



Government of Western Australia
Department of Transport

Empowering a
thriving community

Port authority boards

Directors' handbook



About this Report

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Alternative formats

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Cover: Inner Harbour Fremantle
Courtesy Fremantle Port Authority

Port of Wyndham
Courtesy Kimberley Ports Authority

Acknowledgment of Country

The Department of Transport acknowledges the Traditional Custodians of the land throughout Western Australia and pay our respects to Elders both past and present.

We acknowledge the members of all Aboriginal communities, their cultures and continuing connection to Country throughout the state.

Within Western Australia, the term Aboriginal is used in reference to Aboriginal and Torres Strait Islander, in recognition that Aboriginal people are the original inhabitants of Western Australia. Aboriginal and Torres Strait Islander may be referred to in the national context.





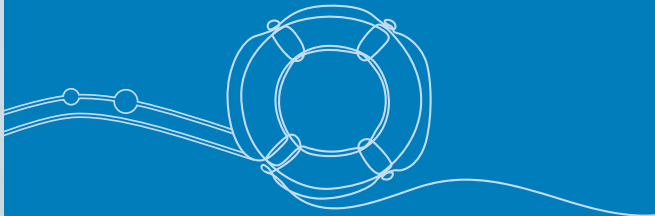
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Introduction

This handbook is a guide and reference for current and newly appointed port authority board members and those considering registering their interest in appointment opportunities to a port authority board.

It summarises the roles, responsibilities and commitment expected from port authority board members and includes links to relevant public sector documents and legislation.



Port of Esperance
Courtesy Southern Ports Authority



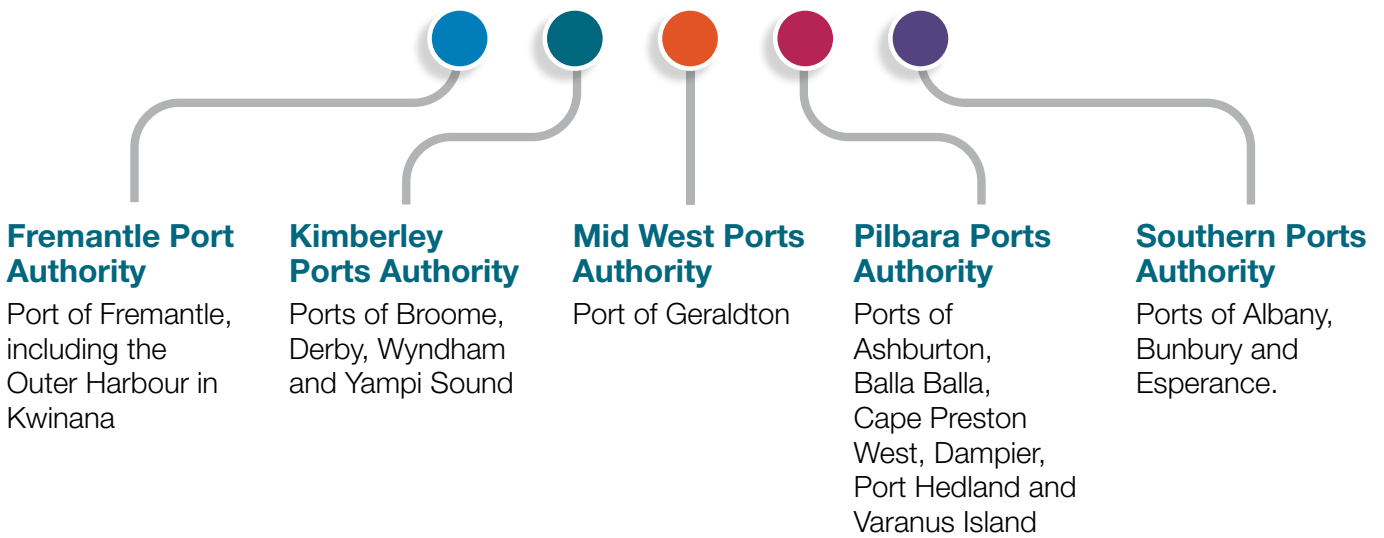
Western Australian port authorities

Port authorities are Government Trading Enterprises (GTE) established under the *Port Authorities Act 1999* and operate as commercial enterprises to facilitate trade within their respective ports.

Port authorities are governed by a board of directors. Governance provisions are detailed within the *Government Trading Enterprises Act 2023*.

Port authority boards are responsible to the Minister for Ports and the Treasurer. The Minister for Ports is accountable to the Parliament of Western Australia for the operation of the boards in their portfolios.

