

THE PRODUCTIVITY COMMISSION AND THE WATERFRONT DISPUTE:

A CAUTIONARY TALE

Christopher Sheil

‘No one has ever doubted that truth and politics are on rather bad terms with each other’, wrote Hannah Arendt (1977: 227) in a famous essay, ‘and no one, as far as I know, has ever counted truthfulness among the political virtues’. Arendt’s words remind us that the tension between veracity and politics was not created by the election of Donald Trump as president of the United States of America. On the contrary, as Arendt observed in tracing the tension from antiquity, the relationship is so fraught, and has been so widely acknowledged as fraught, that the political realm ‘has recognised that it has a stake in the existence of men and institutions over which it has no power’ (p. 261). Arendt cited the judiciary and universities as examples of institutions that were ‘established and supported by the powers that be, in which, contrary to all political rules, truth and truthfulness have always constituted the highest criterion of speech and endeavour’ (p. 260). These places are refuges from political power, where unwelcome decisions can be handed down and unwelcome truths can emerge. Implicitly, Arendt would have also included the Australian Broadcasting Commission (ABC), for she recognised that, if the media belonged to government, ‘it would have to be protected against government power and social pressure even more carefully than the judiciary’ (p. 261).

The question pursued in this article is whether the Productivity Commission can be placed in this company. Can it be fairly described as

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independent of executive government, as outside the political realm? Questioning the commission's independence is inherently controversial for, according to the commission itself, there is no question. Its website states that 'The Productivity Commission is the Australian Government's independent research and advisory body on a range of economic, social and environmental issues affecting the welfare of Australians', and that statement appears in all its reports. Its (PC, 2003: 1) in-house history lists 'independence' as the first of three embodied principles that make it 'unusual, if not unique, among public sector institutions around the world' (the other two being 'transparency' and a 'community-wide focus'). Officially, the executive can tell the Productivity Commission what to advise on, 'but not what to say' (Argy, 2000: 119; see also Banks, 2011; Harris, 2013).

The issue warrants critical analysis because of the cachet that the perception of independence carries in public debate. The effect is illustrated by the recent inquiry into Australia's labour laws, which paved the way for this year's decision by the Fair Work Commission to reduce penalty pay rates on Sundays and public holidays for retail and hospitality workers. In May 2013, the then opposition Liberal-National Party (LNP) announced a pre-election promise to conduct 'an independent review by the respected Productivity Commission' (Liberal Party, 2013). In explaining the review process, the keyword reappeared in three of the first four sentences:

The Productivity Commission is *independent* and has previously conducted reviews, such as in relation to the [National Disability Insurance Scheme], that have been adopted by Labor. This will be an important development and everyone will be given an opportunity to have a say. The review will give *independent* consideration to the problems raised by business and workers. These will be analysed in an *independent* and impartial way (p. 13; emphasis added).

Following the LNP's victory in the federal election of September 2013, the terms of reference were released in December 2014, describing the review as 'an opportunity for independent consideration' (Abetz and Hockey, 2014). 'The verdict of an impartial analyst such as the Productivity Commission', editorialised the *Sydney Morning Herald* (2015), 'will be valuable when future policy is formulated.' When the Labor opposition leader, Bill Shorten (2015), warned that the aim was to cut pay and conditions, a journalist fired back: 'So are you saying that the independence of the Productivity Commission isn't independent of

the Government?’ Shorten deferred to the keyword, replying that there was already an ‘independent umpire’ in the Fair Work Commission and querying the need for another.

There is a long history of governments creating independent authorities with defined responsibilities for a wide variety of reasons (Glezer, 1982; Argy, 2000; Stewart and Prasser, 2015). Established in 1998, the distinguishing feature of the Productivity Commission is the breadth of its remit, which has allowed its inquiries to range across issues as diverse as Indigenous disadvantage, the Great Barrier Reef, gambling and disability.¹ As such, the commission appears as an antipodean species of what Peter Burnham (2001: 127) has defined as the ‘depoliticisation’ strategy pursued in the United Kingdom by the Blair government as a form of statecraft in the late 1990s and early 2000s, *i.e.*, ‘the process of placing at one remove the political character of decision-making’. The assignment of tasks to bodies ostensibly independent of executive government has been the main form of depoliticisation, as exemplified by the trend to independent central banks, but the strategy stretches to the installation of managerial techniques within even the most traditional of government departments (Burnham, 2001: 137). Perhaps nowhere has depoliticisation been applied in a more omnibus setting than Australia’s Productivity Commission, which has been upheld as a model for the world, at least in some respects (Spriggs, 1991; Garnaut and Vines, 2007).

The commission has also drawn criticism from its inception (PC, 2003: 93, 99), but not over its independent status. In part, its apparent immunity in this respect is probably because it is seen by most critics as the official advocate for the cluster of economic policy ideas known as ‘economic

¹ The Productivity Commission evolved from the Tariff Board, which was established in the 1920s. In 1973, the Tariff Board was changed to the Industries Assistance Commission, which was charged with advising on ‘non-regulatory assistance to industry’, including ‘adjustment to structural change’. This was succeeded in 1989 by the Industry Commission, which also absorbed the Inter-State Commission and the Business Regulation Review Unit with a remit to reduce industry regulation. This was succeeded in turn by the Productivity Commission, which was formed by administrative action in mid-1996 and entrenched by legislation in April 1998. The new body further absorbed the Bureau of Industry Economics and the Economic Planning Advisory Commission, and was charged with advising on a more efficient and productive economy generally. Based in Canberra, it began with about 200 staff and an annual budget of \$23 million (see PC, 2003: 2-4, 87-90).

rationalism', 'neoliberalism' or 'market liberalism' (see, for example, Quiggin, 2012, and more generally, Mirowski, 2013).

