year for five years from 1 July 2000. These two factors may have helped to make the Port of Melbourne more attractive to shippers than its competitors, particularly in light of the downturn in the world economy;

(iii) *Increases in Capital Expenditure and upgrade of port facilities:* this will be discussed in more detail later in this chapter.

- **Pricing has been constrained and is less than Consumer Price Index growth;**

The PMA, MPC and PoMC have constrained the cost of their services which has in turn enabled the Port of Melbourne to remain competitive. This has had a flow on effect as it makes the port attractive to users which may result in increases in the amount of cargo passing through the port (TEUs and Mass Tons as shown in Table 6.4). In real terms the Port of Melbourne faces competition from other Australian ports, in particular the South Australian ports as much of South Australia's cargo is transhipped through the Port of Melbourne. This competition helps to keep prices low particularly if two businesses are offering the same or similar services. Price is a factor which will usually influence customers when choosing service providers such as a port.

The prices for the Port of Melbourne's prescribed services are regulated by the ESC and include the provision of shipping channels, berths and facilities to assist with the loading and unloading of container ships. For the purposes of this section, price was determined for each financial year by dividing Operating Revenue by either TEU or Mass Ton. An

examination of the prices to move cargo as shown in Table 6.9 shows that prices dropped in the first two periods and only began to slowly rise from 2003/04 to 2010/11. An explanation for why the prices were so much higher in the first period compared to the other two later periods was that the PMA was a very different organisation from the disaggregated entities which succeeded it.

The Consumer Price Index (CPI) is a measure of the rate of inflation and cost of living. It represents the cost to consumers of buying goods and services including those offered by the PoMC and its two predecessors. If the CPI raises then the buying power of PoMC customers decreases, whereas if the CPI drops then customer buying power increases. An examination of the results in Table 6.9 and Appendix One Table A1.9 and a comparison with the CPI for those years reveals that the price to move one TEU of cargo rose at rate lower than the CPI: in other words prices were not rising at the same rate as inflation.

First Period:

In the first period the price to move one TEU of cargo fell by 8.57% or 1.43% per annum whereas the CPI rose in that period by 22.66%. As there were only two measures for Price per Mass Ton in the first period under the PMA few conclusions can be drawn from the data.

Second Period:

In the second period the prices fell at a greater rate than in the first period although the CPI did not grow at an equal rate to that of the first period. The price to move one TEU fell by 33.74% or 5.62% per annum compared to an increase of 15.82% in the CPI. The price to move one Mass Ton of cargo fell by 19.60% or 3.67% per year.

Third Period:

The rate of increase for TEUs was 71.21% or 10.17% per annum. This means that prices rose at a rate nearly three times that of the CPI which was 21.89% in this period. The rate of growth in price to move one Mass Ton of cargo also outstripped the CPI as it was 96.33% or 13.76% per annum.

Therefore from the above, the price to move cargo only exceeded the CPI in the final period. The annual reports for these periods did not provide an explanation for why there may be such variations in price over the three periods. As illustrated in Table 6.4, trade volumes did increase over time due to more favourable economic conditions and there were increases in capital expenditure over time, which will be discussed below.

There are other measures which are affected by the price of moving cargo. The first is Operating Revenue per TEU or Mass Ton (Table 6.7). If as shown the price to move one TEU of cargo does not grow at the same rate as the CPI over time, then this affects the amount of revenue which the PoMC and its two predecessors receives. The PMA's Operating Revenue per TEU dropped by 8.52% in 1988/89-1994/95, whereas the CPI rose by 22.66% over the same period (Table 6.7). There was not enough data for Mass Tons to calculate a value in the first period. The fall in prices to move cargo discussed above have had a negative impact on the PMA's ability to generate revenue for this period. In the second period there were also drops in the values: Operating Revenue per TEU dropped by 33.74% and for Mass Tons there was a drop of 19.07%. The CPI in this period was 15.82%. However in the remaining period there were large increases. Operating Revenue per TEU rose by 71.21% and for Mass Tons it rose by 96.33% both of which exceeded the CPI. This shows that there are various factors contributing to the amount of Operating Revenue generating each year with the price of moving one TEU of cargo having less impact than in the later period.

The second measure is Operating Profit before Tax which is recorded in Table 6.7. This indicator is influenced by many factors, including the price to move cargo (Table 6.9). In the first period Operating Profit before Tax the average amount was $23.1M, in the second it was $32.5M and in the third it was $40.8M. These increases are reflected in the increases in prices to move cargo and in Operating Revenue.

- **The port has good underlying cost control:**

The Port of Melbourne has remained competitive partly because it has kept its costs low. If the port cannot keep its costs low then that will have an effect on the amount of revenue which it can generate from its operations. Therefore it is in the port

corporation's interests to keep costs low. Costs are what the port corporation must pay in order to provide its products and services. The total cost values used in this section and shown in Table 6.9 do not include the values for depreciation or interest costs. These values have been deducted in order to generate as accurate a value as possible of the cost to move cargo in both TEUs and Mass Tons.

First Period:

In the first period the total cost to move one TEU of cargo fell by 56.87% or 9.48% per annum which indicates that its efficiency in that period increased by over half. The PMA in this time was able to decrease its total costs to in order to provide its services. As there were only two measures for Price per Mass Ton in the first period under the PMA few conclusions can be drawn from this data.

Second Period:

In the second period the total cost to move one TEU of cargo fell at the slightly lower rate of 42.60% or 7.10% per annum. The total cost to move one Mass Ton of cargo fell by 30.29% or 5.05% over this period. As there was not enough data for Mass Tons in the first period, no comparisons can be made with the first period in order to draw conclusions.

Third Period:

The total cost to move one TEU of cargo also fell in this period, but at a considerably lower rate of 3.60% over the period or 0.51% per annum. The total cost to move one Mass Ton of cargo rose in this period by 10.68% or 1.53% per annum. Therefore the PoMC was not as efficient as the PMA and the MPC in keeping its costs down. During this period the PoMC incurred higher capital expenditure costs and the world's economy was experiencing a global financial crisis. Both of these factors would have had an impact on the PoMC's costs.

- **There is continued growth in capital expenditure with returns yet to emerge:**

During the periods investigated there were several instances of the PMA, MPC and PoMC receiving funds for capital expenditure from the Victorian government. This enabled the port to invest in its infrastructure through acquisition and upgrades of existing assets to ensure that its facilities were at a standard to handle increasing amounts of trade. In 1990/91 the PMA received $7.903M for capital expenditure for works; in 1996/97 the MPC received $21.259M for the redevelopment of Webb Dock and the upgrade of the Station Pier berth and terminal; in 1998/99 capital expenditure amounted to $5.3M to upgrade existing berths and facilities; in 2005/06 $35.2M was spent on the Channel Deepening Project to allow larger ships access to the port; in 2006/07 $59.9M of capital expenditure was used to upgrade and enhance marine and land side infrastructure and $14.4M was spent to upgrade the Swanston Container Dock.

The rates of Return on Assets and Return on Equity did not grow strongly over the three periods and by the third period both rates had declined. The average rates for these performance indicators are shown in Table 6.6 and the full data is contained in Appendix One Table A1.6). As explained at Part 6.8 of this chapter, these are both financial performance indicators. Return on Assets measures the level of financial return which is generated per unit of asset investment, whereas Return on Equity is a measure of the level of the return generated per unit of equity investment.

First Period:

In the first period the average rate of Return on Assets was 4.18% or 0.70% per annum For Return on Equity the average rate was 12.41% or 1.77% per annum.

Second Period:

The average rate of Return on Assets was 5.70% or 0.95% per annum and for Return on Equity the average rate was 7.30% or 1.22% per annum.

Third Period:

In the first period the average rate of Return on Assets was 2.84% or 0.41% per annum

and for Return on Equity the average rate was 3.96% or 0.57% per annum.

In an analysis on the annual reports for 1988/89-1994/95 and 1996/97-2010/11 no report mentions the corporatized legislative framework as having any impact on the performance or operations of the entity at any given time. Therefore it cannot be concluded that it is the legislative framework that is influencing the results. What do the annual reports reveal to be the influencers of the results? A commentary of each year is provided earlier in this chapter under the heading of Data Anomalies, but a summary for each period is as follows:

Pre-corporatization:

The period studied began with a decline in overseas imports which registered as a negative growth and a downturn for the PMA in private sector imports and consumer items. State government factors such as a tightening of monetary policy, restrictive credit availability and falling asset prices also had a negative impact on the PMA's results. Exports also suffered especially wool as its markets in China and Japan reduced on the back of the slowing of the world economy in 1989/90.

In 1990/91 a profit was recorded for just over half of the year due to abnormal and extraordinary expenditure including superannuation liabilities. The economic climate continued to be problematic and led to an increase in asset depreciations on the previous year. The PMA also used internal funds to finance capital works and non-commercial operations. Due to the continuing problems with the international economy in 1991/92 trade levels dropped and the re-negotiating of leases led to reductions in property rentals and licence fees. In 1992/93 the amount of total assets was reduced due to the sale of fixed assets such as cranes, as well as the writing-down and retirement of some fixed assets.

First period:

In 1996 there was a disaggregation of the PMA's successor bodies after its corporatization which resulted in an allocation of $58.38M worth of assets from the PMA to those bodies. Continuing strong trade growth contributed to the good financial

results achieved along with $6.176M received in government funding. The results were also affected by the repayment of $10.14M of borrowings and the payment of $30.0M in superannuation liabilities. In 1996/97 operating revenue dropped by $10.64M due to the reduction of wharfage charges but trade levels improved (Table 6.1 and Appendix One Table A1.1). In that year there were also capital losses of $1.124M on the disposal of a non-controlled entity as well as capital expenditure costs of $21.26M for projects including the redevelopment of Webb Dock and the upgrade of the Station Pier Terminal. Net assets increased due to the upward revaluation of assets but they were offset that year by the depreciation of assets and the transfer of $22.58M worth of assets to another government authority and the write-off of retired assets (Appendix One Table A1.2).

In 1998/89 the Operating Profit after Tax amount dropped due to the reduction of wharfage charges and other hire charges which also led to a reduced revenue level for the MPC that year (Table 6.1 and Appendix One Table A1.1). Operating expenses were reduced from the previous year due to a drop in depreciation expenses which were due mainly to a reassessment of the remaining useful lives of the PMA's assets. The Operating Profit before Tax was higher than anticipated as revenue was above budget whilst operating expenses were below budget (Table 6.1). In 2002/03 the MPC experienced increased revenue due to trade growth, increased interest and rental revenue. In that year the MPC's net assets increased from $35.0M to $601.1M due to a net upward revaluation of land infrastructure assets of $20.6M to their fair value and profits relating to the year's operations of $20.9M (Table 6.2 and Appendix One Table A1.2).

Second period:

Upon the establishment of the PoMC in 2003 $631.0M worth of assets were transferred to it thus increasing its asset base (Table 6.2 and Appendix One Table A1.2). In 2005/06 the PoMC's Operating Profit after Tax increased by $21.6M from the previous year as it received items including a reduction in income tax due to allowable deductions for research and development expenditure and changes in accounting policies (Table 6.1 and Appendix One Table A1.1). Increased wharfage charges helped lead to an increase

in Operating Revenue, whilst finance costs were lower than in 2004/05 due to higher cash levels and the fair market adjustment to interest-bearing liabilities (Table 6.1). In 2006/07 finance costs increased as borrowing increased and the Operating Profit before Tax was lower than in past years due to reduced gains on a revaluation of investment properties, increased funding for defined benefit superannuation funds and increased finance costs due to increased borrowing.

In 2007/08 there was strong revenue growth with a slight reduction in total expenses as well as an investment of $48.5M in capital investment. Cash flows from operating activities increased by $10.1M over the past year and the changing treatment of the Channel Deepening Project expenditure led to different outcomes: in 2007/08 a total of $8.1M was treated as an accounting expense with the balance treated as an asset, whereas in 2006/07 the balance was not treated as an asset. In 2009/10 trade volumes increased after a drop in December 2008 and there was capital expenditure of $186.1M which included the Channel Deepening Project. Total expenses also increased by $15.0M on the previous year whilst an increase in depreciation of $16.4M occurred as assets were capitalised. The year 2010/11 was the full reporting period after the global financial crisis which enabled the PoMC to deliver a solid Operating Profit after Tax of $39.0M (Table 6.2 and Appendix One Table A1.1). The PoMC also invested a further $26.0M in capital projects but finance costs of $38.2M were offset by interest income of $2.4M.

Therefore from the above analysis and from an examination of the annual reports, it cannot be concluded that the performances of the MPC and PoMC were influenced by the corporatized legislative model in place. No annual report for this entire period mentions the corporatization model as being a factor in the performance of the port corporation. As discussed above, the annual reports instead cite other factors that contribute to performance, or take away from it, such as the world economy, demand for goods and asset depreciation.

On two occasions after corporatization the Minister for Ports and the Treasurer issued directions to the port corporation, but in only one instance is there any mention of what

the content of the direction was and the Board's response. Therefore, it is not plausible to be able to reach any conclusion on the effect of ministerial directions and their impact on the performance of the port. Therefore it cannot be concluded as to whether the SSOC corporatization model alone, or at all, has had an effect on the performance of the PoMC, or its predecessor the MPC.

This is coupled with media reports released on behalf of the Port of Melbourne, along with annual reports since 2003 that state that the Port of Melbourne is steadily performing better and more efficiently with each passing year. The problem is that there is no information on the breakdown of what it is that may be contributing to these favourable results.

6.10 CONCLUSION

In response Question One, the Minister for Ports has been and remains central to the operation of the PoMC under the 1995 Port Act, its successor the 2010 Transport Act and the *Public Administration Act 2004* (Vic). It was the same situation for the PoMC's predecessor the MPC. Therefore the government is not distanced from the daily operations of the PoMC. Under these Acts, which create the framework for the business of the PoMC to operate within, the Minister has the potential to interfere in the operations of the PoMC by giving directions to the Board. The Minister is not obligated to give directions to the PoMC under the framework. Therefore in reality some Ministers holding the Ports portfolio may choose to be highly interventionist in the operations of the PoMC, whilst others may not.

The Minister for Ports issued two formal directions to the MPC, being in 2002 and 2003 relating to a lease over port land and one to the PoMC in 2009 in relation to freight costs. From the available material, the directions from the Minister for Ports do not appear to have significant impact on the operations of the Board as the directions did not appear to dictate to the Board on how to run the PoMC. The 2010 Transport Act does not change the legislative framework of the PoMC in any way and retains the power for the Minister for Ports to issue directions in relation to the operation of the PoMC. However it does remove the Treasurer's powers to issue directions.

Question Two concerned the issue of whether the 2010 Transport Act and its predecessor created an effective legislative framework that enables the port to respond to the forces of the market. An analysis of the performance data used this in chapter does show increased results since the introduction of corporatization. However there is nothing in the documentation to indicate that this is due to corporatization as a SSOC as opposed to other factors. Therefore it may be that the Minister's power to intervene in the operations of the PoMC may in fact have little or no effect on the PoMC's ability to respond to the forces of the market. This is reinforced again by the fact that there is a record of only three ministerial directions being issued to the Board since 2003.

Therefore degree to which the Minister for Ports or the Treasurer interfere in the operations of the MPC or the PoMC are arguably not measurable, especially as there is no requirement for the recording of informal directions or interventions. The fact that the 2010 Transport Act removes the Treasurer's power to issue directions to the PoMC could in fact mean that ministerial intervention is arguably less of a possibility than before as now only one Minister can issue directions. Added to all of this is the fact that the PoMC's media reports continue to report increases in profitability and performance of the PoMC seems to suggest that the model itself has no effect on the performance and results of the PoMC.

In the next chapter the Ports Corporation of Tasmania, a GOC and the second of the two case studies for this thesis will be examined. The chapter will address the first research question for a GOC model whilst examining the history, the structure and the reforms of the four Tasmanian ports within the context of economic reform.

CHAPTER SEVEN – THE PORTS OF TASMANIA: A CASE STUDY

7.1 INTRODUCTION

Chapter Six examined the reforms at the Port of Melbourne, a port created under the Statutory State-Owned Corporation (SSOC) model. That chapter also addressed the research questions using the Port of Melbourne as the case study. This chapter will examine the reforms implemented in Tasmania which in contrast to Victoria implemented the Government-Owned Company (GOC) model. It will then address the research questions using the GOC ports of Tasmania as the case study.

Tasmania's four main ports Hobart, Launceston (Bell Bay), Burnie and Devonport have undergone an extensive period of reform which began in the 1980s. Although the Tasmanian government opted to corporatize its ports, the corporatization model it chose differed considerably from that implemented at the Port of Melbourne. The Tasmanian government purposefully set out to restructure the Tasmanian ports as GOC port corporations created under a general incorporation Act instead of a specifically-created Act. Under the Tasmanian model, Tasmania's ports are not accountable to a Minister of Parliament but to the Australian Securities and Investment Commission (ASIC), an independent body established to regulate most Australian companies. Maps of the four ports are contained in Figure 7.1, Figure 7.2, Figure 7.3 and Figure 7.4.

Over the past four decades there has been widespread recognition that the Tasmanian port system required some considerable reform (Australian Broadcasting Corporation 2006). There was much unnecessary overlap in functions and needless competition between the state's four commercial ports which led to them becoming inefficient and unprofitable (Parliament of Tasmania 19 May 2005). A number of investigations into the Tasmanian port system undertaken over the last two decades reached the uniform conclusion that Tasmania would benefit from integrating port strategic planning and other functions in order to improve the situation (Australian Institute of Project Management 2006; Tasmanian Government Media Releases 2005a). This has led to reform which was undertaken in two distinct stages. The first stage was the

corporatization of Tasmania's ports into four competing entities. The second stage saw the rationalisation of the ports and their services merged into one single port corporation.

There are three parts to this chapter. The first part will discuss the mechanism of corporatization in Tasmania. The significance of this is that the Tasmanian ports are companies responsive to the forces of the market and are subject to the provisions of *Corporations Act 2001* (Cth). The second part of the chapter will discuss the second reform phase which also is significant as it saw the merger of the state's commercial ports into one GOC. In the third part the research questions will be addressed.

7.2 REFORMING THE PORTS OF TASMANIA

Tasmania is Australia's smallest and least populated state (Australian Bureau of Statistics 2011). As it is an island it relies heavily on shipping services and so ports are a vital part of Tasmania's supply chain and economy. Of the island's fourteen ports, four are commercial ports handling ninety-nine percent of Tasmania's import and export trade (Tasmanian Ports Corporation Pty Ltd 2010). These are the ports of Hobart, Launceston (Bell Bay), Devonport and Burnie (Figure 7.1).

Tasmania's ports handle both interstate and international trade to the extent that in 2008/9 the state's total trade was 14.9 million tonnes (Tasmanian Ports Corporation Pty Ltd 2010). Tasmania's imports and exports include containerised goods, bulk goods including consumables such as fruit and vegetables, mining products such as minerals and ores, as well as forest products, which include woodchips, logs, and paper (Tasmanian Ports Corporation Pty Ltd 2010). Although the ports handle some direct international shipments, the bulk of containers to and from Tasmania are shipped through the Port of Melbourne.

