A new form of Australian state?

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Abstract : *This paper examines the changing nature of the Australian state which has remained strongly interventionist since its emphatic neoliberal shift. Contrary to claims of a reduced, withered or slimmed state, the Australian state has expanded its sphere of influence and scope of activity. Moreover, its interventions are not monolithic but becoming increasingly varied. The Australian state, without relinquishing its economic 'macro-structuring' role, has developed an extensive 'micro-structuring' role particularly through new regulatory instruments and institutions in its overwhelming pursuit of structural competitiveness. At the same time, the Australian state has sought to manage the social costs of its interventions through reconfigured and strengthened private property rights. By exploring the differing nature of these new forms of interventions and examining how these new interventions are expanding the scope and influence of the Australian state, the paper seeks to offer insights into the evolving form of the neoliberal state.*

Introduction

There has been a far-reaching restructuring of the economic, social and political conditions for capital accumulation around the world following the global recession of the 1970s. This restructuring has been driven by the ideology of neoliberalism's metamorphosis into the "central guiding principle of economic thought and management" (Harvey, 2005: 2). Neoliberalism rests on a belief in markets and individual responsibility as well as social conservatism such as law and order, the family, xenophobia, and moral conservatism. Human well-being is considered to be best achieved through private property rights, free markets and free trade, and the role of the state is to create an institutional framework promoting such practices.

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Neoliberalism is a political and economic ideology and the relationship of the state to the market is a core precept. The market has primacy and virtually all economic and social problems are seen as having a market solution. Market discipline, competition and commodification symbolise neoliberalism although some acolytes have acknowledged that "market order requires a particular kind of state to secure it" (Gamble, 2006: 22), a strong state to overcome obstacles and provide necessary support to ensure a 'free' market is paramount.

The political ascendancy and hegemony of neoliberalism has seen significant changes to the role of the state moving from a strong interventionist Keynesian welfare-state role to one characterised by less active intervention as a player and more as a regulator to ensure the effective operation of markets and ongoing profitability conditions for capital. The deregulated economy that was claimed would emerge with the replacement of Keynesian policies designed to maximise investment and employment with a microeconomic emphasis designed to boost efficiency and control inflation with reduced regulatory control by government has not eventuated. We contend that this is exemplified by the Australian state which has remained strongly interventionist, expanding its sphere of influence and scope of activity without relinquishing its 'macro-structuring' role but by using established policy instruments differently and developing an extensive 'micro-structuring' role. This has led not to a 'down-sized' state but the advent of a new regulatory era engineered and controlled by the state.

The paper begins with a broad overview of the state, distinguishing its political and economic roles as well as its broadly changing nature during the contemporary era of post-Fordism. Within this context the evolution of the Australian state is then discussed followed by its more contemporary manifestation. The paper then proceeds to examine the recast role which regulation now performs for the neoliberal state alongside reconfigured and strengthened property rights, drawing on examples from the two leading Australian sectors of electricity and water. A final section posits some implications for our understanding of the neoliberal state.

The nature of the state

Jessop contends that the form of the capitalist state is driven by accumulation strategies, hegemonic projects and associated alliance strategies because the state undertakes economic functions as well as securing social cohesion in a class-divided society (Jessop, 1983).[1] This is similar to Aglietta's notion that the state "develops by penetrating civil society and profoundly restructuring it" (1979: 32), Lipietz's argument that the state is "the archetypal form of all regulation … the institutional form which condenses the compromises" (1987: 19) and Boyer's view that the state is defined by the "nature of the relationship between the political order and the economic institutions" (2001: 82).

These arguments have informed our view of the state which we do not seek to isolate from the economic. We are seeking to determine the nature of the contemporary state which has both political and economic roles reproducing basic social relationships, guiding growth regimes and ensuring the co-ordination of a myriad of decisions. And we see the capitalist state performing these roles as integral to the mode of *régulation* which governs, guides, supports and secures accumulation, the process by which capitalism is reproduced and expanded over time. Five institutional (or structural) forms comprise the mode of *régulation,* the dimensions of which are not limited to economic or quantitative factors and are defined by: wage-labour's relationship with capital, monetary and credit relationships, the competitive relations between firms, the nature of international relationships and arrangements, and finally, the form of state intervention including economic policy (Boyer, 1990; Dunford, 1990).

We view the state as both an institutional form *and* an institutional form that plays a major role securing the other institutional forms and their overall complementarity to each other by relating to the mode of *régulation* in two ways – it works *within* the mode by supplementing and reinforcing the other institutional forms and it acts *on* the overall mode (Delorme, 2002; Lordon, 2002; Théret, 2002). Economic policy is a key mechanism which the state uses to act on, and work within, the mode of *régulation*. Another obvious example of the state 'supplementing and reinforcing' other institutional forms is a country's international position. It has always been a function of the state to organise relations with the world economy.

Different forms of the state are evident during the Fordist and post-Fordist eras. The typical form of the Fordist state is that of the Keynesian welfare state, an interventionist and large state with a broad capacity to directly regulate economic and social outcomes. This form of state was distinguishable by: an economic policy approach (consistent with that advocated by Keynes) seeking full employment within relatively closed national economies and through selective demand-side management;

[1] 'Hegemonic project' is used in the sense defined by Dunford (1990: 308) as "a political, institutional, and moral strategy which is economically conditioned and relevant but whose domain is civil society as a whole and not just the economic sphere".

counter-cyclical economic policy; support for trade unionism and collective bargaining; and, promotion of mass consumption through welfare rights and new forms of collective consumption. In addition, the state made strong interventions through organising the provision of public services, financing infrastructure and managing the social wage as a major means of redistribution and social cohesion (Boyer, 1988, 2000b; Jessop, 1994a, 1994b, 2002).

