

**IMPROVING COMPETITIVE OUTCOMES AND
LANDSIDE PRODUCTIVITY AT NSW PORTS**

BETTER REGULATION STATEMENT

SEPTEMBER 2008

NSW MARITIME

Glossary

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|-------------------------|---|
| CIRA | In 2006, the Council of Australian Governments agreed on a National Reform Agenda. The Competition and Infrastructure Reform Agreement (CIRA) was an agenda component aimed at a national approach to economic regulation of significant infrastructure. Under CIRA, NSW committed to review its regulation of ports and port authorities; and handling and storage facility operations at its major ports by the end of 2007, with the findings to be implemented in 2008. |
| CIRA report/review | The CIRA review is a PricewaterhouseCoopers report entitled “ <i>Economic Regulation of NSW Ports</i> ” commissioned by the Department of Premier and Cabinet and received November 2007. The review’s focus is the effectiveness or need for economic regulation and not the safety functions of the port corporations which are required under their operating licence. |
| HVCCLT | The <i>Hunter Valley Coal Chain Logistics Team</i> . A voluntary industry group formed to improve coordination, productivity and capacity in the Hunter Valley coal supply chain. |
| IPART report/review | The final report of the Independent Pricing and Regulatory Tribunal of New South Wales entitled “ <i>Review into Review of the Interface between the Land Transport Industries and the Stevedores at Port Botany</i> ” and released in March 2008. |
| NSW Port Corporation | The port corporations discussed in this <i>Better Regulation Statement</i> are the <i>Newcastle Port Corporation</i> (principally coal exports), the <i>Sydney Ports Corporation</i> (principally container imports) and <i>Port Kembla Port Corporation</i> (principally grain, steel exports; and, in the future, car imports). |
| SAHA study | A Saha International Limited consultancy study entitled “ <i>Costs of Truck Congestion at Port Botany</i> ” commissioned by Sydney Ports Corporation and delivered in May 2008. |
| SCI | <i>Statement of Corporate Intent</i> . Under s. 21 of the SOC Act, SCI must be provided annually by port corporations to stakeholders not later than one month after the beginning of each fiscal year. SCI contain information about objectives, main undertakings; nature and scope of activities; accounting policies; performance targets and other measures; as well as other matters from time to time. |
| SOC Act | <i>State Owned Corporations Act 1989</i> No. 134. An Act to provide for the establishment and operation of government enterprises as State Owned Corporations (SOCs), such as the port corporations under discussion in this <i>Better Regulation Statement</i> . |
| State Owned Corporation | NSW Port Corporations are SOC's governed by the operation of the <i>State Owned Corporations Act 1989</i> . |
| Supply Chain | A supply chain is a system or network comprising interdependent nodes and transport/logistics corridors. Supply chains exist to carry finished or intermediate goods to customers. Product velocity through the system is critical and if one or more links fail, or if linkages are badly coordinated, bottlenecks occur and throughput (productivity) slows down or stalls. NSW ports are major nodes in the complex NSW supply chain. |
| The Act | <i>Ports and Maritime Administration Act 1995</i> No. 13. The Act establishes, <i>inter alia</i> , statutory state owned corporations to operate the State’s port facilities in the major ports.. |

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1. Executive Summary

Sydney, Newcastle and Port Kembla Port Corporations were established as statutory State Owned Corporations (SOCs) under the *Ports and Maritime Administration Act 1995*. Thirteen years later, it is timely to re-examine their policy and operational settings and consider whether they are operating within a modern policy framework that equips them to reach their full potential as powerhouses of the NSW economy in the twenty-first century.

The proposal for reform set out in this *Better Regulation Statement* aims to enhance the contribution of NSW ports to the NSW economy by improving competitive outcomes and landside productivity at the State's ports. It is informed by recent reviews of issues affecting NSW ports including:

1. The **Review of Port Competition and Regulation in NSW** pursuant to the Council of Australian Government's (COAG) Competition and Infrastructure Reform Agreement (CIRA) ; and
2. The NSW Independent Pricing and Regulatory Review Tribunal (IPART) **Review of the Interface between the Land Transport Industries and the Stevedores at Port Botany** –.

The reports from these reviews and associated consultation processes highlighted the need to reconsider the role of port authorities in a climate of increasing pressure on the efficiency of cargo movements through ports. They reveal that the current objectives and functions of NSW port corporations do not support a competitive environment that drives major port service providers to increase throughput and investment.

The current objectives and functions of port corporations also restrict their capacity to take an active role in coordinating landside port supply chains. An independent facilitator is needed to ensure strong trade growth is not choked by port congestion and the inefficient performance of landside services.

There have been voluntary efforts to improve landside supply chain performance (e.g. the Hunter Valley Coal Chain Logistics Team in Newcastle and stevedore-run vehicle booking systems at Port Botany). However, voluntary efforts are always constrained by the (perfectly legitimate) priorities of supply chain participants who put the benefit of their individual enterprise ahead of potential benefits to the whole supply chain. This situation is exacerbated by the commercial context of the ports, which the reviews above demonstrate is characterised by significant concentrations of market power.