Whether or not the commission is independent can seem irrelevant if one believes that the direction is pre-set, the findings predictable, and its survival depends less on its output than on the elite global consensus that upholds the economic orthodoxies of our era. If anything, the commission has been criticised for being too independent of government, as effectively operating as 'a publicly-funded lobby group for free trade and free-market policies' (Quiggin, 2002: 169). The issue is also elusive due to the difficulty of defining a clear-cut test. The judiciary, universities and the ABC are protected from political interference, but it would be naïve to imagine that the freedom to operate impartially means that they always do so; and even if they do their best, there's no need to remind readers of this journal that they don't always succeed. How can we distinguish the absence of independence from wilful partisanship and inevitable shortcomings? As Stanley Fish (1988: 39-81) has pointed out, moreover, the standards by which impartiality is adjudicated within independent contexts are subject to their own politics, just as Arendt (1977a: 48-51) teased out a diversity of meanings in the concept of 'objectivity'.

It is not the aim here to analyse the inherent tensions in the relationship between governments and independent public bodies as such. Granting independence involves a government surrendering some policy control, flexibility and discretion to gain benefits such as expertise or more accountable decision-making, or to facilitate social participation or mediation (Glezer, 1982: 36-7; Argy, 2000: 99-101, Stewart and Prasser, 2015: 151-54). Among the goals of depoliticisation, Burnham (2001: 136-7) has emphasised the 'elixir' of policy credibility, particularly in financial markets, and shielding governments from unpopular decisions. On one side of the relationship, governments can reduce the risk of unwelcome output by limiting the scope of the independence, controlling appointments and cutting budgets. 'While the traditions of independence differ', observed Nicholas Gruen (2001: 98), 'in most OECD countries politicians can, at the very least, "lean" on the senior officials.' On the other side of the relationship, the independent bodies must operate close enough to government to ensure useful output, but not so as to risk being seen as partisan, biased or manipulated. 'Managing this kind of body', wrote Jenny Stewart and Scott Prasser (2015: 153), 'is a delicate balancing act.'

Nor is the aim to question the Productivity Commission's independence in the senses of proposing novel ways of implementing policy or going further in a direction than a government would willingly go. The commission has often pursued a 'head room' strategy, which refers to recommending an extreme policy that will give the government room to appear moderate by stopping somewhere short. In a candid interview in 1997, Denis Lawrence, a former official with the Industry Commission (the Productivity Commission's main forerunner), spoke of a failure to have advice accepted as if this was a badge of honour (ABC, 1997). Within the policy co-ordination branch (known internally as the 'thought police'), reported Lawrence, 'if a recommendation was accepted, then the commission hadn't pushed hard enough'.

Rather than quibbling over the margins or denying any technical or strategic autonomy, the argument here is that the likelihood of the commission operating independently of the political preferences of the executive is fanciful, perhaps not with a highly discretionary policy, but at least when it comes to a vital government interest. As Arendt (1977: 260) wrote, it's 'only in the event of a conflict' that we become aware of the relationship between independence and the pursuit of the truth. Following Hobbes (1651), who concluded *Leviathan* with the observation that 'such truth, as opposeth no man's profit, nor pleasure, is to all men welcome', independence doesn't rise above a theory or promise in the absence of conflict. This is not to suggest that an independent body must always or often be in conflict with government. Rather, it is to say that, as with the judiciary, universities and the ABC, the only conclusive proof of its independence is a demonstrable capacity to produce, from time to time, unwelcome output.

This article considers the limits of the Productivity Commission's independence through an analysis of two reports published on the stevedoring industry at the height of Australia's landmark 1997-98 waterfront dispute. Although now 19 years old, the reports are a useful case study for two reasons. First, the waterfront dispute was a major public event, attracting saturation national media coverage and international attention. The issues are therefore likely to be more familiar than many reported on by the commission. Secondly, the government's position was deeply cast prior to the publication of the reports, the reverse of the conventional sequence of advice and decision-making, which makes them a rare source for gauging how far the commission's independence reached.

The Australian waterfront dispute, 1997-98

The waterfront dispute is most commonly remembered for the sacking of about half the Australian stevedoring industry's operational employees on 7 April 1998. The action was made vivid in the public mind by a paramilitary-style overnight swoop on the docks, whereby the workers were evicted from their posts and locked out by security personnel with guard dogs. In bare summary, the waterside workers replied with picket lines at the seaports and a bid for legal redress, beginning a trial of strength that extended over a month before they were reinstated on 7 May.²

A confrontation between the then LNP government led by Prime Minister John Howard and the waterside workers had been anticipated by those attuned to current affairs. The LNP was a conspicuous critic of labour relations on the waterfront for most of its period in opposition between 1983 and 1996, and was deeply antipathetic toward the waterside workers' union, the Maritime Union of Australia (MUA). Prior to winning the election of March 1996, the LNP promised to 'clean-up' the waterfront, and soon afterwards the new Howard government began preparing for a confrontation, doing so in concert with the Patrick Stevedoring conglomerate, one half of the private duopoly that serviced the country's four largest ports and the employer in the dispute. Although most of the preparation was done by private consultants, in 1996 or early 1997 the Productivity Commission was asked to advise on the 'scope to improve stevedoring workplace performance'.³

There are two major interpretations of what was at issue in the dispute (see Howard, 2013: 336-53 and Combet, 2014: 72-109). The members and supporters of the then government have always argued that it was a dispute over productivity. In this view, the government had no quarrel with trade unions as such, only with the MUA, which was accused of using its monopoly over the watersiders to protect inefficient work practices. Confronting the union was held to be essential to achieve a

² For a small selection of writing on the dispute, see Dabscheck (1998, 2000); Macintyre (1998, 2004); Sheil (1998, 2007); Trinca and Davies (2000); and Kelly (2009).

