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Port Authorities are Government Trading Enterprises established under the *Port Authorities Act 1999*. They operate as commercial enterprises to facilitate trade within their respective ports, and report directly to the Minister for Ports.

**BOARD’S ROLE**

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 four main functions are:

- **Strategic Direction**
  Setting the overall corporate strategy to plan and function effectively in a competitive commercial environment

- **Performance Management**
  Ensuring competent and efficient management of the port authority, including sound financial management

- **Risk and Crisis Management**
  Managing risks and crises to ensure the port authority’s long-term viability

- **Compliance**
  Ensuring that operations are legal and procedures work

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<th>Board</th>
<th>Management</th>
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<tr>
<td>Sets strategy and goals, and authorises major decisions</td>
<td>Recommends strategic directions and translates these into operation</td>
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<td>Approves the business plan, budget and corporate policies</td>
<td>Manages physical, human, financial resources to achieve the port authority’s objectives</td>
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<td>Monitors and assesses the performance of the port, management and major projects; agrees on KPIs</td>
<td>Carries out day-to-day management in conformity with relevant laws, regulations, strategies and policies</td>
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<tr>
<td>Ensures the port authority’s long-term viability, sound finances, compliance and accountability systems</td>
<td>Develops, implements and updates policies and procedures; prepares budget; operates programs and organises events</td>
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<tr>
<td>Ensures effective communication with stakeholders and the CEO</td>
<td>Acts as a conduit between the Board and the port/s</td>
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<td>Oversees and monitors risk management frameworks</td>
<td>Develops, implements and manages the port authority’s risk management framework</td>
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<td>Reports to the Minister for Ports</td>
<td>Reports to the Board</td>
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DIRECTOR’S ROLE

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

- Fiduciary responsibility to apply prudent commercial principles to ensure sustained but not monopolistic profitability
- Ensure compliance with the port authority’s Statement of Corporate Intent (SCI) and Strategic Development Plans (SDP). Under whole-of-Government GTE Reforms, these plans are expected to be legislatively replaced by an Annual Performance Agreement (APA) and Statement of Expectations (SOE), respectively
- Promote the interests of the port authority and its Board
- Approve the budget, monitor expenditure and ensure the port has adequate funds
- Subject to Ministerial approval and Salary Allowance Tribunal salary parameters, appoint, remove, fix and alter the employment conditions of the CEO
- Determine employment terms and conditions for port authority staff
- Approve key policies
- Ensure the port authority and board complies with all legal requirements
- Develop and implement a risk management plan
- Ensure the board is functioning well; review the performance of the board and plan for the succession and orientation of board members

CHAIR - In addition to the above:

- Spokesperson and leading role in function of the board
- Manages meetings and ensures discussions remain focused, decisions are reached, and members observe meeting rules
- Link between the Board and the CEO, and between the Board and the Minister

DEPUTY CHAIR - In addition to the above:

- General support to the Chair
- Substitute for Chair, as required
What do you need to know?

Every board member should inform themselves about the port authority and each port it controls, including:

- Nature of port authority’s business
- Policies
- Long term issues
- Strategic direction & objectives
- Board numbers & expertise
- Compliance & audit responsibilities
- Internal control systems
- Port financial arrangements
- Level of authority delegated to management
- Short term issues
- Products & services offered

COMMITMENT

- Allow adequate time to read board papers thoroughly.
- Be prepared to contribute to discussions and ask questions in 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 sector in which the port is operating.
- Keep up-to-date with port operations, if necessary conducting 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.
- Maintain good governance awareness and qualifications including, Australian Institute of Company Directors accreditation and training (or equivalent).

Further information about Good Governance for WA Boards can be found on the Public Sector Commission website: https://publicsector.wa.gov.au/public-administration/good-governance-wa-boards-and-committees
APPOINTMENT PROCESS
The Minister for Ports appoints board members for a specified term of up to three years.