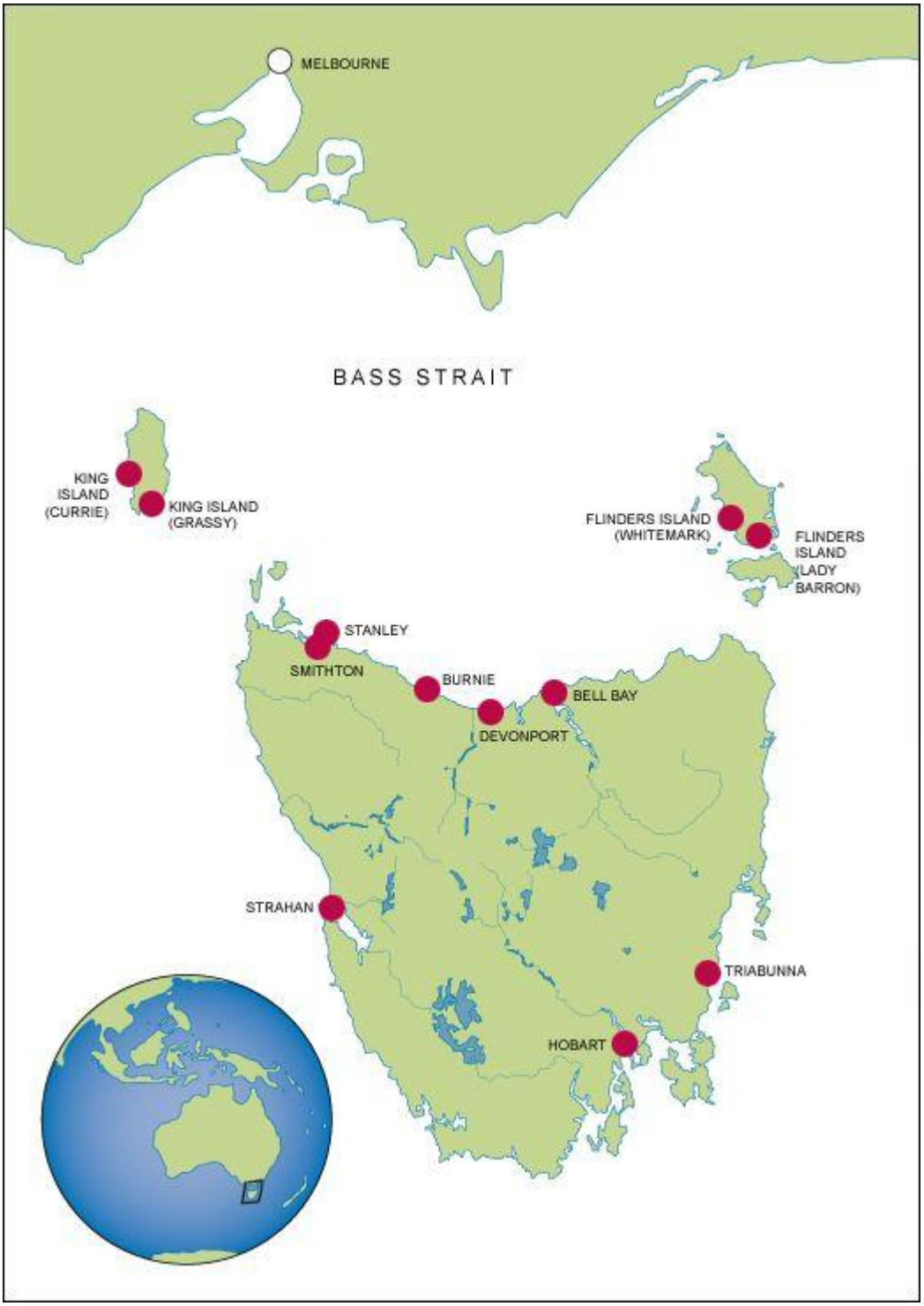

Figure 7.1 Map of Tasmania showing the location of the ports of Hobart, Launceston (Bell Bay), Burnie and Devonport

Source: Tasmanian Ports Corporation Pty Ltd (2010).

Figure 7.2 The Port of Hobart

Source: Tasmanian Ports Corporation Pty Ltd (2010).

It has been estimated that between the years 2000 and 2020, Tasmania's freight loads will double, so its ports must operate at their maximum efficiency (Tasmanian Government Media Releases 2005a). Tasmania is not connected to the mainland by bridge or road, so it must rely on sea and air transport. The Commonwealth government has financially assisted Tasmania with the establishment of the Tasmanian Freight Subsidy Arrangements, which are comprised of the Tasmanian Freight Equalisation Scheme and the Tasmanian Wheat Freight Scheme. Under these arrangements scheme freight subsidies exist for Tasmanian shippers to ensure that they are not disadvantaged in relation to their mainland counterparts (Productivity Commission 2006b).

Over the last two decades, there has been widespread recognition that reform of Tasmania's ports was required (Tasmanian Government Media Releases 2005a). Two major reviews concluded that the Tasmanian ports were proving to be inefficient, unable to compete effectively in the existing market, and as a consequence, unprofitable (Meyrick 2004b; Tasmanian Government Media Releases 2005a). As discussed in earlier chapters of this thesis, this situation was not unique to Tasmania, but was occurring across Australia (Tull and Reveley 2008). The Tasmanian Government, along with other state governments and that of the Northern Territory, was committed to reforming its port system in an attempt to make it more competitive and efficient (Reveley and Tull 2008). When it did introduce a system to reform its port system, Tasmania adopted a corporatized legislative framework that was significantly different from that of the other governments. It chose to corporatize its ports as GOCs and restructure them as market-focused commercial entities under the *Port Companies Act 1997* (Tas) (First Ports Act).

Prior to 1997 each of Tasmania's ports were operated by marine boards established in the nineteenth century. Each marine board was powerful in its own right, governing the ports within its jurisdiction. Reform began with the enactment of the First Ports Act which until its repeal in 2006 covered the operation of Tasmania's port authorities. The aim of this Act was to establish port companies that would provide efficient port and shipping services, and to create four port companies, being the port companies of Hobart, Launceston (Bell Bay), Devonport and Burnie.

Structuring a Port Company

The first action under the First Ports Act was to convert the state's four major marine boards into GOC port companies that were government business enterprises (GBEs) under the First Ports Act in 1997 (Australian Institute of Project Management 2006). For the purpose of this thesis a GBE is defined as one wholly or partly owned by government undertaking commercial activities (Sprott 1998). By the 1990s the marine boards were seen to be very antiquated, inefficient and unprofitable, and therefore in serious need of reform (Hobart Ports 2005). The four new GOC port companies came into existence under the First Ports Act on 30 July 1997. The ports were divested of their non-commercial roles in marine safety, recreational boating and coastal facilities administration, which were transferred to the new Marine and Safety Authority of Tasmania (MAST) (Meyrick and Associates 2004b).

Under Section 9 of the First Ports Act, each port company was to have two members or shareholders, the first being the Portfolio Minister the second being the Minister responsible for the administration of the *Government Enterprises Act 1995* (Tas) (the GBE Act). In effect, these were the Minister for Transport and the Treasurer. Under Section 9(2) of the First Ports Act in the event that the one person held both portfolios, that Minister could nominate another Minister to hold the second portfolio.

7.3 THE ROLE OF THE SHAREHOLDING MINISTERS UNDER THE FIRST PORTS ACT

Tasmania's GOC legislative framework ensured that the two Ministerial shareholders had responsibility in the running of the port companies although they were distanced from daily operational matters (Department of Infrastructure, Energy and Resources 2001). Each Minister nominally held one of the two shares available in the port companies. Section 5 of the First Ports Act gave the Minister the right to form a company to perform functions relating to the operation of a port. That section also created the port companies as GOCs to be incorporated under the *Corporations Act 2001* (Cth). In addition, the port companies were also subject to the GBE Act, which is the Act that establishes Tasmania's government business enterprises and their commercial operations and accountability regimes.

The Ministerial responsibilities included -

(i) monitoring the financial and operational performance of the ports and port companies against strategic and business plans and industry benchmarking standards;

(ii) investigating alternative methods of assessing the returns that the port companies made to Tasmania that would encourage strategic behaviour;

(iii) reviewing the ports system as a whole over and above the performance of individual ports and port companies;

(iv) examining the assets owned by the ports and determining any asset divestment opportunities where assets were not being appropriately utilised; and

(v) assessing their own role as shareholders and the extent to which they could influence change and development.

(Department of Infrastructure, Energy and Resources 2001).

The Ministers' powers under the First Ports Act were relatively limited. Under Section 12, the Minister could establish a panel in respect of the company. Under the Act, the names of potential panel members were nominated, which were then approved by the Minister. The Act did not allow widespread powers to the Portfolio Minister and any action undertaken required the approval of the second Minister, the Treasurer, and the panel (Section 27). However the First Ports Act itself did not specify the detailed powers of either of the Ministers other than the principle objectives noted above that were in Section 7 of that Act. Section 31 of the First Ports Act did state, however, that the administration of that Act was assigned to the Portfolio Minister and that Minister's department. Section 31 also ensured that the Minister's role in the port company was governed by the *Corporations Act 2001* (Cth) and the GBE Act and not the First Ports Act. This made the Ministers' role very similar to a major shareholder in a private corporation under the *Corporations Act 2001* (Cth).

Under Section 11 of the GBE Act each port company was to have a Board of Directors comprising of no less than three and no more than eight members. The Board was to be entirely appointed by the Tasmanian government and was responsible to the two

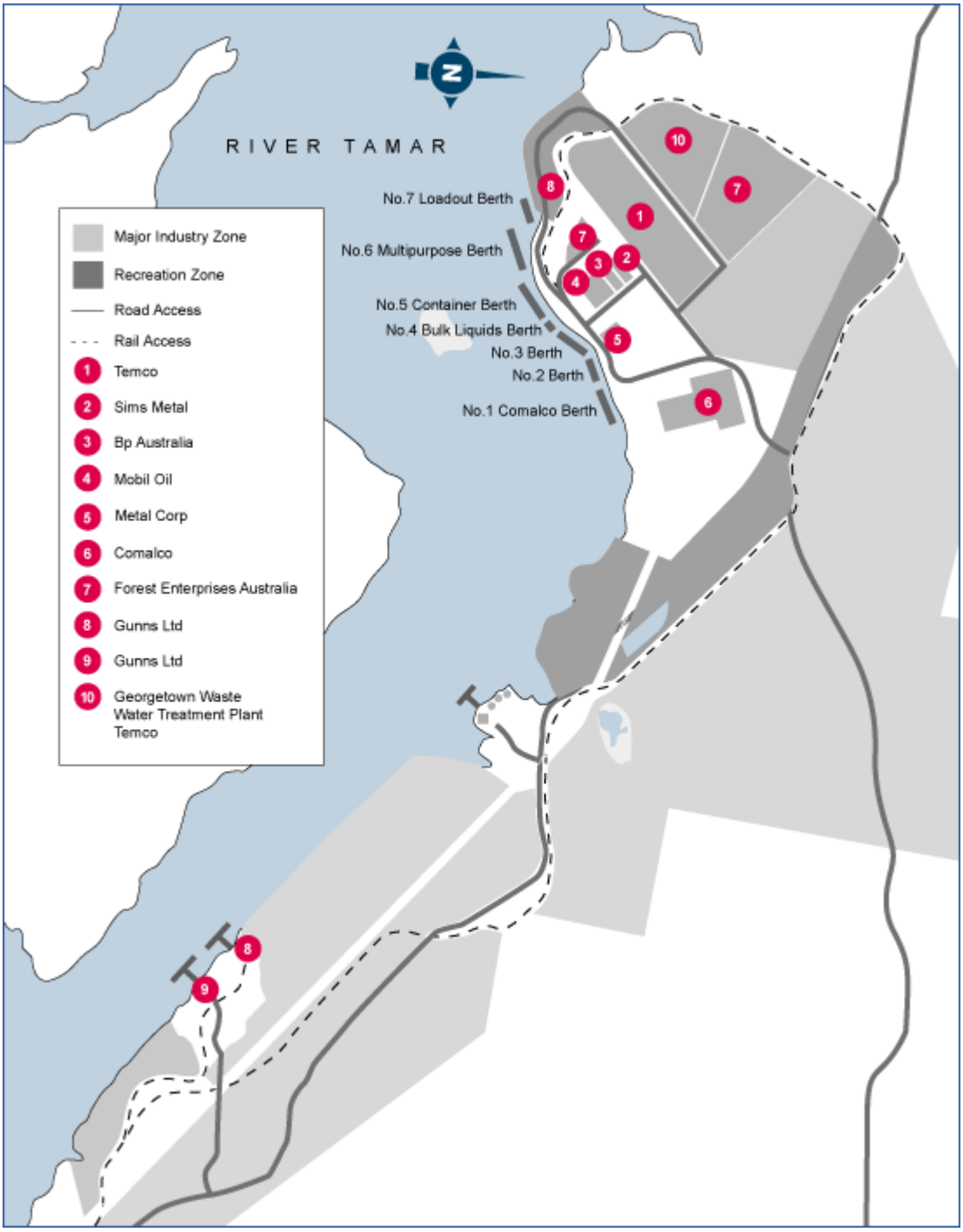

Figure 7.3 The Port of Launceston (Bell Bay)

Source: Tasmanian Ports Corporation Pty Ltd (2010).

Ministers. Clearly, the ministerial roles were dynamic ensuring that they maintained a close watch on the performance of the ports and their port companies. The Ministers had a role in assisting with regular reviews of the management and ownership structures governing the ports in order to identify any potential for enhancements within the port companies and the port system (Department of Infrastructure, Energy and Resources 2001).

The GBE Act provided a consistent framework for Tasmania's government business enterprises by creating them as commercially-focused businesses (Sprott 1998). It authorized the establishment of commercial port GOCs. It also provided a framework for the accountability for GBEs in Tasmania and spelled out their relationship to the Tasmanian government. The GBE Act, under Section 5 stated that the GBE Act and the First Ports Act were to be read together as one Act. The GBE Act elaborated on the commercial focus of Tasmanian GBEs, such as port companies, stating in Section 7(1) that the principle objectives were to operate successful businesses in accordance with sound commercial practices and achieve a sustainable rate of return.

The First Ports Act also ensured that the objectives of a port company were primarily commercial. This legislative framework moved the focus away from the former statutory authority public utility framework of the Marine Boards and changed the port companies' focus to being profitable and operating as any private sector business. Section 7 of the First Ports Act stated that the principle objectives of any port company were to facilitate trade for the benefit of Tasmania and to operate its activities in accordance with sound commercial practices.

Those two objectives were included in the Memorandum of Association of each port company which was to be consistent with the First Ports Act (Section 8). This ensured that the commercial focus of the company being entrenched in the legislation as well as the Memorandum of Association.

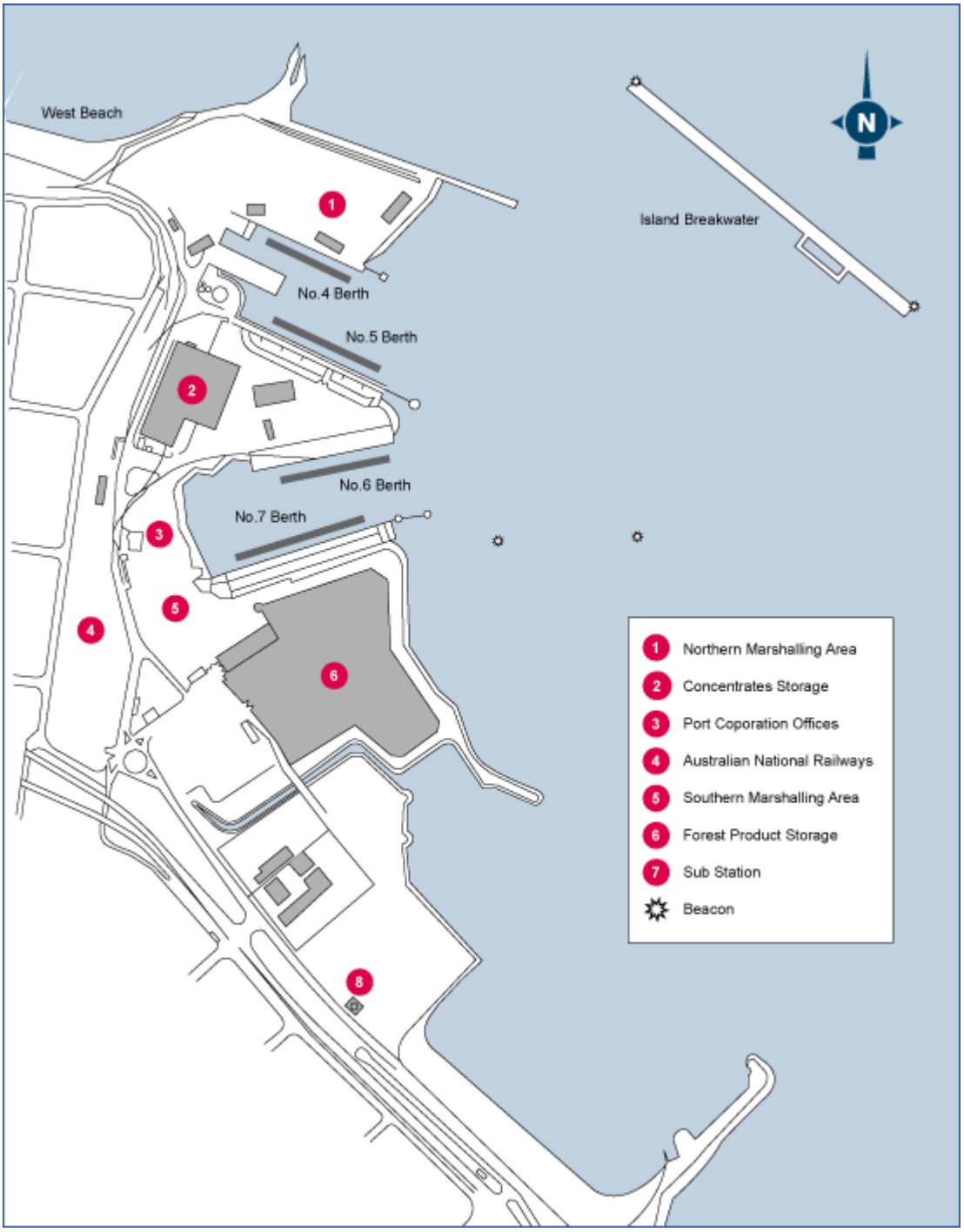

Figure 7.4 The Port of Burnie

Source: Tasmanian Ports Corporation Pty Ltd (2010).

7.4 IMPACT OF THE FIRST PORTS ACT

The First Ports Act incorporated the four corporations on 30 July 1997 to administer the State's ports. Those operators were:

- ***Hobart Port Corporation*** (HPC) – Hobart is the capital city of Tasmania. The Port of Hobart is essentially a landlord port that makes most of its revenue from rental properties. It provides an international container service and is the main cruise ship and naval vessel destination for Tasmania. The HPC administered Hobart as well as several other minor ports including Strahan, Triabunna, Stanley, Smithton and Port Huon. By agreement with Australian Bulk Minerals it also facilitated shipping operations at Port Latta, and managed the King Island ports of Grassy and Currie. HPC also had two operating subsidiaries, King Island Ports Corporation and Risdon Port Services Pty Ltd. The King Island Ports Corporation handled importation of fertilizer, general cargo, fuels, timber, and exportation of dairy and meat products and livestock;

- ***Launceston Port Corporation*** (LPC) – The Port of Launceston (Bell Bay) is located opposite an industrial estate and handles domestic and international bulk goods as well as container services. Launceston is Tasmania's main international port and it has thirteen operational berths, deep water areas and road and rail links to all parts of Tasmania (Port of Launceston 2005). The LPC wholly owned the Flinders Island Ports Corporation, which managed port assets in the Furneaux Group of Islands. Trade was predominately in fuels, livestock, fertilizer, livestock and wool;

- ***Devonport Port Corporation*** (DPC) – Devonport is the headquarters of TasPorts and exports wheat, grain, cement and containerised goods, and imports fertilisers, fuels and consumables (Tasmanian Ports Corporation Pty Ltd 2010). The port is also home to TT-Line Company Pty Ltd's Spirit of Tasmania I and II that operate a regular passenger service between Devonport and Melbourne (Tasmanian Ports Corporation Pty Ltd 2010). The DPC managed the Port of Devonport and owned the Devonport Airport and several cold store facilities in

the area to assist in storage; and

- ***Burnie Port Corporation*** (BPC) – The Port of Burnie lies on Tasmania's north-west coast. It provides services to Tasmania's major West Coast mines and handles most types of bulk-shipping including minerals, fuels, woodchips and logs, as well as containerized consumables (Tasmanian Ports Corporation Pty Ltd 2010).