The port authorities comprise the following five corporate entities:



Port of Esperance
Courtesy Southern Ports Authority





Role of the board

As the governing body, the board of directors provides leadership, direction and overall strategy for the port authority and oversees the performance and activities of management.

The board has the authority and autonomy to make decisions to achieve desired outcomes and is accountable for a port authority's commercial performance.

The board must consider factors such as the facilitation of trade, profit and return on assets, government policy objectives and community impacts and expectations, when determining how a port authority undertakes its functions.

The four main responsibilities of the board relate to:



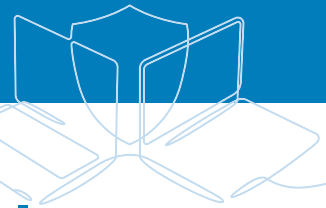
Board and management responsibilities

Board responsibilities:

- sets strategy and goals, and authorises major decisions;
- approves the business plan, budget and corporate policies;
- monitors and assesses the performance of the port, management and major projects; agrees on key performance indicators (KPIs);
- ensures the port authority's long-term viability, sound finances, compliance and accountability systems;
- ensures effective communication with stakeholders and the CEO;
- oversees and monitors risk management frameworks; and
- reports to the Minister for Ports and/or Treasurer.

Management responsibilities:

- recommends strategic directions and translates these into operation;
- manages physical, human, financial resources to achieve the port authority's objectives;
- carries out day-to-day management in conformity with relevant laws, regulations, strategies, and policies;
- develops, implements and updates policies and procedures; prepares budget; operates programs and organises events;
- acts as a conduit between the board and the ports and ports' staff;
- develops, implements and manages the port authority's risk management framework; and
- reports to the board.



Role of the directors

Directors are responsible for overseeing the management of the port authority, including:

- applying fiduciary responsibility and prudent commercial principles to ensure sustained but not monopolistic profitability;
- ensuring compliance with the port authority's Strategic Asset Plan (SAP), Annual Performance Statement (APS) and Statement of Expectations (SoE);
- promoting the interests of the port authority and its board;
- approving the budget, monitoring expenditure and ensuring the port has adequate funds and cashflow;
- subject to Ministerial approval and Salary Allowance Tribunal salary parameters, appointing, removing, fixing and altering the employment conditions of the Chief Executive Officer;
- determining employment terms and conditions for port authority staff;
- approving key policies;
- ensuring the port authority and board comply with all legal requirements;
- setting the risk appetite statement and audit compliance with risk management policies and procedures; and
- ensuring the board is functioning well; reviewing the performance of the board and planning for the succession and orientation of board members.

Other key roles

Chair of the Board:

- speaks for and leads the function of the board;
- manages meetings and ensures discussions remain focused, decisions are reached, and members observe meeting rules;
- links the board and the CEO, and the board and the Minister; and
- applies fiduciary responsibility and prudent commercial principles to ensure sustained but not monopolistic profitability.

Deputy Chair of the Board:

- provides general support to the chair; and
- substitute for chair, as required.

Secretary/Executive Officer of the Board:

- is usually a staff member employed by the port authority;
- provides general administrative support to the chair, deputy chair and directors including circulation of meeting agendas, recording and circulation of meeting minutes, ensures action items are progressed, collation and circulation of meeting papers;
- may provide advice/guidance on governance matters applying to board member responsibilities as required; and
- should have relevant knowledge of the *Port Authorities Act 1999*, as well as the *Government Trading Enterprises Act 2023*, *Public Sector Management Act 1994*, *Financial Management Act 2006*, and other relevant legislation and government policies to appropriately inform the board as required.

Port of Bunbury
Courtesy Southern Ports Authority





Kwinana Bulk Terminal
Courtesy Fremantle Port Authority



Governance framework

It is important for all boards to employ good corporate governance practices to ensure they effectively perform their functions and comply with their obligations. Board members need to understand the governance framework for the public sector agency overseen by their board.

Information concerning governance can be found on the Public Sector Commission website: [Governance of WA government boards and committees](#) and the [Governance Manual for WA Government Boards and Committees](#) document.

What you need to know

Every board member should educate themselves about the port authority and each port it controls, including in relation to:

- nature of port authority's business;
- policies;
- long term issues;
- strategic direction and objectives;
- development opportunities and potential risks;
- port customers and local/regional relationships;
- port interconnection with local and regional; transport freight network;
- board numbers and members' expertise;
- compliance and audit responsibilities;
- internal control systems;
- port financial arrangements;
- level of authority delegated to management;
- short term issues; and
- products and services offered.

