



**SOUTHERN PORTS**

ALBANY BUNBURY ESPERANCE

**MANAGEMENT STANDARD  
STEVEDORE LICENSING  
AND RING FENCING**

**DOCUMENT CONTROL**

Version Number	Description	Reviewed by	Approved by	Revision Date	Issue Date
01	Policy	CEO	Board on 21/02/2019	06/02/2019	13/06/2019
02	Revised and converted to a Management Standard	Corporate Governance Officer	CEO	19/01/2022	01/02/2022

**AUDIT**

This Management Standard shall be reviewed / revised:

- Where a Risk Assessment / Audit identifies a need to review;
- Legislative changes impacting this Management Standard;
- Following a significant incident involving this Management Standard; or
- At least every 2 years.

**TABLE OF CONTENTS**

DOCUMENT CONTROL ..... 2

AUDIT ..... 2

DEFINITIONS ..... 3

1. OBJECTIVE ..... 4

2. SCOPE..... 4

3. EFFECTIVE DATE ..... 4

4. STATEMENT..... 4

5. RESPONSIBILITIES..... 5

6. REVIEW OF MANAGEMENT STANDARD..... 5

7. PROCEDURE ..... 5

8. RELATED LEGISLATION AND DOCUMENTS..... 5

9. ANNEXURE ..... 5

**DEFINITIONS**

None

### 1. OBJECTIVE

Southern Ports takes its obligation to comply with those laws and regulations relevant to its business seriously (including its obligations under competition law as set out in the *Competition and Consumer Act 2010 (Cth)*).

This Management Standard helps to ensure that Southern Ports' conduct does not substantially lessen competition in the market for stevedoring services at the Port of Esperance. It does this by outlining Southern Ports':

- a) approach to exercising its statutory power to issue and monitor licences for the provision of stevedoring services (**Licensing Power**); and
- b) commitment to measures to assist in the appropriate separation of the exercise of its Licensing Power, and to itself provide stevedoring services, at Port of Esperance.

In the event that Southern Ports sought to provide stevedoring services at the Port of Albany or Port or Bunbury, a similar Management Standard would be introduced at those ports.

### 2. SCOPE

This Management Standard applies to all Southern Ports staff.

### 3. EFFECTIVE DATE

This Management Standard is effective from 1 February 2022.

### 4. STATEMENT

Southern Ports is committed to:

- its conduct not substantially lessening competition in the market for stevedoring services at the Port of Esperance by way of the following;
  - generally speaking (that is, without fettering the proper exercise of its statutory discretions):
    - issuing a stevedoring services licence to any appropriately qualified and experienced stevedore services provider that a licensed Port of Esperance user may wish to use for its product and/or that may wish to offer its stevedoring services to licensed Port of Esperance users; and
    - monitoring the provision of stevedoring services to licensed Port of Esperance users in a consistent manner, whether provided by a third party stevedore services provider or by itself; and
  - implementing and maintaining measures to assist in the appropriate separation of the exercise of its Licensing Power, and to itself providing stevedoring services, at Port of Esperance;
- complying with all applicable legislation;
- making this Management Standard and related Procedure available to all employees of Southern Ports and interested third parties, including third party stevedoring services providers;
- periodically reviewing this Management Standard; and
- ensuring this Management Standard and procedure, communicated and implemented.

### 5. RESPONSIBILITIES

The Chief Executive Officer, members of the Executive Leadership Team and delegated staff members are responsible for ensuring Southern Ports' compliance with this Management Standard. The Chief Executive Officer is responsible for ensuring this Management Standard is effectively communicated to all Southern Ports staff.

### 6. REVIEW OF MANAGEMENT STANDARD

A review of the effectiveness and relevance of this Management Standard will be conducted every second year on the anniversary of the Issue Date (unless there is a major legislative change or other material matter that necessitates an earlier review in the opinion of the Chief Executive Officer or a member of the Executive Leadership Team).

### 7. PROCEDURE

Various procedures have been implemented by Southern Ports to facilitate the implementation of this Management Standard. Further details are contained in the Stevedoring Licensing and Ring Fencing Procedure in Annexure A.