As noted above, under the First Ports Act, MAST managed the regulatory environment and oversaw the operation of the State's non-commercial marine facilities.

7.5 FURTHER REFORMS - MERGING THE PORT COMPANIES

Despite the 1997 reforms, as time passed, it became clear that further reforms were needed. One problem that emerged was that due to Tasmania's small size, there was an expensive doubling-up of infrastructure leading to the ports competing against each other in the same markets, often at the expense of efficient performance. A train of thought began to emerge that if the ports were merged under the one port company, the ports could specialise in different areas and work together to achieve better outcomes (Meyrick and Associates 2004b). Following further reviews, Tasmania's four port companies were merged into one port corporation under the *Tasmanian Ports Corporation Act 2005* (Tas) in 2006 (Australian Institute of Project Management 2006). The amalgamation is expected to lead to greater operational efficiency, more efficient use of available assets and improved strategic planning and investment decision-making (Cahoon, Pateman and Chen 2013).

In 2001 an investigation into the Tasmanian Marine Transport System identified a need to rationalize port services and the possibility of a merger of the four port companies was discussed (Department of Infrastructure, Energy and Resources 2001). The investigation identified that the system in place was dysfunctional because the ports were competing to service the same market. A recommendation of rationalization and consolidation was made in order to pursue a system of capturing opportunity in order to

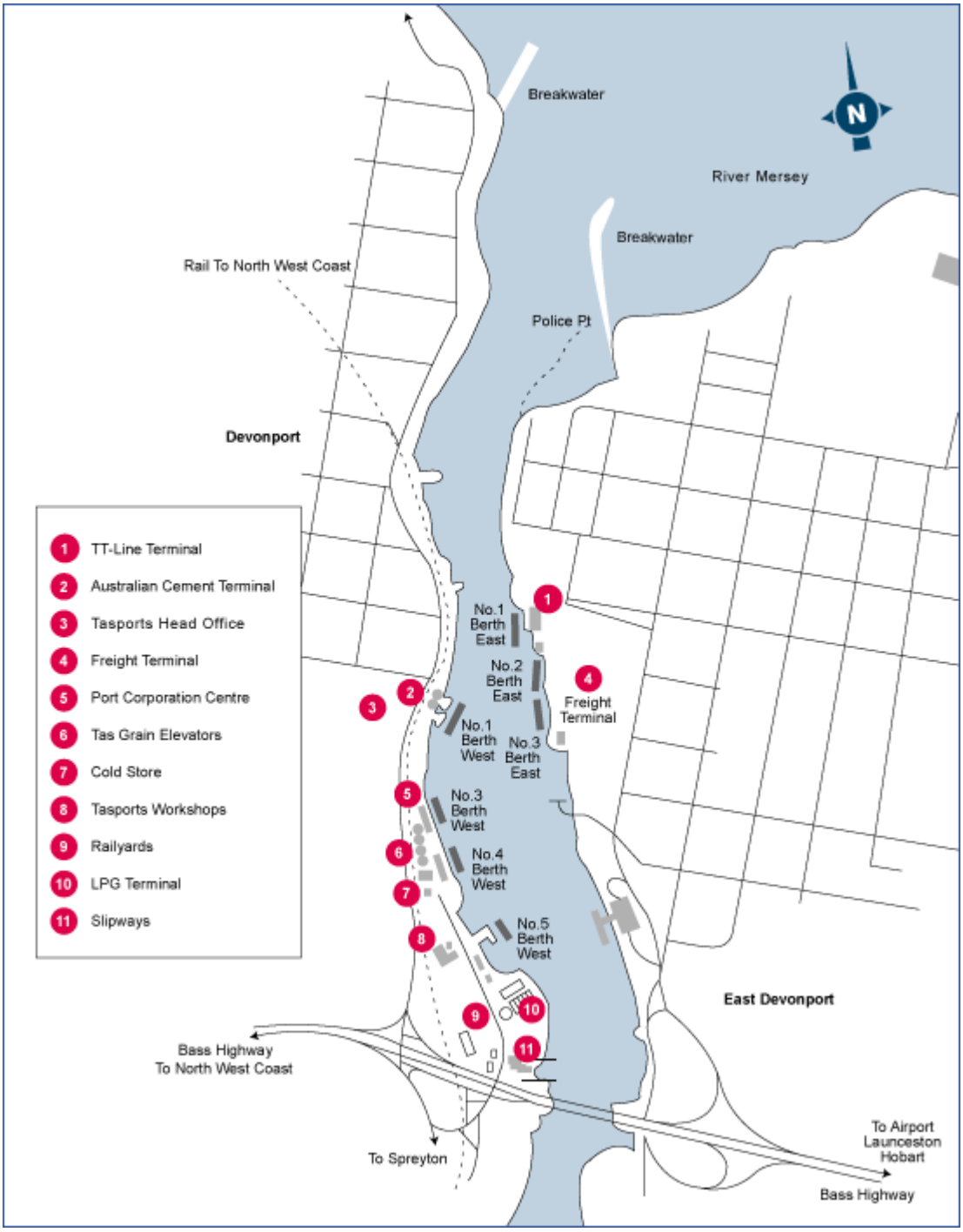

Figure 7.5 The Port of Devonport

Source: Tasmanian Ports Corporation Pty Ltd (2010).

provide maximum benefit (Department of Infrastructure, Energy and Resources 2001). The report indicated that the cost of four competing ports maintaining their own management and expensive infrastructure could become a serious business risk as it entailed a great deal of duplication (Department of Infrastructure, Energy and Resources 2001).

The Tasmanian government appointed a committee in 2004 to review Tasmania's port infrastructure and determine the most effective means of restructure (Meyrick and Associates 2004b; Tasmanian Ports Corporation Pty Ltd 2006a). The committee undertook a review of the existing structure and sought to devise options for a legislative framework that would improve the functioning of the port system (Hope 2005). The committee comprised of the CEOs of the four commercial ports, a representative of the Portfolio Minister, and an independent chairman. In addition, an independent investigation would also be undertaken (Meyrick and Associates 2004b).

The committee found that the GOC status of Tasmania's ports should remain and that all four ports should remain open and operational (Meyrick and Associates 2004b). The recommendation was subsequently made that the four existing port companies - Hobart, Launceston, Devonport and Burnie - should be merged into one corporation. A number of other options had been investigated including having each port specializing in distinct markets; the closure of two port companies so that one port company serviced the north of the state and the other served the south; or dividing up functions between the four port companies. The merger of the four port companies emerged as was the preferred option (Meyrick and Associates 2004b).

Recommendations were based on the following:

(i) the individual ports lacked the financial and human resources, as well as the infrastructure and strategic capacity to support a predicted expansion in freight levels over coming years. The port industry is very competitive and it was felt that as separate entities, the port companies would not be able remain competitive and meet industry and customer needs, particularly due to their small individual size;

(ii) integrated planning would allow the ports to use combined infrastructure and develop further facilities without potentially duplicating infrastructure or resources. This would also make it easier to develop state-wide plans and strategies for the ports; and

(iii) a single port corporation potentially has a larger skills base and it would be easier to govern and administer than four separate port companies.

(Meyrick and Associates 2004b).

In January 2005 based on the recommendations, the committee advised the Tasmanian government that the four existing port companies should be merged into a single port corporation, and that the new port corporation should be structured around business and not geographical lines (Hope 2005; Tasmanian Ports Corporation Pty Ltd 2006a). In 2005 the Tasmanian Cabinet gave approval for appropriate new legislation to be drafted.

7.6 PROCEEDING WITH THE MERGER – THE TASMANIAN PORTS CORPORATION ACT 2005 (TAS):

Before taking any action to merge the four port companies, the Tasmanian government sought approval for the proposed merger from the Australian Competition and Consumer Commission (ACCC). The ACCC is an independent statutory authority of the Commonwealth that was formed to administer Australia's competition and consumer laws. It is the role of the ACCC to promote competition and fair trade in the Australian marketplace and to ensure that anti-competitive behaviour does not occur (Australian Competition and Consumer Commission 2007). The ACCC also regulates national infrastructures services, such as ports (Australian Competition and Consumer Commission 2007).

In particular, the Tasmanian government was required under Section 46 the *Trade Practices Act 1974* (Cth) to ensure that the proposed merger was fair to all players in the market and would not result in TasPorts engaging in anti-competitive behavior. The *Trade Practices Act 1974* (Cth) prohibited anti-competitive behaviour and the abuse of monopoly power. The *Trade Practices Act 1974* (Cth) was replaced by the *Competition*

and Consumer Act 2010 (Cth) on 1 January 2011 which also prohibits the abuse of monopoly power and anti-competitive behavior. The ACCC approved the merger in July 2005 on the basis that it was unlikely that it would lessen competition, prevent new players in the market or lead to a change in the competitive environment of the Tasmanian ports system (Australian Competition and Consumer Commission 2007).

The Tasmanian government proceeded with changing the existing port regime by introducing the Tasmanian Ports Corporation Bill 2005 (Tas) 48 into Parliament in August 2005. Once passed and enacted, the Bill became the *Tasmanian Ports Corporation Act 2005* (Tas) (Tasmanian Ports Act) and it merged the four existing port companies into one port corporation called the Tasmanian Ports Corporation Pty Ltd (TasPorts). The Preamble to this new Act was to allow the creation of and provide for the control of TasPorts, abolish the four port companies (Hobart, Devonport, Launceston and Burnie), transfer their assets and liabilities to TasPorts, and for the repeal of the First Ports Act.

Section 3 of the Tasmanian Ports Act states three aims –

(a) *to provide for matters relating to the control of TasPorts registered under the Corporations Act 2001 (Cth);*

(b) *to vest the assets and the liabilities of the port companies (that is of Hobart, Devonport, Launceston and Burnie) in either TasPorts or the Crown; and*

(c) *to make provision in respect of the employees of the port companies on the transfer of those assets and liabilities.*

The Tasmanian Ports Act states at Section 3(a) that TasPorts, like its four predecessors, is to remain a GOC and is to remain subject to the *Corporations Act 2001* (Cth). TasPorts' role is to manage the four ports of Tasmania and their assets. Section 4 of the same Act defines the term port company as being only the Hobart Ports Corporation Pty Ltd, the Port of Launceston Pty Ltd, the Port of Devonport Corporation Pty Ltd, and the Burnie Port Corporation Pty Ltd.

On 1 January 2006, the four port companies merged into one under the Tasmanian Ports Act. TasPorts assumed the responsibility of managing Tasmania's ports from the four port companies. TasPorts, located in Devonport in the north-west of Tasmania, is a registered private company fully-owned by the Tasmanian government, with all assets of the four former port companies transferred to it (Tasmanian Ports Corporation Pty Ltd 2006a). The Tasmanian Ports Act, under Section 31, repealed the First Ports Act and under Section 3, expressly abolished the four existing port companies and replaced them with TasPorts. The GOC corporatization legislative framework was retained. The merger made TasPorts the fifth largest port corporation in Australia.

Under Section 6, the Tasmanian Ports Act defined the principle objectives of TasPorts, and as under the First Ports Act, they were purely commercial, being:

(a) to facilitate trade for the benefit of Tasmania; and

(b) to operate its activities in accordance with sound commercial practice.

As with the First Ports Act, TasPorts' Constitution (formerly the Memorandum of Association) must include the principle objectives of TasPorts and it must be consistent with the Tasmanian Ports Act (Section 7). TasPorts must have two shareholding Ministers and they are the same as for the port companies, being the Portfolio Minister (at the time of writing, the Minister for Ports) and the Minister administering the GBE Act, who is typically the Treasurer (Section 8). Each Minister nominally holds one of the two shares available in TasPorts. Under the Tasmanian Ports Act the four ports are intended to operate as working ports in their own right under a single Board of Directors and management structure (Tasmanian Ports Corporation Pty Ltd 2006a). TasPorts' main focus is to facilitate trade for Tasmania and to act commercially, as set out in its first Annual Report (Tasmanian Ports Corporation Pty Ltd 2006d).

It was determined that an appropriate legislative framework for TasPorts be developed along the lines of a modern and fully integrated business structure, with several key business units to drive and operate the ports' activities (Tasmanian Ports Corporation Pty Ltd 2006d). TasPorts' management structure remains corporatized as a GOC and

comprises of a Board of Directors who are answerable to the Portfolio Minister; a Chief Executive Officer who reports to the Board of Directors; and managers for the five business units, listed below, who report to the Chief Executive Officer (Tasmanian Ports Corporation Pty Ltd 2006a).

The business units are -

(i) Port Services;
(ii) Logistics Services;
(iii) Infrastructure & Property Services;
(iv) Corporate Services; and
(v) Marketing

(Tasmanian Ports Corporation Pty Ltd 2006b).

As with the four port companies established under the First Ports Act, TasPorts is also subject to the provisions of the GBE Act which must be read in collaboration with the Tasmanian Ports Act. TasPorts, in addition to the ports, owns subsidiary companies operating the ports on King Island and Flinders Island, as well as the regional ports of Strahan, Stanley and Triabunna (Tasmanian Ports Corporation Pty Ltd 2010).

7.7 THE ROLE OF THE SHAREHOLDING MINISTERS IN THE MERGED PORT COMPANY

The Minister for Ports and the Treasurer are TasPorts' two shareholders. Under Section 12 of the Tasmanian Ports Act the two Ministers have the role to appoint the members of the Board. The Board must ensure that TasPorts is managed and conducted in a manner that is in accordance with sound commercial practices (Section 12(a) GBE Act). The Board has input into appointing its own members as it can submit the names of potential members to the Ministers for their consideration under Section 12(4) of the Tasmanian Ports Act.

Unlike the Ministerial powers associated with the PoMC, TasPorts' two shareholding Ministers do not have wide powers of intervention in relation to the operation of TasPorts and they do not have the power to issue the Board with general directions. The

main reason for this is that TasPorts was established under the *Corporations Act 2001* (Cth) which sets out the internal governance rules for companies created under it. Those governance rules do not allow shareholders to issue directions to the Board or act in an advisory capacity. The only area in which they can give directions to the Board is in relation to the financial performance objectives of TasPorts under Section 40(3) of the GBE Act.

The Treasurer alone can issue instructions to TasPorts itself in respect to guidelines, principles and procedures in relation to matters such as corporate plans and annual reports, but that power must be exercised in accordance with the GBE Act under Section 114. Therefore the Ministers' power to give directions to the Board is a very limited one and very closely constrained by the GBE Act and the Tasmanian Ports Act. There is no requirement that Ministerial directions be recorded in TasPorts' annual reports and none were recorded for the time periods examined in this chapter. Neither Act provides scope for the Ministers to use their discretion in what matters that should advise the Board on or direct it to do.

The Ministers have little role in determining policy for TasPorts. They do prepare TasPorts' Ministerial Charter, however they must first consult with TasPorts before they prepare the document under Section 36(3) of the GBE Act. Section 37(2) of that Act does place limitations on the Ministers' construction of the charter as they must ensure that it does not prevent TasPorts from complying with the GBE Act or the Tasmanian Ports Act. The Ministers do not have a role in drafting TasPorts' Corporate Plan as it is the Board that must draft this for the Ministers whose role is then to approve it (Section 39 GBE Act). Therefore it can be seen that the Tasmanian Parliament has chosen to give the Ministers very little power to influence the activities of TasPorts.

Much of the Board's role and duties are set out in the *Corporations Act 2001* (Cth), but under Section 12(a) of the GBE Act they have the responsibility to the Ministers that they ensure that the business of TasPorts is managed and conducted in a sound commercial manner. It is the Board that drafts TasPorts' corporate plan and not the Ministers. The Board must provide the Ministers with copies of TasPorts' constitution

and any financial statements, directors' reports and auditors' reports, but that is for the purposes of presenting to Parliament in order to report back on TasPorts' operations according to Section 14 of the Tasmanian Ports Act. In fact much of the Board's role centres on reporting back the Ministers data about TasPorts' performance and finances to the Ministers so that the Ministers in turn may report back to the Tasmanian Parliament. There is very little scope for the Ministers to have any direct input into the operation of TasPorts as they are more of an avenue for the Board to report on TasPorts' activities to the Tasmanian Parliament.

7.8 THE INDEPENDENCE OF THE BOARD OF DIRECTORS

In the previous section, this thesis examined how TasPorts' Board of Directors is appointed and it also detailed their role and powers in relation to TasPorts and the Ministers. The current Board is comprised of seven members with one also being in the role of chairman. The question arises however as to how independent the members of the Board of Directors are from the Tasmanian government. As discussed above, the two shareholding Ministers make the decisions about the composition of the Board. There is no requirement however that they must have links to the Tasmanian government or that they must be unaffiliated with the government. However under Section 28 of the GBE Act Board, Board members must ensure that they avoid any conflict of interest between their own personal interests and any matters relating their position as a director. This can be done by disclosing any material personal interest to the Board. As stated in Part 6.7, this requirement to avoid conflicts of interest correlates with the role of a director on any Board of a company (OECD 2013).

In Part 6.7 a set of guidelines was developed and will be applied in order to determine the independence of each individual director of the PoMC. The same set of guidelines will be applied in this part to the directors as TasPorts. For the purposes of the criteria below, a related entity includes the Tasmanian government.

The criteria are that the Board member:

(1) Does not represent any particular stakeholder interest in relation to TasPorts or a related entity;
(2) Is not a shareholder or a stakeholder of TasPorts or a related entity;
(3) Has never been employed by TasPorts or a related entity in an executive capacity or if they have been employed so, there has been at least three years between ceasing employment and their appointment to the Board;
(4) Does not currently receive any remuneration from TasPorts or a related entity, except in relation to their duties as a Board member; and
(5) Has no contract with TasPorts or a related entity except as a Board member.

The members of the Board are Dr Dan Norton, who is also the chairman; Ms Margaret O'Rourke; Mr Bruce McGowan; Mr Owen Williams; Mr Barry Berwick; Mr Evan Rolley; and Ms Jane Bennett. None of the Board members are current or past members of the Tasmanian parliament but several have been involved in organizations or bodies that are closely linked to the Tasmanian government. Therefore using the above criteria this would bring the independence of those members into question. According to the TasPorts' website, five members of the Board of Directors have links to the Tasmanian government. The chairman Dr Norton has direct links to the Tasmanian government as he is the former Secretary of the Tasmanian Department of Premier and Cabinet and the former Deputy Secretary of the Tasmanian Department of Treasury and Finance. He also has close links to Tasmania as he is a Director of the Menzies Research Institute which is affiliated with the University of Tasmania. Mr Williams also has direct links to the government having been a non-executive director of the defunct Hobart Ports Corporation and the Hobart International Airport, both of which were owned by the Tasmanian government. Mr Berwick has extensive experience working with Australian Port Authorities, including Launceston and Burnie. No elaboration could be found as to what his roles were in these non-defunct port authorities, however both were owned by the Tasmanian governments. Mr Rolley is a previous manager of Forestry Tasmania which is a body of the Tasmanian government.

In contrast Ms O'Rourke, Mr McGowan and Ms Bennett do not appear to have links to the Tasmanian government, but extensive links to industry and business. Ms O'Rourke has been involved in Tasmanian commerce as a current Board member of the Tasmanian Chamber of Commerce and Industry and as the former Hobart and Southern Tasmanian General Manager of Telstra Countrywide. Mr McGowan has extensive experience in transport and logistics, holding CEO roles in several Australian and international transport logistics companies. Likewise Ms Bennett has extensive business experience and was the 2010 Tasmanian Telstra Business Woman of the Year. She has held advisory roles in relation to the Tasmanian government through being a president of the Tasmanian Rural Industry Training Board, a member of the executive committee of the Tasmanian Farmers and Graziers Association, and a member of the Tasmanian Food Industry Council.