Commitment

As a successful, participative, and contributing board member it is highly recommended that you:

- allow adequate time to read board papers thoroughly;
- be prepared to contribute to discussions and ask questions during board meetings;
- do not allow a topic of discussion to be closed while there are still matters of substance outstanding;
- attend all board meetings and any meetings of committees to which you belong;
- be informed about the industry environment in which the port is operating;
- keep up to date with port operations, and, if necessary, conduct site visits;
- read widely and attend courses on the practice of directorships;
- have a full understanding of financial accounts, and, if necessary, get professional guidance on how to understand them; and
- maintain good governance awareness and qualifications, including Australian Institute of Company Directors accreditation and training (or equivalent).

The Public Sector Commission provides a self-paced, introductory e-learning course for board members at the following link: [Governance e-learning for WA Government Boards and Committees](#).

Courtesy Southern Ports Authority



Appointment to a board

- The Minister is ultimately accountable for appointments to boards within their portfolio and should therefore be kept informed of progress in the selection and appointment of candidates.
- The board chair must have regard to the current mix of skills and expertise, as well as the personal qualities of existing board members, when considering potential new appointments to the board.
- Board chairs maintain a skills matrix of the board to inform vacancies and assist in succession planning. The matrix is reviewed annually to ensure current needs are being met and to identify any future skills that may be needed as the plan to address identified skill gaps is implemented and the operating environment changes.
- Appointments to a board should reflect the diversity of the Western Australian community, being mindful of the board's purpose and focus.
- All Cabinet appointment submissions must provide details on how the appointment affects the gender composition of the board.
- As a general guide, an individual should not hold a position on more than two boards at any one time, regardless of tier classification and/or remuneration of the board.
- Probity checks are undertaken for all appointments, including reappointments, such as verification of qualifications, employment, criminal history, financial regulation, bankruptcy credit default, and potential conflicts of interest.

- Appointment to a port authority board does not automatically mean the individual is entitled to remuneration. A board member may not be eligible for remuneration (other than reimbursement for travel expenses) if they:
 - are being paid from public monies, including being a current:
 - full time Local, State and Commonwealth Government employee;
 - Member of Parliament;
 - retired judicial officer (except a magistrate);
 - non-academic employee of a public academic institution; or
 - were a Member of Parliament within the last 12 months.

For further information, please visit the useful links at the end of this document.

External review

At least once every three years, a port authority board is required to undertake an independent and external review of the board's performance with the results being reported to the Minister for Ports.

This requirement is specified in section 25 of the GTE Act and regulation 37 of the GTE Regulations. Links to the legislation are provided below.

- [Government Trading Enterprises Act 2023](#)
- [Government Trading Enterprises Regulations 2023](#)

Consideration of board performance is also relevant to effective succession planning of board members.

Guidance concerning the board evaluation process can be found on page 19 and Appendix 8 in Public Sector Commission document: [Governance Manual for WA Government Boards and Committees](#).

Fremantle Port
Courtesy Tourism Western Australia





Primary legislation

Port Authorities Act 1999

The [Port Authorities Act 1999](#) (PA Act) is about port authorities, their functions, the areas that they are to control and manage, the way in which they are to operate and related matters.

Fundamentals

- The PA Act is the primary legislation governing the functions of Western Australia's five port authorities.
- The Minister for Ports is responsible for the PA Act.
- The Department of Transport (DoT) assists the Minister to administer the PA Act.
- A port authority is a body corporate with perpetual succession. Proceedings may be taken by or against a port authority.
- A port authority is not an agent of the Crown for the purposes of state laws and does not have the status, immunities or privileges of the Crown.

The [Port Authorities Regulations 2001](#) prescribe regulations applicable to all port authorities and regulations applicable to specific port authorities and declared ports.

Government Trading Enterprises Act 2023

The [Government Trading Enterprises Act 2023](#) (GTE Act) was introduced 1 July 2023 to consolidate the governance requirements of GTEs which were previously contained in multiple instruments. The GTE Act aims to maintain appropriate flexibility for practices to adapt to industry, market and government policy changes over time. It applies to each of the five WA port authorities.

Purpose

The GTE Act introduces the following purpose statement for all GTEs covered by the GTE Act;

“A GTEs purpose is to advance the public benefit through the performance of its functions.”

