# A NEW BEAST ON THE NEW ZEALAND WATERFRONT : THE PORT COMPANY SOLUTION TO CORPORATISING A LOCALLY-OWNED ENTERPRISE

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*ABSTRACT:*

*The background to reform of the New Zealand ports industry is traced, including the consultation processes which allowed political goals and priorities for the onshore leg of the export transport system to be established. First priority was given to reform of the legislative framework within which port and waterside labour management takes place. The policies underlying this port reform programme are discussed.*

*The keystone to a radical new port system is the port company. Combining the basic characteristics of a company under the Companies Act 1955 with the accountability requirements of the State Owned Enterprises legislation, the new companies will take over the control and operation of all commercial port functions and assets in the major harbours.*

*Other elements of the reform package, including changes to the national system of administering the pool of waterside labour, are discussed in terms of the Government's policy goals.*

*The paper concludes with an analysis of the industry reaction to the publication of the Ports Reform Bill, and the steps still to be taken before the companies commence operation.*



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# A NEW BEAST ON THE NEW ZEALAND WATERFRONT : THE PORT COMPANY SOLUTION TO CORPORATISING A LOCALLY OWNED ENTERPRISE

## Introduction

The forbearance of the Forum organiser has allowed me to hold off completion of this paper until the Port Companies Act 1988 has completed the parliamentary process and been brought into law. My discussion of the legislative provisions need not, therefore, be qualified by the possibility of changes in the interim.

This paper briefly traverses the background to the formation of port companies by looking at the previous statutory environment and summarising the state of the ports industry as revealed by a 1984 departmental study. It analyses the policy goals of the port reform process and the way the new Act attempts to attain those goals. The reaction of the industry, as revealed in the parliamentary process is briefly reviewed, and the main features of the next step - the practical implementation of the law to bring port companies into being - are foreshadowed.

## Background

To gain an appreciation of the current nature of New Zealand's major port authorities, the harbour boards, it is instructive to take a short voyage back to the last decades of the nineteenth century. In particular, one can trace since that time the changes in the extent of central Government involvement in ports, and the long tradition of elected harbour boards, the parochial rivalry between them, and the steady rationalisation in the numbers of ports.

In the early years of settlement, harbours were administered by the Governors of the colony, but in the late 1860's a central/provincial division of responsibility for harbours was established, and provincial councils were empowered to constitute short-lived local marine boards. The Harbour Boards Act of 1870 replaced these administrations with elected harbour boards established by the provincial authorities. The Crown retained an input to these boards with its unpopular insistence on the inclusion of a limited number of Government appointees on each.

The period from 1870 to the early 1900's was the heyday of coastal shipping, with all coastal settlements of any size being served. New Zealand's isolation from its export markets, its lack of navigable rivers and its nascent land transport made shipping and ports critical development. The relative internal isolation no doubt also contributed to the fierce provincial rivalry in the development race.

Up to sixty elected harbour boards were formed, and over forty of these served international trade. Each was constituted by a separate Act or Ordinance which nevertheless left them dependent on the delegated power of the Governor. Subsequent Harbours Acts in 1878, 1903 and 1923 consolidated harbours legislation, and more clearly defined the duties and responsibilities of boards. It is interesting to note that in 1948 the Government flirted with the concept of sectoral representation on harbour boards by empowering the Governor-General to appoint labour representatives. The practice was quickly discontinued under the Harbours Act 1950, and the boards have remained wholly elected since then.

The principal statute under which New Zealand ports are administered remains the 1950 Harbours Act. The First Schedule to that Act lists the reduced number of fifteen major boards, reflecting improvements in land transport, and advances in shipping technology.

The influence of central government, while no longer direct through membership of boards, remained extensive by dint of the prescriptive nature of the Act. That which was not expressly permitted by the statute was forbidden, and a number of permitted activities required Ministerial consents. In short, harbour boards were treated as special purpose local authorities, and that was very much the way they acted. Relatively little has changed in respect of harbour boards under the new legislative regime, except of course that their role is now quite different.

There are two other waterfront institutions relevant to this discussion; the New Zealand Ports Authority, and the Waterfront Industry Commission.

The Ports Authority, created by statute in 1968 and dissolved by the Port Companies Act this year, had the objective of fostering an efficient and integrated ports system for New Zealand and, for that purpose, undertaking the process of national ports planning. The

Authority's "teeth" in this role was its control over items of capital expenditure that exceeded prescribed amounts and which were for use within a harbour. The Authority could also designate items that could not be obtained by a port without the Authority's consent.

The Authority's decisions on national ports planning and expenditure applications were appealable to the Minister of Transport, whose sole grounds for considering an appeal was the "national interest".

Essentially, the Authority regulated the supply of port facilities by taking a viewpoint other than that of individual harbour boards. During its lifetime, the Authority in general had the support of the boards, who used it to lodge objections to the development proposals of their neighbours and competitors. There was, however, little support from the industry for the retention of the Authority under the regime envisaged by the Governments' port reform policies.