The reform proposal therefore aims to:

- modernise and strengthen the role of NSW port corporations to meet the challenges of anticipated trade growth and evolving operating environments;
- ensure policy and regulatory settings reflect the port corporations' current market position and operating environment; and
- provide an incentive for greater private sector cooperation by enabling government, if required, to regulate landside activities to optimise the efficiency of the port logistics systems.

The means identified to achieve the proposal are detailed in **section 3**. In summary, they are:

- 1 **Additional statutory objectives** for port corporations to:
 - to promote and facilitate a competitive commercial environment in port operations; and
 - to improve productivity and efficiency in its ports and the port-related supply chain.
- 2 **An additional principal function** of port corporations to facilitate and co-ordinate improvements in the efficiency of the port-related supply chain.
- 3 **A direction-giving power**, in addition to the direction-giving powers in the *State Owned Corporations Act 1989* (SOC Act), so the Minister may direct a Port Corporation to take specific actions to fulfil its new functions and objectives.
- 4 **Regulation-making powers** so that the Minister may:
 - require information to be provided by landside port facilities and service providers for the purposes of monitoring performance and investment in landside activities at a port;
 - set mandatory standards for access, charges and performance at landside port facilities, (e.g. vehicle booking systems), and provide for ancillary inspection and audit powers;
 - set performance, access and capacity targets for landside port facilities and services; and
 - determine charges for port-related supply chain services at the landside interface, including coordination services, and specify which party is to pay and collect such charges.

Implementation of the new port corporation objectives and functions will, with the active cooperation of port service providers and supply chain participants, generate significant improvements especially at the port landside interfaces, by delivering increased competition, improved services and greater efficiencies at NSW ports. The changes impose minimal costs and regulatory burden on stakeholders for the eventual benefit of all participants in the commercial port environment and the NSW economy as a whole.

2. Need for Government Action

2.1. Need for action

Growing demand for port services

International and domestic demand for 24 hour, seven day a week port facilities and services is growing rapidly in New South Wales.

Port Botany is Australia's second largest container port and in 2006-2007, container trade grew by over 12 per cent, well above the forecast growth rate of five to seven per cent. The Port of Newcastle, one of the world's largest coal export ports, is also experiencing a massive increase in activity, with a record 80.8 million tonnes of coal shipped in 2006-2007. Port Kembla is Australia's leading steel export port and, as car imports transfer permanently from Sydney in late 2008, it will handle an extra 250 ship visits and 280,000 vehicle imports.

The *NSW Ports Growth Plan (2003)* provides a strategic framework to ensure the major NSW ports can service future maritime trade. The Plan focuses on the expansion of physical capacity and all three ports have major infrastructure projects underway.

At the same time, actual growth in trade is placing unprecedented pressure on the landside transport systems that move freight to and from the ports. Information emerging from the CIRA¹ and IPART review processes, industry participants and members of the public reveals that the port-related supply chains are underperforming.

Industry initiatives have attempted to resolve supply chain problems and these have met with a degree of success. For example, demand currently exceeds capacity in the Hunter Valley coal chain and there is a rail infrastructure supply gap. Industry has attempted to improve supply chain performance by forming the *Hunter Valley Coal Chain Logistics Team (HVCCLT)*. A 15 per cent increase in output from the coal chain has been attributed to the efforts of this group.

Despite the efforts of the HVCCLT, however, the rate of exports from the coal chain dropped by 8.4 million tonnes per annum in the first quarter of 2008. This decline in productivity has been attributed by industry participants to:

- insufficient information sharing between supply chain participants;
- failure of supply chain participants to achieve voluntary performance standards; and
- the cumulative effect of unaligned maintenance work and outages.

Industry has also attempted to address longer term logistics issues through the HVCCLT but these have proven intractable. In 2007, the Hon. N. F. Greiner AC agreed to act as an independent facilitator to progress industry discussions. The long term situation at the Port of Newcastle and its surrounding infrastructure is complicated by plans to shift further container trade to Newcastle as NSW's next major container facility once Port Botany reaches capacity.

The current situation at Port Botany demonstrates the complexity resulting from rapid growth in container volumes and inadequate supply chain coordination. Industry has reported congestion, delays, lack of transparency and unpredictable performance of the supply chain. The Port of Newcastle and Port Kembla face similar issues.

The Port Botany supply chain shares infrastructure that also serves the population of Sydney with passenger rail and road services. Sydney Ports Corporation leases the land to stevedores; and road and rail access to terminals is controlled through non-transparent commercial arrangements between stevedores and transport carrier companies.

¹ See *Glossary* for an explanation of these and other major acronyms used.

The fragmented nature of the Port Botany supply chain makes it impractical for a voluntary industry body to coordinate the whole supply chain effectively. The supply chain comprises:

- two (soon to be three) stevedoring terminals;
- more than 200 road transport carriers;
- four above-rail operators;
- two rail track owners;
- six metropolitan intermodal terminals; and
- thousands of dependent warehouses, importers and exporters.

Land transportation to and from Port Botany is dominated by road with 80 per cent of containers transported by road and 20 per cent transported by rail. Approximately 80 per cent of full import containers are also unpacked in Sydney within 40 kilometres of the port.