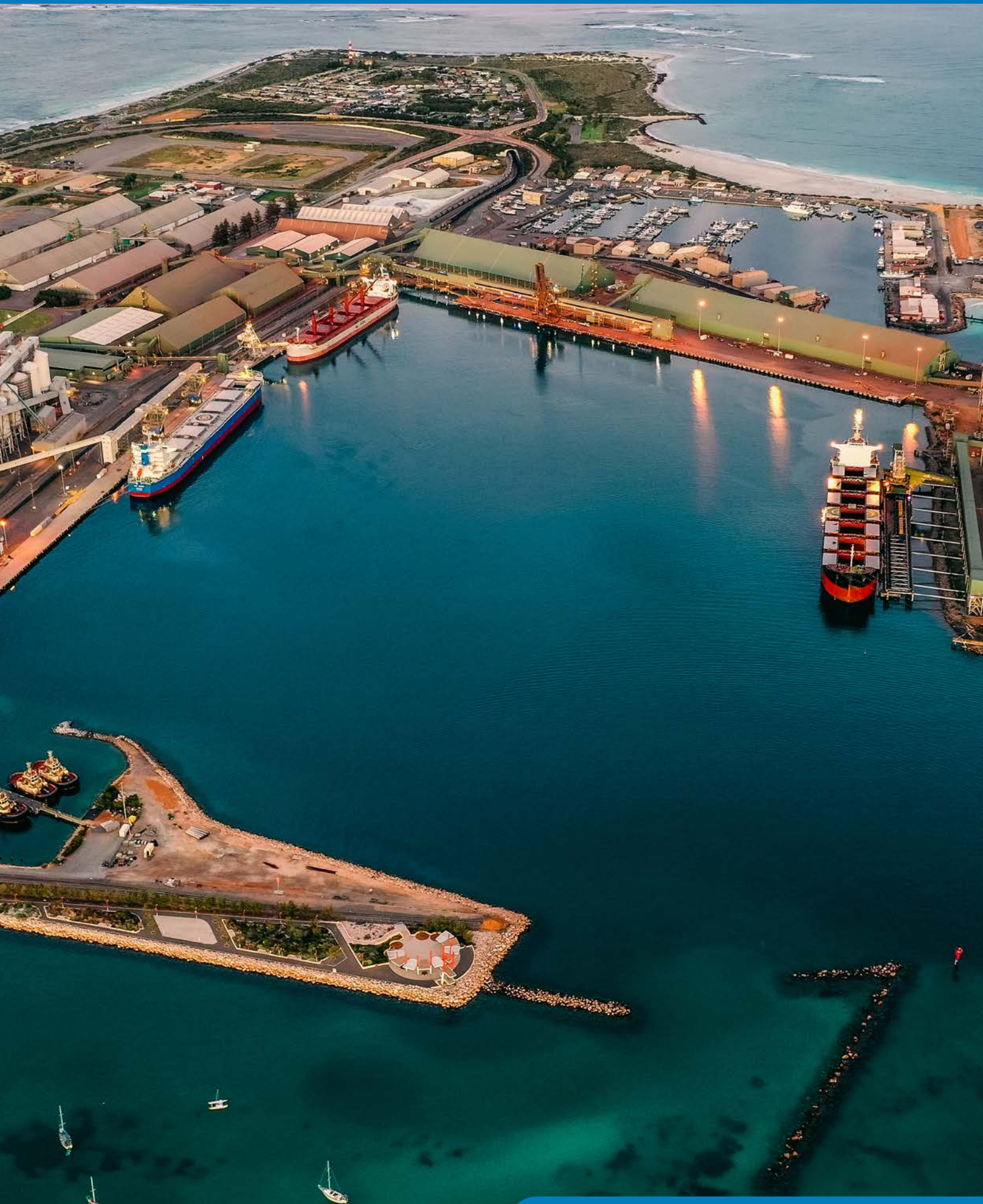
Fundamentals

- The GTE Act aims to standardise governance and accountability and strengthen oversight of GTEs including the five port authorities.
- The GTE Minister is responsible for administering the GTE Act. The Treasurer is currently the GTE Minister.
- The Department of Transport assists the Minister for Ports to ensure port authority compliance with the GTE Act.

The [Government Trading Enterprises Regulations 2023](#) prescribe regulations associated with the GTE Act.

Port of Bunbury
Courtesy Southern Ports Authority







Strategic documents

Currently there are three key strategic documents that guide a port authority's ability to advance the public benefit through the performance of its legislated functions. Each of these three documents is discussed briefly in the following sections.