The Fordist-Keynesian welfare state has subsequently been transformed into what has been termed the Schumpeterian workfare state which has been most notable for a redefinition of its primary economic functions.[2] The structural competitiveness, particularly international competitiveness, of the national economy has usurped full employment as the primary goal. Economic and social policy has been redirected to the supply-side, to productive goals instead of collective consumption and social welfare with fiscal policy reversed towards the pro-cyclical, state expenditures 'redistributed' to supporting capital, rates of taxation becoming more regressive, and social policy subordinated to economic policy to promote greater labour market flexibility. Public debt is regarded as poor management and inequality as a necessary work incentive (Albertsen, 1988; Broomhill, 2001; Jessop, 1994b, 2002; MacEwan, 1999; Moulaert and Swyngedouw, 1989).

Jessop (1994a) argues that this transformation of the state has been accompanied by a 'hollowing out' of the nation-state as some capacities have been devolved to other levels of political organisation, transferred to international institutions (such as the WTO, World Bank and IMF) or ceded to multilateral trade agreements. Others have contended that the transformation to the Schumpeterian workfare state reflects a withering, retreat or slimming of the state (Fairbrother, Svensen and Teicher, 1997; Self, 1996; Strange, 1996). On the other hand, Moody (1997) posits that the state's functions have expanded with the growth of the international economy because nation-states, not any global authority, ensure infrastructure (especially transport) and negotiate trade agreements that facilitate the world market. Each of these claims is debatable given the differences that have been found from country to country (Boyer, 2005). Notwithstanding, two fundamental aspects are clear. First,

[2] Jessop (1994a, 1994b) coined this term. Schumpeter viewed entrepreneurship and innovation as crucial to the dynamism of capitalism because they created a 'perennial gale of destruction' (Stilwell, 2000). Moulaert and Swyngedouw (1989: 339) suggest that a more apt descriptor for the replacement of the welfare state is "an 'entrepenuerial state for the well-to-do' and … a 'soup kitchen state'" for those caught in unemployment or unable to adapt to the accumulation process.

> the basic functions of protecting private business property, mediating internal conflicts between different capitalist interests, and regulating the struggle between capital and labour form the irreducible core of the modern capitalist state (Moody, 1997: 136).

Second, there are stark differences in the *form* of intervention by the state during Fordism and contemporary post-Fordism. The state intervenes using a wide range of instruments through a framework of institutions within the state apparatus. Economic instruments include monetary policy, public expenditure, taxation, trade and wages policy. The different use of these instruments, by the state during post-Fordism, is evidenced by fiscal policy moving from an anti-cyclical to a pro-cyclical stance, taxation rates becoming more uniform and regressive, monetary policy directed at controlling inflation instead of controlling the supply of money, the removal of barriers (such as tariffs, quotas, threshold limits) to international trade and capital flows, and wages no longer increasing in line with price movements but determined from workplace-to-workplace. In addition to varying the nature of intervention using an existing or long-established instrument, the state during post-Fordism has shown a strong predilection for the use of 'new' instruments such as privatisation, the imposition of commercial criteria in the public sector, the introduction of new juridico-political frameworks of regulatory control, and the abandonment of social partnership for managerial prerogatives and market forces. These instruments of intervention combined with the 'post-Fordism use' of established instruments have embodied the concepts and ideas of neoliberalism, the increasingly dominant political and economic ideology since the 1970s.

As an economic project, neoliberalism calls for the deregulation of economic transactions within and across national boundaries, the privatisation of state-owned assets and service delivery, public sector use of market proxies and the treatment of state welfare expenditure as an impediment to competitiveness. As a political project, neoliberalism seeks to 'roll back' state interventions associated with the Keynesian welfare state and 'roll out' state intervention to support a market-driven, globally integrated economy (Jessop, 2002). Implementation of both projects is demonstrated by the foregoing discussion of the state's form of intervention during post-Fordism although the adoption of the neoliberal agenda has not been monolithic (Albo, 2002).

The evolution of the Australian state

Historically the state has been quite pervasive in promoting the development of Australian capitalism since the nation's genesis as a British colonial penal settlement.

The colonial state established a local economy and was seen as responsible for economic development by landowners and commercial interests. By the mid-nineteenth century the state was regarded as the vehicle for infrastructure provision (roads, railways, ports, urban services, and communications) necessary to overcome economic development barriers in a vast and sparsely populated continent. Federation in 1901 resulted in a constitution which specified a limited but important set of powers for the state apparatus of the Federal government and allowed State governments considerable scope to pursue their own policies. The turn of the twentieth century also witnessed the historic 'class compromise' engineered, and subsequently regulated, by the state based on a policy framework of tariff protection against imports, a guaranteed minimum wage and restricted non-European immigration to Australia. This was also the period in which the Australian state began providing albeit limited social welfare support (Bell and Head, 1994a; Butlin, Barnard and Pincus, 1982; Davis, Wanna, Warhurst and Weller, 1990).

The embryonic Australian welfare state expanded between 1940 and 1970 with a considerable boost in expenditure on income security and new education, hospital, medical and housing programs. This expansion coincided with the Federal government's retention of power to levy income taxes which it had assumed from the State governments during World War II. Throughout this thirty-year span, the state had steadily become the dominant owner of the electricity sector in addition to its ownership of key infrastructure monopolies such as water, telecommunications, postal services, shipping, railways as well as banking, insurance and airline services competing with the private sector.[3] This was also a period when a wide range of regulation was progressively introduced by the Australian state. Housing affordability was promoted by interest rate ceilings, higher and higher tariffs on imported goods became more embedded, and there was a marked upsurge in social regulation during the 1960s and 1970s such as controls over tobacco, alcohol and prostitution (Beresford, 2000; Fenna, 2004).