Current truck congestion in and around Port Botany has been estimated to cost industry in the range of \$20-34 million per annum². Over a 20 year period these costs could increase to \$133-218 million per annum, given the projected trade growth and the presence after 2013 of a third terminal. Current rail capacity inhibits moves to alleviate this situation. An increase in rail capacity is underway through planned improvements to the Port Botany Rail Yard, terminal sidings and intermodal capacity (eg at Enfield) but the roads leading to Port Botany will continue to be congested, especially during peak periods, unless the growing rail and road freight task can be spread more evenly across a 24 hour period.

In recent years, the stevedores have also increased their container throughput and made some efforts to increase efficiency at the landside such as introducing online vehicle booking systems. However, the impact of these voluntary initiatives has been limited and IPART found that more substantial improvement of the logistics activities in and around the port is urgently required.

Whilst this policy proposal specifically serves to address the urgent landside problems at the Ports of Newcastle and Sydney, it also seeks to protect Port Kembla from experiencing similar congestion and coordination problems in the future.

The changing role of the modern port

NSW Port Corporations are faced with domestic and international incentives to refocus their role and increase their authority in port-related supply chains in order to improve the nature and the quality of the facilities and services that they host. The Australian Competition and Consumer Commission (ACCC) has observed in relation to container terminals that “In most cases, it appears that port managers have not been involved in controlling vehicle access to stevedoring terminals. A number of state governments are however taking steps to encourage greater efficiency in land-side logistics. The Victorian Government’s Melbourne Port@L is an example of such an initiative.”³

Globally, major ports face trade growth, congestion and rapid technological development in the market. They are responding by growing their role beyond the simple ‘landlord’ model⁴ or land lessor function. Modern ports, such as the Port of Singapore, are now recognised as delivering strategic economic benefit to the state, both as pivotal nodes of a greater logistics system and as active facilitators of value-added logistics solutions. Similarly, the Port of Tauranga, New Zealand⁵ and its integrated inland port operation and transport system ‘MetroPort Auckland’; and the Port of

² SAHA. May, 2008. pp 3, 6.

³ ACCC, *Container stevedoring - Monitoring Report No. 8*, November 2006, p 37.

⁴ PwC CIRA. November 2007, pp 17, 22.

⁵ These two examples are taken from a presentation to the 2006 3rd Intermodal Asia Conference. It is entitled “*Reshaping a port’s strategic role – adapting to challenges & changing trends*” by Guy Reynolds of Meyrick and Associates.

Duisburg, Germany, a so-called ‘logistics port’; are all taking greater control of their port-related supply chains.

Modernising the role of the port is necessary to remain internationally competitive, but need not entail interference in the market. Instead, ports are taking the opportunity to redefine their unique roles in terms of maximising value and productivity within an operating environment dominated by private investment and monopoly power.

Current leasing arrangements at the ports fail to encourage competitive commercial behaviour. This leads to:

- a loss of strategic port planning capacity;
- a loss of operational knowledge;
- a limited understanding of the supply chain;
- inadequate landside investment and maintenance outcomes;
- decreasing productivity; and
- an emerging risk of liability for port-related heavy vehicle driver safety.

Outcomes of recent reviews

Economic Regulation of NSW Ports (CIRA Report)

In February 2006, COAG endorsed a program for the implementation of National Competition Policy reforms known as the Competition and Infrastructure Reform Agreement (CIRA). Under CIRA, each jurisdiction reviewed its economic regulation of “significant ports”, to ensure that it conformed with the CIRA’s access, planning and competition principles.

In 2007, the Department of Premier and Cabinet (DPC) engaged PwC to conduct the NSW CIRA review, which found that:

- the regulatory framework achieves an appropriate balance between promoting competition and ensuring port operations are viable;
- pricing and access arrangements for port facilities and services do not constitute a significant barrier to entry or exit;
- common user provisions can facilitate market entry but may also restrict competition if terms and conditions vary between common user and dedicated facilities;
- the planning framework achieves an appropriate balance between providing port facilities and addressing community and environmental concerns; and
- additional economic regulation is unlikely to promote greater competition.

Key recommendations of the CIRA review were that:

- port corporations should work with stakeholders to identify capacity constraints and facilitate the improvement of landside infrastructure;
- port charges should be benchmarked against those in other jurisdictions;
- long term lease conditions should be subject to greater transparency and reviewed to ensure they reflect current Government policy; and
- a consistent approach should be taken to the setting of common user lease conditions and any differences in status between terminals should be subject to a net benefits test.

Review of the Interface between the Land Transport Industries and the Stevedores at Port Botany (IPART Review)

In November 2006, the *Port Botany Logistics Taskforce* convened by the Minister for Ports and Waterways agreed on the need for an independent review to be conducted of the landside interface between stevedores and transport operators at Port Botany. The matter was referred to IPART in December 2006.

In March 2008, IPART released its final report. Key themes included that:

- congestion is causing unnecessary and expensive delays at the port-landside interface;
- long term shipping (not landside) contracts provide the prime commercial drivers for stevedores;
- the stevedores' monopoly power over access to landed containers has an impact; and
- there is a lack of transparency in systems through which road carriers gain access to containers.