The Waterfront Industry Commission (WIC) has a longer history and it continues today. The WIC in its present form was established in 1976 primarily to administer the employment of pooled waterfront labour. The forerunner of the present Commission was established in 1940 when the Second World War made it increasingly important that ships be loaded and unloaded quickly. Following the 1950 waterfront dispute a Royal Commission of Inquiry recommended that the Commission form of administration continue and a 1953 Waterfront Industry Act was passed. The sole Commissioner under that statute was replaced by a representative Commission in 1977, when the current Act came into force.

The Commission's functions are largely administrative, and to a large extent are the functions that a normal employer of labour would carry out. They include:

- the engagement of waterside workers and the fair allocation of work to them;
- the collection of direct costs and levies from the users of waterside labour, and the payment of wages and allowances to watersiders;
- the administration of incentive contracts and payment by results schemes; and
- the provision of amenities.

Only companies registered with the WIC can engage waterside labour.

Changes to the Waterfront Industry Act impacting on the WIC were incorporated in the port reforms and have an important place in the overall package, discussed later in this paper.

The harbour boards, the New Zealand Ports Authority, and the Waterfront Industry Commission were the principal players in the statutory framework affecting ports when, in 1984 the Government of the day requested a detailed study of the transport, handling and related costs of goods carried by sea: the Onshore Costs Study (MOT, 1984) which was seminal in the development of the Government's port reform policies.

## Policy Development

In the early 1980's there was increasing disquiet emerging with respect to the contribution of New Zealand's ports to the well-being of the country's import and export trades. The publication of a Ministry of Transport discussion document "Towards a New Zealand Shipping Policy" (MOT, 1983) gave an opportunity to respondents to vent their views on port performance (although it was not a topic highlighted by the discussion paper). The subsequent White Paper on New Zealand Shipping Policy (NZ Government, 1983) published in December 1983 announced the study of the procedures adopted and the costs incurred in moving export commodities from farm gate or factory door to the seaward harbour limit of the port of export. The study was approached in two parts:

- an examination of selected commodity flows from the farm gate or factory door to the harbour pilotage limit; and
- an examination of costs and procedures within wharf and harbour limits at the various ports.

he Government's stated wish was to give priority to the port-related spects.

he Onshore Costs Study involved extensive consultations with ndustry groups, and was duly published in September 1984, having een delayed only slightly by the need to brief a new Minister of ransport following the snap election of that year.

## PORT COMPANIES

The concluding chapter of the study summarised major issues, and those relating to ports became enduring themes in the subsequent policy development. Key elements of the summary are reproduced in Appendix One.

Strong threads from the discussion document can be traced through the subsequent stages of the Onshore Costs exercise and into the Ports Reform Bill (of which the Port Companies Act was part). As the Onshore Costs Study publication did not present conclusions or recommendations as such, these threads can best be expressed as questions:

- How could ports adopt a more commercial outlook?
- How could the problems of harbour boards' dual nature (commercial vs community service; trading function vs regulatory function) be satisfactorily resolved?
- How could distorting factors in competition within and between the ports be reduced?
- What competition regulatory mechanisms were required?
- Was central planning of port facilities necessary?
- How could waterside manpower levels be more closely attuned to local needs?
- How could employers of waterside labour present a united front in negotiations with waterfront unions?
- What changes to the employment system for watersiders would produce improved efficiency and economy?

I have focussed on the port-related aspects of the Study in drawing out these questions, the Study itself also examined practices and policies outside the ports such as cargo aggregation, shipping company charging systems, shipper input into onshore transport, the role of the Government outside ports, and so on.

The publication of the Study was followed by an extensive period of consultation, which took a variety of forms. Written submissions on the Study were sought, and during the period for submissions to the prepared an industry forum was held where all interested groups had an opportunity to submit and debate their points of view.

A substantial summary and analysis of the written submissions was prepared and published by the Ministry, (MOT, 1985(a)) and it was in that document that the Government's priorities for future work were set. They were:

- first, the structure and institutional framework of the ports industry;

- second, land transport up to and from the wharf gate; and waterfront practices; and

- third, the land/wharf interface.

I think it is fair to acknowledge that there has been continuing debate over the allocation of priorities, right up to and including the passage of the Ports Reform Bill. This took two principal forms:

- that harbour boards were being unfairly singled out for reform; and

- that the area which generated the greatest proportion of on-wharf costs, waterside labour, merited first priority.

The Government has been consistent in its response to these claims. Harbour boards are not the sole target of reform, and the reform process does not stop with the creation of port companies. They are, however, along with the Waterfront Industry Commission, the dominant institutions on the waterfront, and certainly they set the tone for port operations. One has to start somewhere, and much will be achieved by the commercialisation of port management. The Government also has greatest impact, and the greatest potential for reform, in those areas which it can influence directly: namely the statutory bodies.

The area of labour practices and terms and conditions of employment certainly generate port costs, but as elements which are negotiated between industry parties, they are less susceptible to Government action. In my view, however, the changes adopted in the recent legislation have considerable indirect impacts on these elements.

Given, then, the Government's priorities for reform, an industry workshop was held in September 1985, chaired by the then Under Secretary to the Minister of Transport, the present Minister, and attended by forty-five key players in the ports and related industries.

The workshop failed to gain the confidence of the waterside unions, which didn't attend, and an unrelated dispute led to the harbour workers representatives leaving the forum early. Both groups were drawn back into the consultative process in its next stage.

