

**A LEGAL PERSPECTIVE ON
PRIVATIZATION
IN AUSTRALIA**

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ABSTRACT

Policy debates about privatization have been dominated by the economic and political perspectives. In contrast, the legal implications of privatization have received little attention. In this paper, I examine 5 common methods of privatization in Australia – (1) managerialism, (2) corporatization, (3) contracting out, (4) regulation by contract, and (5) sale of public assets – and provide a detailed account of the legal control issues that arise after privatization.

Privatization places stress on the traditional controls on government activity and, in some instances, completely alters the legal framework within which the privatized activity is carried out. However, blanket claims that the legal controls after privatization are inadequate cannot be sustained. The adequacy of the legal framework after privatization can only be judged having regard to the activity to be privatized and the environment in which the activity will be carried out. The legal controls after privatization might be inadequate in some, but not necessarily all circumstances. In this thesis, I attempt to identify the circumstances in which the legal controls might be inadequate.

With an understanding of the legal controls that apply after privatization, and the circumstances in which they might be inadequate, law and policy makers can then make better decisions about whether to privatize and, if so, whether to change the applicable legal controls.

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