IPART also made the following observations about Port Botany:

- "IPART concurs with the view expressed in the ACCC's *Container Stevedoring - Monitoring Report No. 8*⁶, that "[t]he role of port managers in managing land-side connections would appear to be important in achieving efficient logistics chains." (IPART, p134); and
- "There is some degree of dysfunction in market interactions at present, leading to poor coordination of operational planning and investment decisions. The NSW Government has a role in supporting better coordination, which would support more efficient market transactions." (IPART, p31)

Circumstances at the major ports and consistent themes from consultation demonstrate the need for impartial and independent facilitation in order to:

- increase landside service competition;
- improve planning and coordination of landside services; and
- provide greater transparency in the port-related elements of the supply chain.

2.2. Consequences of inaction

The potential consequences of a failure to modernise and strengthen the role of the ports to drive greater efficiency in landside supply chains are identified as:

- increasing terminal congestion (longer waiting times);
- erosion of overall port performance (transport constraints reduce throughput);
- surplus (and therefore uneconomic) supply chain capacity;
- higher costs for port users;
- higher costs for NSW consumers;
- increasing road congestion and noise in metropolitan Sydney;
- worse road safety outcomes;
- longer ship queues off Newcastle;
- higher ship and vehicle fuel emissions;
- loss of market share to other ports as traders seek better logistics solutions; and
- a decline (or lack of growth) in the value of ports as assets of the State.

2.3 Urgency

A number of factors indicate that action should be taken now.

For example, SPC has significant lease renewal negotiations imminent for the DP World stevedore lease at Port Botany, plus the leasing of part of the expanded Port Botany land area to Patrick stevedore. Major procurement processes are also due to commence shortly for the third terminal at

⁶ ACCC, *Container stevedoring - Monitoring Report No. 8*, November 2006, pp 37, 38.

Port Botany and the new Enfield intermodal logistics centre. Altering port corporation objectives in relation to competition may affect the conduct of these negotiations and procurement processes.

The NSW Freight Initiative has a notional target of 2011 for a 40 per cent modal shift of freight to rail from road in conjunction with the scheduled opening of the Enfield Intermodal Logistics Centre.

It is also noted that IPART has recommended immediate regulation to mandate the reporting of certain landside logistics performance information to SPC and the reporting of that information by SPC to Government. Activities to facilitate better service coordination at the interface would be best implemented as soon as possible in order for the outcomes to coincide appropriately with other port-related projects.

3. Objective of Government Action

3.1 Objectives of the Proposal

The principal objectives of the proposal are to improve competitive outcomes and landside productivity at NSW ports. This will lead to effective and efficient ports through lower terminal congestion, increased port capacity, and reduction in surplus supply chain capacity. This will in turn result in lower costs for port users and consumers, less traffic congestion (which means safer roads, shorter ship queues and lower emissions) and an increased emphasis on the use of and investment in ports as a transport solution.

The objectives of the proposal are consistent with existing Government policies as set out below.

NSW Treasury Commercial Policy Framework (1998⁷)

This framework has implications for the manner in which ports provide and price services. It includes a policy for improving the performance of Government Trading Enterprises or GTEs (which include SOCs). As the CIRA review has noted, the policy is based on a principle that the quality of a GTE's performance depends upon the incentives it faces.

Ports Growth Plan (2003)

The *NSW Ports Growth Plan* provides strategic direction to ensure the major ports have the physical capacity to service forecast growth in trade. The objectives of this proposal are consistent with strategic management of the growth in operations conducted at the expanded ports. The long and complex supply chains of which NSW ports are major nodes require increasingly sophisticated, adaptable and well coordinated systems to ensure seamless cargo throughput.

NSW State Plan (2006):

Consistent State Plan priorities are:

- *Priority E3*: Cleaner air and progress on greenhouse gas reductions.
- *Priority E7*: Improve the efficiency of the road network by targeting congestion hotspots
- *Priority S7*: Safer roads

The proposal's objectives also recognise the principle underlying Priority P2 (Maintain and invest in infrastructure) that "every business and person in NSW relies on State Government infrastructure such as roads, railways, power, water supply and ports to do their business".

NSW Government Freight Initiative (2007):

- This initiative includes a commitment to "Establish new freight terminals at Enfield [and] at Moorebank; achieve a target of 40 per cent of freight carried by rail which will reduce the number of truck movements on key arterial roads by approximately one million truck movements per year; and reduce truck movements around Port Botany and inner metropolitan suburbs by up to 300 per day."

Competition Principles

The objective to improve competitive outcomes is consistent with the CIRA principles relating to the competitive neutrality of GTEs.

Relevant and consistent national initiatives to improve freight movement in Australia are:

- The *Australian Transport Council's* Joint Communiqué of 2 May 2008 states that its members have agreed to work together to "provide better signals to guide both the supply and demand for

⁷ Namely, *A Policy Framework for Improving the Performance of Government Trading Enterprises* (September 1988) that forms part of the NSW Treasury Commercial Policy Framework.

transport infrastructure and services involving whole-of-transport solutions for corridors and networks rather than being simply mode specific”. Priority supply chains identified by the Council included those supporting movements of coal, grain and container trade.