Agree objectives for the port industry were developed by the workshop and are recorded in the published proceedings (MOT, 1985(b)).

To build on the Workshop findings and the consultative process which characterised the policy development, the Minister of Transport at the time, the Hon. R.W. Prebble, formed a committee whose job was to confirm the Workshop objectives for the ports industry, to review the reform proposals put forward at the Workshop, and report to the Minister on the institutional and legislative reforms within the industry which would be necessary to meet the objectives.

The Committee, which became known as the Ports Industry Review Committee (PIRC), was chaired by the Under Secretary, Mr Jeffries, and comprised harbour board, ship operator, union, producer, waterfront employer and WIC representatives (ten seats in all). The PIRC reported to the Minister in August 1986 (PIRC, 1986) under the same headings identified by the Workshop.

In hindsight, it is perhaps not surprising that, although the PIRC members debated long and hard the intricacies of the waterfront, the resulting report represented so many compromises by the various sector representatives that it could hardly be described as either radical or particularly forward-looking. Most of the key issues which later emerged as themes of the Ports Reform Bill were, however, at least touched on by the Committee, and certainly a good deal was learned by the officials who worked with the Committee.

With the receipt of the PIRC report, the ball was firmly in the Government's court, and expectations were high that action would soon be taken.

## The Policy Package

In March 1987, Mr Prebble spoke to the Annual General Meeting of the Harbours Association of New Zealand. It did not escape the notice of the harbour board delegates after listening to Mr Prebble that the date of the gathering was ominous: Friday the thirteenth.

The Minister spoke of three key objectives, then went on to detail the Government's plans. The objectives were the separation of the harbour boards' commercial function from their non-trading roles; the freedom from antiquated legislative controls over commercial activities; and the need for standards of accountability similar to those applying to businesses in the private sector.

In summary, the Governments decisions were relayed as follows:

- each harbour board would be required to form a port company to run its commercial facilities;
- each company would operate under the Companies and Commerce Acts;
- the companies would have their own boards of directors, and memoranda and articles of association;
- their principal objective would be to operate as a successful business;
- three of the smaller regional ports would have the option of forming a company or handing over their functions and assets to a local authority (or authorities);
- harbour boards would retain responsibility for non-trading functions such as navigational safety, recreational facilities and wider port planning (in the case of some boards);
- harbour boards would be joint shareholders and would monitor company performance and help determine the scope of company activities, performance targets, etc;
- electors of harbour boards would be able to hold the boards to account for the performance of their respective companies;

- port company shareholding would initially remain in public ownership: fifty percent harbour board and fifty percent constituent local authorities (this policy was subsequently amended following a groundswell of objection from the boards themselves, and general apathy on the part of local authorities);

- shares could be sold at the discretion of the initial owners;

- because of the initial public ownership, additional accountability and monitoring mechanisms similar to those applied to State Owned Enterprises (SOE's) would be instituted;

- the New Zealand Ports Authority would no longer be required as central oversight of investment and development would be replaced by market disciplines;

- harbour board and local authority members should not simply become port company directors - real change in management was required, and parochial political views must be overcome.

A number of issues were identified which had not been fully fleshed out yet, such as the method of determining which assets should transfer to the companies; whether there should be more than one company at a given port; who should own non-port commercial assets; and how exactly the companies might be established. The Harbours Association was invited to assist in refining these elements.

As an integral part of the ports reform package the Minister announced at the same time that changes would be made in the area of waterside labour employment and cargo-handling in order to remove existing distortions to competition both within and between ports. These particular changes were originally intended to be set in place within a few months of the announcement, but in the event they proceeded in the same time frame as the total port reform package. Essentially, they involved:

- placing the WIC's national administration fund levy on a port-by-port basis. This contrasted with the existing policy which was to spread the cost of watersiders' idle time and administration costs across all ports. The practical effect of the "national" approach was that some ports, Auckland in particular, were carrying some waterside labour costs that arose in other ports.

The lack of a direct connection between these costs and the port in which they were incurred encouraged some parties to take stances that clearly contributed to inefficiencies, for example harbour boards might argue for higher waterside manning levels knowing that the increased cost of the idle time of those workers would not greatly penalise their own ports.

- providing that waterside labour numbers at each port be negotiated by employers and employees at that port. This was an obvious concomitant of the port-by-port levy discussed above: those who directly use waterside labour and waterside costs should have the say over manpower levels.

- ending the harbour boards' near-monopoly on the provision of cargo-handling plant. At present it is set in statute that harbour boards have the first option to provide equipment within wharf limits, and it is also set down that harbour board employees should drive that equipment (if trained operators are available). At one port, Mt Maunganui, the harbour board does not exercise at all its right to provide the cargo-handling equipment, and at other ports it is reasonably common for equipment to be brought in from outside the wharf, and in such cases it is operated by watersiders. The harbour boards' pre-emptive right was clearly anti-competitive, and could not be sustained. This element of the reform generated considerable heat in respect of the inter-union relationship, and is discussed further in later sections of this paper.