### 8. RELATED LEGISLATION AND DOCUMENTS

The applying legislation and documents include, but are not limited to the following:

- *Port Authorities Act 1999 (WA)*;
- *Port Authorities Regulations 2001 (WA)*; and
- *Competition and Consumer Act 2010 (Cth)*.

### 9. ANNEXURE

Annexure A – Stevedoring Licensing and Ring Fencing Procedure

**ANNEXURE A – STEVEDORE LICENSING AND RING FENCING PROCEDURE**



**SOUTHERN PORTS**

ALBANY BUNBURY ESPERANCE

**STEVEDORE LICENSING AND  
RING FENCING PROCEDURE**

## DOCUMENT CONTROL

Version Number	Description	Reviewed by	Approved by	Revision Date	Issue Date
01	New document	CEO	Policy approved by Board 21/02/2019	06/02/2019	13/06/2019
02	Revised document to align to new Management Standard	COO, CCO	CEO	19/01/2022	01/02/2022

## REVIEW AND AUDIT

A review of the effectiveness and relevance of the Procedure will be conducted every second year on the anniversary of the Issue Date (unless there is a major legislative change or other material matter that necessitates an earlier review in the opinion of the CEO or the CCO). The Procedure will be audited as part of Southern Ports' regular internal audit programme.



## TABLE OF CONTENTS

DOCUMENT CONTROL .....	2
REVIEW AND AUDIT .....	2
DEFINITIONS .....	4
1. OBJECTIVE .....	5
2. SCOPE .....	5
3. RESPONSIBILITIES .....	5
4. LEGISLATIVE BACKGROUND .....	5
5. STEVEDORE LICENCE ISSUANCE PROCEDURE .....	6
6. RING FENCING PROCEDURE.....	6
6.1. Separation of Roles and Functions.....	6
6.1.1. Stevedoring Licensing and Monitoring.....	6
6.1.2. Stevedoring Services Undertaken by Southern Ports .....	7
6.1.3. Managing Conflicts of Interest and Confidentiality .....	7
6.2. Procedure for Grant of Stevedoring Licences (and Amendment).....	8
6.3. Use of Information.....	8
6.4. Disputes .....	8
7. COMMUNICATION OF PROCEDURE.....	8
8. ENFORCEMENT OF PROCEDURE.....	9
9. RELATED LEGISLATION AND DOCUMENTS .....	9

## DEFINITIONS

<b>Board</b>	has the meaning given to the term “Board” under section 3 of the Act.
<b>CCO</b>	means the Chief Commercial Officer of Southern Ports as appointed from time to time
<b>CEO</b>	means the Chief Executive Officer of Southern Ports appointed by the Board in accordance with section 14(2) of the Act and approved by the responsible Minister in accordance with section 14(3) of the Act, from time to time.
<b>COO</b>	means the Chief Operating Officer of Southern Ports as appointed from time to time
<b>ELT</b>	means the Southern Ports Executive Leadership Team as appointed from time to time.
<b>Port Act</b>	means the Port Authorities Act 1999 (WA).
<b>Port Regulations</b>	means the Port Authorities Regulations 2001 (WA).
<b>Southern Ports</b>	means Southern Ports Authority ABN 30 044 341 250.

## 1. OBJECTIVE

This Stevedoring Licensing and Ring Fencing Procedure (**Procedure**) assists Southern Ports in ensuring that its conduct does not substantially lessen competition in the market for stevedoring services at Port of Esperance in accordance with Southern Ports' Stevedoring Ring Fencing and Licensing Management Standard.

It does this by providing:

- (a) Southern Ports' approach to exercising its statutory power to issue and monitor licences for the provision of stevedoring services (**Licensing Power**); and
- (b) the measures to be implemented by Southern Ports to provide the appropriate separation of the exercise of its Licensing Power, and to itself provide stevedoring services, at Port of Esperance.

In the event that Southern Ports sought to provide stevedoring services itself at Port of Albany or Port of Bunbury, a similar procedure would apply.

## 2. SCOPE

This Procedure applies to all Southern Ports staff.

## 3. RESPONSIBILITIES

The CEO, members of the ELT, and delegated staff members are responsible for ensuring Southern Ports' compliance with this Procedure. The CEO is responsible for ensuring it is effectively communicated to all Southern Ports staff.