- The *Australian Transport Council* also recently approved Chain of Responsibility laws that will require loading managers (e.g. managers of queuing systems, distribution centres, empty container parks and stevedore terminals) to take all reasonable steps to ensure truck loading or unloading arrangements do not cause or permit drivers to breach work-hours limits or drive while impaired by fatigue. This proposal will contribute to reducing port-related inefficiencies that could lead to heavy vehicle driver fatigue and poor road safety outcomes.

4. Consideration of Options

This proposal puts a primary emphasis on modernising the policy settings guiding the operation of statutory port corporations, and the commercial environment within ports, in order to deliver greater productivity by fostering competition and driving efficiencies.

The following assessments of cost and benefits of options for action are therefore largely qualitative.

Four options identified to improve competitive outcomes and landside productivity at the State's ports are considered below.

Option 1 (No Change):

- Port Corporation objectives and functions remain unchanged;
- no power to monitor or regulate performance standards of supply chain participants; and
- current voluntary arrangements of landside operators where present, continue.

Option 1 is the status quo option. Under this option, ports would continue to operate mainly as landlords. Their limited objectives and functions would continue to foster a narrow, single enterprise approach, rather than an approach more consistent with the role of a modern port authority as facilitator, system manager and market maker. The status quo also relies on altruistic behaviour by participants in landside supply chains to generate whole-of-chain efficiencies that may not be in their own best interests. This approach has not been successful to date. Although it is the least costly in terms of short term actions, this option has the most costly ramifications for Government, business and the community in the long term.

As outlined in **section 2**, some likely outcomes of the 'no change' option include increasing terminal congestion in all major ports; further erosion of port performance; higher costs for port users; higher costs for consumers; increasing road congestion; longer ship queues; higher fuel emissions; loss of market share to other ports; and a decline in the value of ports as assets.

Compliance, administration, competition and innovation costs

There are no direct compliance costs for business or administrative costs for government associated with this option.

Landside logistics chains will continue to be affected by the imbalance of market power arising from the monopoly position of stevedores in relation to access to landed import containers; and the unequal power of large, vertically integrated interests in the coal chain.

This option will not facilitate innovation in information and communications technology (ICT) or stimulate the introduction of new service coordination systems at the ports. For example, the full functionality of an online vehicle booking software system voluntarily introduced by a Port Botany stevedore in 2005 has never been exploited. Pursuit of Option 1 will neither drive a change in this situation, nor provide incentives for stevedores to enhance other ancillary systems e.g. automated gate identification systems.

Direct and indirect cost and benefits

Direct costs are nil for this option but ongoing instances of market failure in the operations of landside interfaces at the ports will continue to produce high indirect costs associated with congestion. Businesses will continue to incur the costs of congestion at the ports and costs associated with reactive planning of business activities to accommodate congestion. Truck congestion at Port Botany has been estimated to cost industry between \$20-34 million⁸ per annum. Sub-optimal coal throughput at Newcastle reduces earnings for participants in the coal chain.

⁸ SAHA report. May 2008.

Small businesses will feel the impacts of policy inaction more severely as they lack the capacity to weather delays arising from inefficient port-related supply chain coordination.

Indirect costs to the Government include a loss of NSW ports' reputations as fast, reliable conveyors of product, e.g. coal from Newcastle and imports from Port Botany. Loss of reputation has national and international implications with associated economic costs to the state.

There are few if any identifiable benefits associated with this option, other than its low initial cost impact.

Social, environmental and regional impacts

Consultation by IPART has revealed that the suburban amenity of Botany has been negatively affected by the congestion of heavy vehicles using the streets to and from the Port. Reduced amenity includes increased noise, truck fumes and road safety issues. Flow-on effects occur in surrounding neighbourhoods. This option will neither alleviate nor manage this problem.

Idling trucks in queues at Port Botany and queues of ships at anchor off the coast at Newcastle are examples of inefficient fuel use producing emissions that are associated with unproductive, uneconomic activities. Lengthy ship queues also pose an environmental risk to the NSW Central Coast. This option will neither alleviate nor manage the presence of queues.

The performance of the entire NSW freight supply chain is compromised by delays or inefficiency at port landside interfaces. This option will not manage or improve the *ad hoc* nature of failed voluntary freight efficiency solutions to date.

Option 2 (Enhance port competition role only, no potential for regulatory incentives):

- modernise port corporation objectives to include fostering competitive environment but do not specify port corporation objectives or principal functions to facilitate landside logistics;
- no regulatory capacity to implement mandatory performance standards for landside port operators; and
- promote voluntary supply chain coordination arrangements

Option 2 relies wholly on increasing the Port Corporations' competition focus to deliver improved performance over the full range of sea-side and landside operations. This can be expected to deliver enhanced competition between port service providers who have direct relationships with the port corporations, but have little impact on improving the efficiency of landside interfaces and supply chains.