These then, were the key elements of the Government's reform package. The intention was to have the necessary, quite complex, legislation introduced into Parliament before Christmas of 1987, and that schedule was met. A comparison of the elements of the announced policy with the issues identified by the Onshore Costs Study suggests that the earlier study had indeed identified most of the areas in need of reform.

## Response to Policy Package

The harbour boards homed in on one particular feature of the Government's announcement: the distribution of fifty percent of the respective company shares to local authorities in each harbour board's district, and the fact that this would probably be a gift rather than a sale of shares.

## PORT COMPANIES

The Government had long acknowledged that the assets of harbour boards were locally owned, or perhaps more accurately, held in trust by the boards for their districts. There is no Government equity in the ports, and the Government was not seeking any sort of direct payout from the corporatisation process.

The issue was one of putting the local assets, in their new form as company shares, into local hands. At the same time the Government believed it would be desirable if sales of shares took place and the disciplines of having a range of genuine investors in port companies were felt by the companies.

It was generally acknowledged that if shares were gifted to local territorial authorities (representing the local "owners" of the port) then a number of the authorities would capitalise some or all of their company equity.

Three principal arguments emerged from the harbour boards in opposition to this prospect. Firstly, the boards held that many of the local authorities had never contributed to the development of the port assets through being rated or by any other means. They therefore had no automatic right to half the port company shares. The historical fact of harbour board rating of adjacent districts varies from port to port. Some levied rates of differing amounts over differing time periods right up to the late 1960's, others not at all. All however, over the decades, benefitted from the implied security of possible rating in raising loans at favourable local body rates.

The second argument related to the financial structure of the future port companies. The boards held that "giving away" half of the company shares to local territorial authorities would undercut the companies' capital structure. Half the value of the port assets would be lost without recompense, seriously affecting the financial ratios. The boards also questioned where "control" of the companies would lie in the event of a fifty-fifty split.

Finally, the boards believed that the port company shares must be held by a body that had a particular interest or responsibility in ports. The boards feared that local authorities would have no regard for the special needs of the ports or their role in regional economies, and would tend to sell their port company shares for windfall gains without regard to the impact on the ports.

In the event, the Government announced an amendment to the company ownership policy which acknowledged the local/public ownership of the ports, and also allowed for share sales. Harbour boards would hold 100 percent of the shares at the time of incorporation, with the ability to sell up to 49 percent as they saw fit. Indications are that some, at least, of the boards are giving consideration to share sales, and that employee shareholding schemes are being explored by a number of boards.

**Principle Features of the Legislation Package**

Introduced into Parliament in the final days of the 1987 Session, the Ports Reform Bill had four distinct elements: the establishment and essential characteristics of port companies were provided for; the Harbours Act was amended to recognise the new companies and the altered role of harbour boards; the Marine Pollution Act was likewise amended; and the Waterfront Industry Commission Act was changed in a small number of important respects. During the Committee of the Whole House stage of the Bill, it was divided into the Port Companies Act, the Harbours Amendment Act (No. 2), the Marine Pollution Amendment Act, and the Waterfront Industry Commission Amendment Act (No. 2) respectively, all of which are available from New Zealand Government Bookshops (1988 No.s 91, 92, 93 and 94)

The scheme of the Port Companies Act is best described by examining its principal features, which emerged from the Parliamentary process largely intact.

**Elements of the Port Companies Act**

These comments follow the order of their appearance in the Act.

(i) **"Port related commercial undertakings"**

It was necessary to somehow identify those assets and activities of harbour boards which should transfer to the new port companies, and those which should remain in the hands of the elected harbour boards. Simply stated, the companies are to take over those undertakings which were both port-related and of a commercial nature. Harbour boards are to hold those activities and assets which are not connected with the business of the port, which are not "commercial" (e.g. community recreation facilities for which little or no charge is levied) or those which relate to the Board's regulatory and safety role.

The definition of "port-related commercial undertakings" was difficult to develop, because each port is different and it was deemed desirable to give an element of flexibility to ports in drawing the dividing line through grey areas. In the end a variant of some wording borrowed from the New Zealand Ports Authority Act was used, and improved after consideration of submissions from harbour boards.

(ii) **Incorporation of port companies**

The formation under the Companies Act of a port company by each major harbour board was made mandatory. Experience gained with airport companies was relevant to this decision, and also the practical realisation that boards would not willingly part with a large portion of their operational raison d'etre if it was left to them to choose.

The Government recognised that port company articles of association would have a considerable influence over the future nature and conduct of the companies, and accordingly the articles of each company, and any future amendments of them, must be approved by the Minister of Transport. Model articles prepared on the instructions of the Ministry have been circulated to establishment units and have found general acceptance.

(iii) **Principal objective**

The Act states quite simply that "the principal objective of every port company shall be to operate as a successful business." The State Owned Enterprises Act, on which the port companies are largely modelled, states a number of secondary objectives, but it was felt that these were unnecessary, or were matters of general law and did not require repetition.