Therefore as five members have either worked for the Tasmanian government or have been a member of bodies associated with the government, it cannot be definitively concluded that the Board of Directors is truly independent from the government in their affiliations.

7.9 RATIONALES FOR REFORM

The main rationales behind the merger under TasPorts were to increase efficiency and competition in the sector, and to increase responsiveness to customer needs (Tasmanian Ports Corporation Pty Ltd 2006d). The four ports generally served the same market and when they existed under separate companies this led to inter-port competition which often proved detrimental to the industry and to profits. Initially inter-port competition was considered beneficial and the mechanism to improve efficiency, but in reality it led to the duplication of services and a clash of priorities (Meyrick and Associates 2004b).

With the existence of the four separate companies the ports were increasingly using their resources to compete with each other for work. In a relatively small market this was considered detrimental. This led to thinking that a merged single corporation could rationalize functions to operate in a more efficient manner. The replication and duplication that occurred under the four port companies was seen to be inefficient: the

duplications included costs for management, the purchase and maintenance of infrastructure, as well as the costs associated with maintaining four corporations, particularly when the three on the northern coast were in close proximity to one another (Department of Infrastructure, Energy and Resources 2001). It was hoped that the merger would offer customers the advantages of size and economies of scale and lead to a high level of service and efficiency (Tasmanian Ports Corporation Pty Ltd 2006a).

7.10 TASMANIAN PORTS PERFORMANCE DATA

So far this thesis has relied upon the existing literature to argue examine the GOC model. There has been no mention of the performance data from the four Tasmanian port companies or TasPorts for any period before or after the 1997 reforms to show trade results. As highlighted in Part 6.8 of this thesis, relying solely on the existing literature is problematic as it makes little reference to any financial or operational performance data or indicators to support any contentions. It is therefore very difficult to draw any firm conclusions about the performance of Tasmanian ports and the port entities that manage them.

This chapter will use the same financial and non-financial performance indicators examined in Chapter Six. As the four Tasmanian ports were merged in 2006, data from 1995/96-2004/05 was taken from the annual reports of the four port companies. This data was compiled in the annual report for each Australian financial year. These were only available as hardcopy versions and not available online. The TasPorts data for 2005/06-2010/11 was obtained from TasPorts' annual reports which were available online from its website. TasPorts' reports were produced for each financial year. The first full financial reporting period for TasPorts was 2006/07. The TasPorts data recorded in TasPorts' 2005/06 Annual Report covered only the six months ending 30 June 2007 as TasPorts commenced operations on 1 January 2006. **Therefore it must be noted that the data for 2005/06 was not used in calculating performance indicators as it did not represent a full financial year.**

Like the Port of Melbourne, Tasmania's ports compete on both a financial basis and a non-financial basis (Reveley and Tull 2008). Overall the data used in this thesis for the

ports of Tasmania ranges from 1995/96-2004/05 and 2006/07-2010/11 to give a clear indication of performance in the pre- and post-corporatization eras. Whilst it is true that the TasPorts and the four individual port authorities are not the same entity due to the various legislative changes, the performance indicator data can be used and compared to give a picture of the performance of the entities managing Tasmania's ports from 1995/96-2004/05 until 2006/07-2010/11. Unlike for the Port of Melbourne in Chapter Six, there were no explanations in any of the annual reports for the Tasmanian ports for any data anomalies recorded.

The data contained in Tables A3.1-A3.3 in Appendix Three was used to calculate the average results contained in Tables 7.1-7.8. The full set of data for tables in this chapter is contained in Appendix Three. The raw data was obtained from the annual reports for the ports of Hobart, Devonport, Launceston and Burnie for the years 1995/96-2004/05 and from the annual reports of TasPorts for the years 2005/06-2010/11.

It is necessary to clearly define the performance data and performance indicators which will be used in this chapter. They are the same as those used in Chapter Six for the PoMC. This thesis will use both financial and non-financial performance data and performance indicators to address the research questions.

Financial Performance Data

Operating Revenue: Revenue includes a port entity's incomes from its normal core business operations such as wharfage (charges on goods passing through the port). Operating Revenue is a port entity's revenue as well rent and licence fees, charges on channel usage, charges on berth hire and other services at the port

Operating Profit before Tax: A port entity's sales revenue from its normal core business operations before taxation amounts are deducted. Operating Profit does not include profits earned from TasPorts' investments or the effect of interest or taxes

Operating Profit after Tax: Operating Profit before Tax minus taxation

Total Assets: The sum of current and non-current assets.

Net Assets: The amount of total assets minus any liabilities on those assets

Total Cost: The amount of Operating Revenue remaining after Operating Profit before Tax, Depreciation and Interest charges are deducted. This is a port entity's investment in the services which it offers to customers

Non-Financial Performance Data

TEU: The Twenty-Foot Equivalent (TEU) is the standard unit for measuring a ship's cargo-carrying capacity or a shipping terminal's cargo handling capacity. It measures the amount of cargo passing through a port in any given year and is based on the volume of a twenty-foot long container which can be transported on ships. One TEU represents the cargo capacity of a standard intermodal container (20 feet long by 8 feet wide)

Mass Tons: The measure used to represent the weight of cargo passing through the port in any given year.

Table 7.1 Average Operating Revenue, Average Operating Profit before Tax and Average Operating Profit after Tax (1995/96–2010/11)

Financial Year	Average Operating Revenue ($)	Average Operating Profit before Tax ($)	Average Operating Profit after Tax ($)
1995/96-2004/05	50,050,704	5,350,000	2,630,000
2006/07-2010/11	64,411,696	4,559,668	29,983,068

Table 7.2 Average Total Assets and Average Net Assets (1995/96-2010/11)

Financial Year	Average Total Assets ($)	Average Net Assets ($)
1995/96-2004/05	191,960,000	124,530,000
2006/07-2010/11	177,103,957	130,922,412

Table 7.3 Average Cost and Average Total Cost (1995/96-2010/11)

Financial Year	Average Cost ($M)	Average Total Cost ($M)
1995/96-2004/05	44.70	34.45
2006/07-2010/11	59.85	67.24

Table 7.4 Average Volume of Cargo entering and leaving the ports of Tasmania (1995/96-2010/11)

Financial Year	Average TEUs	Average Mass Tons
1995/96-2004/05	321,188	13,514,472
2006/07-2010/11	468,079	14,647,167

From the performance data collected several performance indicators were created. A **performance indicator** measures the efficiency with which an organization achieves its operational goals and helps it to assess its progress towards them (Tull and Reveley 2001). A **financial performance indicator** contains measurements of financial performance such as the financial value of the port corporation's profits, whereas a **non-financial indicator** contains measurements related to other aspects of the port's performance such as throughput of cargo passing through the port. Whilst financial performance indicators can give an indication of an organization's performance in any given year, non-financial performance indicators can be used to forecast future financial performance and progress towards long-term goals.

Financial Performance Indicators

Return on Assets (RoA): Measures the level of return a port entity generates per unit of asset investment prior to any financial effect.

Return on Equity (RoE): Measures the level of return a port entity generates per unit of equity investments prior to any financial effect.

Non-Financial Performance Indicators

Operating Revenue per TEU/ Mass Ton: A financial efficiency measure used to measure the amount of revenue that can be generated for every TEU/Mass Ton moved.

Operating Profit before Tax per TEU/Mass Ton: An indication of the efficiency of a port entity's operations which measures the amount of profit which can be generated from the movement of one TEU/Mass Ton.

Total Cost per TEU/Mass Ton: An indication of the efficiency of a port entity's operations which measures the cost of moving one TEU/Mass Ton of cargo.

Assets per TEU/Mass Ton: A measure of the efficiency of a port entity's operations

Price per TEU/Mass Ton: An indication of the efficiency of a port entity's operations which measures the price of moving one TEU/Mass Ton of cargo for a port user. Price is the amount which customers must pay to purchase services such as wharfage (which allows the right for customers to pass through a port). Price must exceed cost in order for a port entity to make a profit. Price is reported in Australian dollars (AUD).

Using the performance indicators generated below was not the only possible approach available to measure the efficiency of the port corporation in achieving its operational and financial goals. However there was limited data recorded in the available material on the performance of the PMA, MPC and PoMC. This in turn meant that there were constraints on the choice of possible approaches utilized to measure efficiency in this thesis. As this thesis had a major focus on the financial performance of port corporation's performance indicators generated and used which would assist in that analysis.

7.11 ADDRESSING THE RESEARCH QUESTIONS

The research questions to be addressed in this chapter are:

(1) Does the legislation under the GOC framework distance government from the daily operations of TasPorts and free it from political control?

(2) Does the legislation under the GOC framework provide the conditions which create an effective legislative framework that enables TasPorts to respond to the forces of the market?

As in Chapter Six these two questions will be discussed separately in order to answer them both in detail. There have been no amendments to the Tasmanian Ports Act since December 2005 that change the corporatized GOC structure of TasPorts. This suggests that the Tasmanian government may be satisfied with the GOC structure of TasPorts to date.

(1) Does the legislation under the GOC framework distance government from the daily operations of TasPorts and free it from political control?

As has already been argued in this thesis, the reforms that led to the merging of Tasmania's four companies were driven by the reality that they were competing in the same market. The Tasmanian government created TasPorts as a GOC, thereby retaining the GOC corporatization model used for the four port companies under the First Ports Act. TasPorts' role is to manage Tasmania's port facilities and assets. By retaining the GOC legislative framework, the Tasmanian government ensured that it was using a corporatized framework that permitted a large degree of parliamentary separation from the daily activities of TasPorts, as per the *Corporations Act 2001* (Cth). This is a general company incorporation Act of the Commonwealth Parliament that dictates how companies created under it are to be operated as well as how much input into the company's operations the shareholding Ministers can have. As it is an Act of the Commonwealth Parliament, the Tasmanian Parliament is unable to amend this Act to

suit its own requirements in relation to any aspect of TasPorts, including the Ministers' roles and powers. As examined above, the Tasmanian Parliament has also granted the two Ministers a very limited role or scope for interference in TasPorts. This suggests strongly that the Tasmanian government is satisfied with a more distant control of TasPorts than is permitted under SSOC models governing the Port of Melbourne and other Australian SSOC port corporations.

However as Tasmania's four ports remain government-owned, it strongly indicates that the Tasmanian government does not wish to relinquish control over them or any benefits that ownership entails. The Tasmanian government is the sole shareholder of TasPorts and the two Ministers hold their shares on behalf of that government. Due to the application of the *Corporations Act 2001* (Cth) these shareholders are treated the same as the shareholders of any other corporation created under that Act. The political involvement is maintained by the Tasmanian Ports Act stating that two government Ministers must be involved in the operation of TasPorts.

As has been argued in detail in Chapters Five and Six, the element of government cannot be removed from TasPorts operations because it is mandated by the Westminster System of Responsible Government inherited from the United Kingdom and enshrined in the Australian Constitution. Therefore as TasPorts' owner, the Tasmanian Government must ensure that it has a key role in the operations of TasPorts so that it remains accountable to the Tasmanian people for TasPorts' performance. Under the current Australian political system, the only way to remove that element would be to privatize TasPorts which is not currently on the Tasmanian government's agenda.

As in Victoria, Tasmania's politicians are elected for four-year terms. A possible criticism of such a short term of office is that there is the potential for Ministers to place their own political agendas and ambitions ahead of what is best for a port corporation in an effort to be re-elected at future elections. Under the Tasmanian GOC model, the Tasmanian Parliament has placed strong limits of this occurring as the powers that the Ministers have in relation to TasPorts are very limited. The Ministers do not have total control over appointing the Board and they have very little power to provide the Board

with directions. This is in direct contrast with the Port of Melbourne as examined in Chapter Six. Indeed much of the Tasmanian Ministers' role is to receive documentation and reports from the Board to then present to the Tasmanian Parliament. The Ministers must also act tightly within the scope of the Tasmanian Ports Act and the GBE Act so there is little chance for them to act in their own interests.

The GOC model also ensures that the Tasmanian government has a role of determining policy and all other matters relating to the operation of the TasPorts. However again it is a very limited role especially when compared to SSOCs. In drafting any policy for TasPorts such as the Ministerial Charter the two Ministers must first consult with TasPorts in order to have gain TasPorts' input. In relation to any Corporate Plan prepared it is the Board that drafts it for the Ministers' approval; the Ministers do not direct the Board as to what to put in the plan.

Therefore the GOC model appears to not completely distance government from the daily operations of TasPorts or remove complete political control from their activities. It does however seem to provide more distance than the SSOC model, thus allowing TasPorts to operate with minimal potential political interference.

(2) Does the legislation under the GOC framework provide the conditions which create an effective legislative framework that enables TasPorts to respond to the forces of the market?

In the first question, it was concluded that the legislation does not remove political control from the daily operations of TasPorts. The Tasmanian Parliament is bound by the Westminster System of Responsible Government so it must ensure that there is a chain of accountability between TasPorts and the Tasmanian parliament which represents the Tasmanian electorate. Although the GOC model appears to allow the potential for less political intervention than the SSOC model, nevertheless it does not remove that element entirely because of the Westminster system, which has already been discussed at length previously in this thesis. What must be examined now is whether the GOC model creates an effective legislative framework that enables TasPorts to respond

to the forces of the market in which it operates.

The current legislative framework, which came into effect in 2006, merged Tasmania's four existing port corporations which had been created under the First Ports Act. This merger was intended to remove any possible doubling up of resources or roles that may have existed under the separate port model. With the separate port model the four ports were reported to have had no real specialisations and were competing against each other for resources and business. This led to unnecessary efforts and finances being wasted competing against each other as well as a doubling-up of infrastructure.

Whilst it remains government-owned TasPorts does not have exactly the same freedoms to participate in the market as its private sector counterparts, although as the above discussion has argued the two Ministers do not have very wide powers to intervene in TasPorts' operations. In fact their powers as shareholders are very similar to those of the shareholders of a private sector company, as most private sector companies in Australia are created under the same Act as TasPorts which is the *Corporations Act 2001* (Cth). Therefore in reality, there may be little difference between the two.

Under the *Corporations Act 2001* (Cth) the shareholders of a private sector company have little power of intervention over the operation and activities of the Board of Directors, just as is the case with the shareholding Ministers of TasPorts. With TasPorts the Ministers' powers are restricted mainly to appointing the Board of Directors, giving directions in relation to the financial performance objections of TasPorts and the preparation of the Ministerial Charter. The Ministers also have the responsibility of reporting TasPorts' performance results to the Tasmanian parliament. A private sector company, as previously discussed, has no requirements for ministerial input or interference, although as with TasPorts the Board must report to the company's shareholders details about the company's performance each year. This does not necessarily imply that every private sector company will be more efficient or competitive than a government-owned company as much depends on the circumstances in which a company operates (Notteboom and Winkelmans 2001a). It was Grantham (2005) that questioned whether a GOC can act under the same commercial conditions as

a private sector company. He claimed that both it and the SSOC had structural inadequacies which prevented the proper market-based forces working upon them.

In 2012 the Tasmanian Audit Office (TAO) conducted a review of TasPorts focusing on whether the statewide planning benefits had been realized and whether the operational benefits had been realized (Tasmanian Audit Office 2012). In undertaking its review, TAO referred to Meyrick's report as a guide in reaching its findings (Meyrick 2004b). TAO's review found that the strategic benefits envisaged by the Meyrick Report were largely achieved, namely that there was input to statewide planning and policy and that TasPorts' current structure was an improvement on the pre-merger structure (Tasmanian Audit Office 2012). However, it was found that the operational benefits of the merger envisaged by the Meyrick Report had not been realized: the Meyrick Report predicted an increase in sales revenue which did not materialize meaning that TasPorts was not as financially successful as had been predicted in the Meyrick report. This drop in revenue was stated to be due to two factors: the Meyrick Report's predications were overly optimistic, and the economic conditions within which TasPorts was operating had changed since the Meyrick Report was conducted (Tasmanian Audit Office 2012). It is important to note that at no point did the TAO Report suggest that TasPorts' corporatized structure had an impact on its financial or planning success.

TasPorts has been created as a monopoly within Tasmania so all port business in Tasmania must pass through at least one of its four commercial ports. Most private sector businesses, such as freight and logistics businesses are not monopolies as they have many competitors operating in the same industry. That is not to say that a monopoly is a negative concept as monopolies can still provide cost-effective services. This will be examined later in this chapter. There are no other commercial ports in Tasmania so therefore TasPorts has no competitors within Tasmania. This lack of competition for TasPorts within Tasmania could mean that the product markets within Tasmania have little or no disciplining effect upon TasPorts. There may be some disciplining effect when TasPorts competes with other Australian ports, but within Tasmania itself there are no other ports competing with TasPorts. Due to their location south of the Australian mainland, Tasmania's ports generally do not compete with the

ports on the mainland, although from time to time competition does occur. When there is competition in any sector it can have the effect of lowering prices and increasing efficiency as businesses compete for customers. Any business or individual wishing to send goods from Tasmania via the sea must in some capacity deal with TasPorts.

Examination of Port data

At this point an analysis of the performance indicators generated from the data in contained in Appendix Three must be undertaken in order to ascertain whether there is any change in performance between the two periods that may be attributable to corporatization.

The financial performance indicators analysed in this Chapter are:

- Return on Assets; and
- Return on Equity.

The non-financial performance indicators analysed in this Chapter are:

- Operating Revenue per TEU;
- Operating Revenue per Mass Ton;
- Operating Profit before Tax per TEU;
- Operating Profit before Tax per Mass Ton;
- Total Cost per TEU;
- Total Cost per Mass Ton;
- Assets per TEU;
- Assets per Mass Ton;
- Price per TEU; and
- Price per Mass Ton.

Due to the changes in Tasmania's port legislation that led to the creation of TasPorts, TasPorts is not just a merged version of the four individual port corporations. Therefore as with the Port of Melbourne in Chapter Six, a true comparison cannot be undertaken as TasPorts performs different activities and has different responsibilities from the four port corporations which existed prior to the merger. Another issue is that there is a

discrepancy in the amount of data available to examine within the two periods: in the first there are nine years and therefore nine years' worth of data to examine; however in the second period there were only four years as TasPorts' first full reporting period was 2006/07.

This is a limitation to this study and so must be kept in mind with the analysis of the TasPorts' data. This is not a problem which can be rectified based on the time frame in which this thesis was written; rather the data for the second period can be seen as merely indicative of how TasPorts may perform in future years. Another problem is that unlike the Port of Melbourne in Chapter Six, there are only two reporting periods available for analysis for the Tasmanian ports. Therefore there are fewer results available in order to make in-depth conclusions about the performance of the Tasmanian ports.

In an analysis on the annual reports for 1995/96-2010/11 no report mentions the legislative framework as having any impact on the performance or operations of the entity at any given time. The annual reports report that factors such as the global economic crisis, poor interest rates, the high Australian dollar and the poor economic climate have impacted on port performance and financial statements. Therefore this makes it hard to definitively conclude that it is the legislative framework that is influencing the results. Another problem is that it is difficult to isolate and exclude other factors such as demand for services or global economic environments, which may have influenced the performance of the four individual ports and TasPorts.