The Government (possibly through the Port Corporations) could potentially encourage some improvement to supply chain coordination arrangements, but this option contains no new drivers or incentives for better supply chain coordination. Option 2 augments the responsibilities of the port corporations without providing supporting tools to ensure competition, efficiency and transparency are achieved.

Compliance and administration

Potential costs to business arising from adjustment of landside leasing practices to include requirements relating to market-based rent arrangements, productivity and/or capital investments, would be offset through commercial negotiations with the port corporations.

Further voluntary measures will impose costs on individual businesses from the time that it takes to assemble and coordinate their activities. Businesses would need to allocate staff, time and sufficient resources to allow them to meet and make decisions on port activity.

The imposition of lease conditions designed to foster competition could potentially result in lower cash rental returns to port corporations. To promote voluntary supply chain coordination

arrangements, Government may be required to allocate staff and perhaps provide meeting venues and secretariat resources to facilitate implementation of this option.

Competition and innovation

In relation to landside supply chain efficiency, this option will have similar competition impacts to Option 1. There is expected to be a cumulatively beneficial (though not currently quantifiable) effect on competition in port services as a result of changes to major leasing practices noted above. This is expected to increase competitive tension within the current limited market, with benefits flowing through to landside port services and eventually to consumers.

Further voluntary mechanisms are likely to favour larger operators with more negotiating power and greater capacity to devote resources (such as time; staff; training and ICT) to deploy to such voluntary efforts, although small business would benefit from majority decisions to increase communication and cooperation.

An increase in competition between major leaseholders may be expected to spur innovations required to increase terminal efficiencies to increase throughput. There may be a trickle-down effect to landside logistics improvements at container terminals if new terminal efficiencies put pressure on storage capacity making it more important to stevedores that containers be cleared quickly.

Direct and indirect costs and benefits

In addition to the costs associated with Option 1, potential indirect costs of this option include maintaining the status quo through continued reliance on voluntary coordination arrangements. In the absence of an incentive such as potential for Government to mandate reporting or performance standards, it is unclear what improvements would be forthcoming.

If actions by port corporations to encourage competition through lease provisions result in lower direct rent payments, there is a potential impact on dividends to government. These are expected to be offset by the positive impact on the NSW economy of enhanced competition in port services.

Social, environmental and regional impacts

Increased competition in port services can be expected to drive more cost-effective port operations which could eventually lead to cost benefits for consumers of imported products and exporters. Otherwise the social and environmental impacts are expected to be similar to Option 1.

Modernised leasing practices may lead to stevedores offering more competitive services to regional exporters.

Option 3 (Enhance port competition and facilitation role, create regulatory potential to drive improvements):

- modernise port corporation objectives to include fostering competitive environment;
- expand port corporation functions to include a role in implementing productivity-based performance standards for landside port services and supply chains, and facilitation and coordination of landside port services;
- provide portfolio Minister with regulatory powers to mandate compliance with performance standards, monitoring and reporting in relation to landside port services and port-related supply chains; and
- provide portfolio Minister with powers to direct port corporations to undertake specific activities to fulfil new objectives and functions.

Option 3 is the preferred option. Under this option, Port Corporations' objectives and functions are expanded to encompass the modern potential of a port corporation as contributor to the broader NSW economy. Where there are tensions between the broader public policy objectives and functions and the port corporations' business objectives, this option provides a mechanism through Ministerial directions, to provide guidance on an appropriate balance between commercial and policy considerations.

Option 3 represents an initially light-handed regulatory approach that both focuses on port corporation governance and functions, and includes powers to support regulatory intervention if voluntary industry efforts coordinated by the port corporations are not successful in improving the performance of landside port services. This is consistent with the approach recommended by IPART in response to landside issues at Port Botany.

This option is preferred as the most likely to deliver significant improvements in port and related services at the least cost to the community, while incorporating strong signals for industry to lift its performance and engage at the interface more cooperatively.

Compliance costs

Compliance costs may be incurred by regulations developed under the proposal. These costs will be minimised through the application of the better regulation principles at the time the regulation is developed. Any compliance costs incurred will be offset by greater efficiency and effectiveness in landside productivity, which will reduce costs for business.”

It is expected that any specific supply chain coordination activities undertaken by port corporations in pursuance of their supply-chain related objectives and functions (including activities undertaken in response to a direction from the Minister) would be undertaken on a cost recovery basis.

During consultations undertaken by IPART, businesses were generally supportive of greater transparency in supply chain services and did not express concern about potential costs of regulation in this regard, but were concerned to ensure the protection of commercial information.

Direct and indirect costs and benefits

If actions by Port Corporations to encourage competition through lease provisions result in lower direct rent payments, there is potential for an impact on dividends to government. This would be offset by substantial growth in throughput at the ports in the mid- to long-term leading to an upswing in economic impact from trade growth in NSW.

Competition and innovation

Competition and innovation impacts of Part 1 of this option are outlined under Option 2. The proposal will not constitute a barrier to entry into the market for either port services or the landside supply chain.

The addition of supply chain facilitation and coordination to port corporations’ objectives and functions will enable them to operate as independent brokers and facilitators of landside operations with which they are not competing. This is expected to improve transparency and trust in the landside logistics market and foster higher levels of cooperation and information-sharing than currently prevail, thereby enhancing an open and competitive market.