## 4. LEGISLATIVE BACKGROUND

### ***Consumer & Competition Act 2010 (Cth)***

Section 46 of the *Consumer & Competition Act 2010 (Cth)* was amended in late 2017, and now states that a corporation that has a substantial degree of power in a market must not engage in conduct that has the purpose, or has or is likely to have the effect, of substantially lessening competition in a market.

### ***Port Authorities Act and Regulations***

Southern Ports is a body corporate set up under the Port Act, with the Minister for Ports as its sole shareholder. Under section 30(1) of the Port Act, it is responsible for controlling activities in or in connection with the operation of, and the safe and efficient operation of, Port of Esperance. It is accordingly given exclusive control of Port of Esperance by section 32 of the Port Act. For the purpose of performing its functions, the Port Act empowers Southern Ports to provide port services (including stevedoring activities) or arrange for port services to be provided.

Under Regulation 64E of the Port Regulations, a person must not provide (amongst other services) a stevedoring service at Port of Esperance except:

- Under the authority of a service provider's licence issued by Southern Ports; and
- In accordance with any conditions or restrictions to which the licence is subject.

Regulation 64F of the Port Regulations then sets out:

- (a) the procedure for a prospective stevedore to apply for a licence (which involves the provision of an application form prescribed by Southern Ports from time to time, and an application fee);
- (b) confirmation that Southern Ports "may" issue a stevedoring licence at Port of Esperance if it is satisfied the applicant has "appropriate qualifications and experience" to provide stevedoring services at Port of Esperance;

## Procedure - ALL - Stevedoring Licensing and Ring Fencing

- (c) authority for Southern Ports to issue a licence (for a period set out in the licence) subject to payment of an annual licence fee (not exceeding \$10,000) and subject to any conditions or restrictions that Southern Ports imposes;
- (d) authority for Southern Ports to suspend or cancel stevedoring licences that it has issued if it considers that a condition or restriction under a service provider's licence has been breached.

The concept of segregating the dual functions of Southern Ports as a stevedore and as a statutory licensing authority under the Port Regulations is not specifically addressed in the Port Act or Port Regulations.

However, the need for segregation of duties (via a ring fencing process), as further detailed in this Procedure, has been identified as an appropriate Procedure for Southern Ports to adopt given the existence of these dual functions and to help Southern Ports ensure that its conduct does not have the effect of substantially lessening competition in the market for stevedoring services at Port of Esperance.

### 5. STEVEDORE LICENCE ISSUANCE PROCEDURE

In exercising its statutory licensing powers under Regulation 64E & 64F of the Port Regulations, Southern Ports is to confirm that any licensed stevedore has the appropriate qualifications and experience to safely provide stevedoring services at Port of Esperance. Southern Ports also needs to assure itself that the stevedore will be able to comply with all operational, safety and environmental requirements applicable to the provision of such services at that Port.

In general terms, Southern Ports will licence any stevedoring applicant who can meet these requirements.

In considering a stevedoring licensing application, Southern Ports will not consider the commercial impact on its own stevedoring services offered at Port of Esperance in its assessment.

### 6. RING FENCING PROCEDURE

To ensure the separation of Southern Ports' dual functions (as licensor and services provider) at Port of Esperance, the practices outlined below will apply.

#### 6.1. Separation of Roles and Functions

##### 6.1.1. Stevedoring Licensing and Monitoring

The intent is to ensure that all Southern Ports staff involved in the stevedoring licensing and monitoring functions from time to time will not be involved in the stevedoring services function at Port of Esperance. As such:

- (a) The stevedoring licensing function for Port of Esperance is managed by the role of Commercial Manager – Licensing or in that person's absence by the Port Services Licensing Officer.
- (b) As at the date of this Procedure:
  - i. the Commercial Manager – Licensing also holds the role of Commercial Manager – Trade (who focuses on acting as the commercial business partner for the Port of Bunbury); and
  - ii. the Port Services Licensing Office also holds the role of Commercial Specialist based at Port of Bunbury (who focuses on the procurement of goods and services for Southern Ports),

however, these roles do not have any involvement in the negotiation of commercial arrangements affecting stevedoring services undertaken by Southern Ports at Port of Esperance.