(iv) **Directors of port companies**

A major thrust of the reform was to achieve a different attitude in port management, and in particular to move management away from the realms of local government and into a commercial environment. In my view this will be the key to the success of the companies. An important safeguard in achieving this

is a restriction on the number of elected harbour board (or shareholding local or regional authority) members or employees who can become company directors. The number is set at two, in a minimum directorate of six, clearly consigning the elected members to a minority. The boards, nevertheless, have clear control over the make-up of the directorate through their dominant shareholding. If the establishment unit memberships are any guide, most boards will be able to encourage the participation of leading figures from the local business community.

(v) **Voting rights of shareholders**

A class of port company shares must be established which holds 51 percent of the voting rights at any general meeting of the board. These shares must remain in harbour board, local or regional authority hands. This provision recognises the local ownership of the port assets, and the importance of the port to the wider regional economy.

(vi) **Statements of corporate intent**

As an additional accountability mechanism (bearing in mind that the Companies are protected from the full impact of market forces by the 51 percent rule) the port company must prepare a statement of corporate intent to a similar manner to State Owned Enterprises. The parent harbour board must review the company performance against this statement in its own annual report, providing a link back to the public to whom the board is accountable at the polls.

The statements can be dispensed with in certain circumstances which amount to proof of significant outside shareholding of the company.

(vii) **Information disclosure**

The Companies are not obliged to make available in their public documents information that a local body would be able to decline to produce under the Local Government Official Information and Meetings Act 1987. No official information regime applies generally to the port companies: in this respect they are regarded the same as any other company.

(viii) **Establishment units**

The onus for establishing the port companies is laid on the harbour boards, and for this purpose a detailed scheme for "establishment units" is set out in the Act. The units are given certain key tasks, such as identifying and valuing the assets to be transferred to the port companies, and a tight timeframe in which to work. In fact the creation of such bodies had been recommended to the boards at an early stage last year, and a number had taken the suggestion well before the drafting of the legislation. These early establishment units were retrospectively authorised, and the boards which utilised them appear to be more advanced in their preparations.

(ix) **Port company plans**

The Government wished to oversee key elements of the port company formation process. It wanted to ensure an element of consistency in the key features of the companies (e.g. the approach to asset valuations) and to ensure that policy requirements were being adhered to. Each company therefore must be established according to a plan agreed between the harbour board and its establishment unit, and approved by the Minister of Transport. The Minister has the power to vary the plans if he sees fit. The company plans are public documents.

(x) **Other people may operate ports**

The Act makes explicit what has long been the case, that a port may be built or operated by anyone, not just a harbour board or port company. In fact, in future the Government has deliberately made it more difficult for harbour boards to get back into the business of port operations (from which the Act removes them) by providing that they will not be able to do so without the consent of the Minister.

(xi) **Special ports**

Three ports, Gisborne, Greymouth and Wanganui are specially treated in the Act. These ports currently levy rates within their electoral districts to support port operations, and consequently were considered to have greater

difficulty in meeting normal commercial standards as stand-alone businesses. They were given the option of winding-up as separate harbour boards, or forming companies in the same manner as other ports. Wanganui and Greymouth have elected to be wound-up.

(xii) **New Zealand Ports Authority**

The Ports Authority Act was repealed and the Authority dissolved as from 1 May 1988. While port companies are not subject to expenditure or development controls of the type exercised by the Authority between 1968 and 1988, harbour boards and local authorities remain subject to an equivalent regime with the decision-making power vested in the Minister of Transport. Thus while no oversight is deemed necessary for fully commercial port companies, local authorities are treated much as they were in the past in this regard.

**Elements of the Harbours Amendment Act**

Key complementary elements of the Harbours Amendment Act included:

- allowing harbour boards to distribute money (e.g. returns from their port companies) to their constituent local authorities;
- removal of the liability exemptions enjoyed by harbour board pilots from pilots employed by port companies; and
- a requirement that any advances of money by harbour boards to port companies must be disclosed in the boards' annual accounts.

**Elements of the Waterfront Industry Commission Amendment Act**

This Amendment Act consists of only nine sections. The key policy changes are provided for in three specific areas:

(i) **Port-by-port levies**

In the latter part of 1987 the Waterfront Industry Commission, after receiving some policy guidance from the Government, elected to change its approach to its National Administration Fund levy system, as discussed earlier in the paper.

The amendment cements in place the port-by-port system, which ensures that the costs of waterside workers at any port are charged against the employers of labour at that particular port. In addition to the obvious removal of distortions to inter-port competition and the increased incentives to seek efficient manning levels, the policy has a further anticipated benefit. It brings home to waterside workers who previously had no strong allegiances to anyone except their unions the fact that their fortunes are closely linked to the fortunes of their particular port. It has been a common observation in the past that the watersiders do not know or do not care who employs them, or how well that employer is doing. They now at least can identify with the success or failure of their home port, and some positive change in attitude may come from that.

(ii) **Number of workers**

As a corollary of port-by-port levies, the number of waterside workers at any port will now be settled between the unions and the group of registered employers at that port. In short, those who are paying the costs of waterside labour will negotiate the numbers of those workers. Previously there had been a strong centralised element in the negotiation of manpower strengths. Only in the case of a failure to reach local agreement will the Waterfront Industry Commission as an aribtrator become involved.