This option is expected to foster innovation as it is intended to encourage the operations of the port supply chain to be more transparent to all stakeholders, firstly through enhanced coordination undertaken by port corporations and potentially through the regulatory requirements. New services and improvements are expected to arise and fill any service gaps identified as a natural feature of demand and supply. Similarly redundant, inefficient or unnecessary handling/transport systems or activities are likely to decline or disappear as they are identified.

Social, environmental and regional impacts

Improved supply chain performance is expected to improve amenity for road users and commercial vessel operators around ports by reducing truck and ship queues and associated air emissions in the vicinity of ports. Fewer ships at anchor off the coast will also reduce the environmental risks associated with their presence (e.g. potential oil spills).

The community is also expected to benefit from the contribution to the NSW economy of improved productivity and supply chain performance at NSW ports as well as potentially lower prices for more efficiently-delivered imported products.

This option provides an enhanced role and functions for Port Corporations who are in the best position to facilitate solutions to delays or inefficiencies at the port nodes that compromise the entire NSW freight supply chain and therefore producers and consumers across the state. The proposed regulatory powers provide added incentive to drive innovation and improvement along the whole supply chain to benefit all NSW importers and exporters.

Option 4 (Enhance competition role only, create regulation powers, establish entity/function to implement)

- modernise port corporation objectives to include fostering competitive environment
- provide the portfolio Minister with powers to direct port corporations to undertake specific activities to fulfil new objectives;
- provide the portfolio Minister with regulatory powers to mandate compliance with performance standards, monitoring and reporting in relation to landside port services and port-related supply chains; and
- create a separate entity or function to receive business information, monitor and enforce compliance with mandated standards and, if required, manage supply chain coordination services at the landside interface.

Option 4 presents a scenario where the port corporations are given an additional role to promote competition in port services and the Minister has power to direct them where there is a need to balance competition and commercial outcomes. Port Corporations are not required to expand their business focus or functions to promote coordination and efficiency at the landside interface and in port-related supply chains.

Under this option, the Minister is provided with regulatory powers similar to those provided in Option 3, but a separate entity (either new or existing) is charged with the responsibility for implementing those regulations. This entity could also be responsible for acting as facilitator and manager of supply chain coordination services.

The concept of a new and independent entity charged with port coordination and implementation functions has some intuitive appeal. However, it is considered that the costs of establishing, staffing, maintaining and monitoring such an arms-length entity would outweigh any major benefits to the Port Corporations or Government.

The impacts of this option are in most respects similar to those identified for Option 3 with the following exceptions:

The Port Corporations would not be given a specific function relating to the implementation of productivity-based performance standards for landside port services and supply chains, and the facilitation and coordination of landside port services. In lieu of Port Corporations taking an active role in this area, it is likely that a higher level of regulatory action would be required in the absence of successful voluntary solutions.

Government will incur administrative costs in establishing, staffing, training and resourcing an additional statutory entity (or an additional statutory function within an existing entity). This entity/function will in turn require monitoring and evaluation, creating an extra layer of red tape and incurring further administrative costs.

It should also be noted that no existing NSW Government entity has the level of expertise that is currently available within port corporations to monitor and interpret relevant information, nor to facilitate the development of performance standards, nor to manage (if required) supply chain

coordination enterprises. Any new entity would need to establish/recruit this expertise and would draw upon the resources of the port corporations to do so, at a cost to the corporations. It would also require time to develop new business relationships with supply chain participants.

5. Consultation

Wide-ranging public consultation was undertaken throughout the CIRA and IPART review processes.

The CIRA Report was a transparent public review of ports regulation, conducted by PricewaterhouseCoopers (PwC) and overseen by a Steering Committee comprising representatives from the Department of Premier and Cabinet, NSW Treasury, NSW Maritime and the Ministry of Transport. The review was required to assess whether the current regulatory framework is consistent with CIRA principles and in particular:

- whether economic regulation is required to promote competition or prevent abuse of market power;
- whether price and access arrangements reflect commercially agreed outcomes and do not accrue competitive advantage to government enterprises; and
- whether any regulatory restrictions to competition that do exist generate net community benefit.

Following the release of an issues paper addressing the above points in August 2007, which was advertised in the press and posted on the NSW Maritime website, a roundtable discussion for industry stakeholders was held and further submissions received and considered. A total of 15 formal submissions were received from port stakeholders including stevedores, road and rail operators, port corporations, shippers, importers and exporters. These stakeholders generally supported the current economic regulatory framework.

IPART sought information from stakeholders in relation to the operation of the interface between stevedores and land transport operators at Port Botany. In seeking stakeholder views, IPART released an issues paper in March 2007, considered public submissions, hosted a public forum and held other meetings with individual stakeholders. In October 2007, IPART released a draft report, published this on its website and invited further submissions. IPART considered those submissions and then undertook further consultation with stakeholders before releasing its final report in March 2008.

Through this process, IPART received 52 submissions from stakeholders including stevedores, logistics companies, customs brokers and freight forwarders, local government, rail operators, community members, unions, government departments, and industry associations representing road carriers, customs brokers and shipping lines.