In the immediate post-war period, the Australian state was also very receptive to the adoption and use of the new interventionist Keynesian macroeconomic management policies. Previously the annual Federal government budget has been viewed as a balance sheet not a policy instrument and "balanced budgets were the inviolable ideal" (Whitwell, 1994: 121). The Second World War led to the Federal government assuming a role of economic control and then its 1945 white paper, *Full*

[3] Ownership of these assets was spread between the Federal and State governments.

Employment in Australia, explicitly proposed using public expenditure (budgetary policy) and monetary policy to counter cyclical downturns, a form of economic intervention not previously used but a 'distinctly Keynesian viewpoint' (*ibid*: 121-22). The scope of state activity expanded during the post-war era at both Federal and State government levels. One consequence of the changing and expanding complexion of state intervention was the growth of the public sector because government departments assumed responsibility for the direct provision of newly initiated services and programs.[4]

This pattern of state-economy relations outlined above invokes a particular image of statism. Substantial control by the state over the economy is but one historical aspect of Australia's political economy. It should be recognised that state economic intervention historically – with the exception of industrial arbitration – was not

> at the level of specific workplace relationships … in the detailed workings of the economy … The ruling assumption throughout twentieth-century Australia has been that market actors, not government officials, knew best how to run their firms (Bell and Head, 1994b: 10-11).

The Australian state played an economic 'macro-structuring' role.

When the long post-war period of economic growth ended in the mid-1970s, government expenditure was criticised as being out of control leading to burgeoning deficits and an increased reliance on higher levels of taxation. It was further claimed that the bloated welfare state had eliminated individual initiative, business regulation was excessive and the taxation system stifled incentive and investment. The purported 'twin evils' of inflation and unemployment also emerged, a phenomenon not previously experienced. The further entrenched that these problems became, the more fertile the ground for the acceptance of new approaches as criticism of the state's interventionist role became sustained (Bell and Head, 1994b; Woodward, 2005).

Reversal of the post-war Keynesian approach to economic management began in earnest after the Federal Labor government's election in 1983 and accelerated when the Liberal-National conservative coalition assumed government in 1996. The 1980s witnessed the removal of exchange rate controls, floating of the Australian dollar, abolition of restrictions for offshore Australian investment, the entry of foreign banks, and deregulation of the financial sector including removal of the housing interest rate ceiling and lending directives along with changes to bank supervisory practices. The focus of monetary policy began to switch from banking system regulatory and credit controls to the general level of interest rates with the abandonment of monetary

[4] For example, the 1945 white paper also proposed the Federal government establish an employment service, the Commonwealth Employment Service, which subsequently occurred.

targeting from 1985. These changes were followed by balanced budgets and then budget surpluses as the Federal and all State governments sought to reduce the growth of public expenditure, reorder the allocation of funds across the functions of government and reduce public debt. From the mid-1990s all Australian governments embarked on the nearly-decade long National Competition Policy, a program of measures to dismantle public utility monopolies and create an array of new regulatory bodies, which was accompanied by the progressive abolition of tariff protection. At the same time, Australia became an active participant in international institutions advocating trade and investment liberalisation as well as entering into an increasing number of free trade agreements. In addition, the longstanding centralised system of industrial conciliation and arbitration was disembowelled with the decentralisation of wage determination to the workplace with active promotion by the Australian state of individual contracts for the employment of labour and the emasculation of trade union power.

The virtue of the market was heralded as the solution to ‘open up the economy’ and ensure that Australia be part of the new ‘globalisation’. The rhetoric of market forces and state minimalism became the drivers of economic policy (Bell and Head, 1994b; Horne, 1992) as the Australian state adopted, or moved towards embracing, Friedman’s ‘golden rules’ of a neo-liberal economic agenda

> making the private sector the primary engine of its economic growth, maintaining a low rate of inflation and price stability, shrinking the size of its state bureaucracy, maintaining as close to a balanced budget as possible, if not a surplus, eliminating and lowering tariffs on imported goods, removing restrictions on foreign investment, getting rid of quotas and domestic monopolies, increasing exports, privatizing state-owned industries and utilities, deregulating capital markets, making its currency convertible, opening its industries, stock and bond markets to direct foreign ownership and investment, deregulating its economy to promote as much domestic competition as possible, eliminating government subsidies and kickbacks as much as possible, opening its banking and telecommunications systems to private ownership and competition, and allowing its citizens to choose from an array of competing pension options and foreign-run pension and mutual funds (Friedman, 1999: 86-87).

A new form of regulatory state or new forms of regulatory intervention by the state?

This ‘market’ agenda has progressively spread during the last two decades across all areas of state intervention as the Australian Federal and State governments reduced the size and functions of their respective public sectors through the privatisation of public assets, outsourcing and contracting-out (through competitive tendering) for the delivery of government services, and the private provision of economic and social infrastructure (Beresford, 2000; Chester and Johnson, 2006; Fairbrother, Paddon and

Teicher, 2002; Fenna, 2004). The Australian welfare system has been pared back to direct provision of income 'safety net' payments with ongoing tightening of eligibility criteria, and regulation of private providers for a pared back range of welfare services (Saunders, 2002).

These changes to the assets and functions of the public sector were integral to the Australian state extending its interventions to an economic 'micro-structuring' role without relinquishing its 'macro-structuring' functions. Three dominant examples of the 'micro-structuring' role adopted by the Australian state are:

- introduction of a goods and services tax, income tax cuts leading to a flatter structure of rates, the abolition of wholesale sales tax, and the increasing use of tax incentives to encourage self-provision of services such as health insurance and superannuation;
- the nearly decade-long National Competition Policy program of measures which dismantled public utility monopolies through de-integration, third party access to infrastructure and new forms of regulation followed by the more recent National Reform Agenda and complemented by an array of specific programs to improve the competitiveness of industry; and
- progressive decentralisation of the determination of wages and working conditions to individual workplaces.