³ Exactly when the request was made is unknown and the terms of reference were not published. The in-house history (PC, 2003:9) implies that the advice was sought in 1996. In any event, the request was public knowledge by 18 April 1997 (Farynski, 1997), implying a timeframe of at least a year.

vital economic reform. The inverse view is upheld by the members of the MUA and its supporters, *i.e.*, the government sounded the alarm over productivity as a cover for orchestrating an assault on the watersiders, their union, and trade unionism and collective bargaining generally. In thrall to the neoliberal goal of installing individual employment contracts, the dispute was manufactured by the Howard government in a conspiracy with the Patrick group as the spearhead of a plan to seriously weaken if not destroy the Australian trade union movement.

The salient point is that the Productivity Commission was asked for advice on the waterfront by a government whose antipathy toward the MUA was no secret. 'Few institutions had been more loathed by Australian conservatives', wrote Paul Kelly (2009: 379). The solidarity, militant capacity and political consciousness of waterside workers have a legendary quality. Maritime workers were central in the first of the Great Strikes of the 1890s that led to the foundation of the Australian Labor Party, waterside workers were founding members of the Australian Council of Trade Unions in 1922, and their union took a leading role in supporting post-colonial Indonesia and protesting over South Africa's apartheid regime and the Vietnam war. Two Labor prime ministers have risen from the union's leadership ranks, which have also featured members of the Communist Party of Australia; and it was a *bête noire* of the nation's longest serving prime minister, the Liberal Party's founder, Robert Menzies, stinging him with the nick-name 'Pig Iron Bob' for allowing exports to Japan for manufacture into weapons in 1938 (see Lockwood: 1987 & 1990; Beasley, 1996; Sheridan, 2006). As noted by Kelly (2009: 379), the 'MUA's history and its monopoly provoked an almost irrational hostility from the Liberal Party'.

The request for advice in the context of the dispute thus presented a sterling test of the Productivity Commission's impartiality. Two reports were published, *International Benchmarking of the Australian Waterfront* (the 'Benchmarking' report) and *Work Arrangements in Container Stevedoring* ('Work Arrangements'), totalling 613 pages. The reports were released on 27 April 1998, which raised the stakes in conflicting with the government's position to an exceptionally high — and, for that reason, exceptionally useful — pitch. This was three weeks after the mass sacking, while the dispute's outcome was in the balance prior to proceedings in the High Court that would confirm the workers' reinstatement. Time has dulled the memory of the way the waterfront dispute inflamed passions and polarised the nation, but had the

commission's analysis compelled it to undermine the government's position at this stage, conceivably one or the other or perhaps even both could have paid the ultimate price.

To gauge the Productivity Commission's independence, we will examine how impartially it represented three major issues that were also central in the dispute: (1) the economic significance and cost of the stevedoring industry; (2) industrial disputes; and (3) the crane rate in the containerised trades, which was taken as the main measure of productivity. These were not the only matters the reports dealt with, and nor are they the only issues on which we could fruitfully pursue the question of the commission's independence. These three issues have been selected because they were central to the dispute and will allow us to test the institution's limits from different perspectives.

The economic significance and cost of stevedoring

Throughout 1997-98, the Prime Minister, John Howard, and the Industrial (later 'Workplace') Relations Minister, Peter Reith, repeatedly emphasised the economic importance of the waterfront for primary producers and the burden they carried because of high stevedoring costs and inefficiencies caused by union intransigence over work practices. 'Reform of the waterfront is vital for jobs', Howard claimed, for example, in a press conference in Parliament House three weeks before the commission's two reports were released: 'It is vital for investment. It is vital for the export industries of Australia' (Howard, 1998).

The industry's economics were dealt with by the commission's *Benchmarking* report, and can be read as endorsing the government's position. The report's first page encapsulates a tension between emphasising the industry's significance and an apparent propensity to conflate this with the containerised trades and the interests of exporters, which were at the centre of the dispute. The report began by testifying to the industry's importance for 'the welfare of all Australians'. This was supported as follows: 'In value terms, approximately 70 per cent of imports and 78 per cent of exports were transported by sea in 1995-96. These trade flows amounted to close to \$60 billion' (p. xi). 'These trade flows' actually referred to the value of Australia's total sea-going trade, which was \$115bn in 1995-96 (not \$60bn), almost double the estimate (ABS, 1997). The balance of the first page presented the report's main

findings, so that the meaning of the \$60bn figure was not apparent before the second chapter, which presented some more detailed analysis. Here, \$60bn was said to be the value of the two-way containerised trade (p. 16). The analysis repeated the *proportionate* value of Australia's total sea-going imports and exports and featured the same in a chart, and referred to the respective volume of Australia's total sea-going imports and exports, but nowhere was the total \$115bn value of these proportions and volumes reported.

So, was the report about the industry as a whole, which moved traded goods worth \$115bn, or the containerised sector, which handled trade worth about \$60bn and was at the centre of the dispute? This question is germane to the Productivity Commission's independence in two respects. First, the absence of the total value avoided any need to recognise that containerised cargo only amounted to about half of Australia's sea-going trading interests. Secondly, the presence of no fewer than four references to the sea-going proportions of the nation's total trade all showed a balance of exports over imports, which hid the fact that the value of the containerised trade flowed in reverse, favouring importers by a ratio of at least three to two (see PC, 1999: Appendix C). Together, these two corrections would have shown the stakes in the dispute as about half the value of the cargo handled by the industry, wherein it would have been apparent that the parties with the biggest trading interest in boosting the operations of the container ports were importers, not exporters.