(iii) **Provision of mechanical equipment**

Certainly the most controversial section of the Act is that which changes the status quo with regard to mechanical cargo-handling equipment on wharves. In the past, statutory provisions have given protection to harbour boards in the provision of cargo handling equipment. The harbour board employees (who are quite distinct from watersiders) have benefitted from the near-monopoly of the boards in this field, by virtue of their right to operate equipment provided by the boards. In breaking the boards' statutory advantage, and opening wharf equipment provision to competition, the guaranteed work of the harbour board workers has been threatened. The watersiders also operate equipment on wharves in certain circumstances, and the two unions are now in effect competing for coverage of the equipment-operating work when the change comes into effect on 1 October.

The Government has held all through the reform exercise that it had no wish to set down union demarcations in statutes, and has made this explicit in the amendment. The change to the status quo has undoubtedly, however, increased the apprehension of both unions, and the tension between them is evident.

**Reaction to the Ports Reform Bill**

In the following Section I have briefly summarised the major issues raised in submissions to the Parliamentary Select Committee which considered the original Bill. The issues are listed in no particular order, but I would first like to identify three which I am not going to dwell on, firstly because they were not part of the scheme of the Ports Reform Bill, and secondly because they are not especially relevant to this forum. These were:

(i) a call from a wide range of parties that the Waterfront Industry Commission should be abolished;

(ii) a request for provision to be made in the Bill for seasonal port workforces;

(iii) a suggestion that the reform be held over until the process of local government reform was completed.

In general the submissions revealed that the thrust of the ports reform was well received. There was wide-ranging support for the objectives of the Bill, the increased commercialisation of ports, the separation of the commercial function from the other harbour board functions (e.g. regulatory and wider public interest matters), and the formation of port companies. Against this groundswell were lodged protests that the process of corporatisation was not required to reach the objectives of the Bill, and that market forces in the ports industry were not strong enough to ensure successful corporatisation.

The other major issues are listed below. They do not include the many useful contributions made on technical points and suggestions for improved drafting.

## PORT COMPANIES

### (i) Asset transfers to port companies

Two distinct themes emerged: One was that a broader range of assets should be transferrable from the harbour boards to the port companies. Of special concern to harbour boards were assets not related to port activities but which were none-the-less "commercial", such as large pleasure boat marinas, land developments, and land areas which might in future be used for port developments. An opposing point of view came mainly from those harbour boards which have little or no "non-port" land at present, and they understandably supported a restriction on non-port assets being transferred to port companies, as it would have put their companies at a disadvantage.

The final answer was a slight relaxation in regard to recreational boating facilities, and the addition of a section that would allow non-port assets to be transferred with the approval of the Minister. The Minister has stated that the basic policy on non-port land **not** going to companies has not been changed, and my personal view of the section is that it is something of an 'escape clause' which will allow special cases to be examined on their merits.

### (ii) Ministerial controls

A number of submissions complained that, having set up companies which were to operate largely under the Companies Act, ministerial controls over those companies after their incorporation were not appropriate. In fact the only significant regulatory mechanism of this description is the continuing control over port company memoranda and articles of association. As these are, in effect, the constitution of the companies, the Government has felt it desirable to maintain an oversight of them to ensure that its port policies continue to be reflected by the companies.

### (iii) Port Company Directorships

The numerical limit on harbour board members and employees becoming Company directors clearly irked the harbour boards and they strongly opposed it, arguing instead for half the seats on the directorate. Other industry sectors strongly backed the limitation. In the event, the restriction on harbour board involvement was retained.

(iv) **Share ownership**

This issue brought forth a full range of viewpoints, including total ownership by harbour boards and total privatisation. The point was made that while the limited ability to sell shares was better than none, the inability of an outside shareholder to gain "control" of a port company may count against the attractiveness of the investment. Harbour board workers sought priority as purchasers if shares were to be sold.

(v) **Statements of corporate intent**

This requirement was opposed as being contrary to normal company practice. A compromise was suggested whereby the statements could be dispensed with where 25 percent of the shareholding was outside harbour board hands. This proposal was rejected largely on the grounds that a set percentage did not reflect the 'quality' of outside shareholding that might justify lifting the requirement. For example, a single body holding 25 percent of the shares might not generate the same sort of commercial scrutiny of the company that a broader base of shareholders might.

(vi) **Stevedoring competition**

The Bill was introduced containing a clause (no. 19) that addressed aspects of competitive practice in stevedoring, largely to ensure that port companies did not exploit what appears to be an advantaged position vis a vis other stevedoring companies. While this clause was strongly supported by some interests, the weight of submissions tended to the view that the Commerce and Fair Trading Acts adequately covered this ground. The clause was deleted.

(vii) **Bureau register strengths**

Bureau register numbers (watersider manning levels) were to be set, under the Bill, by the local unions and the local employers. This principle was strongly supported and remains the approach adopted in the Act. The point was taken from submissions, however, that a mechanism was required in the event of a lack of local agreement. In this eventuality the Waterfront Industry Commission will decide the number.

(viii) **Sectoral representation**

A wide range of interest groups argued for statutory representation on both the establishment units and the company boards of directors. They included ship operators, shippers, and workers' organisations. The Select Committee took the view that, firstly, it was not appropriate on a company board to have sectoral representatives. In fact the Companies Act requires directors to act in the interests of the company (not any outside sector). Secondly, it would clearly be difficult to identify and evaluate all the interests competing for directors' seats. No single formula was likely to satisfy all the differing circumstances of the ports. Establishment unit membership will be chosen by the harbour board, and company directors in the normal way by shareholders (also the harbour board at the time of incorporation).