Table 7.5 Average Return on Assets and Average Return on Equity (1995/96-2010/11)

Financial Year	Average Return on Assets (%)	Average Return on Equity (%)
1995/96-2004/05	1.4	2.0
2006/07-2010/11	5.0	7.2

Table 7.6 Average Operating Revenue per TEU & Mass Ton and Average Operating Profit before Tax per TEU & Mass Ton

Financial Year	Average Operating Revenue per TEU ($)	Average Operating Revenue per Mass Ton ($)	Average Operating Profit before Tax per TEU ($)	Average Operating Profit before Tax per Mass Ton ($)
1995/96-2004/05	157.23	3.69	15.34	0.37
2006/07-2010/11	185.31	5.92	135.45	4.11

Table 7.7 Average Total Cost per TEU & Mass Ton and Average Assets per TEU & Mass Ton (1995/96-2010/11)

Financial Year	Average Total Cost per TEU ($)	Average Total Cost per Mass Ton ($)	Average Assets per TEU ($)	Average Assets per Mass Ton ($)
1995/96-2004/05	108.65	2.55	400.43	9.34
2006/07-2010/11	144.13	4.62	304.29	9.78

Table 7.8 Average Price per TEU & Mass Ton (1995/96-2010/11)

Financial Year	Average Price per TEU($)	Average Price per Mass Ton ($)
1995/96-2004/05	157.23	3.69
2006/07-2010/11	185.31	5.92

Conclusions from the data:

As with the Port of Melbourne in Chapter Six, four conclusions can be generated from an examination of the data in Tables 7.6-7.8 and Appendix Three.

- **There are higher volumes of cargo passing through the port over time:**

As with the Port of Melbourne in Chapter Six, volumes of cargo passing through the Tasmanian ports were measured and recorded in Twenty-Foot Equivalents (TEUs) which measure a ship's carrying capacity based one volume, and Mass Tons which are a measure of cargo weight (Table 7.4).

The data in Table 7.4 show an increase in the first period, but in the second period the growth rate is much slower for TEUs and there is a negative rate of growth for Mass Tons.

First Period:

The number of TEUs handled over this period rose by 84.41% or 9.38% per annum. Mass Tons rose at the slightly lower rate of 51.40% or 5.71% per annum.

Second Period:

In this period the amount of growth of TEUs rose by 2.87% or 0.72% per annum. There was a fall in Mass Tons of 10.91% which equated to a fall of 2.73% per year.

The data for the first period were compiled from the annual reports from the four individual port authorities. These reports did not provide detail as to what factors, whether internal or external, could have been impacting upon the four ports' performance. Therefore no conclusions can be drawn as to whether it was the pre-corporatized legislative model or other factors which were influencing each ports' performance. What can be seen from an examination of the data for both measures, although they are not strictly comparable as they come from two different entities, in the years 2004/05 being the last year of the first period and 2006/07 being the first reporting year of the second period there is only a fall of 0.50% for TEUs and a fall of 7.35% for Mass Tons. Therefore the merged TasPorts was handling similar

amounts to the combined amount of the four individual ports. As the annual reports from TasPorts do not provide much detail on what may be influencing the slower rates of growth in the second period, no conclusions can be drawn.

- **Pricing has been constrained and is less than Consumer Price Index growth:**

The four port authorities and TasPorts have constrained the cost of their services which has enabled them to remain competitive. In turn this could be a factor which has made the Tasmanian ports attractive to potential customers and helped them to retain existing customers because competition can help to keep the price of port services low (Table 7.8). Although TasPorts is a monopoly in Tasmania, at times it does face competition from some of the mainland ports, in particular Melbourne and Hastings.

First Period:

In this period the price to move one TEU of cargo fell by 15.34% or 1.70% per annum. The price to move one Mass Ton of cargo rose only slightly as 3.15% or 0.35% per annum. The CPI for this period was 23.48%. This shows that for both categories, prices were not rising at the same rate of the CPI for the period.

Second Period:

In this period both the prices for both values rose. The CPI in this period was 11.89%. The price to move one TEU of cargo rose at a rate of 1.60% or 0.4% per annum, whereas the price to move one Mass Ton rose at a rate of 17.46% or 4.36% per annum and therefore exceeded the CPI.

As identified in Chapter Six, Operating Revenue is affected by the price of moving cargo as the prices which a port charges contribute to its revenue stream (Tables 7.1 & 7.6). In the first period Operating Revenue per TEU dropped at a rate of 15.34% and for Mass Tons it rose by 3.15%, neither of which exceeded the CPI which was 23.48%. However in the second period Operating Revenue fell for both TEUs and Mass Tons. For Operating Revenue per TEU it fell by 19.00% and for Mass Tons it fell by 6.44% both of which were lower than the CPI which was 11.89%. At no

point was TasPorts' corporatized GOC model cited as a possible contributor to this lower result in the merged port period. Within the second period in particular, the annual reports cited the global financial crisis and the poor local economy as being factors which had impacted upon TasPorts' financial results.

Operating Profit before Tax is another measure which is influenced by prices charged for services (Table 7.1). In the first period this figure started at $2,400,000 and ended at $10,400,000. The second period experienced fluctuations in this value due to various factors including the sale of shares in the Hobart International Airport, the payment of employee termination payments and infrastructure asset value decrements. These are explained in more detail at Table 7.1.

- **The port has good underlying cost control:**

By keeping their total costs low, the Tasmanian ports have helped themselves stay competitive which in turn has helped their financial performance. The ports must pass costs onto their customers so by keeping costs low, their services remain attractive to existing and potential customers. The total cost values used in this section do not include the values for depreciation or interest costs (Table 7.3 and Table 7.7). These values have been deducted in order to generate as accurate a value as possible of the cost to move cargo.

First Period:

In this period the total cost to move one TEU of cargo fell by 22.18% or 2.46% per year. The total cost to move one Mass Ton of cargo fell by 5.32% or 0.59%.

Second Period:

In this period the total cost to move one TEU of cargo rose 17.26% or 4.31% per year. The total cost to move one Mass Ton of cargo fell by 35.69% or 8.92%.

- **There is continued growth in capital expenditure with returns yet to emerge:**

According to the annual reports for 1995/96-2005/06 and 2006/07-2010/11, the Tasmanian ports received funds for capital expenditure from the Tasmanian government in order to build, maintain and improve its infrastructure, equipment and assets. Prior to the merger, the four individual ports received a combined amount of $34,419.144 from 1995/96-2005/06. The annual reports from the four individual ports did not detail how exactly this amount was spent other than it was to build, maintain and improve its infrastructure, equipment and assets. From 2006/07-2010/11 TasPorts received $51,885,868 for capital expenditure which has been put to use in many ways including: in 2006/07 funds were used to undertake remediation works at Macquarie Wharf Pier No. 4 in Hobart and in at the Port of Burnie dredging works were undertaken as part of the port's maintenance programme; in 2008/09 funds were used to purchase 10.8 hectares of land in the (Launceston) Bell Bay industrial estate for port-related activities and to create a security operation centre; and in 2010/11 funds were spent on maintaining infrastructure and to invest in assets.

First Period:

In the first period the average rate of Return on Assets was 1.43% or 0.16% per annum. The average of Return on Equity was 1.97% or 0.22% per annum.

Second Period:

In this period the average rate of return for both measures was higher than in the first period. The average rate of Return on Assets was 4.98% or 1.00% and the average Return on Equity was 7.18% or 1.45%.

Therefore these rates show that the rates of return which are being generated are not high (Table 7.5). However as the average rates are higher in the second period than in the first, this may indicate that in future years TasPorts may generate increasingly higher rates of return.

7.12 CONCLUSION

As discussed above, the Tasmanian ports operate under a GOC legislative framework, and since 1 January 2006, they have operated under one merged port corporation, TasPorts. This merger represented an important reform and is unique in Australia. The merged port corporation has been created to suit the specific needs of Tasmania, which is an island state with three of its four commercial ports within a very short distance of each other. In response to Question One, despite Tasmania opting for the GOC legislative framework in order to stress the business aspect of its intentions for its ports, the framework does not entirely distance the port corporation from the parliament. The GOC framework has arguably allowed TasPorts to distance itself from the government more than is allowed for the Port of Melbourne where the intentions were very different as the Victorian government wanted to ensure that it had a tighter rein over its ports. By choosing a GOC framework, the Tasmanian parliament has created an entity that is subject to the *Corporations Act 2001 (Cth)* and not its own legislation.

In relation to Question Two, none of the annual reports for the individual port corporations or for TasPorts identified the legislative structure of each entity as being an influence on performance. The annual reports did mention at various times that the poor economic climate or the global financial crisis was impacting upon freight volumes and TasPorts' ultimate financial performance. In relation to TasPorts specifically, none of the annual reports available mentioned corporatization or TasPorts' GOC model as having any influence upon performance. This was also the case with the Tasmanian Audit Office's 2012 Report into TasPorts which found that TasPorts' financial performance since the merger was due to over-optimistic performance forecasts and changed economic conditions and not the GOC model. It appears unlikely then that the effect of corporatization as a GOC on the port corporation's performance cannot be measured as that element cannot be isolated out from others, such as economic factors. Therefore it cannot be concluded as to whether corporatization had a negative or positive effect on TasPorts' performance.

As to whether the merged port corporation will remain will be up to time, as at the time of writing it is a very new entity which has meant that TasPorts does not have a large time series available to analyse its performance. The next chapter will use the information provided in the two case studies in order to reach conclusions.

CHAPTER EIGHT - ASSESSING THE SUCCESS OF CORPORATIZATION: A FRAMEWORK FOR FURTHER ANALYSIS

8.1 INTRODUCTION

The research in this thesis has examined the legislative frameworks of Australia's corporatized ports. In particular the research has focused on the port legislation and the apparent constraints upon the port models created by that legislation. The research has also questioned whether the legislation creates an appropriate business framework that allows port corporations to achieve their commercial objectives. This thesis has argued that effective corporatization is dependent upon legislation that creates those frameworks.

The earlier chapters in this thesis investigated port reform against the background of historical forces that led to the introduction of corporatization both overseas and in Australia. Those chapters also focused on the different corporatization models implemented in Australian ports and examined the elements of those models. Chapter Four provided a general outline of port reform overseas and in Australia, whilst Chapter Five provided a general overview of the ports in each Australian jurisdiction. Chapter Six examined the Statutory State-Owned Corporation (SSOC) model with the Port of Melbourne as the first case study and Chapter Seven examined the Government-Owned Company (GOC) ports of Tasmania as the second case study. In Chapters Six and Seven the two research questions addressed using both corporatization models to determine if the legislation under each model distanced government from the daily operations of port corporations and created an effective legislative framework that enabled each port corporation to respond to the forces of the market.

In this analysis chapter the effectiveness of corporatization will be examined using the findings from Chapters Six and Seven to determine which of the two legislative frameworks, the SSOC or the GOC enable the objectives of corporatization to be met.

8.2 HAS CORPORATIZATION DELIVERED AN APPROPRIATE LEGISLATIVE FRAMEWORK?

The research in this thesis has focused on the effectiveness of the legislative frameworks and the port models in Australia. The question of the effectiveness of corporatization is a crucial one. Although the focus of this thesis is not on operational issues, a successful model is theoretically one where the outcomes are consistent with the original objectives in the legislation. Those objectives were manifold but the major features were to:

- Distance government from a port's daily operations and free it from political control; and
- Create an appropriate legislative framework which enabled the port corporations to respond to the forces of the market in which they operate.

The two research questions were addressed in Chapters Six and Seven and centred on these two objectives for the SSOC and GOC models. It was concluded that based on the literature reviewed in Chapter Two, neither model was able to fulfil those two requirements due to the legislative constraints contained in the two models. However as argued in both of those chapters, the performance data generally showed an increase in performance for both port corporations since the introduction of corporatization. It could not be concluded that the increases were due to corporatization in any way as there no mention of it being a contributing factor, or a hindrance, in any of the annual reports or documentation and literature released by the Port of Melbourne or TasPorts.

In a similar study of Sydney Water's performance for pre- and post-corporatization, the researchers found that likewise the performance data used also increased, however they were unable to conclude that the reason was corporatization (Jane and Dollery 2006). The researchers concluded that the increases in performance shown were due to external factors, such as the economy and not corporatization (Jane and Dollery 2006). A recent study in New Zealand on the electricity industry before and after corporatization also produced results that showed that the post-corporatized entities showed increased improvement compared to the pre-corporatized entities, however the study was unable to

conclude that it was corporatization itself, as opposed to other outside factors that caused the improvement (Hooks and Van Staden 2007).

The rationale for corporatization was to emulate private sector corporations and practices by placing the corporatized port in similar market conditions to those experienced by its private sector competitors (Jones 1994; King 2002). This was driven by the belief that private-ownership may make a port more efficient because it does not have the political constraints experienced by government-owned corporations (Quiggin 2002; Productivity Commission 2005a). This is not to say that it can be concluded that a privatized port will always be more efficient or financially successful than a corporatized port because much depends on other factors such as the market and the economy in which the port is operating (Wiltshire 1994; Notteboom and Winkelmans 2001a). A port's financial performance can in fact be affected by matters that are out of the control of the port's managers such as the determination of pricing structures by regulators, the level of payments by governments for the provision of non-commercial services and the importance that governments place on achieving commercial returns relative to the achievement of non-commercial objectives (Productivity Commission 2003a). This has created some dilemma for Australian governments as several have been reluctant to relinquish ownership and control of their ports because they are regarded as essential infrastructure and an integral parts of the nation's transport system (Mantiziaris 1998).

As argued in this thesis, most state governments and the Northern Territory converted their ports to corporatized government-owned businesses. However many writers, as shown in Chapter Two have argued that in most instances in Australia, been unable to replicate a private sector business driven by commercial objectives because of the parliamentary requirement for ministerial involvement in the operation of the port corporation (for example Coates 1990; Wettenhall 1995; Hirst 2000). The SSOC model, as argued particularly in Chapter Six, is created by a statute that is specific to that entity that allows the parliament to determine the extent of ministerial involvement in that entity (Bottomley 1994). The GOC model, which was examined particularly in Chapter Seven, is subject to general incorporation legislation such as the *Corporations Act 2001*

(Cth). There is still a requirement for ministerial involvement as they are also government-owned, but the parliament is limited as to how much involvement is permitted because GOCs are created under general incorporation statutes (Grantham 2005).

8.3 THE PORT OF MELBOURNE: SSOC MODEL – 1995 REFORMS

The 1995 Port Act under the 1995 reforms separated the responsibility for the land and watersides. Therefore a port business was created that had lost its responsibility for essential port functions: for example the waterside and channel responsibilities were transferred to a newly created channel authority Channel Corp. The port corporation became a landlord managing landside assets only. The Victoria Channel Authority (VCA) was created and had jurisdiction for navigation aids, channels and harbour control. Furthermore the 1995 reforms meant the port lost responsibility for regulation, carrying of dangerous goods, pollution and land-use planning – essential port functions which were transferred to other government entities which had no experience in port planning.

These problems with the Port of Melbourne model, the redistribution of responsibilities and the institutional arrangements under the 1995 legislation were recognized by government to have contributed to a neglect of strategic issues and to constrained funding for public investment. Not only was there a neglect of strategic issues, but also strategies essential for the port's further business growth were ignored and therefore not implemented (Russell 2001). The model was such that uncertainty was created relating to the responsibility for particular tasks. Another problem was that the Victorian government and bureaucracy were driving the model and market forces (Everett and Robinson 2007). This is inappropriate for a port reformed to emulate and operate like a private sector business.

In this instance, the SSOC model which led to the split of port functions, responsibilities and resources led to inaction and problems in carrying out functions (Russell 2001). The market demanded deepening of the channel, government and shareholding ministers

were reluctant to implement it as it was a sensitive issue both politically and with the voting public (Everett and Robinson 2007).

8.4 PORT MELBOURNE ONGOING REFORM: 2003 AND 2010 MODELS

Difficulties with the split port model led to further reform in 2003 under the *Port Services (Port of Melbourne Reform) Act 2003* (Vic). The amended legislation addressed some of these anomalies and attempted to provide solutions. It abolished the Melbourne Port Corporation (MPC) and the VCA and replaced these entities with a single entity, the Port of Melbourne Corporation (PoMC) which reunited the land and waterside operations. The 2010 Transport Act removed the Treasurer's power to issue the Board of the PoMC directions in relation to non-financial matters, making the Minister of Ports the only Minister able to issue directions to the Board. The objectives of the new port corporation were to deliver a broader charter defined for the corporation by the government and a key element of this entailed the synergistic benefits from managing the land and waterside components of the port.

These developments, as with the 1995 and 2010 models theoretically are not designed to meet the demands of the market because the objective and broader charter continue to be determined by the government and not the PoMC. Robinson (2003) argues that companies that are responsive to the market, irrespective of ownership, are those with the ability to compete within their market and respond to market forces. Other problems have emerged from this latest restructure. The PoMC now has the responsibility to drive efficiencies across the land and water logistics chain but the problem in this case is that it does not have jurisdiction over the landside matters.

8.5 TASMANIAN PORTS: GOC MODEL

In contrast the state of Tasmania chose to corporatize its ports as GOCs which was discussed in the case study in Chapter Seven. The GOC model used in Tasmania is intended to emulate private sector company models as the accountability for the performance of Tasmania's four commercial ports is not to any Minister or the Tasmanian parliament, but to the Australian Securities and Investment Commission

(ASIC). Tasmania's GOC model, as was argued in Chapter Seven is a more market-focused commercial entity than that of the SSOC because there is less opportunity for political interference and it is very similar to a private sector business.

Tasmania corporatized its ports as GOCs in two distinct stages after a long recognition that its ports were inefficient and uncompetitive. In 1997 the ports were corporatized under four GOC port companies and in 2006, those four port companies were merged so that one GOC port company, the Tasmanian Ports Corporation Pty Ltd (TasPorts) became responsible for the running of Tasmania's ports. The merger occurred because there was a recognized overlap of resources that meant that the port companies were often unnecessarily competing with one another and providing the same services which caused inefficiency (Tasmanian Government Media Releases 2005a). There have been no substantial changes to the TasPorts GOC model since it has been implemented. In contrast, in 2003 the original SSOC model governing the Port of Melbourne was vastly altered.

Unlike the 1995 reforms of the Port of Melbourne, Tasmania's corporatized port companies never lost control of functions and responsibilities relating to the ports such as land and waterside, navigation, regulation or other port-related functions. This means that the port companies were and remain integrated. They did however lose control of their non-commercial operations, being marine safety, recreational boating and coastal facilities administration. These were transferred to the newly-created Marine and Safety Authority of Tasmania (MAST). Losing these functions did not take away from the port companies' ability to function as competitive businesses as these functions were outside their core operations as port businesses.

Tasmania's port legislation, both the *Ports Companies Act 1997* (Tas) and its successor the *Tasmanian Ports Corporation Act 2005* (Tas) (Tasmanian Ports Act) emphasize the commercial nature of Tasmania's port companies. These two Acts created an identical model which places the focus on being businesses that are to be profitable and operating as private sector businesses. TasPorts (and its predecessors) are also governed by the *Government Business Enterprises Act 1995* (Tas) (the GBE Act) which provides a

framework for Tasmania's government business enterprises. The GBE Act stresses that Tasmania's government businesses are to operate as successful businesses in accordance with sound commercial practices and achieve a sustainable rate of return.

8.6 ADDRESSING THE RESEARCH QUESTIONS

The research questions addressed in Chapters Six and Seven were:

> **Does the legislation under the SSOC/GOC framework distance government from the daily operations of the PoMC/TasPorts and free it from political control?**

In Chapters Six and Seven it was concluded that neither the SSOC model, represented by the PoMC nor the GOC model, represented by TasPorts, entirely distanced government from the daily operations of port corporations. It was also concluded that in theory neither model created an entirely effective legislative framework that enabled its port corporation to respond to the forces of the market in which it operated because of this political interference which was made necessary by the Westminster System of Government.

However an analysis of the annual reports of the MPC, PoMC or TasPorts did not support the contention that corporatization interfered with either port corporation's operations as none of those reports even mentioned corporatization as being a factor influencing operations and performance results. This was further made problematic by the fact that the pre- and post-corporatization entities for both the Port of Melbourne and the ports of Tasmania were not the same due to legislative changes in their structure.