The board must ensure the strategy, objectives and operations outlined in strategic documents align with the Government's overarching priorities and commitments. The requirements for strategic planning under the GTE Act are to:

- provide clarity in a port authority's role and responsibility in the performance of its functions;
- improve government oversight of a port authority's performance through reporting against clear objectives and outcomes; and
- standardise the development process, including the interaction between the Government and the port authority.

Statement of Expectations

The Statement of Expectations (SoE) framework provides the ability for the Minister for Ports to convey the Government's expectations to the port authority. Section 70 of the GTE Act provides for the contents to be included in a SoE.

These include:

- the port authority's role in the delivery of government objectives and management of risk for the State;
- the community service obligations a port authority is expected to perform; and
- any specific requirements as to the information that a port authority must include in its annual and interim reports, if required by the Minister for Ports and Treasurer.

A sample ministerial statement of expectations is provided at Appendix 1 of the [Governance Manual for WA Government Boards and Committees](#).

Annual Performance Statement

The Annual Performance Statement (APS) is a forward-looking document that functions as an accountability mechanism, articulating expectations of a port authority's performance for a budget year. The APS stems from the strategic priorities agreed in the SoE and clarifies how the port authority will direct and apply its resources in ways to maximise outcomes on how resources are used to achieve targets for the budget year.

The timing of the APS is aligned with the state budget process. The APS must be consistent with the information in the port authority statements published in relevant budget papers as stated in section 75 of the GTE Act.

Strategic Asset Plan

A Strategic Asset Plan (SAP) is a document updated annually which details a port authority's summarised future 10-year capital works program. The SAP is a component of the Government's Strategic Asset Management Framework (SAMF) Policy as administered by the Department of Treasury. The SAP is one of the mandatory documents required to be submitted as part of the annual budget process. Further information on strategic asset management planning, frameworks and policy can be found on the [WA Government website](#).

Port of Bunbury Inner Harbour
Courtesy Southern Ports Authority



Financial management

Port authorities are required to act in accordance with prudent commercial principles and endeavour to make a profit whilst undertaking their legislative obligations and government's strategic objectives and expectations.

Fundamentals

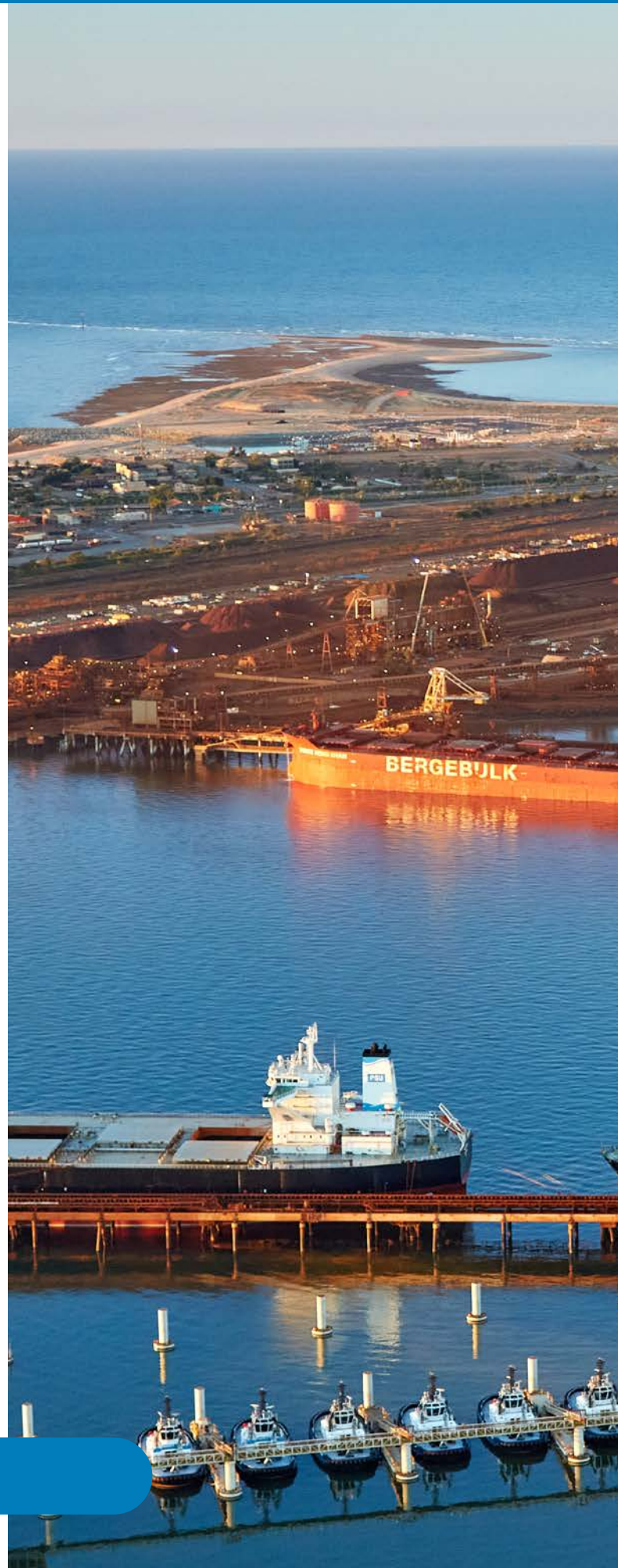
Port authorities are expected to:

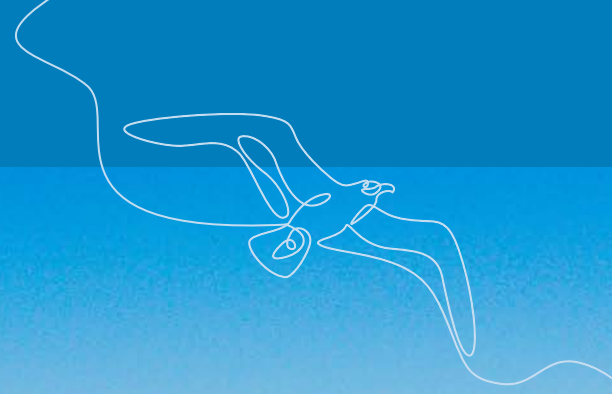
- operate commercially and be financially self-sustaining;
- contribute to the wealth of the State by fulfilling a trade facilitation role and making financial contributions to the State in the form of dividends and tax equivalent payments, without imposing monopolistic fees;
- proactively respond to commercial activities within their region, helping the State to benefit from emerging economic activity and private business investments; and
- operate within the constraints imposed by the Government from time to time in the form of capital investment programs and net debt arrangements.

Clear financial processes have been developed by the Treasurer and Department of Treasury, the Minister for Ports and Department of Transport and each port authority to help meet the above expectations and requirements.

Rate of return

From time to time, the Government sets target rates of return for each port authority. These targets are long term (5-10 year) averages. They are calculated as a return on total port assets using a deprival value methodology. Port authorities are expected to report on their annual and rolling average rates of return in the Annual Performance Statement and Statement of Expectations and to explain variances from any target set by Government in their respective annual report.





Port of Ashburton
Courtesy Pilbara Ports Authority





Relationship with Government

Port authorities operate as commercialised entities, each with a board of directors with legislative obligations to both the Minister for Ports and the Treasurer.

Minister for Ports

- The Minister for Ports (the Minister) is responsible for the [Port Authorities Act 1999](#).
- The Minister appoints a board of directors as the governing body to perform the functions, determine the policies, and control the affairs of the port authority.
- The Minister may give directions to a port authority with respect to the performance of its functions.
- Any directions given must be in writing and tabled before each House of Parliament within 14 days.
- The port authority may question a direction under section 17 of the [Statutory Corporations \(Liability of Directors\) Act 1996](#).

Treasurer

- The GTE Minister (Treasurer) is responsible for the administration of the overarching GTE legislation and issuing whole of government policy orders.
- Governance requirements that are to apply to the entire GTE cohort covered by the [Government Trading Enterprises Act 2023](#) and [Government Trading Enterprises Regulations 2023](#) are determined by the Treasurer.
- The following port authority documents require submission to the Treasurer:
 - Statement of Expectations (SoE);
 - Annual Performance Statement (APS);
 - Strategic Asset Plan (SAP – as part of annual state budget process);
 - Annual Report; and
 - Interim Report.
- Port authorities need to inform the Treasurer of significant transactions and significant initiatives.
- A significant transaction is where the amount or value of the consideration for a transaction, or the amount or value to be given or received by a port authority under or in connection with a transaction, exceeds the lesser of:
 - five per cent of the port authority's written down value of the consolidated fixed assets and investments of the port authority, as appearing in its last audited accounts; or
 - \$25 million.
- A significant initiative is course of action proposed by a port authority that:
 - is likely to be of significant public interest; or
 - is likely to have a significant social, economic, technological or industrial impact or a significant impact of another type as prescribed by regulation.