Moreover, these changes are often cited as examples of deregulation which suggests the reduction or abolition of some form of economic, political or social restriction. This has not been the case as regulation has become more pervasive rather than less, providing one form of tangible evidence of the disjuncture between the ideology of neo-liberalism and 'actual existing' neo-liberalism.

It has been suggested that the term deregulation is tantamount to re-regulation which seeks to guarantee profitable markets (Anderson, 1999). Although this notion does imply regulatory change that has resulted in new settings of regulation, it is simplistic because of failure to distinguish between regulation-*of*-competition and regulation-*for*-competition, two different forms of intervention by the state but the one of the most prolific forms of regulation that has occurred with the increasing hegemony of neo-liberalism (Jordana and Levi-Faur, 2004).

Regulation-*for*-competition is far more intrusive, directly controlling and prescribing the market behaviour of individual firms as well as the operation of the market itself. Regulation-*of*-competition is economy-wide by national regulators such as the Australian Competition and Consumer Commission. The approach of national competition authorities is invariably reactive such as reviewing proposed mergers or cross-ownership to prevent market concentration and their broad responsibilities for competition allow less influence on market participants. In the case of regulation-*of*-competition authorities, the responsibilities are sector-specific (such as the Australian Energy Regulator) which brings much more influence to bear on market participants and these regulatory agencies are "involved in market design and market control to an unprecedented degree" (*ibid*: 6).

With the extension of state interventions to 'micro-structuring' across the public sector and other areas of the economy, the Australian state has created a new regulatory mode of governance characterised by an emphasis on the use of authority, rules and standard-setting (Hood, Scott, James, Jones and Travers, 1999; Loughlin and Scott, 1997). All parts of the public sector have become accountable to multiple regulators[5] and in turn, all public sector agencies perform regulatory roles either directly or indirectly.

With the replacement of direct service provision by government agencies with contracting-out to the private sector, and the use of intra-public sector service contracts (Alford and O'Neill, 1994), the public sector has 'swapped' service provision with contract management which is a form of regulatory oversight through the use of contractually defined roles and responsibilities, performance standards, and dispute settling procedures. The same has occurred with the increasing provision of infrastructure through the use of public-private partnerships which cover many different types of contractual relationships between government and the private sector to produce an asset and/or deliver services (Chester and Johnson, 2006).

New regulatory institutions also have been specifically created to promote competition through regulation-*of*-competition and regulation-*for*-competition. The former, as previously mentioned, hold economy-wide responsibilities in addition to replicating competition for those government businesses that have retained any natural monopoly advantages. The proliferation of these new institutions has been at both the nation-state and local-state levels.

It has been posited by a number of commentators that the state has receded, declined or retreated (see earlier discussion). The Australian state, through its public sector, is certainly less directly involved in service provision than previously and the

[5] These regulators are generally functional and include central funding and policy oversight agencies, ombudsmen, auditors, anti-corruption bodies in addition to regulators for such matters as anti-discrimination, environmental protection and, workers compensation. In addition, there are a range of inspectorates which oversee specific services, for example, police, security (Hood, Scott *et al*., 1999).

composition of assets has been significantly reduced in value, type and number through privatisations. However, there has been no relinquishment of its 'macro-structuring' functions although its economic interventions have changed either through a different use of more-established instruments or through the use of new instruments. Moreover, the Australian state has developed an extensive 'micro-structuring' role particularly through new regulatory instruments and institutions. To suggest that the collective result of these changed forms of interventions, the form of the state, means a 'reduced state' presupposes a state defined only in quantitative measurable terms.

Some metrics of the Australian state have been proffered based on the expenditure of all levels of government including government businesses, the number of public sector employees or public sector outlays, taxation and borrowings as proportions of GDP (Bell and Head, 1994b; Davis, Wanna *et al*., 1990; Fenna, 2004). Yet a 'quantified' state cannot explain the state's overall control of the economy because it excludes the impact of the interventions of the state through regulation.[6] This point is even more poignant with the expansion of regulation to legitimise and enhance market forces as the Australian state has adjusted its armoury of economic interventions during the last twenty years.

Not only does a 'quantified' state provide a truncated, inaccurate picture of the state's economic control, it offers no insight into the state's political authority. The state comprises more than "a distinct ensemble of institutions and organizations" (Jessop, 1990b: 341) because the state's institutional organisation is shaped by, and can not be separated from, a specific type of political orientation given its role to secure social cohesion, that is, the economic and political functions of the state are not independent although the domain of civil society is greater than the economy. Quantification of the state's activities thus provides a superficial account of the state and the extent of its control.

The state's economic control is more realistically explained by considering the mode of *régulation*, the configuration of five macro institutional forms that guides and supports the accumulation regime given the inherent tensions of capitalism's fundamental social relations, because capitalism's major institutions have arisen

> from the *process of socialization* operating at the level of society as a whole and relating to monetary factors, the market and the wage-labour nexus, themselves objects of strong interventions by the state (Boyer, 2000b: 309, original emphasis)

[6] Apart from expenditure and employment by regulatory authorities.

The form of the state, as one macro institutional form, works *within* the mode by supplementing and reinforcing the other institutional forms as well as acting *on* the overall mode.

So what does the changing form of the Australian state mean for Australia's contemporary mode of *régulation*? There has been a marked qualitative shift in the structure of all institutional forms during the 1990s and the first six years of the new millennium. A major influence has been increasing global integration driven by a state which has actively embraced the notions of free trade and the removal of constraints on capital flows through bilateral trading agreements, other international alliances and a raft of economic policy decisions. Competition has been promoted strongly by the state through new national regulatory regimes (the National Competition Policy and the National Reform Agenda), new sector-specific regulation (for example, energy), privatisation of government assets, and contracting-out - via competitive tendering - of services previously provided by government.