The Department of Transport (DoT) facilitates the appointment process and makes recommendations to the Minister.

DoT monitors the expiry of board appointments. There is an automatic extension of up to three months, if a re-appointment or new appointment is not made by the expiry date.

REMUNERATION
The Minister for Ports approves director fees from time to time. Members are typically entitled to additional fees for major committees (maximum of 3 major committees at any one port authority).

DoT advises the port authority CEOs of director fees each year.

If fees are indexed (e.g. by CPI) then, in the event the Australian Bureau of Statistics reports a negative change in the annual movement of CPI, the Directors’ fees and rates will remain unchanged until the next annual assessment.

Websites
- Department of Transport: www.transport.wa.gov.au
- Ports Australia: www.portsaustralia.com.au
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 Western Australia’s five port authorities.
- The Minister for Ports is responsible for the PA Act.
- The Department of Transport assists the Minister to administer the PA Act.
- Sections 7-13 deal with port authority boards.
- Section 30 sets out the functions of a port authority, including the facilitation of trade.
- 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.

You can access the Port Authorities Act 1999 here:
Reading legislation can be a bit daunting. An outline of Port Authorities Act 1999 and its contents is provided in the table below.

**SHORTCUTS**
Part 2, Division 2 – Boards of Directors
Part 4, Division 1 – Functions and Powers

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|      | • Board – role, constitution, remuneration, conflict of duties, committees  
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| 3    | Port areas and property |
| 4    | Functions and powers:  
|      | • Section 30 Functions  
|      | • Section 31 Act at their discretion  
|      | • Section 32 Control of port  
|      | • Section 33-34 Duty  
|      | • Section 35 General powers  
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|      | • Section 40-43 Transactions requiring Ministerial approval  
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|      | • Section 58-66 Statement of corporate intent  
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|      | • Section 74-77 Consultation with Minister and provision of information  
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Schedules

(1) Port authority names and allocated ports
(2) Board constitutions and proceedings
(3) CEO and staff duties
(4) Subsidiaries
(5) Financial administration and audit
(6) Pilbara Ports Authority provisions
(7) Regulations
(8) Transitional provisions
(9) Additional ports
RELATIONSHIP WITH GOVERNMENT

Port authorities operate as commercialised entities with boards of directors that report to the Minister for Ports.

MINISTER FOR PORTS

- The Minister for Ports (the Minister) is responsible for the PA Act.
- 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.

Port authorities interact with a range of Government agencies, including:

- Department of Transport
- Department of Treasury
- Department of Biodiversity, Conservation and Attractions
- Department of Finance
- Department of Jobs, Tourism, Science and Innovation
- Department of Mines, Industry Regulation and Safety
- Department of Planning, Lands and Heritage
- Department of Primary Industries and Regional Development
- Department of Water and Environmental Regulation
- Regional Development Commissions
The roles of the most frequently contacted agencies are outlined below.

### DEPARTMENT OF TRANSPORT

- The Department of Transport has no statutory functions under the PA Act, but assists the Minister for Ports in administering the PA Act.
- DoT focuses on operational transport functions, and strategic transport policy and planning across a range of public and commercial transport systems that service Western Australia.
- In relation to WA ports and port authorities, 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
- Port authorities liaise with a number of areas within DoT; however, the central point of contact is the Freight, Ports, Aviation and Reform directorate.

### DEPARTMENT OF TREASURY

- The Treasurer’s concurrence is required for:
  - Statements of Corporate Intent (SCIs) and Strategic Development Plans (SDPs)
  - Dividend recommendations
  - High-value transactions (PA Act s 40)
  - Acquisition of a subsidiary
- Treasury analysts contact port authorities as needed.
- Port authorities, DoT, and Treasury typically work together on Cabinet and ERC submissions.

### 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 MINES, INDUSTRY REGULATION AND SAFETY

- The Department of Mines, Industry Regulation and Safety (DMIRS) is WA’s regulator for extractive industries and dangerous goods. It ensures safety, health and environmental standards are maintained.
- DMIRS has a leading role in providing geoscientific information, which supports private investment in resources exploration and development.
- DMIRS 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 DMIRS.