The *Benchmarking* report made three further references to imports, which cannot be reconciled for reasons that lead to the main technical flaw. First, imports and exports were broken down by pie charts into the proportionate (not dollar) value carried by different types of ships. Second, in the text, imports were broken down into three sectors: containerised cargo, which was said to account for 66 per cent of the value; bulk cargo, said to account for 45 per cent; and break-bulk, which is individually shipped cargo, said to account for 22 per cent. These figures, notice, add to 133 per cent! Third, the \$60bn figure for the containerised trade (that was mistakenly lifted onto the first page to represent total trade) was broken down into import and export commodities, with the proportions shown by pie charts. The last should have warned anyone familiar with the industry that the analysis was astray. The flashing alert was that 14 per cent of export value was attributed to 'food and live animals' (containers are an illegal mode of animal transport). The breakdown also showed other apparent bulk cargo

(e.g., mineral fuels, chemicals, crude materials), and break-bulk (machinery and transport), whereas manufactures, the main containerised cargo world over, were shown as only 17 per cent of the value of imports.

This confusion partly reflected the unacknowledged fact that there are no actual figures on Australia's containerised cargo. Customs monitors the volume and value of all cargo from clearance declarations, whereas the port authorities (roughly) monitor the number of containers physically un/loaded, but the two tallies are not integrated. That is, we know much about amounts of cargo and containers, but not much at all about the specific cargo that is containerised. The report had slipped down the crevice between the national accounts, which are concerned with the value of cargo, and data on container stevedoring, which is the business of un/loading the big (and mostly) steel boxes. This crevice has ruined the correlation of commodity trades with shipping statistics the world over (see Stopford, 2009: 67-8, 515).

Where did the commodity breakdown come from? The cited source was the Bureau of Transport and Communications Economics 'based on unpublished ABS *International Customs Statistics, 1995-96*' (p. 18). The opacity denies certainty, but this breakdown appears to be Customs' estimates of the cargo carried by *liner* (i.e., regularly scheduled) shipping, which is not the same as *containerised* shipping. As a later report for a different purpose noted (PC, 1999: 22, 25, 72, Appendix C), liner data swept up 'significant volumes of charter cargo from regional ports', including '500,000 tonnes of dry bulk cargo from regional Western Australia and 200,000 tonnes of sugar from regional Queensland', plus 'large volumes of iron and steel' and break-bulk in general.⁴ Based on the 1998 report's pie charts, presumably the liner data also included live animals. The source tends to be confirmed by the chart showing the proportionate value carried by different types of ships (p. 15). The chart amalgamated container carriers with roll-on/roll-off vessels (ro-ros), but overlooked the fact that these are often also grouped with multi-purpose vessels, such as 'con-ros' that combine container and

⁴ The later report (PC, 1999) referred to the source as 'Bureau of Transport Economics, International Cargo Statistics Database', which was described in Appendix C. This was a review of shipping's exclusion from Part X of the *Trade Practices Act*, work previously done by the Australian Competition and Consumer Commission and its forerunners, and was clearly prepared by different authors.

roll-on/roll-off decks, and ‘con-bulkers’ that mix containers with minor bulks, which could account for the ‘live animals’.

All this detail might seem inordinately complex for anyone not familiar with the maritime industry. Indeed, the specialised knowledge is one reason why governments should properly seek advice. But that advice should be both expert and impartial. Was that evident here? Perhaps the easiest way to summarise the problem with the *Benchmarking* report’s analysis is that it resoundingly confirmed the government’s view that the stevedoring industry was ‘critical to Australia’s economic performance’ because it ‘affects the competitiveness of Australia’s trade and the welfare of all Australians’ (p. xi), and yet the commission reported neither the total value of the nation’s ocean-going trade nor a reliable value for the containerised sector. The latter may be excusable as there were no direct figures, but this begs the question of why such a fundamental qualification was not acknowledged, fuelling the suspicion that both flaws might be explained by an over-riding imperative to support, or at least not explicitly contradict, the government’s position in the dispute.

Turning to costs, we find a more clear-cut case of the same apparent tendency to present a picture consistent with the government’s position. The *Benchmarking* report’s first mention of costs in the detailed analysis was in a chart (on page 15), titled ‘Waterfront costs as a share of export prices, 1994-95’. This showed waterfront costs of 3.5 to 4.5 per cent of the export prices for three commodity categories: agriculture, mining and manufacturing. The text said this showed the ‘significance of waterfront costs ... according to the type of cargo’. A reader would have been mistaken to think that this meant that stevedoring costs reduced returns (or increased prices) by up to 4.5 per cent. An incomplete note on the chart stated that the export prices were ‘free-on-board (*f.o.b.*)’. Under international standards, export prices are calculated as *f.o.b.* in a complementary relationship with the expression of import prices as ‘cost, insurance, and freight (*c.i.f.*)’. The standards facilitate the separation of foreign values and avoid countries double counting shipping costs (see IMF, 2009: 101-15). What this means is that prices *f.o.b.* include, but are not the same as, the prices paid to producers. The difference is that prices *f.o.b.* also include all the land-side prices paid (to or by the merchant or whoever) over the journey from production to the physical export of the goods, plus taxes minus subsidies. The rub is that one price not included is stevedoring, for it falls over the export frontier, where it is paid by the

ship-owner (not the exporter) and picked up in prices *c.i.f.* In sum, this chart showed some export prices (such as the price of land transport, distribution margins, insurance, customs brokerage) as a ratio of the same prices *plus* the producers' price (after taxes and subsidies), but *not* the relevant price. Even if all these 'costs' were somehow removed, this would not necessarily affect the producers' prices and certainly would not affect stevedoring prices. Rounding off, if a reader had wished to investigate the chart, the cited source was 'Centre Of Policy Studies, 1995', no further trace of which can be found in the report.