Although the 'glorification' of markets has been pushed to new extremes, the form of competition remains characterised by monopoly or oligopoly with firms more intent on controlling the market than participating in an ideal pure form. The monetary and financial regime, and particularly the central bank's interest rate policy, is closely scrutinised by international financial markets. Monetary (interest rate) policy has become autonomous of fiscal policy with the exchange rate determined by financial markets and the primary objective of the central bank being to minimise inflation. Public debt has been virtually eliminated, cuts in taxation rates have favoured capital and, substantial national budget surpluses have become the norm as the pattern of budgetary expenditure follows a pro-cyclical pattern. The form of the wage-labour nexus has been driven by the combined impacts arising from the aforementioned changes in all other institutional forms. Wage determination has shifted from a long-standing centralised structure to the level of each workplace, a system actively created by the state. Real expenditure on the social wage has been reallocated to other functions of government and taxation concessions are used to 'encourage' individual provision of services previously funded by government.

The box below provides a generalised synthesis of the contemporary Australian mode of *régulation*.. The overall organising principle of all the institutional forms has become one of market logic heavily supported by strong regulatory interventions.

Box 1 : Australia's contemporary mode of *régulation*[7]

Institutional form	Contemporary characterisation
Wage-labour nexus	Heavily regulated decentralised wage-bargaining, individual contracts, labour market segmentation, increasing private provision of social wage elements.
Money and finance	Independent central bank, financial market scrutiny, companies run by financial logic, systemic risk exposure of financial markets.
Competition	Legislative restriction of concentration, oligopolistic competition is predominant.
International position	Adhesion to free trade principles, increasing global integration through trade, finance and investment promoted by international alliances.
Form of the state	Proactive and market-enhancing regulating state through a range of agencies.

The changing face of regulation

The growth of the regulatory state is paradoxical given the prevailing economic and political ideology of neo-liberalism promotes deregulation, much less intervention by the state, and the triumph of markets. We saw earlier the state's changing role as it increasingly reversed the interventionist economic policy stance of Keynesianism. 'Public interest' was the unquestioned rationale for state intervention during the Keynesian-Fordist era and regulation was advocated to overcome market failure, the oft-cited example of which was the harmful impacts of inequitable and inefficient pricing practices of natural monopolies such as electricity (Quiggin, 1996). During the 1970s and 1980s, critics of government regulation argued that the origins, evolution and features of regulation resulted from the pursuit of rational self-interest, 'private interest'. Regulation was viewed as the result of the endogenous self-interests of governments, politicians and bureaucrats. Hence, it caused an inefficient allocation of resources, it failed to meet its purported objectives and was deemed to be of most benefit to either those being regulated, or the regulators, or provide a 'coalition-benefit' whereby the profits generated by monopolistic pricing financed cross-subsidies which regulators

[7] These generalised descriptions draw in part from Boyer (1988: 78; 2000a: 114-15; 2005: 11-12).

regarded as worthy (Laffont and Tirole, 1993; Majone, 1994; Peltzman, 1976; Posner, 1974; Stigler, 1971).[8]

Public choice theorists provided perhaps the most strident barrage of sustained criticism advocating that deregulation was the fundamental panacea to the alleged problems of government intervention. Public choice theory is the most contemporary application of neo-classical economics which advocates that the operation of markets is substantially better without regulation and competition within markets will deliver the objectives of equity and efficiency. It was this thinking that infused governments at the time and

> from about the 1970s, the neoclassical viewpoint, always the controlling view in the [economics] discipline, became more dominant … To a large extent, the fringe morphed into the mainstream. There occurred a hardening of the dominant laissez-faire philosophy in almost every field, but none more so than regulatory and public utility economics….The economics literature was suffused with a steady stream of work that minimized the existence or narrowed the extent of market imperfections and was highly critical of regulators and of regulatory policies and practices….only one solution to all regulatory deficiencies was advanced. “Regulatory reform” was posited as the solution to all regulatory ills, irrespective of their nature. Furthermore *regulatory reform* was given one meaning only. It *was equated with a transformation to market guidance*, at best through deregulation, but at the least, through market simulation by adoption of such neoclassically approved methods as marginal cost pricing ….or through the use of market-like techniques such as bidding or auction (Miller and Samuels, 2002: 7-8, emphasis added)

This quote highlights, implicitly and explicitly, two very significant points.

First, the meaning of the term ‘regulation’ has changed over time. During the Keynesian-Fordist era, the terms ‘regulation’ and ‘government intervention’ were treated as virtually synonymous suggesting that regulation was defined as a general form of governance of the economy as well as a ‘set of administrative rules’ (Jordana and Levi-Faur, 2004; Majone, 1994).[9] Now, during the post-Fordist era, the meaning of regulation has become much narrower and commonly deemed to mean a set of promulgated authoritative rules, relating to a particular sector, for which one (or maybe more) public agency is responsible for monitoring and promoting compliance (Baldwin, Scott *et al*., 1998).

Apart from the meaning of regulation becoming narrower, the other significant point is that the prescribed purpose of regulation has done a 180 degree turn. Regulation, the arch enemy of competition, the purveyor of all things anti-competitive, has become a key part of the competition toolbox. It has now been perceived as, and

[8] The ‘private interest’ school of thought covers a spectrum of theories with a range of nomenclatures such as: capture, economic, rent seeking, private interest, special interest and public choice.