### 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.
STATEMENTS OF CORPORATE INTENT
AND STRATEGIC DEVELOPMENT PLANS

STATEMENTS OF CORPORATE INTENT
The requirements for a Statement of Corporate Intent (SCI) are outlined in Part 5 of the Port Authorities Act 1999 (PA Act).

- Annual submissions must be made by 15 January
- Must be consistent with the Strategic Development Plan (SDP)
- Covers a period of 12 months (first financial year of the SDP)
- The Minister for Port’s approval and Treasurer’s concurrence are required
- The Minister and/or the Treasurer can request a port authority make amendments to its SDP; however any Ministerial direction must be tabled in Parliament within 14 days.; and
- Once approved, the SCI is required to be tabled by the Minister in Parliament (by 30 June).

Section 60(2) of the PA Act provides the details of matters to be included in the SCI:

- an outline of the port authority’s objectives;
- an outline of major planned achievements;
- proposed arrangements to facilitate trade;
- estimates of operating revenue and expenditure;
- an outline of capital expenditure and borrowing requirements;
- proposed pricing arrangements;
- proposed provisions for dividends;
- the performance targets and other measures by which performances may be judged and related to objectives;
- accounting policies that apply to the preparation of accounts;
- the type of information to be given to the Minister, including information to be given in half yearly and annual reports;
- the nature and extent of community service obligations that are to be performed;
- the costings of, funding for, or other arrangements and adjustments relating to, community service obligations;
- the ways in which, and the extent to which, compensation will be made for performing community service obligations; and
- such other matters as may be agreed on by the Minister and the board of the port authority.
STRATEGIC DEVELOPMENT PLANS

- The requirements for a Strategic Development Plan (SDP) are outlined in Part 5 of the PA Act.
- Annual submission must be made by 15 January.
- Covers a five year forward estimates period.
- Minister’s approval and Treasurer’s concurrence are required.
- The Minister and/or the Treasurer can request a port authority make amendments to its SDP.
- SDPs are confidential and are not tabled in Parliament.

Section 51(1) of the PA Act provides the details of matters to be included in the SDP:
- the port authority’s medium to long term objectives (including economic and financial objectives) and operational targets;
- how those objectives and targets will be achieved; and
- an environmental management plan for each port.

Section 51(2) of the PA Act says that, in preparing a SDP, the board is to consider:
- competitive strategies;
- pricing;
- service efficiency and effectiveness;
- strategies for land use and infrastructure maintenance;
- financial requirements;
- capital expenditure;
- investment strategy;
- customer service arrangements;
- relevant government policy;
- personnel requirements;
- trade projections;
- trade facilitation;
- the environmental management of the port; and
- any other matters that the Minister and the board agree should be considered.

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 Consolidated Fund 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
- are subject to constraints imposed by 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, Government sets target rates of return for each port authority assets. 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 Statements of Corporate Intent and Strategic Development Plans, and to explain variances from any target set by Government.
NEW INVESTMENTS

To ensure maximum benefits are achieved from limited funding resources, financial controls introduced by Government include:

- annual submission of 10-year Capital Investment Plans by port authorities (Strategic Asset Plans)
- prioritisation of investment projects across Government and at Ministerial portfolio level; and
- Government funding approval for all port authority capital works projects, including internally financed projects (because expenditure of internal cash flows result in increased total Government net debt).

Funding Approval Process

Port authority submits a brief project detail for all major capital works projects, to seek Ministerial support;

This is followed by the port authority submitting a comprehensive business case to the Departments of Transport and Treasury, to enable detailed officer-level discussions prior to formal budget submission;

The final port authority budget submission will contain a summary of each project proposal. Department of Transport coordinates and compiles a single Transport Portfolio and port authorities budget submission for Ministerial endorsement and submission to Treasury;

Bilateral meetings between responsible Ministers and the Expenditure Review Committee (ERC) are held in the lead up to the annual State Budget; and

Approved projects are published in the annual State Budget.