(ix) **Company objectives**

Various groups argued for two additional company objectives: a requirement to be a "good employer" (as defined in the State Owned Enterprises Act); and an objective to achieve the lowest cost for port users. The Select Committee preferred to leave such matters in the hands of the port companies (and their shareholders via the statements of corporate intent).

(x) **Labour demarcations**

Known as Clause 96 in the Ports Reform Bill, the provision which opened mechanical equipment provision to competition caused the Select Committee some headaches. While on the one hand witness after witness predicted industrial strife if the status quo was altered, the Government on the other hand was strongly averse to setting an industrial demarcation matter in statute. The breaking of the monopoly was persisted with, and the parties have until October 1988 to reach a new industrial equilibrium vis a vis the driving of equipment on the wharves.

(xi) **Port-by-port levy**

While the beneficial effects of the change to the Waterfront Industry Commission levy system were widely acknowledged, and the change strongly

supported, waterfront employers and the waterside unions sought the removal of the provision from the draft legislation. They argued that it was possible to make the change administratively (as indeed it had been, late in 1987) and by setting the change in law some flexibility was lost. As the change was such an important part of the pro-competitive package for ports, this argument was rejected.

**Looking Forward**

The ports reform legislative package is now in place, and port companies are to be set up by 1 October 1988. Much important work must be completed by then, and the character of the port companies will be established in this process.

Three aspects of the companies will be especially influential in their future success and achievements: the selection of assets to be transferred; the valuation of the assets; and the steps taken now to improve the efficiency of the new companies.

With regard to the identification of port company assets, doubts or grey areas should only appear at the margins. The operational cores of the ports should be relatively easy to identify. Troublesome areas might include those earmarked for future port development, those originally reclaimed as part of port growth but no longer a real part of the port operation, and areas claimed under the special Ministerial discretion (which would be clearly non-port areas). In Auckland and Wellington consideration may also need to be given to the special circumstances of inner port redevelopment projects (the Lambton Harbour Project and the Prince's Wharf Development) depending on their "port related" content.

Valuation of the company assets is a critical feature of their establishment. Appropriate valuations will ensure that the companies are placed into a realistic commercial situation, needing to stay hungry to achieve their financial and revenue targets. Too low a valuation would see the company able to levy unrealistically low charges, thus gaining a competitive advantage over neighbouring ports, while too high a valuation

would result in unnecessarily high port charges - at a cost to the regional economy - and a difficult competitive situation for the company concerned. The valuations may also tell some interesting stories about past investment decisions by harbour boards.

The Ministry of Transport has circulated some brief guidelines on the valuation methodology considered appropriate (discounted cash flow method) and some of the key assumptions required in the analysis. This approach has been closely based on the Treasury's experience in valuing State Owned Enterprises. Nationwide consistency is being sought in the methodology (because of the competitive nature of the ports) and this might potentially generate debate between the Government and individual ports. The valuation does, however, form part of the port plans which must be approved by the Minister for each company, so that a final decision must have the blessing of the Government.

A reasonable openness in communication has developed between the Ministry and many of the establishment units, and it is to be hoped that the sort of valuation stand-off that developed between the Government and many of the SOE's can be avoided.

The third key element of the establishment process is out of the hands of the Government, and that is the steps being taken or planned by individual establishment units to improve port efficiency. The creation of port companies should provide a rare opportunity for port operations to be re-structured, and increased efficiencies introduced. In many cases this may involve reduced manning levels compared with the previous harbour board operations. It will also in many cases involve streamlined and commercialised management structures: the creation of business units within port companies, the setting of performance targets, the development of improved management information systems, and so on. Much of this will be very new to ports, and I am sure it will be generally welcomed by port customers, who will be the direct beneficiaries.

There seems little doubt, from the contacts the Ministry has had with individual ports, that this work is going on to a greater or lesser extent everywhere. The success of the port company concept depends to a large extent on how successful this key establishment work is, because opportunities like this, to go back to basics for an entire enterprise and an entire industry sector, are few and far between. The work that is done now in setting up the port companies - remembering that most of the detail is determined at the local level - will set the course of the country's ports for decades to come.

With the freedom to succeed comes the freedom to fail, and the next few months will be of crucial importance in determining the future of the new beast on the waterfront, and indeed the future of the import and export transport systems of New Zealand.

## Conclusions

Looking back at the original priorities for onshore transport and handling reform, it can be said that really only the first part of the first priority (waterfront institutions) has been completed. The Waterfront Industry Commission forms the final leg of the first stage, and there is considerable pressure on the Government to move ahead on that front.

The consultative nature of the reform process adopted by the Government has paid dividends in the general acceptance accorded the legislative package by the industry, and even those parties most closely affected (the exception is the industrial demarcation problem discussed earlier) contributed in a positive way to the development of the new regime. Indeed the momentum of reform was such that, by the time the draft legislation had been prepared, the industry was pressing for quicker movement by the Government. The ground has also been well prepared for the review of the Waterfront Industry Commission's functions.