[9] Levi-Faur (2004) points out that the US was the exception to this claim having moved to a narrower meaning of ‘targeted rules’.

equated with, market guidance. Stigler wrote that "regulation and competition are rhetorical friends and deadly enemies: over the doorway of every regulatory agency … should be carved: Competition Not Admitted" (1975: 183) clearly intimating that the elimination of regulation – deregulation – was a necessary condition for competition (Jordana and Levi-Faur, 2004). But now regulation and competition have been aligned with regulation becoming "a necessary condition for the functioning of the market" (Levi-Faur, 2006: 19). Regulation is being used by the state, in this post-Fordist era, to enable markets and, as discussed earlier, one of the most diffuse forms used by the state to undertake this newer micro-structuring role has been regulation-*for*-competition which directly controls and prescribes the sector-specific market behaviour of individual firms.

The Australian electricity sector is an exemplary case of the state using regulation, in the form of authoritative rules, as a tool to stimulate competition. Under the auspices of the National Competition Policy and using financial incentives, the nation-state cajoled the local-state into a national restructuring of the electricity sector. Former monopolies were de-integrated and the new companies, competitive and monopoly-regulated, corporatised and some privatised. New pricing and third-party access regulatory rules have been applied to the monopolies of transmission and distribution. In addition, hundreds and hundreds of pages prescribe in minute detail the regulatory rules for the operation of the NEM including the bidding, settlement and prudential requirements for all participants. Not only has this regulatory regime transformed the structure of the electricity sector, it has created a 'national' market for a product that can not be stored and for which demand must be met instantaneously. The NEM's regulatory regime has led to a plethora of new Federal and State government regulatory bodies not only responsible for the national market's operation but also dealing with complaints from electricity consumers. The overall result for the Australian electricity sector has been pervasive regulation to create a purportedly competitive market which is unattainable because of the NEM's structural characteristics, the genesis of many being its very own regulatory regime (Chester, 2006a).

In addition, a number of regulatory changes have led to an increased centralisation of the NEM's regulation. With the progressive transfer of regulatory responsibilities for transmission, distribution and retail (except pricing), by mid-2007, State governments will only hold responsibility for consumer complaints and the regulation of residential retail price caps which the Federal government is pressing the

States to abolish. There has been no diminution of State regulatory authorities with the progressive centralisation of the NEM's regulation. Nor is any diminution or elimination expected should the retail price caps be abolished given the other industry sector responsibilities of State government regulators.

This regulatory approach of the Australian nation-state has yielded more than far-reaching structural change sweeping across the electricity sector. It is also transforming Australian Federal-State relations. Despite all State governments being active participants through the COAG process, the

> States have ceded … some of their own capacity for autonomous action … the States have also weakened their capability by acceding to arrangements that promote or impose market-type structures and competition (Parkin and Anderson, 2006: 6)

A new "regulatory federalism" (*ibid*) has taken hold with the unfurling of the National Competition Policy and the electricity sector as its flagship. Throughout the late 1990s and this decade, new regulatory regimes – with national governance - have been introduced for a wide range of policy areas including, but not limited to, road and rail transport, credit laws, food standards, vocational education and training, non-bank financial institutions and, most recently, water. In addition, the States were required – in order to be NCP-compliant and receive the 'competition payments' – to ensure conformity with the principles of competitive neutrality throughout their respective provision of services and activities. Consequently, the least heralded but highly crucial outcome has been "to impose national-level policy and program priorities into areas within State constitutional jurisdiction" (*ibid*: 7). Competition has been the single-minded objective of these national-level priorities meaning that the nation-state has managed to increase its control across Australian federalism. This is definitely not the pattern Jessop (1994a) had in mind when he posited that the post-Fordist state was devolving authority to the local-state.

This new regulatory federalism has been achieved by the nation-state exercising both its macro- and micro-structuring roles through the use of regulation-*of*-competition combined with regulation-*for*-competition. The key prongs of the economy-wide regulation-*of*-competition have been an extended coverage of the anti-competitive conduct rules of the *Trade Practices Act* and the creation of two new national regulators – the Australian Competition and Consumer Commission to enforce compliance with the *Trade Practices Act* and the National Competition Council (and its successor, the COAG Reform Council) to enforce compliance with the NCP. The vanguard of regulation-*for*-competition has been the electricity sector, the first sector dominated by government ownership to be exposed to competition and the only sector for which a national market has been engineered by regulation.

A new regulatory framework for water

The limitations of a perspective of the Australian state that focuses on the neoliberal state's regulation-*of*-competition without attention to a state regulating-*for*-competition in a sectoral approach is indicated by the changes taking place to the water sector in Australia at the regional and national level. The expanding role of sectoral regulation can be gauged by two examples taken from developments in the urban and rural water sectors that reinforces the arguments put earlier in this paper that the dimensions of regulation cannot be understood as a system focussed on ensuring compliance with competitive rules. The reasons for the neoliberal state increasing the scope of its regulatory regime, as will be indicated in relation to the water sector, is that narrow competition based regulatory focussed regimes envisaged by the first round of neoliberal reformers of the 1970's and 1980's were found in practice to be inadequate by the 1990's. The simple regulatory structures and models adopted by the state - firstly at the regional level in the early 1990's by State governments - were progressively undermined by the capacity of market regulators to ensure services could meet future demand efficiently and deal with a progressive scarcity in the availability of water resources. The shortage due to a range of factors including growing populations and cyclical factors like droughts made worse by the progressive effects of global warming. The second wave of reform begun with the election of a conservative coalition government in Australia in mid 1990's that switched the focus for reform from a regional urban water focus to a national rural water focus and a change agenda concerned with regulatory interventions designed to enable water markets to exist.