The slippery term 'waterfront costs' reappeared in a second chart titled 'Waterfront costs, December 1996' as part of a more detailed analysis (on page 32). This time the costs were said to include (and only include) stevedoring plus ship- and cargo-based charges. Only the cargo-based charges could have been caught in the earlier *f.o.b.* chart under the related heading. More troubling is the claim in the text that the data showed that stevedoring 'represented between 55 per cent and nearly 70 per cent of waterfront charges in 1996' (p. 32). The problem here is that the cited source (BTCE, *Waterline*, no. 10, March 1997) found that stevedoring only comprised between 22 and 35 per cent of the 'port interface cost index'. Without acknowledgement, the commission doubled the cost of stevedoring as a proportion of the 'waterfront costs' published in its cited source by excluding customs brokerage fees and the cost of carrying cargo between the ports and warehouses. The discretion is not only underlined by the inconsistency with the source (and prices *f.o.b.*); the excluded costs were explicitly noted in the report's own text ('the charges imposed by AQIS, ACS, customs brokers, freight forwarders, and those costs incurred in getting exports and imports to and from port') (pp. 30-31).

We can conclude on this issue by putting some 'ground' under our feet, to adopt Arendt's metaphor (1977: 264). The *Benchmarking* report's flaws largely turned on the absence of disciplining parameters, primarily the ABS's \$115bn estimate for the two-way shipping trade. The other major parameter that was ignored was the value of world trade compared with the cost of freight (including stevedoring), published in the annual review of maritime transport by the United Nations Conference on Trade and Development (UNCTAD, 1997: 64-5). Using import prices *c.i.f.*, UNCTAD valued the world's ocean-going trade in 1995 as US\$4,688bn, of which freight rates (including stevedoring) comprised US\$247bn, yielding a cargo value/freight cost ratio of 5.27 per cent. The publication

of this ratio would have brought a sense of proportion to the analysis, for it shows that the world paid its ocean-going transport services (including stevedoring) only about a twentieth of the value of the goods that the vessels carried, a smaller proportion than the customary diner's tip of 10 per cent of the value of the meals carried by waiters in restaurants. For 'developed market-economy countries', the ratio fell to 4.2 per cent (*i.e.*, one twenty-fourth of the total value). Of this, by using UNCTAD's parameters with plausible assumptions, it can be estimated that the cost of stevedoring Australia's export containers was about 0.7 per cent of the \$24bn that customs estimated for the outward liner trade. Of this, labour costs were less than 60 per cent. If it was assumed that these could be cut by, say, a third, this would have been about 0.13 per cent of the cargo's value (see appendix for the figures; on the economics more generally, see Quiggin, 1996: 191-3, 225-7). Had such a finding been published, the prime minister's claim that reform was 'vital for the export industries of Australia' would have sounded rather hollow.

'Error, of course, is possible, and even common, with respect to factual truth', noted Arendt (1977: 249). To be kind, because some of these issues were not well understood even within the industry, perhaps the big mistake on the first page was due to an accidental error. The apparent shell game over costs is more difficult to forgive on such grounds. The test of impartiality, however, is not knowledge nor competence. Impartiality, as Arendt wrote (1977: 263), means 'being able to look with equal eyes on both friend and foe'. To test the commission's approach to the other party in the event, let's turn to the treatment of disputes.

Industrial disputes

The issue of industrial disputes on the waterfront was addressed by the commission's other report, *Work Arrangements*. This needs to be considered against a background where Peter Reith, as the Howard government's labour minister, had been persistently criticising the MUA for its strike record for a year or more. In Melbourne in October 1997, for example, he told the annual conference of the Refrigerated Warehouse and Transport Association (Reith, 1997):

The Australian Bureau of Statistics constantly shows that stevedoring has a record of disputation second only to coal. In 1995, 3300 working days were lost per 1000 employees. In 1996 this improved to 1250

working days lost, nevertheless this figure was still almost 10 times the national average.

There's no gainsaying that watersiders have a strategic capacity to take effective strike action and a (proud) history of militancy, but that's not the issue here. The question is whether the commission took an impartial approach in reporting on the incidence and impact of industrial disputes.

We can credit the *Work Arrangements* report with amending Reith's statistics, reducing the days lost in 1995 by a quarter (to 2472 days) and his 1996 claim by a third (to 836), but this was as far as its independence reached (p. 24). The most prejudicial feature was a table that supported Reith's general position by showing that in 1997, and on average from 1992, the working days lost per 1000 stevedoring employees 'remains comparatively very high, and is exceeded only by coal mining' (pp. 23-4). The problem here is that there are no ABS statistics, published or unpublished, that directly support this claim. The only ABS series for the industry (roughly) estimates the (absolute) number of disputes, the (absolute) number of employees involved and the (absolute) number of days lost; and it can only be read as continuous from 1994, following the advent of the Australian and New Zealand Standard Industrial Classification (ANZSIC) (ABS, 1995, 1996, 1997a & 1998). Compared with the 23 other industries, or rather industry sectors, covered by the same statistics, the data show that stevedoring never ranked higher than 4th on any measure behind coal mining (which always led). In 1997, stevedoring ranked 16th in days lost and 10th on average across the three ABS measures.