It was found that the main reason that government could not be distanced from their operations was because of the Westminster System of Responsible Government that was inherited from the United Kingdom and was entrenched in the Australian Constitution. The Westminster System requires that there be a chain of accountability between the parliament and the public who elect the parliament. What this means in a practical sense is that government-owned corporations like the PoMC and TasPorts must have at least

one Minister of Parliament involved in their operations in order to fulfil this requirement. This requirement for political involvement also led to the conclusion being made that neither model created an entirely effective legislative framework that enabled its port corporation to respond to the forces of the market in which it operated.

This now leads to the second research question which must be addressed. Although it was concluded in Chapters Six and Seven that neither legislative framework examined created a framework that allowed for the aims of corporatization to be met, this thesis must now examine whether one of the models created a more effective legislative framework than the other.

> **Does the legislation under the SSOC framework provide the conditions which create an effective legislative framework that enables the PoMC/TasPorts to respond to the forces of the market?**

As previously discussed the aims of corporatization when it was introduced in Australia were to distance government from the daily operations of the port corporations, and to create an effective legislative framework for the port corporations to operate in the marketplace. This thesis has already shown that government can only be distanced and port corporations able to effectively respond to market forces if the corporatization model in place permits it. The corporatization models in place are created by legislation drafted and passed by the parliament in the relevant jurisdictions.

This thesis has examined the two corporatization models in use in Australia: the SSOC with the case study of the Port of Melbourne and the GOC with the case study of TasPorts. Both models were designed with the aim of creating commercially-successful entities, which was shown in the stated objectives in the respective legislation for the Port of Melbourne and for TasPorts. It was concluded that theoretically neither model allowed the aims of corporatization to be met because of the constraints in the respective legislation.

However whilst both models allowed political interference by way of input from Ministers of Parliament, the degree of interference allowed is not the same. In Victoria the SSOC model in place under the 2010 Transport Act allows the Minister for Ports a very large degree of intervention in the operations of the PoMC to the point that the Minister is central to its operations. The *Public Administration Act 2004* (Vic) also gives the minister powers of intervention in the operation of the PoMC. This is because the Victorian Parliament which drafted the 1995 Port Act and the 2010 Transport Act was able to legislate for as much intervention into the PoMC as it chose as it was drafting the legislation from scratch and not creating a port corporation under a general incorporation Act that it could not amend.

The Minister for Ports' main power is to give directions to the PoMC on how to act. The PoMC cannot challenge or refuse to follow any ministerial direction given to it which means that clearly the Minister has a very large and unfettered degree of control over the PoMC. Any direction given must not be inconsistent with the objectives of the 2010 Transport Act, but as the objectives are very wide and there is nothing in the Act that defines what may be regarded as being inconsistent, it may be difficult to determine when the Minister is acting in his or her own interests and not those of the PoMC. The PoMC is particularly vulnerable to political interference here and to acting as a ministerial puppet as it has no right to challenge or refuse to follow the directions. The Victorian Minister also has the right to appoint the Board of Directors and the Board itself has no input into appointments. The implication of this is that the Minister may appoint members who are sympathetic to the Minister's political interests, thus indicating a potentially large degree of political interference allowed by the 2010 Transport Act.

In comparison, the shareholding Ministers of TasPorts, the Minister for Infrastructure and the Treasurer have a very limited role in TasPorts' operations and therefore very little opportunity for political interference. They do not have the power to give general directions to TasPorts or its Board of Directors unlike in Victoria. The Treasurer does have the power to give directions to the Board, but it within the very limited scope of being in relation to the financial performance objectives of TasPorts. Whilst the

Tasmanian Ministers can appoint the Board of Directors, they must consider any recommendations put forward by the Board itself. Therefore the Ministers do not have sole control over appointing the Board, which could mean that they are prevented from appointing members that share their political views. As already argued in Chapter Seven, the main reason for this is that TasPorts was created under the *Corporations Act 2001* (Cth) which is a general incorporation Act which sets out the internal governance rules of companies that are created under it. The Tasmanian Parliament does not have the power to amend the *Corporations Act 2001* (Cth) as it is an Act of another parliament. It would appear that if the Tasmanian Parliament had wanted to create a port company that allowed the shareholding Ministers a larger degree of input, they would have created TasPorts under a specialized Act of Parliament similar to the 2010 Transport Act in Victoria.

The Ministers involved in the PoMC and TasPorts have very different roles in determining policy for their respective port corporation. The PoMC has no role in determining their own policy as these are determined by the Victorian Parliament and by the Minister for Ports. In contrast, the Tasmanian Ministers have little role in determining TasPorts' policies. Whilst they prepare TasPorts' Ministerial Charter, they cannot do so without first consulting with TasPorts' Board of Directors. TasPorts' Board of Directors has the role of drafting the Corporate Plan and then it the role of the Ministers to approve the document. Much of the role of TasPorts' Ministers is to collect information from the Board such as financial statements and Directors' reports in order to present them to the Tasmanian Parliament as a reporting mechanism. It appears therefore that whilst the Victorian Ministers' role is proactive and interventionist, that of the Tasmanian Ministers is mainly reactive and leaves TasPorts to operate as much as possible without political interference.

It is clear therefore based on the literature that it is the Tasmanian GOC model that creates the more effective legislative framework that allows for the aims of corporatization to be met. Whilst this model does not entirely remove the element of political interference, it does distance it far more than the Victorian SSOC model. Arguably because of these factors it is the TasPorts model that theoretically enables

TasPorts to more effectively respond to the forces of the market.

Analysis of Performance Indicators

When the performance indicators were examined, four conclusions were reached:

(1) There are higher volumes of cargo passing through the port over time;
(2) Pricing has been constrained and less than Consumer Price Index growth;
(3) The port has good underlying cost control;
(4) There is continued growth in capital expenditure with returns yet to emerge.

These performance indicators are summarized in Tables 8.1-8.3 as average values with the full data contained in Appendix One and Appendix Three. At no point was there any evidence from the annual reports that the corporatization model used for either PoMC or TasPorts had any influence upon their operations or their ability to respond to the forces of the market. This was discussed in detail in Chapters Six and Seven. To undertake a direct comparison of the Port of Melbourne and the ports of Tasmania the data from corresponding years must be examined being 1996/97-2010/11. It must be acknowledged that they are two very different entities with different legislative structures so any comparison of the changes in their performance indicators is merely indicative of how the ports are performing.

(1) There are higher volumes of cargo passing through the port over time:
(a) Port of Melbourne: TEU increase of 142.39%; Mass Ton increase of 75.14%
(b) Tasmanian Ports: TEU increase of 85.79%; Mass Ton increase of 22.12%

(2) Pricing has been constrained and less than Consumer Price Index growth (44.63%):
(a) Port of Melbourne: Price per TEU increase of 19.10%; Price per Mass Ton increase of 64.76%;
(b) Tasmanian Ports: Price per TEU drop of 13.75%; Price per Mass Ton increase of 31.20%;

(3) The port has good underlying cost control:

(a) Port of Melbourne: Total Cost per TEU drop of 22.42%; Total Cost per Mass Ton increase of 7.47%;

(b) Tasmanian Ports: Total Cost per TEU increase of 6.41%; Total Cost per Mass Ton increase by 61.85%

(c) Port of Melbourne: Operating Revenue per TEU increase of 19.09%; Operating Revenue per Mass Ton increase of 65.85%.

(d) Tasmanian Ports: Operating Revenue per TEU increase of 3.95%; Operating Revenue per Mass Ton increase of 57.94%.

(4) There is continued growth in capital expenditure with returns yet to emerge:

(a) Port of Melbourne: Average Return on Assets 4.18%; Average Return on Equity 5.52%;

(b) Tasmanian Ports: Average Return on Assets 2.70%; Average Return on Equity 3.91%.

Table 8.1 Average TEUs, Mass Tons, Cost and Total Cost and related Performance Indicators for the Port of Melbourne and the ports of Tasmania

Financial Year	Average TEUs (000)	Average Mass Tons (M)	Average Cost ($M)	Average Total Cost ($)	Average Total Cost per TEU ($M)	Average Total Cost per Mass Ton ($)	Average Price per TEU ($)	Average Price per Mass Ton ($)
Port of Melbourne								
1988/89-1994/95	735.00	15.00	126.33	74.84	104.35	4.10	203.29	10.94
1996/97-2002/03	1256.00	21.60	50.81	37.07	30.27	1.74	67.85	3.88
2003/04-2010/11	2104.00	29.40	126.43	77.13	36.64	2.62	78.18	5.64
Ports of Tasmania								
1995/96-2004/05	321.19	13.51	44.70	34.45	108.65	2.55	157.73	3.69
2006/07-2010/11	468.10	14.65	59.85	67.24	144.13	4.62	185.31	5.92

Table 8.2 Average Operating Revenue and Operating Profit and related Performance Indicators for the Port of Melbourne and the ports of Tasmania

Financial Year	Average Operating Revenue ($M)	Average Operating Profit before Tax ($M)	Average Operating Profit after Tax ($M)	Average Operating Revenue per TEU ($)	Average Operating Revenue per Mass Ton ($)	Average Operating Profit before Tax per TEU ($)	Average Operating Profit before Tax per Mass Ton ($)
Port of Melbourne							
1988/89-1994/95	148.79	22.46	33.90	203.29	10.94	31.64	3.32
1996/97-2002/03	83.30	32.49	20.36	67.85	3.87	26.60	1.51
2003/04-2010/11	167.24	40.81	31.41	78.18	5.64	19.06	1.37
Ports of Tasmania							
1995/96-2004/05	50.05	5.35	2.63	157.23	3.69	15.34	0.37
2006/07-2010/11	64.41	4.56	2.98	185.31	5.92	135.45	4.11

Table 8.3 Average Total Assets and Net Assets, Return on Assets and Return on Equity and related Performance Indicators for the Port of Melbourne and the ports of Tasmania

Financial Year	Average Total Assets ($M)	Average Net Assets ($M)	Average Assets per TEU ($)	Average Assets per Mass Ton ($)	Average Return on Assets (%)	Average Return on Equity (%)
Port of Melbourne						
1988/89-1994/95	517.14	150.10	201.32	13.92	4.18	12.41
1996/97-2002/03	580.91	464.30	367.84	21.27	5.70	7.30
2003/04-2010/11	1515.83	1040.46	486.35	35.07	2.84	3.96
Ports of Tasmania						
1995/96-2004/05	191.96	124.53	400.43	9.34	1.40	2.00
2006/07-2010/11	177.10	130.92	304.29	9.78	5.00	7.20

8.7 CORPORATIZATION MODELS: AN OBSERVATION

From the discussion above it appears clear that the structure of a GOC is preferable to that of a SSOC when a parliament intends to reduce potential political interference in a corporatized entity. As argued above however, when the performance data is examined it cannot be concluded that one model is more effective or successful in achieving its commercial aims. On most of the measures in the previous sections both the Port of Melbourne and the Tasmanian ports experienced increases when examined for the same time period. However there was no evidence at any stage available to support the contention that the results were due to the corporatization models in place. As explored in Chapters Six and Seven, none of the port entities asserted that their performances were due to the management or corporatization model under which their ports were operating.

The GOC as demonstrated by the Tasmanian model therefore has in reality emulated private sector company structures in theory and has the freedom to respond to the forces of the market. The GOC structure is very similar to that of any *Corporations Act 2001* (Cth) private sector company as they are subject to the same regulatory regime. The only difference is that a GOC has the government as its sole shareholder. The fact that government holds all of the shares is not an impediment. Under the *Corporations Act 2001* (Cth) a company's constitution and corporate governance rules are developed which require a statement on the structure of the company, its internal management, and the responsibilities of the company, its members, the board of directors and other officers. The constitution also sets out the objectives and operations of the company.

Under this model the company's constitution cannot be breached without penalty by government Ministers, who represent the government which owns the company. The GOC model, implemented in Tasmania, has meant the port company, whilst continuing to be government owned, is accountable to both the Tasmanian Parliament under the *Government Business Enterprises Act 1995* (Tas) and the *Tasmanian Ports Corporation Act 2005* (Tas) and to ASIC under the *Corporations Act 2001* (Cth). In contrast the Victorian Parliament has created the PoMC as a SSOC that is fully accountable to the

Victorian Parliament. Under the GOC model, ASIC is the regulator and ASIC must be satisfied in relation to the company's performance and protocol. If the Minister does breach the constitution, that Minister will be subject to redress from ASIC and not the Tasmanian parliament.

The GOC model as implemented in Tasmania is also preferable to the SSOC model as the Ministers do not have the potential to interfere in the daily operations of the GOC because the Tasmanian parliament has not chosen the SSOC model. The ministerial powers under the Tasmanian GOC model do not relate to exercising power over the Board of Directors or having a power of veto or the right to make final decisions that are permitted under the SSOC models. The ministerial powers relate more to monitoring the financial and operational performance of TasPorts, determining business strategy, monitoring port assets and devising asset divestment strategies, and reviewing the port system as a whole and port performance. This places the Ministers at a distance from the internal and daily operations of the GOC, which does not occur with the SSOCs as the Ministers are permitted powers over the Board of Directors such as the power to overrule Board decisions and to exercise powers of veto, and to choose Board members.

Use of the GOC model means creating an entity that is subject to a general incorporation Act that sets out the duties of shareholders, such as Ministers, that cannot be changed by the parliament creating the GOC because either the incorporation Act was created by another parliament, and/or to amend the incorporation Act would mean that countless other companies were affected because they were also subject to that particular incorporation Act. This enables the GOC to be able to focus on its commercial operations and achieve rates of returns, just as it could if it were not government-owned.

8.8 EFFICIENCY IN CORPORATIZED PORTS

The objective of corporatization was distancing government from daily operations. This was widely recognized as a major cause of inefficiency and corporatization was to resolve this issue. The assertion that corporatized port businesses are more efficient than non-corporatized port businesses is difficult to illustrate, particularly when the

performance data used in this research are examined. Even though most of the pre- and post-corporatization data could be obtained for the Port of Melbourne and for the ports of Tasmania, the pre- and post-corporatized entities are not the same and do not perform all of the same functions. As was also argued, none of the data or sources available isolates out the legislative model as a factor to be compared or analysed, so therefore the effect of corporatization is impossible to measure. Some improvements in data may be due to external factors such as an increased demand for services or an improved global economic market and therefore completely unrelated to corporatization at all.

8.9 CORPORATIZED PORTS: A MORE EFFECTIVE BUSINESS?

A further issue relates to efficiency increases and whether they are a product of corporatization. It is demonstrable that ports have become more efficient (Hayes 1995) and have improved productivity (Hirst 2000), particularly when the performance data is examined, as argued in Chapter Six and Seven. This thesis has shown that it cannot be argued that this is a product of corporatization as there is no evidence to support that contention. It is more likely to be the result of productivity improvements linked to the broader microeconomic and port reform program underway in Australia, changes in the local and global economic climate and government contributions to capital expenditure to improve port facilities. As highlighted earlier in this thesis, an accurate evaluation of performance pre- and post-corporatization is difficult to undertake for the port corporations in these periods as the port corporations undertook quite different tasks and so there is little basis for comparison.

8.10 CORPORATIZATION MODELS: SOME ISSUES

While the GOC model is the preferred one for the pursuit of a company with a charter for a commercial focus, some problems do arise. These relate to the philosophical position of government as the owner of a market-focused business but also with the responsibility of delivering the public good. Arguably this can create a conflict of interests, particularly in relation to attempting to adequately address these positions and fulfil the roles.

As noted above SSOCs are created by a special Act of Parliament and fall outside the

jurisdiction and powers of the *Corporations Act 2001* (Cth) unless the enabling legislation states otherwise (Pitkin and Farrelly 1999). Under the Westminster system SSOCs are accountable to the shareholding Ministers and to the Parliament due to their enabling Acts. GOCs, on the other hand, are under the regulatory control of ASIC but fall outside direct government control. This means that the SSOC structure can be subject to political influence while under the GOC structure the port remains government-owned it falls outside direct government control. Although there is a requirement that the GOC Ministers report to the Parliament on the GOC's performance, the *Corporations Act 2001* (Cth) does not permit them to intervene in the operation of the corporation to suit self-interests or for political purposes.

Some issues do arise from the GOC model particularly in relation to the role of government in this model. On the one hand, shareholders in any company have input into the running and direction of the organization. Under the GOC model, the Minister representing the shareholder, the government, is also entitled to have input into the organization. This raises the question of whether a government-owned corporation can be created that conforms to the Westminster model and the concept of Responsible Government. As a GOC the business is not subject to the direct scrutiny of Parliament but to ASIC and associated auditing processes. A particular area of concern that Bottomley (1990) points to is whether in this regulatory regime the accountability of government companies is adequately served by private auditors and the reporting requirements of the *Corporations Act 2001* (Cth).

8.11 AN EFFECTIVE LEGISLATIVE FRAMEWORK

Clearly some issues arise from both the GOC and SSOC models although theoretically the former appears preferable if the focus is on market orientation and pursuing commercial objectives. In reality an analysis of the performance data for the Port of Melbourne and TasPorts did not show this. Success requires a long-term strategy that is focused on achieving results (Everett and Robinson 2007). In corporatized port companies this means that the legislation creates an effective legislative framework that permits the objectives of the corporation to be achieved without political interference or

other competing objectives.

The GOC model, as implemented in Tasmania has shown that the Tasmanian parliament has distanced the ministers from having influence over the internal operations of the port company, which has not occurred in SSOCs because the ministers retain such a pivotal role in the operations of the entity. This has the direct implication that the Ministers can put the interests of the government or other political interests before those of the corporatized entity, which of course then has severe implications for the operational success of the port company. Everett and Robinson (2007) also raise the question of whether politicians necessarily have the right business acumen to be able to make decisions for the operations of the port company – this may be a matter of luck depending on the ministers concerned.

8.12 CONCLUSION

This thesis has investigated port reform against the background of historical forces and examined the two corporatization models implemented in Australia to reform the nation's ports. In particular it has used as its case studies the PoMC and TasPorts. In this chapter the question of the effectiveness and the success of the corporatization models were examined in order to ascertain whether corporatization has delivered an appropriate market model. In answering the second research question it was concluded that based on the corporate structure that it was the GOC model which was the model that created a more effective legislative framework that allowed for the aims of corporatization to be met. As it was still required to have shareholding Ministers, due to the Westminster System of Responsible government, it could not entirely distance government from its daily operations. However it was able to distance government more effectively than the SSOC model.

Despite this, an examination of the performance data for the Port of Melbourne and the ports of Tasmania showed the opposite result. However as was argued, there was nothing available to reach the conclusion that corporatization in fact had any effect at all on the performance of either the Port of Melbourne or the ports of Tasmania as

corporatization could be not isolated out as a factor and measured.

This research has been able to conclude that based on the legislative structures alone that the PoMC SSOC model was unable to replicate a proper privatized legislative framework for ports because the objectives broader charter continue to be determined by government and not the market. The legislation behind the port corporation continues to involve the shareholding Ministers in the operations and governance of the port, and it also fails to restructure the port corporation in a manner that allows the port to compete effectively in the marketplace.

In contrast it was concluded that the GOC model that governs TasPorts was a more effective market-focused model because it never lost control of the functions and responsibilities of the ports, such as land and waterside functions and navigation. It was also a more effective model than the PoMC SSOC because the company model under which it operates does not allow the shareholding Ministers the degree of input and control allowed by the SSOC. The powers of the Tasmanian shareholding Ministers are restricted to monitoring the financial and operational performance of the Tasmanian ports and do not extend to a power of veto or the right to make final decisions, as allowed under the Victorian model.

This chapter also showed that it is difficult to illustrate that corporatized ports are more efficient than those that are not. This is because there is a lack of data comparing the performance of ports pre- and post-corporatization, and because many ports post-corporatization have not retained the same responsibilities over their operations that they had before corporatization. There are many factors and performance measures that contribute towards efficiency and a port's perceived success and the available data does not allow the isolation of any one factor in order to determine a contribution towards these. The data available also does not allow the researcher to determine whether in fact any improvements in performance are due to corporatization, or due to productivity improvements that are part of broader microeconomic and port reform programs implemented in Australia since the 1980s.