The initial wave of reform in the water sector in Australia took the form of corporatising and in some cases contracting or privatising the whole or part of existing state owned water service utilities serving the large urban concentrations of population in States such as New South Wales (NSW) and Victoria and shifting the setting of water prices from government to an independent regulator established by government (Paddon & Johnson, 1995). The case of New South Wales provides a useful exemplar of the expanding scope of regulation in the water sector. The NSW Government corporatised Sydney Water Corporation (SWC) under the State Owned Corporations Act of 1989 and licensed it (in 1994) to operate as a water service provider. The current

SWC licence includes a per capita water reduction target that has not been achieved in the current licence period. The SWC licence is currently under review. The NSW Government is moving towards establishing the same structure as SWC for the Sydney Catchment Authority (to be the water resource manager for collecting, storing and supplying bulk water) set up in 1999. The current NSW Government continuing to hold the SWC in public ownership (at least for the time being) recognising its monopolistic function in the provision of public goods. This despite the fact that no comparative studies indicate that the public provision is any less efficient the by private provision (Hall and Lobina, 2005)

The SWC in turn contracts out 80% of raw water treatment to four private BOT plants introduced to cut the capital demands of public infrastructure, introduce new technology and other reasons. The SWC treats all of Sydney's sewerage. A monopoly for sewerage services however, that was challenged through the National Competition Council by a private company, Services Sydney Pty Ltd who wished to sewerage mine Sydney's North Head, Bondi and Malabar sewerage streams (see NCC, 2004) in a case that was resolved in its favour. A market development that will, if followed up by the private company make the existing SWC technically more inefficient (and increase the costs of sewerage treatment) as its sewerage streams on which its existing economies of scale arte dependent, are mined.

On the demand side the NSW Government focussed its programs to increase water saving through reducing the demand for water and encouraged private sector property developers and equipment suppliers to increase localised treatment, a range of regulatory measures to encourage the better water conservation design of houses and the introduction of financial incentive schemes for installing water tanks and other water saving devices. It also took steps directed at progressively market determined prices for water services managed by the NSW Government's Independent Pricing and Review Tribunal (IPART) set up to establish a specialised economic regulator of electricity (distribution and retail), gas, transport, water and other public services independent of the formerly politically determined prices.

The question IPART confronted was how far should commercial and competition principles be applied to public water resources and services? In its report of July, 2004 (IPART, 2004) 'Final Report on Investigations into Price Structures to Reduce Demand for Water in the Sydney Basin.' It proposed an overall charge that gave the SWC about the same revenue but composed of a lower fixed charge combined with a two-tier graduated consumption charge that would increase charges for larger users. This included supply side measures to increase user pays charging for raw stored water and on the demand side increases and use-linked tier tariffs for delivered potable water- a development that had been advocated for some years (see Johnson&Rix:1993). The goal to reduce consumption, though the price levels and ranges should, it suggested should be based on long run marginal costs of producing water services that include the capital though at least in 2004, it has no idea what this might be (IPART, 2004). This issue (together with the need to be more realistic in including environmental costs) is crucial. Some reformers suggest SWC prices should include elements to build more local recycling schemes to dismantle the current centralised, vertically integrated urban water services; the charge collected as a tax and paid to local government to build plants and to consumers as incentives to increase localised water collection and treatment? Whichever solution is adopted the regulatory framework for the sector at the regional level will become more extensive and complex.

The complexity and scope of the water regulatory regime in NSW was increased again in recent times as IPART started looking at placing a cap on the SWC's extraction of raw water from the SCA and looking at the long run cost of raw water but was uncertain how environmental costs would be incorporated. As the current neoclassical economic models employed do not easily include all aspects of the social/environmental costs of raw water extraction and because IPART does not know in a situation of environmental change know what they are, simple regulatory models cannot be applied. As a result simple CPI+X or 'rate of return' regulation of prices has been replaced by a much more complex regulatory regimes, regimes that have to incorporate consideration of the public interest to ensure the security of resource supply and resource use and a more complex public/ private structure in the water industry.

At a national level water management reform from 1996 onwards was seen by the Federal government as a matter firstly of extending private property rights to water users. The national government's influence on the water policies of State governments reinforced by the introduction of a general sales tax that improved the fiscal position of the State and Federal governments and the start of an extended period of high economic growth. The start of the 2002 severe and widespread drought episode mobilised the Federal and State governments individually and through the COAG into greater action. COAG developed a 'National Water Initiative' (NWI) in 2003 that proposed changes to water policy and the way water is managed in Australia (COAG, 2004). The urgency behind the development of the NWI through COAG was firstly that of governments being seen to be doing something about the continuing drought effecting farmers; the declining condition of a dying Murray River where the over-extraction of water had led to serious environmental damage and the drying up of the resource for down river from excessive extraction of the users at the top. The Federal and State governments in turn wanted to find solutions that were ideologically compatible with those of their influential supporters and corporate sponsors, were cheap, kept their budgets in surplus and did not reduce economic growth or employment.

The goals and priorities identified by the COAG for the NWI were:

a. improve the security of water access entitlements, including by clear assignment of risks of reductions in future water availability and by returning over-allocated systems to sustainable allocation levels;
b. ensure ecosystem health by implementing regimes to protect environmental assets at a whole-of-basin, aquifer or catchment scale;
c. ensure water is put to best use by encouraging the expansion of water markets and trading across and between districts and States (where water systems are physically shared), involving clear rules for trading, robust water accounting arrangements and pricing based on full cost recovery principles; and
d. encourage water conservation in our cities, including better use of stormwater and recycled water COAG, NWI: 2004).

The priorities were clearly set out in the NWI principles. Firstly, they are to establish private water property rights for water users and then get taxpayers to buy them back if necessary to save a river- the Murray. In tandem with COAG's announcement of the NWI, the Murray–Darling Basin Commission announced its intention to resuscitate the river through its 'living Murray' initiative. The priority number one of the NWI was very clear- getting water back for the dying Murray-Darling wet lands and other environmental assets. The Commonwealth (except notably Queensland's Government at the head of the rivers and controlling a large portion of its catchment) agreed to put $500 million over five years to address water rights over-allocation in the MDB by buying back water permits and support the Murray-Darling Basin Commission's to get flow and life back into the Murray. The budget of $500 millon being used to pay water extractors $500 million to buy back a resource to provide 'intensive care' for a river that they did not own but held 'rights' as licences to use.