Opacity again prevents certainty, but the commission appears to have divided the ABS's estimates by its own employer-survey to arrive at an incidence 'per 1000 employees'. This task involved some discretion in counting the complex mix of full-time, permanent part-time and casual workers, but let's leave such minor objections aside. The major offence was to compare a small workforce of roughly 5000 with eight ANZSIC categories that comprised Australia's entire 8.5 million strong labour force. ANZSIC consists of four nested industry levels: divisions, subdivisions, groups and classes. Stevedoring is a class; but none of the benchmarks with which it was compared was below a subdivision, while two were combined subdivisions and five were either full divisions or combined full divisions. Coal mining apart, since it 'ranks near the top of virtually every national table of "strike-proneness"' (Hyman, 1984: 30), the procedure drastically diluted the incidence of disputes within the

benchmarks by effectively tipping them into the national average. By this method, if not all then certainly nearly all the discrete sections of the 24 industries on which the ABS kept statistics could have been placed in the same company to show that they had an incidence of disputes ‘exceeded only by coal mining’. To see the scale effect via a *reductio ad absurdum*, expressed as a function of working days lost ‘per 1000 employees’, a business with ten workers who stopped for three days in 1997 would have shown up in the table with an incidence of disputation ‘exceeded only by coal mining’, which had over 20,000 employees and lost around 100,000 working days.⁵

This doesn’t exhaust the trouble with the table. The commission didn’t bother to avoid double-counting the disputes in the transport/storage and communications divisions, where ANZSIC counts stevedoring. The dates in the table’s title are wrong. Three errors occurred in transposing the ABS’s 1997 divisional figures. The import of these blemishes is that they present as of a piece with the other errors previously identified – the absent industry parameters, proportions that add up to 133 per cent, containerised animals, ill-defined indices, incomplete or missing references, and inexplicable discretions. Falsehood, as Arendt (1977: 253) observed, acknowledging the practice of historians, ‘tears, as it were, a hole in the fabric of factuality’ and can often be spotted ‘by noticing incongruities, holes, or the junctures of the patched-up places’.

The balance on disputes is likewise questionable, but suffice it to conclude on this issue by again putting some ground under our feet. The ABS series was shaped by two industry peculiarities that can convey a misleading impression of waterfront militancy. First, the watersiders’ legendary solidarity means that every stoppage will sweep up virtually 100 per cent of the relevant workforce. The upshot is that the statistics will show a high number of days lost compared with the duration. An impartial correction for the efficiency of waterfront strikes would be to divide the days lost by the employees involved, yielding a ratio of days lost per stopped worker. On this basis, the days lost per striking — or locked out — waterside worker in 1997 were fewer than one (about six hours). Ranked against the ABS’s 23 other industries, in 1997 the incidence was 18th behind coal mining, up from 19th in 1996. Indeed,

⁵ Three days lost per 10 workers = an incidence of 300 days lost ‘per 1000’, higher than second-ranked construction’s 290 days per 1000 but exceeded by coal’s 4206 days per 1000.

this was only three hours per year more than the hours lost per employee involved in disputes within the industry sector that the ABS calls 'government administration and defence', which presumably includes the Productivity Commission.⁶

Second, an index of days lost will prejudice industries like the waterfront because of its 24-hour operation, which yields three times as many potential days to lose than most. The industry's traditional response to this distortion has been to measure the ratio of the hours lost over those worked, which brings the matter down to earth. Even during the waterfront's turbulent postwar decade to 1956-7, the annual average person-hours lost was only 4.3 per cent of the hours worked. Over the three decades to 1986-7, the annual average fell by more than half to 1.8 per cent (I-SC, 1988: 192). However crude the sources, we can get a comparable contemporary perspective by converting the ABS data on days lost into person-hours and putting this over the commission's estimates for the size of the workforce and the average hours worked per employee per week. For 1997, this ratio suggests that the hours lost were 0.2 per cent of those worked, reducing disputation to vanishing point, or at least to a level exceeded by industries that generally did not demand shift-work, such as that which included the Productivity Commission.⁷

Crane rates

The treatment of crane rates supplies a third way of testing whether the Productivity Commission's reports were produced by minds independent of the government's interests. It would be wrong to convey the impression that the commission's entire 613-page output was bent to

⁶ Following the ABS (1998) in assuming 'an eight hour working day': days lost in stevedoring = 3,600 x 8 hours = 28,800 hours; employees involved = 4,700; thus, hours lost per employee involved = 28,800/4700 = 6 hours 8 minutes; days lost in government administration and defence = 11,700 x 8 hours = 93,600 hours; employees involved = 24,800; thus, hours lost per employee involved = 93,600/24,800 = 3 hours 41 minutes.

⁷ Figures: days lost in 1997 (ABS, 1998) = 3600 x 7.5 hours per shift (PC, 1998a: 115) = 27,000 hours. The number of operational stevedoring employees in 1997* (PC, 1998a: p. 21) = 5910 x average hours worked per operational employee per week 1996** (PC, 1998a, p. 114-5) = 36.1 (ordinary) + 9 (overtime hours paid) = total hours per week = 45.1 hours x 5910 employees x 52 weeks = 13,860,132 hours per year - 27,000 hours lost = 13,833,132 hours worked. Hours lost as proportion of hours worked = 27,000/13,833,132 = 0.2%. (*Only available 1997. ** Only available 1996.)

favour the government and damage the watersiders. Here and there, evidence appeared that ran in the opposite directions, and the most notable concerned crane rates. No one living in Australia during the 1997-98 dispute needs be reminded that Reith in particular never tired of criticising the crane rate in Australian stevedoring compared with overseas ports. Whether this was actually a fair measure of the waterside workers' productivity is somewhat beside the point here. Rather, the significance of the commission's research on crane rates is that the results did undercut the government. The analysis was undertaken by the *Benchmarking* report. The essential background to the story is threefold.

First, the time a vessel spends in port represents a declining proportion of costs over distance, so the shorter the voyage the more that marginal improvements in un/loading rates can matter. It follows that, if the issue mattered at all, it mattered most overwhelmingly of all on the Australia-Singapore route. Compared with five weeks to London and three to Los Angeles, Singapore is about a fortnight from Australia's largest port in Melbourne and a week from Fremantle.