Port authorities interact with a range of government agencies, including but not limited to the following:

Department of Transport

- The Department of Transport (DoT) has no statutory functions under the [Port Authorities Act 1999](#) (PA Act) but assists the Minister for Ports in administering the PA Act.
- DoT focuses on strategic transport policy and planning and operational transport functions across a range of public and commercial transport systems that service Western Australia.
- In relation to WA ports and port authorities specifically, DoT:
 - develops state-level port strategies, legislation, reform programs, policies and guidelines;
 - facilitates the strategic relationship between port authorities and the State Government;
 - provides advice on legislation, high level policy, and strategic issues affecting WA ports;
 - works collaboratively with port authorities and other stakeholders to protect port areas from encroachment and improve supply chain infrastructure and systems;
 - assists port authorities to comply with legislative, and government policy and reporting requirements;
 - assists to facilitate port authority capital investment submissions; and
 - strategically assesses the implication of significant, longer-term port authority contracts.
- Port authorities liaise with several areas within DoT, but mainly with Freight, Ports, Aviation and Reform (FPAR) and Maritime, which deals with water safety, boat harbours and coastal erosion.

Department of Treasury

- The Treasurer's approval is required for:
 - Statement of Expectations (SoE) and Annual Performance Statement (APS);
 - dividend recommendations; and
 - acquisition of a subsidiary.
- Approval of significant transactions, significant initiatives under Part 7, Division 3 of the [Government Trading Enterprises Act 2023](#) unless approved as excluded significant transactions.

Department of Jobs, Tourism, Science and Innovation

- The Department of Jobs, Tourism, Science and Innovation (JTSI), works closely with industry, communities and government agencies to deliver significant state initiatives and coordinate major resource, industrial and infrastructure projects.
- An important role for JTSI is managing State Agreements – a legal contract between the Government and a proponent of a major project or facility.
- JTSI manages state agreements with many port facility operators in WA, both within common-user ports and single-user ports.

Department of Energy, Mines, Industry Regulation and Safety

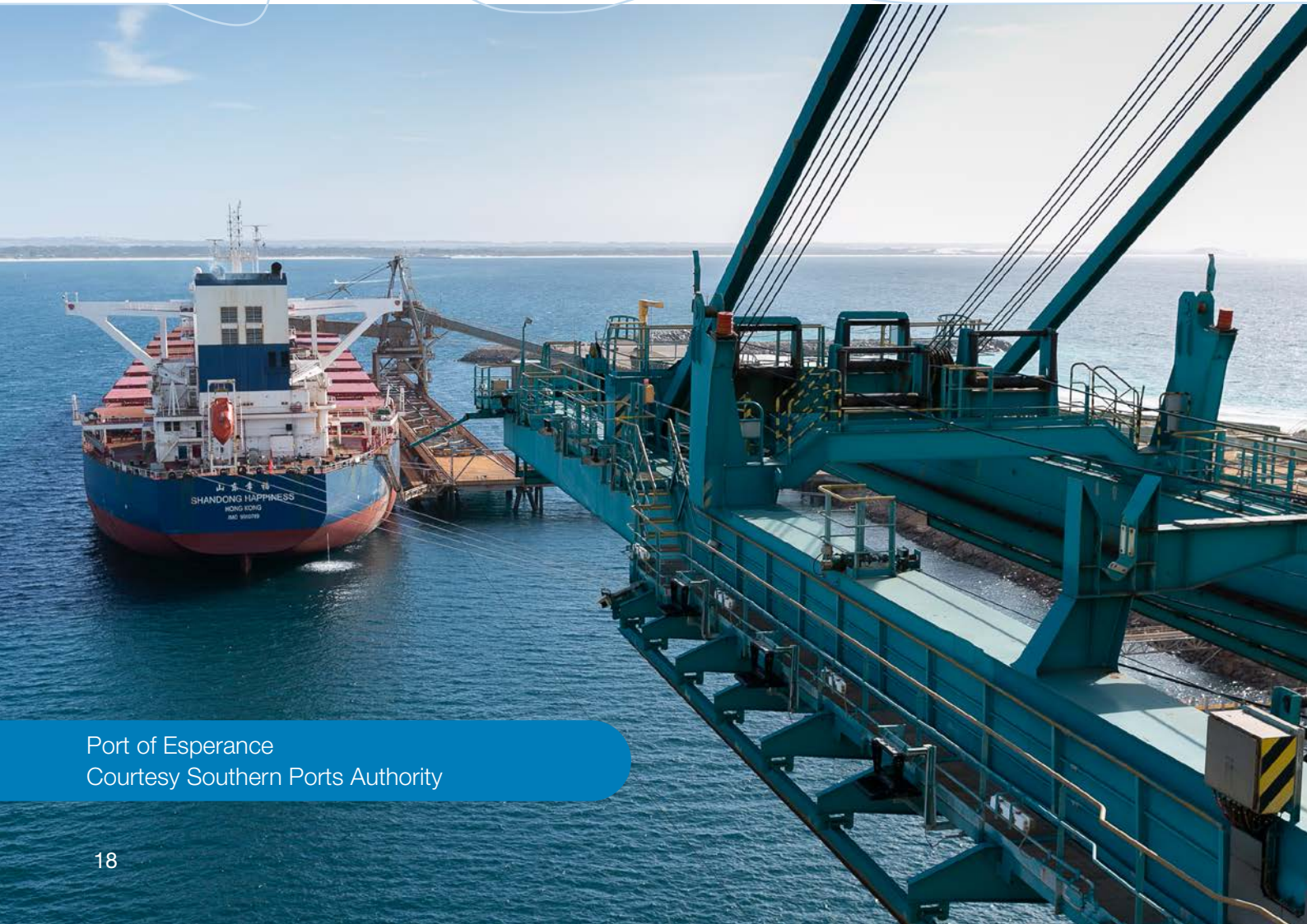
- The Department of Energy, Mines, Industry Regulation and Safety (DEMIRS) is WA's regulator for extractive industries and dangerous goods. It ensures safety, health and environmental standards are maintained.
- DEMIRS has a leading role in providing geoscientific information, which supports private investment in resources exploration and development.
- DEMIRS and DoT have developed a template administrative agreement in relation to mineral, petroleum, geothermal and pipeline title applications and proposed exploration and mining operations within port authority control port areas. This template is available to all port authorities to implement with DEMIRS.