Following the release of IPART's final report, the Minister for Ports and Waterways invited all those who had made submissions to IPART to attend a round table discussion to share their views on the final report and make further submissions to the Minister if they so wished. Although industry stakeholders universally rejected IPART's preferred solution to truck congestion at the port (a two-tiered auction system to manage vehicle booking slots), they did generally support the majority of the final report's recommendations for measures to increase transparency and improve communications at both road and rail interfaces.

6. Preferred Option

The principal objectives of this proposal are to improve competitive outcomes and landside productivity at NSW ports.

In the long term, as demand for movement, storage and transport of goods to and from ports increases, the costs of doing nothing are likely to rise for all participants. This is because existing congestion will become worse; present forms of voluntary business cooperation will become increasingly inadequate leading to frustration and system failure; port service coordination solutions will remain *ad hoc*; and surrounding community amenity will continue to decline thanks to growing bottlenecks at the ports. While the Hunter Valley Coal Chain will always be linked to Newcastle, a worst case scenario for container and grain trade is that other ports particularly on the east coast of Australia will capture more of the import/export container and grain trade from NSW.

The preferred option to meet the proposal's objectives will:

- modernise the port corporations' statutory objectives by including the fostering of a competitive operating environment;
- expand the port corporations' statutory functions to include a new strategic role in the facilitation and coordination of landside port facilities and services;
- provide the portfolio Minister with powers to direct port corporations to undertake specific activities to fulfil their new objectives and functions. This may include taking responsibility for developing and implementing regulated standards; and
- provide the Minister with regulatory powers in relation to requiring information, mandating compliance with performance standards, monitoring and reporting in relation to landside port services and port-related supply chains.

In relation to producing better competitive outcomes, this proposal will help intensify competition amongst the major leaseholders and thus drive much-needed innovation to improve terminal efficiency. Higher efficiency within the terminal should place pressure on storage capacity forcing stevedores to clear containers more quickly. Enhancing port corporation objectives to achieve a stronger competitive focus will influence the conduct of future negotiations and procurement processes at the ports.

In relation to increasing landside productivity, the addition of supply chain facilitation and coordination to Port Corporation objectives and functions will enable them to operate as independent brokers and facilitators for operations with which they are not competing. This should both improve transparency and trust in the landside logistics market and promote ongoing cooperation and information-sharing as well. Enabling Port Corporations to act in this role is also aimed at delaying, and ideally preventing, the need to implement the full range of proposed regulatory powers.

Option 3 is a 'framework' approach that focuses on adjusting policy settings while sending clear signals about the government's capacity and intention to regulate where required. As such, it avoids the costs of doing nothing without imposing the costs on affected businesses that would arise from immediately mandating particular responses.

For example, in relation to Port Botany, Option 3 provides the framework for the Government to implement a phased strategy consistent with IPART's recommendations for an **initially** light-handed approach to regulation and an enhanced facilitation and coordination role for Sydney Ports Corporation. It does this by augmenting the port corporations' statutory functions and establishing regulatory powers to implement the improvements IPART has identified as necessary. These improvements include greater transparency and minimum performance standards at the landside interface; and a pricing signal to improve efficiency and reduce congestion.

The Government will initially provide an opportunity for industry to respond to IPART's recommendations on a voluntary basis, allowing industry to pursue its preferred options to achieve the necessary outcomes. If it is proposed to implement a specific regulatory power, a detailed regulatory assessment will be undertaken.

Option 3 places the port corporations at the centre of efforts to improve port performance and supply chain efficiency and avoids the costs associated with Option 4 (separate coordination entity) which would involve significant and ongoing costs to duplicate existing capabilities.

In terms of costs to Government, while actions to stimulate competition and facilitate efficiency could have a potential impact on dividends paid by port corporations to government, this is expected to be offset by the positive impact on the NSW economy of enhanced competition in port services and more efficient supply chains.

7. Evaluation and Review

It is proposed that this initiative be reviewed in five years to determine whether the policy objectives remain valid and whether the policy framework has been effective in delivering them.

It is recommended that implementation of the proposed measures be monitored and reported on by the Port Corporations through their annual Statements of Corporate Intent (SCI) for shareholders.

Effectiveness of some of the measures in this proposal can also be evaluated with reference to statistics already reported upon in SCI such as container trade rate growth and chargeable vessel visits etc. as well as publicly available information relating to port tenant investment and improvements.

Key Performance Indicators (KPI) will vary among ports but could include:

- transparency of landside logistics arrangements;
- supply chain productivity;
- proportion of available off-peak container slots used;
- truck waiting time outside container terminals;
- length of coal ship queue off Newcastle;
- container storage time; and
- modal shift.

Key signs of improvement will be sought from:

- evidence of industry initiatives, e.g. ICT investments and new cooperative arrangements;
- industry feedback from new cooperative arrangements;
- throughput statistics from terminal operators;
- landside congestion statistics;
- port facility analysis;
- port user satisfaction surveys;
- node-dependent surveys (warehouses, distribution centres); and
- landside investment and maintenance analysis.