Second, the Singapore route is the most vital for Australia. Customs estimated that the two-way Australia-Singapore liner trade in 1995-96 was about a third of the total liner trade by volume (including about 40 per cent of exports), but this was understated. This is because Singapore is a trans-shipment port. There are no reliable data for Australian trade trans-shipped through Singapore to (or from) other destinations, but the industry press suggests that this could have added up to another 30 per cent, as this is where trade is fed into (and drawn from) the inter-modal highway that runs around the great economies of the northern hemisphere (*Containerisation International*, cited in PC, 1999: 76).

Third, there was no more global benchmark than the port of Singapore. Of the many conditions and contingencies that can affect un/loading rates, one stands supreme: the economies and physical advantages of scale. In 1998, no container port in the world was bigger than Singapore's great hub on the Strait of Malacca, which handled seven times the entire throughput of the Australian stevedoring duopoly put together (UNCTAD, 1999: 70-71). While Patrick, for example, was upgrading Melbourne and Sydney with one new Panamax [Panama Canal ship-sized] crane for each terminal in 1997, Singapore was precisely two generations and many much larger capital investments in

advance, installing 'the first of eight in a new series of super post-Panamax gantry cranes' (DCN, 1997 & 1997a; UNCTAD, 1999: 71).

Based on work by consultants contracted in 1997, the *Benchmarking* report's surprising finding was that the crane rates in Melbourne and Sydney matched Singapore in lifting an average 25 containers per hour, while Fremantle bettered the world's leading port with 27 an hour (p. 125). To be sure, the presentation of these results was crowded around with unfavourable comparisons, the typeface identifying the ports was squint-size, no table showed the actual numbers, and no reference was made to the key finding in the text, which reported that on 'most trades the handling rates at Australian terminals were generally well below those at overseas ports for the same ships' (p. xxii). Still, the commission published the contrary Singapore result. Does this constitute some evidence of a genuine margin for independence?

More telling was the denouement. The commission (PC, 2003a: 57-8, 77) duplicated the research in 2002, and this time the consultants returned the even more unwelcome finding that the post-dispute crane rate on the Singapore route had *fallen* in all the Australian duopoly's ports. Singapore's rate was rather stable at 24.3 lifts per hour, but the pre-dispute rates in Melbourne and Sydney had fallen to 20 and 19 respectively, while Fremantle's 27 was down to 24. Inferior rates were also found compared with Malaysia's Port Klang (the gateway to the capital, Kuala Lumpur).⁸ Before finalising the report, the commission conferred with Patrick, hardly an impartial source, who advised that the 1997-98 findings were 'implausibly high' (p. 38). With the results of the prior report that we have been analysing thereby discredited out of Patrick's hand, the commission advised the Howard government rather woollily that, in '2002, with more reliable data, Australian terminals exhibit broadly similar productivity to those in Port Klang and Singapore' (p. 58).

Thus, even when we trace the most outstanding piece of evidence going against the government's political interests, we see again how such material tended to be downplayed by the commission. In this case, the

⁸ The actual 1997 figures were not published until 2003 (PC, 2003a 77). The following shows the duopoly's pre-sacking 1997 results first (from highest to lowest), with the post-dispute 2002 results in brackets: Fremantle: 27.4 (24.1); Melbourne: 25.2 (19.8); Sydney: 24.6 (18.9); Brisbane: 22.4 (16.3). The respective figures for Singapore were: 25.0 (24.3); and for Port Klang: 23.0 (20.6).

record of the time when Australia's wharfies were found to have matched the greatest port on earth was retrospectively rewritten. 'The chances of factual truth surviving the onslaught of power are very slim indeed', observed Arendt (1977: 231), 'it is always in danger of being maneuvered out of the world not only for a time but, potentially, forever.'

Conclusion

This article has searched the limits of the Productivity Commission's independence in three issues central to the concurrent dispute in the industry that were covered by its two stevedoring reports. These were not the only issues covered by the reports, and are far from the only issues that could be tested for similar results. The impossibly high hurdle in the way of presenting a comprehensive analysis is that this would require more space than the commission's 613-page output. Instead, we have gone to issues that show the problem from three sides. First, we looked at the way the commission treated the 'positive' side of the government's position in the dispute — the significance of the industry and the importance of lowering costs. Second, we went to the 'negative' side — the complaints about the MUA's militancy. Third, we took up the most outstanding example of when the commission's output was off-side with the government's position. In each case, we found the apparent exercise of selectivity or worse at points where the work would have otherwise seriously, or in the latter case more seriously, conflicted with the government's interests. Perhaps any one of these could be waved away as a product of the exigencies that always accompany the pressure in preparing major reports on complex subjects, but the avoidance of conflict with the government's known position in all three cases constitutes a grave caution over the commission's independence.

How far this study can be generalised is inherently difficult to know, for the commission has rarely been asked for advice on an industry when the government's position has already been so deeply cast, and known to be cast, and when the stakes have been so high. At the opposite pole, such conflicts are unlikely when governments have asked the commission 'to develop policy when they had none' (Stuart and Prasser, 2015: 161). In evaluating the UK's depoliticisation strategy, Burnham (2001: 145) noted the tendency for the government to 'creep back' when social shocks occurred that alarmed the public. At the least, we can conclude that such

a tendency can be more safely assumed when political shocks occur that alarm the government itself. In considering the contradictions to depoliticisation, Burnham invoked Osborne and Gaebler's managerial metaphor of separating policy 'steering' from 'rowing', and observed that the fragmentation of governance wrought by the strategy risks the rowers and the passengers (*i.e.*, the users) capturing their regulator (Burnham, 2001: 144-5; Osborne and Gaebler, 1992). Perhaps; but what this research suggests is that 'depoliticisation' will tend to fall short of the distance required for the rowers to stage a mutiny, or indeed to advance more than the mildest correction to the government's preferred direction.