In the next and final chapter, conclusions will be discussed and drawn as to the research and findings in this thesis.

CHAPTER NINE – CONCLUSION

In the middle of the 1990s Australia's state and territory governments embarked on an intensive program aimed at commercializing the public sector. This followed a period of more than a decade of microeconomic reform which, following the enactment of National Competition Policy in 1995, aimed amongst other things, at commercializing Australia's government-owned transport infrastructure. Part of this reform program included the reform of Australian ports, which was later followed by the deregulation of the rail sector. By the early 1990s Australia had undergone an intensive maritime reform program specifically targeting Australian flag shipping, which was later followed by waterfront labour reform. Following the release of reports by the Industry Commission, the Interstate Commission and the Productivity Commission queried whether port authorities, which ran Australia's ports, should also undergo reform and if so, what reforms should be implemented.

Australia's ports had been established by state and colonial governments and were owned and operated by state and territory governments. The port reforms of the 1990s were subsequently enacted under state and territory government legislation. The Hilmer Report recommendations and the subsequent enactment of National Competition Policy had not made recommendations as to the preferred model for port reform. They did however argue that if state and territory governments were to retain ownership of their ports, corporatization was the preferred model.

As argued in earlier chapters of this thesis, effective corporatization is a product of legislation that sets in place a business framework that allows the objectives of corporation to be met. In particular effective corporatization requires a framework which emulates private sector business practices and which distances government from the daily operations of the corporatized entity which was the element that was seen as the cause of inefficiencies.

The corporatization models implemented are the Statutory State-Owned Company (SSOC) and the Government-Owned Company (GOC). The significant differences

between these two models relate to accountability and the role of government in ports. The SSOC port corporation is created by a specific Act of Parliament generally unique to it. They are also subject to the provisions of the Act under which they are enacted and it is a model in which Ministers remains pivotal to its daily operations. The GOC model on the other hand, allows port companies to be created subject to the requirements of a general incorporation statute, such as the *Corporations Act 2001* (Cth). Most Australian corporations are created under the *Corporations Act 2001* (Cth) which also sets out their regulatory regimes.

Whilst considerable research has been undertaken in respect of structural reform of the public sector and corporatization in general as demonstrated in Chapter Two, this thesis asserted that the research undertaken in it was necessary as very little research had been undertaken from a legal perspective which focused on (a) the different corporatization models in place; and (b) the specific impact that those models and their legislation had on port structure and the ability to respond to the forces of the market.

This thesis set out to address these issues by answering the two research questions which examined whether the SSOC or GOC was the most effective structure to distance the government from their daily operations and to enable each port corporation to respond to the forces of the market. In response to the first question it was concluded that neither model entirely distanced government from the daily operations of port corporations. However in response to the second question, it was concluded that it was the GOC model that created the more effective legislative framework that allowed for the aims of corporatization to be achieved. However an examination of the performance data for PoMC and TasPorts revealed that the PoMC produced better performance results. It was argued though that because corporatization itself could not be isolated out and measured in relation to those performance data a conclusion could not be reached on this issue.

In structuring this thesis the concern was twofold. The first was to examine analytically the nature of port reform and the legislation under which Australian port corporatization models were enacted. This was closely associated with the continuing roles of government accountability to Parliament. This created a dilemma, as the shareholders of

any corporation have a role in determining the future direction of that company. Whilst this could be managed under the SSOC model, under a GOC model, however, government input was secondary as the *Corporations Act 2001* (Cth) (or the applicable incorporation statute) would dictate issues such as the management, regulation and direction of the organization.

Chapter One was the introductory chapter of this thesis and set the framework for analysis. It provided a rationale for this research and a statement on the method of research and analysis adopted for this thesis. It also introduced the concept of corporatization, its origins and aims.

Chapter Two was a selected Literature Review of the existing research in this area. This research is in essence multidisciplinary being undertaken by lawyers, public policy analysts and economists, among others. This chapter provided insights into major paradigms applied and also included insights into privatization and corporatization as implemented overseas and the impact this has had on reform in Australia. This chapter also further examined the concept of corporatization and the fact that it is a concept that differs not only in definition across the world, but in its form. It also showed the gaps in the existing literature and argued why the research in this thesis was needed. It concluded by stating the two research questions to be addressed in this thesis.

Chapter Three examined the methodology used in this thesis and justified the use of the case study method employed over more common methods. It argued why the two case studies were chosen and how they were appropriate to examining the research questions. The chapter also investigated the probity of the different sources used and examined the method of data triangulation.

Chapter Four provided a historical background of port reform. Global recessions of the 1970s and 1980s, as well as government sector blowout led to microeconomic changes introduced into major western economies. This included deregulation of public sector transport infrastructure and the exposure to the forces of competition and the market. This chapter also examined the microeconomic reform program that took place in

Australia from the 1970s and how it related to worldwide microeconomic reforms. It also examined the development of corporatization in other countries and the later introduction into Australia, as well as the nations, such as the United Kingdom and New Zealand, that Australia looked to when developing its own microeconomic reform programs. Chapter Four also outlined the reasons for microeconomic reform in Australia, the influence of the National Competition Policy upon the reform program, and why microeconomic reform measures were introduced into Australia's port system and what those changes were.

Chapter Five was divided into two parts and dealt with the implementation of corporatization in port corporations across Australia. Part One gave a definition of corporatization, privatization and commercialization and differentiated between them. Part One then examined the different versions of corporatization in use in each of the states and the Northern Territory to run Australia's ports. This part also provided a summary of how ports were run in each jurisdiction prior to the introduction of corporatization and why corporatization was introduced in each case to reform the port system. It then went on to discuss why the Victorian ports of Geelong and Portland, the ports of South Australia and the Port of Brisbane were privatized when other Australian ports were corporatized. This part also discussed the changes in legislation needed to implement corporatization in each jurisdiction and outlined the implications of that legislation.

Part Two of Chapter Five dealt with the two most common models of corporatization implemented in Australia being the SSOC and the GOC. This part discussed the evolution of the running of ports in Australia, from the early harbour trusts and statutory authorities to the current corporatized port corporations. It also investigated the implications of both models and the legislation establishing those models in Australia, including the differing role of the Shareholding Ministers in both SSOCs and GOCs. The research shows that the SSOC allows a larger role for the Minister in the running of the port corporation than that allowed by the GOC. This Part then ended with a discussion of whether a GOC could ever adequately replicate a private sector corporation, given its government-ownership.

Chapters Six and Seven presented two case studies of this thesis. The developments in these chapters analysed the efficacy of the corporatization models and which was most effective for Australian ports.

Chapter Six dealt with the first case study, the Port of Melbourne in Victoria. This chapter examined in some detail the consecutive stages of reform for the Port of Melbourne which implemented a SSOC model in the mid-1990s. This chapter examined why a SSOC model was chosen as opposed to a GOC, the implications for the changes to a SSOC model and the reasoning for the further reforms in 2003 and the steps that led to that second round of reforms. The role of ministers was discussed in detail and the fact that it appears that, despite the stated aims of corporatization that the ministers be removed from the daily operations of the port business, the Minister for Ports retains a pivotal role in the operation of the Port of Melbourne. It was suggested therefore, that the Victorian government did not intend to reduce its control and influence over the operations of the Port of Melbourne. The chapter also examined the legislation in place and its implications, and ended by addressing the first of the research questions, concluding that the SSOC model did not create a model that entirely distanced government from the daily operations of port corporations. It was also concluded that it did not create an entirely effective legislative framework that enabled the Port of Melbourne Corporation to respond to the forces of the market it which it operates.

Chapter Seven was the second case study and examined the staged reform for the ports in Tasmania. As opposed to Victoria, the Tasmanian government adopted a GOC model with the first reform legislation in 1997. In 2005 a second stage of reform followed which corporatized Tasmanian ports under a single government-owned company structure. This chapter examined the Tasmanian government's reasoning for choosing a GOC model and what it set out to achieve under that model. This chapter then closely examined the moves to merge Tasmania's four port companies and the reasoning for this move. This chapter also examined the port legislation in place in Tasmania and its implications and ended by addressing the first of the research questions. It concluded that it did not create an entirely effective legislative framework that enabled the ports of Tasmania to respond to the forces of the market it which they operate.

Chapter Eight examined in some detail the benefits of both corporatization models. It argued that the success of corporatization requires appropriate legislation which establishes a business framework that allows a port business to achieve the aims of corporatization. This chapter addressed the second research question and argued that the research in this thesis suggests that theoretically the preferred model of corporatization is the GOC model as it enables the corporation to operate like its private sector counterparts with the government having a role no different from any other company shareholder. The GOC model also appears to be the preferred model because the corporation is accountable to an independent regulatory body, such ASIC, as opposed to the government. Of the two models, it is the SSOC which places the most legislative constraints upon the effective operation of the corporatization models in place. The chapter argued however that when the port data from both port corporations were examined it could not be could not be concluded that the factor of political interference had an impact on the operations of the port corporations. It was also noted that for both port corporations the pre- and post-corporatization port corporations could not be compared as they were not the same entities.

This research has added to an existing body of knowledge undertaken particularly in the disciplines of law and policy analysis. It has applied this specifically to the reform and restructure of port authorities. It has not attempted to compare this with performance of ports which have been fully privatized nor has it attempted to encompass operational efficiency. This, no doubt, is a further area of research that requires attention.

Appendix One

Full data for the Port of Melbourne (1988/89-2010/11)

Table A1.1 Operating Revenue, Operating Profit before and after Tax for the Port of Melbourne (1988/89-2010/11)

Financial Year	Operating Revenue ($M)	Operating Profit before Tax ($M)	Operating Profit after Tax ($M)
1988-1989	138.6	-7.9	*NR
1989-1990	147.0	17.5	NR
1990-1991	142.1	8.1	NR
1991-1992	139.8	8.0	NR
1992-1993	148.3	31.7	NR
1993-1994	164.9	42.7	NR
1994-1995	160.8	57.1	33.9
1995-1996	***124.2***	***-8.9***	***-11.1***
1996-1997	83.9	30.5	17.7
1997-1998	81.8	32.2	19.2
1998-1999	83.3	38.4	24.2
1999-2000	77.5	30.0	17.3
2000-2001	83.0	34.2	21.7
2001-2002	83.4	31.1	21.5
2002-2003	90.2	31.0	20.9
2003-2004	101.8	14.8	8.1
2004-2005	124.6	30.9	21.6
2005-2006	134.7	42.3	48.5
2006-2007	142.1	30.9	22.0
2007-2008	171.5	61.6	43.3
2008-2009	202.6	55.6	41.3
2009-2010	218.4	36.2	27.5
2010-2011	242.2	54.2	39.0

Table A1.2 Total Assets and New Assets for the Port of Melbourne (1988/89-2010/11)

Financial Year	Total Assets ($M)	Net Assets ($M)
1988-1989	482.0	90.2
1989-1990	497.0	118.8
1990-1991	512.0	143.5
1991-1992	516.0	130.3
1992-1993	515.0	149.1
1993-1994	513.0	173.9
1994-1995	585.0	244.9
1995-1996	***452.0***	***75.8***
1996-1997	482.0	340.3
1997-1998	533.0	400.3
1998-1999	513.0	383.8
1999-2000	568.0	455.6
2000-2001	596.0	498.9
2001-2002	670.0	570.1
2002-2003	704.4	601.1
2003-2004	861.0	746.3
2004-2005	943.4	725.1
2005-2006	991.8	758.4
2006-2007	1024.3	765.8
2007-2008	1653.3	1229.6
2008-2009	1929.1	1200.0
2009-2010	2380.2	1423.8
2010-2011	2343.5	1474.7

Table A1.3 Cost and Total Cost for the Port of Melbourne (1988/89-2010/11)

Financial Year	Cost ($M)	Total Cost ($M)
1988-1989	146.50	96.95
1989-1990	129.50	72.75
1990-1991	134.00	81.47
1991-1992	131.80	96.93
1992-1993	116.60	54.13
1993-1994	122.20	68.34
1994-1995	103.70	53.03
1995-1996	***133.10***	***89.88***
1996-1997	53.40	44.60
1997-1998	49.60	40.50
1998-1999	44.90	22.54
1999-2000	47.50	27.13
2000-2001	48.80	48.80
2001-2002	52.30	34.36
2002-2003	59.20	41.53
2003-2004	87.00	62.60
2004-2005	93.70	68.00
2005-2006	92.40	65.77
2006-2007	111.20	80.84
2007-2008	109.90	75.59
2008-2009	147.00	90.93
2009-2010	182.20	89.46
2010-2011	188.00	83.86

Table A1.4 Volume of Cargo entering and leaving the Port of Melbourne (1988/89-2010/11)

Financial Year	TEU	Mass Tons
1988-1989	697,000	*NR
1989-1990	707,000	NR
1990-1991	648,000	NR
1991-1992	674,000	NR
1992-1993	733,000	NR
1993-1994	803,000	14,100,000
1994-1995	884,000	15,800,000
1995-1996	***923,000***	***17,800,000***
1996-1997	986,00	18,500,000
1997-1998	1,051,000	18,900,000
1998-1999	1,125,000	21,500,000
1999-2000	1,290,000	22,000,000
2000-2001	1,322,000	22,300,000
2001-2002	1,420,000	23,600,000
2002-2003	1,600,000	24,700,000
2003-2004	1,720,000	26,700,000
2004-2005	1,910,000	28,300,000
2005-2006	1,930,000	27,800,000
2006-2007	2,093,000	29,500,000
2007-2008	2,256,000	30,800,000
2008-2009	2,160,000	29,100,000
2009-2010	2,370,000	30,300,000
2010-2011	2,390,000	32,400,000

* Values for Mass Tons were not recorded by the PMA for 1998/89-1992/93.

Table A1.5 Return on Assets and Return on Equity for the Port of Melbourne (1988/89-2010/11)

Financial Year	Return on Assets (%)	Return on Equity (%)
1988-1989	-1.64	-8.75
1989-1990	3.52	14.73
1990-1991	1.58	5.64
1991-1992	1.55	6.14
1992-1993	6.16	21.26
1993-1994	8.32	24.55
1994-1995	9.76	23.32
1995-1996	***-1.97***	***-11.74***
1996-1997	6.33	8.96
1997-1998	6.04	8.04
1998-1999	7.49	10.01
1999-2000	5.28	6.58
2000-2001	5.74	6.86
2001-2002	4.64	5.46
2002-2003	4.40	5.16
2003-2004	1.72	1.98
2004-2005	3.28	4.26
2005-2006	4.26	5.58
2006-2007	3.02	4.03
2007-2008	3.73	5.01
2008-2009	2.88	4.63
2009-2010	1.52	2.54
2010-2011	2.31	3.68

Table A1.6 Operating Revenue per TEU & Mass Ton and Operating Profit before Tax per TEU & Mass Ton (1988/89-2010/11)

Financial Year	Operating Revenue per TEU ($)	Operating Revenue per Mass Ton ($)	Operating Profit before Tax per TEU ($)	Operating Profit before Tax per Mass Ton ($)
1988-1989	198.85	*	11.33	*
1989-1990	207.92	*	24.75	*
1990-1991	219.29	*	12.50	*
1991-1992	207.42	*	11.87	*
1992-1993	202.32	*	43.25	*
1993-1994	205.35	11.70	53.18	3.02
1994-1995	181.90	10.18	64.59	3.61
1995-1996	***134.56***	***6.98***	***-9.64***	***-0.50***
1996-1997	85.09	4.51	30.93	1.64
1997-1998	77.83	4.32	30.64	1.70
1998-1999	74.04	3.87	34.13	1.79
1999-2000	60.08	3.52	23.36	1.36
2000-2001	62.78	3.72	25.87	1.53
2001-2002	58.73	3.53	21.90	1.32
2002-2003	56.38	3.65	19.38	1.26
2003-2004	59.19	3.81	8.60	0.55
2004-2005	65.24	4.40	16.18	1.09
2005-2006	69.79	4.85	21.92	1.52
2006-2007	67.89	4.82	14.76	1.05
2007-2008	76.02	5.57	27.30	2.00
2008-2009	93.80	6.96	25.74	1.91
2009-2010	92.15	7.21	15.27	1.19
2010-2011	101.34	7.48	22.68	1.67

* Values for Mass Tons were not recorded by the PMA for 1998/89-1992/93. Therefore Operating Revenue per Mass Ton and Operating Profit before Tax per Mass Ton could not be calculated.

Table A1.7 Total Cost per TEU & Mass Ton and Assets per TEU & Mass Ton and (1988/89-2010/11)

Financial Year	Total Cost per TEU ($)	Total Cost per Mass Ton ($)	Assets per TEU ($)	Assets per Mass Ton ($)
1988-1989	139.09	*	129.41	*
1989-1990	102.90	*	168.03	*
1990-1991	125.73	*	221.45	*
1991-1992	143.81	*	193.32	*
1992-1993	73.85	*	203.41	*
1993-1994	85.11	4.84	216.56	12.33
1994-1995	59.99	3.36	277.04	15.50
1995-1996	***97.38***	***5.05***	***82.12***	***4.26***
1996-1997	45.23	2.41	345.13	18.30
1997-1998	38.53	2.14	380.88	21.18
1998-1999	20.04	1.05	341.16	17.85
1999-2000	21.03	1.23	353.18	20.71
2000-2001	36.91	2.19	377.38	22.37
2001-2002	24.19	1.46	401.48	24.16
2002-2003	25.96	1.68	375.69	24.34
2003-2004	36.40	2.34	433.90	27.95
2004-2005	35.60	2.40	379.63	25.62
2005-2006	34.08	2.37	392.95	27.28
2006-2007	38.62	2.74	365.89	25.96
2007-2008	33.51	2.45	545.04	39.92
2008-2009	42.10	3.12	555.56	41.24
2009-2010	37.74	2.95	600.76	46.99
2010-2011	35.09	2.59	617.03	45.59

* Values for Mass Tons were not recorded by the PMA for 1998/89-1992/93 and therefore Total Cost per Mass Ton and Assets per Mass Ton could not be calculated.

Table A1.8 Price per TEU & Price per Mass Ton (1988/89-2010/11)

Financial Year	Price per TEU ($)	Price per Mass Ton ($)
1988-1989	198.85	*
1989-1990	207.92	*
1990-1991	219.29	*
1991-1992	207.42	*
1992-1993	202.32	*
1993-1994	205.35	11.70
1994-1995	181.90	10.18
1995-1996	***134.56***	***6.98***
1996-1997	85.09	4.54
1997-1998	77.83	4.33
1998-1999	74.04	3.87
1999-2000	60.08	3.52
2000-2001	62.78	3.72
2001-2002	58.73	3.53
2002-2003	56.38	3.65
2003-2004	59.19	3.81
2004-2005	65.24	4.40
2005-2006	69.79	4.85
2006-2007	67.89	4.82
2007-2008	76.02	5.57
2008-2009	93.80	6.96
2009-2010	92.15	7.21
2010-2011	101.34	7.48

* Values for Mass Tons were not recorded by the PMA for 1998/89-1992/93 so Price per Mass Ton could not be calculated.

Appendix Two

Anomalies in the Port of Melbourne data

1989/90

In this year there was a decline in overseas imports which registered as negative growth and a downturn in both private sector imports of capital (equipment and machinery) and consumer items (motor vehicles and parts, toys and sporting goods). Victoria's level of domestic spending was adversely affected by tight monetary policy settings, restrictive credit availability, a deterioration in consumer and financial confidence and falling asset prices. The poor export performance of the port's major commodities (wool, cereal, grains, dairy products, fruit etc.) constrained the expected recovery of the overseas export sector. Adverse climatic conditions constrained Victoria's supply of fresh fruit and technical problems at the Altona refinery limited the export of petroleum. The continued withdrawal of China and subdued demands from Japan were the major factors in the declining performance of wool exports. The slowing down the world economy, precipitated by the industrialised countries' anti-inflationary policies resulted in the weakening of markets for Victoria's other major commodity exports.