Secondly, the NWI principles included action to establish the conditions necessary to identify and then protect environmental water assets using catchment management principles in the future. The next priority focussed on establishing water markets for the private property rights conferred on the old licensees and finally introducing demand management and recycling in urban water systems. In summary, the goals of the NWI were firstly to introduce a privatised system of water management based on the assumption that this will in time lead to the better husbanding and distribution of water resources and protect the environment. The secondary goal of the NWI to find out what the environment needs to be sustained and protect it if necessary. The States, including NSW, agreed to adopt and implement the agreed principles in policy, but NSW decided to move its own legislation ahead of the adoption of the Commonwealth legislation to ensure the measures introduced, were designed to extend water rights in a form that would fit in with its other priorities; to protect the environment and create a system of control in which it could control water resources properly.

In relation to the rural water crisis, the response by the Federal and NSW governments was firstly, emergency measures to deal with the drought and the long term increase in demand over supply of urban water systems, including in NSW's case the development of the option of building a desalination water plant in Sydney. Secondly, a focus on the reform and extension of private property rights over rural water access and use and finally the extension of market principles to water management as a solution to the longer water management problem. A solution which Elinor Ostrom and Charlotte Hess (2003) says means, with reference to much of the economics and legal literature, private property being defined as "holding the right of alienation'. A definition that they suggest ignored the facts that this 'right' is in fact a bundle of rights that includes one or more of the rights of access, extraction, management, exclusion and alienation and goes on to point out others consider many more characteristics must be known about the entity over which rights are being claimed to determine whether that entity is being used efficiently (Ostrom and Hess, 2003: 8).

In summary, early reforms in the water sector were initially focussed at the State level on the creation of a range of independent public and private entities to deliver urban water services and developing a 'down-sized' state to manage the regulation of the competition anticipated between them. The regulation of competition in the urban water sector over time, it was anticipated, would be elevated to the national level, as occurred partly in the case of the electricity sector. In practice this has not eventuated in the area of urban water services and State government regulation has been extended in scale and scope to incorporate a wide range of new considerations, including the need for new investments by the water service suppliers and water service consumers to enhance the water resource environment. In relation to the management of rural water management, the advent of a strongly neoliberal state in the mid-1990's, saw a commitment to the extension of strong proprietary water rights as a means of managing and distributing water resources more efficiently. In practice it has not achieved this, but it has increased conflict between rights holders as water supplies have declined and created demands for governments to buy out rights that are putting pressure on the declining water resource base. This has involved building a stronger role for the state rather than a declining one.

The contemporary form of the neoliberal Australian state

It has been posited by some that the contemporary neoliberal state is a 'shadow' of its former self due to the privatisation of public assets, the contracting-out of service provision and de-regulation. We concur that these changes have occurred. The form of the Australian state has changed due to these actions, as we have outlined. Others have suggested that there is a new regulatory state. We agree that a vast array of new regulatory mechanisms have been established, as we have shown in the case of Australia, which have led to re-regulation or new forms of regulation. All these changes – the sale of public assets, contracting-out and regulatory change - have been progressively or concurrently instigated by the state.

We contest the notion that the state has been 'reduced' as a result of these changes. We suggest that actions such as privatisation, contracting-out, de-regulation and the creation of new regulatory regimes have all helped to define and shape the contemporary form of the state, a new 'mutant' form which has expanded the scale and scope of state intervention. Neoliberalism has been described as 'hydra-headed', mutating during the last three decades from more abstract doctrines and a means to dismantle Keynesian welfare-state interventionism to market-guided regulation (Brenner, Peck and Theodore, 2005; Gamble, 2006). The Australian neoliberal state epitomises this mutation. It has not relinquished its political or economic roles nor have these roles been reduced. It is *how* the Australian state performs these roles which has been reconfigured and expanded the scope of its interventions.

As the paper has outlined, the Australian state's economic interventions have changed through a different use of more-established instruments or through the use of new instruments. There has been no relinquishment of its long-standing macro-structuring role whilst developing an extensive micro-structuring role particularly through new regulatory instruments and institutions. The overwhelming pursuit of structural competitiveness has been effected through a reconfiguration of Australian state institutions and practices by an expansion of its armoury of interventions with policies and actions such as privatisations, contracting-out of government services, a flatter tax structure, decentralised wage determination processes, dismantling of public monopolies, market disciplines across all aspects of government activity and the use of authoritative rules and standards to engender regulation-*for*-competition and regulation-*of*-competition. Market imperatives have been imposed through the systematic use of state interventions including a heightened but not totally exclusive use of regulatory interventions.

We have also shown the evolving scale and scope of regulatory intervention by the Australian state particularly through its micro-structuring role. The nature of this regulatory control has become highly technical and complex with its own specialist knowledge-base. These combined aspects, we contend, have led to regulatory forms of intervention increasingly used by the post-Fordist neoliberal state which are much less overt and somewhat surreptitious compared to the regulatory interventions of the Fordist-Keynesian state. In addition, given the obvious disjuncture with the rhetoric of neoliberalism, the various arms of the state have preferred to promote the virtue of government action to rid markets of encumbrances rather than praise new forms of regulation. Thus a caricature has been created and increasingly reinforced that there has been a reduction in the scale and scope of the contemporary neoliberal state. This is not the case of the Australian state as it has successfully sought to shift the balance of power between capital and labour, and assert the prerogatives of capital.

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