The finding should not be surprising, for there is no solid basis for assuming that the commission has the standing to operate independently of the executive. The commission occupies no constitutional ground like the judiciary, possesses no self-governing warrant like universities, and has no statutory charter akin to the ABC. Words such as 'independent' or 'impartial' don't even appear in the *Productivity Commission Act 1998*. The sole substantial executive limitation is on sacking a commissioner, but appointments are only made for five years (or fewer, if the minister prefers), the same as all senior public servants. This is a much weaker basis for issuing conflicting public advice than the permanent tenure that once underpinned the independence of officials in the Westminster system, and implies thinking twice before casting sanctimonious aspersions. Apart from the career risks, the commission could have its executive oxygen cut in a wink, be flung to the ministry's outer bounds in a blink, or have its destiny recast or destroyed by the parliament, were it to sufficiently irritate the government. Within such a context, few expectations can be more certain than that the advocates of doctrines based on self-interest will know where their own lies. Conceivably, it was no coincidence that the statute which entrenched the institution was given assent only 11 days before the publication of the waterfront reports, after the copy would have become available to the executive. The two reports have troubled our tests for impartiality, but perhaps they got what the commission really aimed for, the legislative green light.

Recent Arendtian scholarship has focused on her argument that the adjudication of political debate by rational forms of truth amounts to imposing extra-political authority to foreclose on democratic freedom, an argument that might be profitably applied to the Productivity Commission's economistic reasoning (see Zirelli, 2005, 2006, 2012). Here, we have found merely another case of the banal conflict between

political power and factual truth, which Arendt accepted as more or less endemic, since the freedom to say how the world appears and imagine change entails the freedom to say how the world is not. The only augmentation is that, of the many genres of propaganda or ‘spin’, fostering a public perception of independence is perhaps a relatively new variety. From the perspective of this research at least, the extra-political standing of the commission’s economism serves to legitimise the body’s utility as an avenue for shaping opinion in favour of the government. While beyond the scope of this work, the process that led to the recent decision to cut the penalty rates of retail and hospitality workers bears several of the same hallmarks, and a close analysis could further illuminate the problem (see Peetz, 2017)

Finally, the enlistment of the concept of independence within the modern spin-doctor’s repertoire has implications for institutions that depend on the integrity of their borders with the political realm. The obverse of the relationship here examined is the trend for universities to ‘become increasingly enamoured of spin’ (Watts, 2014: 43), and to install managerial imposts that corrode the professional norms and ethics of conduct within places that are ‘supposed to be in the business of truth-telling, in some sense or other’ (Aspromourgus, 2012: 49). We began by asking whether the independence of the Productivity Commission places it in the company of traditionally independent bodies such as universities. We can conclude by asking whether universities are destined to treat factual truth in a way that will place them in the political company of institutions like the Productivity Commission.

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chris.s@unsw.edu.au

Appendix: Calculating the cost of stevedoring Australia's containerised exports

Using UNCTAD's parameters and making plausible assumptions, the potential savings as a proportion of the total value of Australia's exports can be roughly estimated as follows:

$$s = y \times c \times cw \times wa \times l \times ls \div ya (y \times a)$$

Where s = potential saving; y = total value of two-way trade; c = ratio of two-way freight (including stevedoring) costs to the total value of the two-way trade; cw = ratio of two-way stevedoring costs to two-way freight costs; wa = the volume of Australian exports within the two-way trade; l = labour costs in stevedoring Australian exports; ls = one-third of labour costs; ya = value of Australian exports; a = ratio of the value of Australian exports to the total value of two-way trade. This gives:

$$0.13\% = \$60bn \times 4.2\% \times 10.7\% \times 58.36\% \times 60\% \times 33.3\% \div \$24,276m (\$60bn \times 40.46\%)$$

The assumed ratios and values are:

y = \$60bn is the Productivity Commission's estimate of the value of the two-way (liner) trade.

c = 4.2% (\$2520m) is UNCTAD's market-economy average. UNCTAD didn't publish an Australian ratio, which was probably close to Canada's 2.4% (being a roughly comparable bulk trading nation). The market-economy average is preferred as container stevedoring is more expensive than bulk.

cw = 10.7% (\$269.64m) is based on Stopford's (1997: 353) estimate of the ratio of two-way stevedoring costs to freight revenue. Stopford's ratio is based on: (1) an Atlantic voyage (round-trip), which is roughly the same as the East Coast Australia-Singapore voyage, a conservative estimate given that this is about half the Australia-Japan voyage and a third the Europe loop; and (2) an average 'lift rate' of US\$200 per container, which is also conservative as the Australian average in 1996 was US\$154 (A\$203), using the Productivity Commission's exchange rate (1998a: 219).

wa = 58.36% (\$157.36m) is the Australian proportion of stevedoring costs based on the export volume ratio for liner shipping in 1996 (PC, 1999: Appendix C).

$l = 60\%$ (\$94.42m) is based on: (1) Prices Surveillance Authority (1990: 49), which estimated labour costs as 50% for operational and 71% for maintenance; (2) Australian Competition and Consumer Commission (2001: 9), which estimated 58% in 1998, excluding 'port management and other overhead costs'; and (3) Productivity Commission (1998a: 1), which coyly reported that labour 'accounts for over half of terminal operating costs of container stevedoring services'.

$ls = 33.3\%$ (\$31.44m) assumes a saving of one-third of labour costs.

$a = 40.46\%$ (\$24,276) is the export value ratio for liner shipping in 1996 (PC, 1999: Appendix C).

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