Prioritisation

Projects are assessed against several factors, including:

- Alignment with Government policy and commitments
- Net project benefits, such as:
  - return on investment
  - economic benefits
  - employment benefits
- Achievability, in the context of project risk and the overall State budget position.
SEEKING CAPITAL INVESTMENT FUNDING: GUIDE FOR PORTS AUTHORITIES

START: Investment Proposal

Is it a variation to an existing project?

YES → Is it within the borrowing limit and approved capital expenditure limit and was not successful at Mid-Year Review?

NO → Mid-Year Review process*

YES → Obtain Port Authority’s Board approval

NO → Obtain Treasurer’s approval (limit <$2m. If >$2m progress as NO)

YES → Report on progress of project to Minister for Ports via Half-Yearly Report

NO → Approved by EERC

YES → Update SIMS

NO → Cabinet Submission approved by Minister for Ports

NO → Approved by Cabinet / EERC

NO → Hold until next year’s Budget Submission

NO → Update forthcoming SCI/SDP

YES → Approved by EERC

NO → Approved by Cabinet / EERC

NO → Cabinet Submission approved by Minister for Ports

NO → Obtain port authority’s board approval

NO → Develop / update business cases for projects >$1m and accompanying Short Forms*

NO → Submit to DoT for inclusion in the annual Transport Portfolio Capital Works State Budget Submission in accordance with Annual Calendar

NO → Approved by Ports Authority Board

NO → Obtain Treasurer’s approval (limit <$2m. If >$2m progress as NO)

Yes → Cabinet Submission approved by Minister for Ports

NO → Mid-Year Review process*

YES → Obtain Port Authority’s Board approval

NO → Obtain Treasurer’s approval (limit <$2m. If >$2m progress as NO)

YES → Report on progress of project to Minister for Ports via Half-Yearly Report

NO → Approved by EERC

YES → Update SIMS

NO → Cabinet Submission approved by Minister for Ports

NO → Approved by Cabinet / EERC

NO → Hold until next year’s Budget Submission

NO → Update forthcoming SCI/SDP

YES → Approved by EERC

NO → Approved by Cabinet / EERC

NO → Cabinet Submission approved by Minister for Ports

NO → Obtain port authority’s board approval

NO → Develop / update business cases for projects >$1m and accompanying Short Forms*

NO → Submit to DoT for inclusion in the annual Transport Portfolio Capital Works State Budget Submission in accordance with Annual Calendar

NO → Approved by Ports Authority Board

NO → Obtain Treasurer’s approval (limit <$2m. If >$2m progress as NO)

See the Annual Calendar, developed by DoT, for further information on Mid-Year Review, Capital Works and Annual Budget / Budget Adjustment submission timelines.

* Using the Short Form templates, Business Case templates and guidelines as provided by DoT

For further assistance contact ports@transport.wa.gov.au
FUNDAMENTALS

- Port authorities maintain Directors’ and Officers’ Insurance.
- This is renewed annually with RiskCover (the State Government’s self-insurance scheme) and is subject to Ministerial approval under section 15 of the Statutory Corporations (Liability of Directors) Act 1996 (SCLD Act).
- It covers directors for seven years after the end of their appointed term.
- The policy insures a director or former director against liability incurred by him or her under sections 13 and 14 of the SCLD Act. These sections outline compensation requirements and provide for liability arising from conduct involving a breach of the duties outlined under sections 9 to 12, other than a wilful act:
  - s 9   Duty to act honestly
  - s 10  Duty to exercise reasonable care and diligence
  - s 11  Duty not to make improper use of information
  - s 12  Duty not to make improper use of position

**Director Indemnity by the port authority**

Port authorities do not have the legislative power to provide indemnity to Directors.