Viewed against the historical background, the administration of ports has changed a lot in a short time. Elected harbour boards as port authorities had withstood the tests of time for over one hundred years, but were not able to adapt to a fully commercial approach. The

framework of the State Owned Enterprise model was modified and applied to these locally publicly owned enterprises, whose character is now dominantly that of a company operating under normal company rules. Nevertheless, the port companies are certainly a new type of beast - particularly in respect of their ownership restrictions - and some further fine-tuning of the legislation must be expected in the early years of their operation.

In my opinion the new companies will be well placed to operate successfully in their business environment. Taking the long view, I believe they will also be capable of ready adaptation to changing circumstances, such as the local government review. Whether they will last for a hundred years, as their predessors have, is difficult to say, but I firmly believe they have the potential to take New Zealand's ports successfully into the early decades of the next century. Whether that potential is realised or not will depend on how well we, as public servants, have advised the Government on the means of bringing its policies into practice, and how well the companies and their parent harbour boards accept the challenge of standing by themselves, in the real world of commerce.

## Footnotes

1. Ministry of Transport, 1984
**Onshore Costs: the transport, handling and related costs of goods carried by sea**
September 1984 (Ministry of Transport)

2. Ministry of Transport, 1983
**Towards a New Zealand Shipping Policy**
January 1983 (Ministry of Transport)

3. New Zealand Government, 1983
**White Paper on New Zealand Shipping Policy**
December, 1983 (Government Print)

4. Ministry of Transport, 1985(a)
**Onshore Costs: A summary and analysis of submissions**
July, 1985 (Ministry of Transport)

5. Ministry of Transport, 1985(b)
**Ports Industry Workshop: Workshop Proceedings**
October, 1985 (Ministry of Transport)

6. Ports Industry Review Committee, 1986
**Report of the Ports Industry Review Committee**
August, 1986 (Ministry of Transport)

7. Port Companies Act 1988 (No. 91)
Harbours Amendment Act (No. 2) 1988 No. 92
Marine Pollution Amendment Act 1988 No. 93
Waterfront Industry Commission Amendment Act (No. 2) 1988 No. 94

Appendix One: Key Elements of the Onshore Costs Study Issues Summary

Harbour Boards

- for certain charges there was no longer any clear relationship between costs and revenue;
- the Harbours Act inhibited normal commercial pricing flexibility;
- harbour boards did not have objectives which were truly comparable to private sector enterprises;
- the "service" approach and the "commercial" approach did not sit happily together;
- port operations were characterised by the dominant roles of public and statutory bodies;
- there was a widespread view that boards should consider reducing their involvement in the provision of cargo-handling gear, especially in those ports where they have a near-monopoly on equipment hire;
- the retention of a strong base of common use port facilities appeared to be desirable to protect the interests of the full range of shippers and ship operators.

Port Competition

- Harbour Boards were of the view that competition between ports for trade was vigorous and real. Shippers were less convinced that competition or choice existed;
- port performance (mainly speed of cargo handling and reliability) was considered to be a more important element of competition than harbour board charges;
- levels of service among ports were certainly influenced by competition, often manifested by investment and over-investment in cargo-handling equipment and facilities;

- competition between ports was neither extensive nor open. It was distorted by the cross-subsidisation of labour costs which occurs under the WIC's levy system;

- competition was also regulated by the New Zealand Ports Authority.

**New Zealand Ports Authority**

- the Authority was acknowledged as being necessary because of a number of features of the system, particularly the regional rivalries and the degree of commercial competition between boards, and the way ship operators are able to externalise their costs to their own advantage by encouraging additional or over-investment in ports;

- the Authority would not be necessary in a situation where the efficiency and economy of ports was assured by other means.

**Waterside Labour**

- even a 31% decrease in the labour force between 1972 and 1983 had not removed the imbalance between labour supply and demand;

- the efficiency of many operations on the waterfront were hindered by the successful efforts of the waterfront unions to retain manning levels and labour intensive practices that exceed reasonable requirements. For the most part such practices occur with the explicit or implicit approval of the employers;

- a large number of inefficient work practices have developed to overcome demarcation problems. The creation of a single waterfront employees union appears to offer a good deal of scope for improving port efficiency and reducing costs;

- onshore costs, particularly for LCL containers, would be considerably reduced if an element of choice or competition were introduced in the packing and unpacking of containers.

**Waterfront Employers**

- the agreements reached by competing ship operators (with waterside labour) tend to leap-frog each other as each company seeks an advantage in stevedoring arrangements, but it is questionable whether the national benefit is adequately considered in this process;

- the New Zealand Association of Waterfront Employers is unable to control or discipline its members in negotiations with waterside unions, which contributes to escalating costs and the entrenchment and spread of inefficient practices.

**Waterfront Industry Commission**

- a short fall in the system for setting bureau register limits was the distortions produced by the national administration fund levy which tend to encourage some parties to argue for higher manning levels;

- the national levy reduces the cost incentive in setting appropriate manning levels. A number of employers favoured a system of funding waterside labour in which the costs must be totally met by employers at each port.