Department of Biodiversity, Conservation and Attractions

- The Department of Biodiversity, Conservation and Attractions (DBCA) protects and conserves WA's natural environment and manages national parks, marine parks, and other reserves.
- DBCA and port authorities work together to ensure the conservation of marine parks in or around port waters.

Infrastructure Western Australia

- The role of Infrastructure Western Australia (IWA) is to provide advice and assistance to the WA Government on infrastructure matters. With a medium to long term perspective, IWA advice informs infrastructure investment decision-making and supports better outcomes for the people and economy of Western Australia.
- IWA is required to independently assess major infrastructure proposals with a capital cost of \$100 million or more, consistent with its responsibilities under the *Infrastructure Western Australia Act 2019*.
- The Major Infrastructure Proposal Assessment (MIPA) function supports and aligns with existing government requirements such as Department of Treasury's Strategic Asset Management Framework and Infrastructure Australia's Assessment Framework, while providing relevant advice to the WA Government to support informed investment decisions.



Port of Esperance
Courtesy Southern Ports Authority

Supporting information

Useful links

- [Governance of WA Government boards and committees](#)
 - [Governance e-Learning for WA Government Boards and Committees](#)
Link to self-paced e-learning for board members, particularly those joining for the first time.
 - [Governance Manual for Western Australian Government Boards and Committees](#)
Provides detailed information to assist boards and their members carry out their responsibilities.
 - [State Government Boards and Committees - Premier's Circular 2023/02](#)
Defines State Government boards and committees; specifies diversity requirements; and provides guidance on selecting and remunerating members.
 - [State Government Boards and Committees: Classification and Appointment Guidelines](#)
Department of Premier and Cabinet document with relevant information applicable to Government boards.
 - [Remuneration for Government Boards and Committees](#)
Guidelines for the payment of Government board and committee members.
 - [OnBoardWA](#)
Department of Premier and Cabinet site where people can register their interest to be considered for appointment to a Government board.
- [Cabinet Handbook](#)
Guidance: Assists ministers and government agencies in Western Australia to navigate the Cabinet process and prepare submissions.
- [Developing a Code of Conduct](#)
A guide for public sector agencies to develop and implement a code of conduct.

WA Legislation

- [Port Authorities Act 1999](#)
- [Government Trading Enterprises Act 2023](#)
- [Salaries and Allowances Act 1975](#)
- [Public Sector Management Act 1994](#)
- [Financial Management Act 2006](#)
- [Statutory Corporations \(Liability of Directors\) Act 1996](#)

Access to further WA legislation can be found at: [WA Legislation](#)



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