1990/91

The Port of Melbourne Authority's commercial operations at the Port of Melbourne and Western Port and State Navigational Operations recorded a net profit of $8.110M compared to $17.537M in 1989/90. The result for 1990/91 was influenced by abnormal and extraordinary expenditure of $9.282M. The 1990/91 operating result enabled the funding of non-commercial operational and capital expenditure of $7.903M in the year and an appropriation allocation of $10M to the Dividend Distribution Reserve. There was also a difficult economic climate which adversely affected the amount of trade going through the port and an increase in depreciation of $2M compared to the previous year. An additional accrued superannuation liability of $8.416M increased as an abnormal expenditure due to changes in calculating future superannuation entitlements. The authority undertook $40.382M of capital expenditure during 1990/91 and also increased the use of internal funds to finance capital works and non-commercial operations whilst limiting new borrowings to keep the debt level at a responsible level.

1991/92

There was a net profit of $8.031M compared to $8.110M the year before in 1990/91. The result was affected by bringing to account abnormal expenses of $11.955M. In this year there were also difficult local and international economic conditions which prevailed and affected trade levels and related activities. Some significant factors relating to performance were trade levels through the Port of Hastings being down 15.7% compared to 1990/91 and a reduction in property rentals and licence fees of $2.070M as a result of re-negotiating leases in line with existing market conditions.

1992/93

There were substantial reductions in expenditures and improvements in operating efficiencies. There was a 7.8% increase in trade which translated to a $5.978M increase in charges on goods and ships compared to the previous year, additional revenue of $4.303M from contract work undertaken for external parties and a reduction in operating expenses of $3.546M compared to the previous year due to increased efficiency. Operating expenses were reduced in several ways including a reduction of the port's workforce and the stringent control of non-labour expenses. Total assets were reduced by $3.217M due to the sale of fixed assets. The most significant assets sold were the authority's container cranes which had a written down value of $23.951M. There was also a retired of fixed assets to the value of $7.741M whilst a write-back of previous year's depreciation of $6.620M was made following the re-assessment of assets useful lives.

Total liabilities and deferred revenue reduced by $19.249M due to the repayment of borrowings amounting to $18.916M and a decrease in accrued superannuation and leave entitlements amounting to $8.491M due to payments to departing employees.

1995/96

After 29 February 1996 there was a disaggregation of successor bodies. The good financial results achieved by the authority for the eight months to 29 February (the date of transfer of functions and operations to successor bodies) is an indication of the continuing strong growth in trade together with further operating cost reductions. The provision of $6.176M government funding to Associated Ports in 1995/96 contributed to the strong financial performance as this replaced direct funding of non-commercial activities from commercial port revenue.

The establishment of successor bodies on 1 March 1996 resulted in an allocation of $58.382M worth of assets from the authority to them. After incorporating those adjustments, the authority's combined financial operations for the full 1995/96 resulted in an operating profit of $23.62M before abnormal items and income tax. Other significant events during the year were repayment of borrowings of $10.139M and a payment to the Superannuation Scheme for liabilities for $30.0M.

The asset transfers included $20.107M to the Department of Natural Resources and Environment in respect to the transfer of the ports of Port Phillip and Westernport, $10.291M transferred to the Marine Board of Victoria in respect to the responsibility of oil pollution control in Victorian waters, $72.461M transferred to the Crown comprising of dredged channels ($69.271M), minor works in progress ($0.236M) and land ($2.954M), and $2.532M was transferred to the City Link Authority.

1996/97

During the year wharfage charges were reduced leading to a $10.638M reduction in operating revenue. Factors that led to the corporation's financial performance were the level of trade through the Port of Melbourne being above 1995/95 levels bringing to account abnormal expenditure being tenancy relocation compensation payments of $5.885M and a capital loss of $1.124M on the disposal of a non-controlled entity and

provision for repairs of $2.6M was written back as an adjustment against operating profit.

Capital expenditure costs were $21.259M which included $14.189M on the redevelopment of Webb Dock and $2.707M on the upgrade of the Station Pier berth and terminal. There was an increase in net assets due to the upward revaluation of fixed assets by $270.314M and the retention of operating profits of $19.674M. Total assets increased due to the upward revaluation of assets including property, plant and equipment to their market and replacement values. These increases were offset by depreciation of assets and the transfer of $22.580M worth of assets to another government authority as well as the retirement and write-off of assets totalling $0.887M. Investments were reduced by $10.011M due to the disposal of a non-controlled entity. The corporation's liabilities decreased by $23.838M principally due to the corporation's borrowings being reduced by $38.513M as a result of the resumption of borrowings of $22.580M by the State Government following the transfer of fixed assets to another government authority and the repayment of $15.933M of borrowings.

1998/99

The operating profit after tax amount of $24.2M was due to the reduction of wharfage charges and common user facility berth and area hire charges by an average of 6.2% from 1 July 1998. These price reductions together with those of the past two years resulted in reduced revenue to the corporation and savings to the port community of $18.8M. These savings then led to an 18.4% reduction in the corporation's total operating revenue for the year but were offset by additional revenue from trade growth of $2.2M and increased rentals from new and existing tenancies of $2.1M. Operating expenses were reduced by 11% from 1997/98 due to factors including a reduced depreciation expense due primarily to a reassessment of the remaining useful lives of the corporation's assets and reduced expenditure relating to the general management and administrative activities due to management incentives to improve operational effectiveness. The operating profit before tax was higher than budgeted due to revenue being 3% above budget whilst operating expenses were 15% below budget. The major

reason for this were a reduced depreciation expense from a reassessment of the remaining useful lives of the corporation's assets and deferral of proposed capital expenditure as well as efficiency savings achieved in respect to contracted services, consultants and labour costs.

There was a capital expenditure of $5.3M which included the upgrade of existing berths and facilities for $2.6M. The MPC also incurred a net cash reduction of $9.6M due to net cash flows used in investing activities of $4.7M and net cash flows used in financing activities of $32.9M which were offset by net cash generated from operating activities of $28.0M. The net assets decreased by $16.5M due to dividends provided of $34.1M and redemption of capital of $10.7M following the transfer of Station Pier to the Department of Infrastructure. The reductions were partially offset by operating profits of $24.2M and an upward revaluation of the corporation's land holdings to their market value by $4.0M. Total assets decreased due to the depreciation of property, plant and equipment by $14.8M, assets retirements of $11.4M and the transfer of Station Pier and related assets valued at $10.7M to the Department of Infrastructure. These were partly offset by an upward revaluation of land holdings to their market value by $4.0M and capital expenditure of $5.3M.

The corporation's cash balance decreased by $9.6M resulting in the level of cash funds held being $20.1M by 30 June 1999. Total liabilities were reduced by $3.3M and the level of borrowings was reduced due to the amortisation of deferred interest of $2.7M. Liability provisions were increased by $3.3M primarily due to increases in the level of dividends and deferred taxes and accounts payable was reduced by $2.4M due to the timing of expenditure payments.

2002/03

The operating profit before income tax of $31.0M was principally due to increased revenue as a result of trade growth, increased interest and rental revenue which were offset by a reduction in prices relating to prescribed services and the recognition of a provision for restoration costs relating to land contamination. The operating profit after income tax was $20.9M down on the previous year due to the previous year's income

tax expense being favourably affected by adjustments being brought to account relating to previous year tax payments. In June 2000 the Essential Services Commission determined that the MPC's prices for prescribed services should be reduced by an average of 5.2% per annum during the five year period from 1 July 2000. Due to this the MPC gradually phased out berth hire/rental charges at some its berths to 1 July 2003. The required price reductions were partially offset by an average 2% increase in wharfage charges. The net price reductions resulted in reduced revenue of $1.6M during the year. The MPC's operating profit before income tax of $31.0M was $0.1M lower than the previous year result and $3.5M higher than budget due to revenue from ordinary activities being $6.8M above the previous year and $7.6M above budget.

The increase in expenditure from ordinary activities was due mainly to the recognition of non-budgeted provision for restoration costs relating to land contamination of $4.4M and increase in the write-off of infrastructure assets sold of $2.7M above the previous year and $3.0M above budget. The increase in net assets from $35.0M to $601.1M was due to a net upward revaluation of land infrastructure assets of $20.6M and profits relating to the year's operations of $20.9M. These increases were partly offset by dividend payments of $10.5M during the year.

The MPC's total assets increased by $35.0M to $704.4M and property, plant and equipment increased by $23.1M principally due to a net upward revaluation of the MPC's and infrastructure assets of $20.6M to their fair value as at 30 June 2003.

2003/04

On the establishment of the new PoMC $631.0M of net assets were transferred to it. On the transfer of the channels' operating business from the Victorian Channels Authority a further $95.0M of assets were transferred. The operating profit after tax was $8.1M after charging $14.8M of costs relating to the preliminary design studies for the Channel Deepening Project.

2005/06

The operating profit after income tax increased from $21.6M the year before as it benefited from "one-off" items including a reduction in income tax due to allowable deductions for research and development expenditure and changes in accounting policies to comply with recently mandated international financial reporting standards. Operating revenue was increased from the previous year partially due to increased wharfage charges and prices including the reintroduction of charges on empty containers and the inclusion of a full financial year of Station Pier revenue. Finance costs were lower than the previous year due to higher cash levels throughout the year and the fair market value adjustment to interest bearing liabilities. Expenditure increased partly due to capital projects during the year including $35.2M on the Channel Deepening Project and land purchases of $18.5M.

2006/07

Over the year dividends of $20.4M were paid to the Victorian government. There was a capital expenditure of $59.9M on projects to upgrade and enhance marine and land side infrastructure, excluding the Channel Deepening Project. There was also a $14.4M upgrade of the Swanston Container dock as part of a $38.0M investment. Expenses increased to $107.7M from $90.8M with $21.5M spent on the Channel Deepening Project. Finance costs increased as borrowing increased and the Operating Profit before Tax was down on previous years due to reduced gains on a revaluation of investment properties ($1.1M), increased funding for defined benefit superannuation funds ($2.9M) and increased finance costs ($1.4M) as result of increased borrowing.

2007/08

Over the year there was an investment of $48.5M, meaning that a total of $200M in capital investment had occurred since the inception of the PoMC in 2003/04. There was strong revenue growth during the year to $171.5M together with a slight reduction in total expenses. Cash flows from operating activities increased by $10.1M over the last year. The treatment of the Channel Deepening Project expenditure differed: in 2007/08

a total of $8.1M was treated as an accounting expense with the balance treated as an asset, whereas in 2006/07 the accounting expense relating to the Channel Deepening Project was $25.1M.

2009/10

The PoMC delivered a dividend of $67.8M to the Victorian government. Since October 2009 trade volumes increased after dropping from December 2008. There was $186.1M in capital expenditure including the Channel Deepening Projects. Operating profit after tax of $27.5M was a decrease on the previous year. Total expenses increased by $15.0M on the previous year to $145.6M and an increase in depreciation of $16.4M contributed to this as assets were capitalised during the year.

2010/11

The robust trading performance for the first full reporting period flowing after the global financial crisis enabled the PoMC to deliver a sold after tax profit of $39.0M. The PoMC delivered a dividend of $13.4M to the Victorian government and invested a further $26M in capital projects. There was a tight control of operating expenditure. Finance costs of $38.2M were offset by interest income of $2.4M. The resulting net finance charge of $3.5M was lower than the previous year reflecting the full year impact of loans drawn down to fund the Channel Deepening Project. Operating cash flows increased by $22.0M over the last year.

Appendix Three

Full data for the ports of Tasmania (1995/96-2010/11)

Table A3.1 Operating Revenue, Operating Profit before Tax and Operating Profit after Tax for the ports of Tasmania (1995/96–2010/11)

Financial Year	Operating Revenue ($)	Operating Profit before Tax ($)	Operating Profit after Tax ($)
1995-1996	41,234,756	2,400,000	1,100,000
1996-1997	39,755,743	1,700,000	200,000
1997-1998	37,704,185	2,200,000	-3,900,000
1998-1999	44,578,567	2,100,000	2,200,000
1999-2000	49,723,194	6,400,000	700,000
2000-2001	51,463,014	2,200,000	-1,300,000
2001-2002	52,899,556	6,600,000	4,500,000
2002-2003	57,381,607	9,000,000	6,600,000
2003-2004	61,393,034	10,500,000	8,000,000
2004-2005	64,373,380	10,400,000	8,200,000
2005-2006	***29,685,412***	***-7,244,114****	***-5,242,665***
2006-2007	60,949,569	7,541,415	3,599,054
2007-2008	69,436,267	6,900,000**	4,336,895
2008-2009	66,073,660	6,702,440	5,167,359
2009-2010	61,895,738	1,592,026	1,368,732
2010-2011	63,703,244	62,460***	443,299

* The financial year of 2005/06 was the first reporting period for TasPorts but covers only 1 January 2007-30 June 2007. This figure includes merger costs, maintenance and dredging costs for the Port of Burnie, all actual and anticipated redundancy costs as well as an allowance for major maintenance work.

** This is an adjusted figure provided by TasPorts. The non-adjusted figure for this period was $313,361,209 due to the sale of shares in Hobart International Airport of $287.4m and dividends received from Hobart International Airport of $18.9m.

*** There was a net loss after tax in the 2010/11 financial year of $23.7m due to employee termination payments ($1.3m) and infrastructure asset value decrements ($29.2m). The lower operating profit in this year was a planned increase in infrastructure and fleet maintenance and the withdrawal of the international shipping service at Bell Bay (Launceston).

Table A3.2 Total Assets and Net Assets for the ports of Tasmania (1995/96-2010/11)

Financial Year	Total Assets ($)	Net Assets ($)
1995-1996	176,000,000	117,100,000
1996-1997	175,800,000	117,800,000
1997-1998	186,800,000	116,900,000
1998-1999	194,100,000	122,500,000
1999-2000	192,000,000	124,000,000
2000-2001	193,100,000	120,800,000
2001-2002	197,500,000	124,300,000
2002-2003	197,600,000	129,700,000
2003-2004	205,600,000	135,100,000
2004-2005	201,100,000	137,100,000
2005-2006	***171,317,858***	***114,324,294***
2006-2007	174,718,372	119,746,403
2007-2008	161,545,002	120,647,764
2008-2009	162,178,212	120,379,218
2009-2010	157,304,972	118,130,799
2010-2011	229,773,228	175,707,874

Table A3.3 Cost and Total Cost for the ports of Tasmania (1995/96-2010/11)

Financial Year	Cost ($M)	Total Cost ($M)
1995-1996	38.83	28.46
1996-1997	38.06	27.58
1997-1998	35.50	26.18
1998-1999	42.48	30.45
1999-2000	43.32	32.78
2000-2001	49.26	39.81
2001-2002	46.30	37.59
2002-2003	48.38	39.24
2003-2004	50.89	41.60
2004-2005	53.97	40.84
2005-2006	***36.93***	***48.52***
2006-2007	53.41	76.42
2007-2008	62.54	56.13
2008-2009	59.37	72.07
2009-2010	60.30	70.14
2010-2011	63.64	61.46

Table A3.4 Volume of Cargo entering and leaving the ports of Tasmania (1995/96-2010/11)

Financial Year	TEUs	Mass Tons
1995-1996	245,486	10,832,496
1996-1997	249,389	11,085,781
1997-1998	265,927	11,646,330
1998-1999	270,269	12,094,444
1999-2000	292,868	13,499,237
2000-2001	305,943	13,714,610
2001-2002	329,727	14,570,107
2002-2003	375,034	15,447,889
2003-2004	424,533	15,853,702
2004-2005	452,705	16,400,128
2005-2006	***450,073***	***14,794,613***
2006-2007	450,420	15,195,424
2007-2008	491,485	16,222,533
2008-2009	474,185	14,854,330
2009-2010	460,957	13,425,342
2010-2011	463,346	13,538,204

Table A3.5 Return on Assets and Return on Equity for the ports of Tasmania (1995/96-2010/11)

Financial Year	Return on Assets (%)	Return on Equity (%)
1995-1996	1.4	0.9
1996-1997	0.1	0.2
1997-1998	-2.1	-3.3
1998-1999	1.1	1.8
1999-2000	0.4	0.6
2000-2001	-0.7	-1.1
2001-2002	2.8	3.6
2002-2003	3.3	5.1
2003-2004	3.9	5.9
2004-2005	4.1	6.0
2005-2006	***-2.1***	***-4.5***
2006-2007	2.0	4.2
2007-2008	18.7	26.0
2008-2009	3.1	4.3
2009-2010	0.9	1.2
2010-2011	0.2	0.2

Table A3.6 Operating Revenue per TEU & Mass Ton and Operating Profit before Tax per TEU & Mass Ton for the ports of Tasmania (1995/96-2010/11)

Financial Year	Operating Revenue per TEU ($)	Operating Revenue per Mass Ton ($)	Operating Profit before Tax per TEU ($)	Operating Profit before Tax per Mass Ton ($)
1995-1996	167.97	3.81	9.78	0.22
1996-1997	159.41	3.59	6.82	0.15
1997-1998	141.78	3.24	8.27	0.19
1998-1999	164.94	3.69	7.77	0.17
1999-2000	169.78	3.68	21.85	0.47
2000-2001	168.21	3.75	7.19	0.16
2001-2002	160.43	3.63	20.02	0.45
2002-2003	153.00	3.71	24.00	0.58
2003-2004	144.61	3.87	24.73	0.66
2004-2005	142.20	3.93	22.97	0.63
2005-2006	***101.12***	***3.08***	***-9.24***	***-0.28***
2006-2007	204.54	6.06	28.64	0.85
2007-2008	197.43	5.98	629.30	19.07
2008-2009	184.05	5.88	16.04	0.51
2009-2010	174.82	6.00	3.22	0.11
2010-2011	165.70	5.67	0.074	0.0025

Table A3.7 Total Cost per TEU & Mass Ton and Assets per TEU & Mass Ton for the ports of Tasmania (1995/96-2010/11)

Financial Year	Total Cost per TEU ($)	Total Cost per Mass Ton ($)	Assets per TEU ($)	Assets per Mass Ton ($)
1995-1996	115.92	2.63	477.01	10.81
1996-1997	110.58	2.49	472.35	10.63
1997-1998	98.45	2.25	439.59	10.04
1998-1999	112.67	2.52	453.25	10.13
1999-2000	111.92	2.43	423.40	9.19
2000-2001	130.12	2.90	394.84	8.81
2001-2002	114.01	2.58	376.98	8.53
2002-2003	104.63	2.54	345.84	8.40
2003-2004	97.99	2.62	318.23	8.52
2004-2005	90.21	2.49	302.85	8.36
2005-2006	***107.80***	***3.28***	***324.60***	***9.87***
2006-2007	169.66	5.03	343.33	10.18
2007-2008	114.20	3.46	255.19	7.73
2008-2009	151.98	4.85	265.23	8.47
2009-2010	152.16	5.22	267.57	9.19
2010-2011	132.64	4.54	390.14	13.35

Table A3.8 Price per TEU & Mass Ton for the ports of Tasmania (1995/96-2010/11)

Financial Year	Price per TEU($)	Price per Mass Ton ($)
1995-1996	167.97	3.81
1996-1997	159.41	3.59
1997-1998	141.78	3.24
1998-1999	164.94	3.69
1999-2000	169.78	3.68
2000-2001	168.21	3.75
2001-2002	160.43	3.63
2002-2003	153.00	3.71
2003-2004	144.61	3.87
2004-2005	142.20	3.93
2005-2006	***101.12***	***3.08***
2006-2007	204.54	6.06
2007-2008	197.43	5.98
2008-2009	184.05	5.88
2009-2010	174.82	6.00
2010-2011	165.70	5.67

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