- (c) The task of monitoring stevedores for ongoing compliance with their licence terms at Port of Esperance is managed by the Port of Esperance's Client Liaison Officer, or in that person's absence by the Regional Manager Esperance. The Client Liaison Manager reports to the Regional Manager Esperance.

### 6.1.2. Stevedoring Services Undertaken by Southern Ports

- (a) The intent is that any staff involved in the stevedoring services function at Port of Esperance from time to time will not be involved in the stevedoring licensing and monitoring functions.
- (b) Potential new stevedoring work to be undertaken by Southern Ports will be managed by the Port of Esperance's Operations and Maintenance Manager, or in that person's absence by the Port of Esperance's Operations Superintendent. The Operations and Maintenance Manager reports to the Regional Manager Esperance.
- (c) To the extent that the Operations and Maintenance Manager requires commercial support in relation to proposed stevedoring service arrangements, that support is provided by the separate Commercial Manager – Property and Major Procurement whom also acts as the commercial business partner for Port of Esperance.
- (d) The task of monitoring Southern Ports' stevedores to ensure their operations are conducted to similar operational standards as external stevedores (having regard to Southern Ports internal policies and procedures) is managed by the role of Port of Esperance's Client Liaison Officer.
- (e) It is possible that the Regional Manager Esperance and the Client Liaison Officer will be asked about the general options for stevedoring services at Port of Esperance during the course of their roles. If so, the Regional Manager Esperance and Client Liaison Officer will simply indicate to port users that the licensed stevedores at the port can be found on the Southern Ports website (where an up to date list of stevedore contact details will be maintained).

### 6.1.3. Managing Conflicts of Interest and Confidentiality

All Southern Ports staff involved in the stevedoring licencing and monitoring functions or the stevedoring services function at Port of Esperance must maintain the confidential separation of information between the two functions and must avoid conflicts of interest in respect of stevedoring and licencing. In particular:

- (a) the Regional Manager Esperance must avoid conflicts of interest in respect of stevedoring and licencing. If an actual or perceived conflict of interest arises, the Regional Manager Esperance will declare that conflict of interest and request that the COO at first instance, or in that persons absence by the Regional Manager Bunbury temporarily, for the purposes of the conflict of interest, step into the role of Regional Manager Esperance to appropriately manage the conflict of interest;
- (b) the CCO must avoid conflicts of interest in respect of stevedoring and licencing. If an actual or perceived conflict of interest arises, the CCO will declare that conflict of interest and request that the CEO, for the purposes of the conflict of interest, step into the role of CCO to appropriately manage the conflict of interest; and
- (c) the Commercial Manager Licensing and the Commercial Manager – Property and Major Procurement are both located in the West Perth office. The Commercial Manager Licensing and the Commercial Manager – Property and Major Procurement must ensure the confidential separation of information is maintained in respect to their respective stevedoring functions by ensuring appropriate physical separation occurs when undertaking their respective functional activities.

### 6.2. Procedure for Grant of Stevedoring Licences (and Amendment)

- (a) Grant Step 1 - Any stevedore seeking to be licensed to work at Port of Esperance must apply for a stevedoring licence. The Commercial Manager – Licensing will handle the application process and confirm to the stevedore the precise information required to consider its application. The information requested will be tailored having regard to the particular products the stevedore wishes to be licensed to handle and will particularly focus on ensuring the stevedore has appropriate experience, systems and practices to handle the relevant products safely and in accordance with environmental standards and usual port operational standards.
- (b) Grant Step 2 - Southern Ports (ie. the Commercial Manager - Licensing, the Client Liaison Manager, and any other relevant Southern Ports operational functional areas such as Safety and Environment) will review this information to ensure safety, environmental, regulatory and operational requirements can be met and, if in order and subject to its governance delegations (which may include Board approval in some instances), will then seek to proceed to document the stevedore's licence for the relevant products.
- (c) Amendment - A stevedore must seek Southern Ports consent (and amendment to its stevedoring licence) if it wishes to handle new products for which it does not have an approved management plan. Applications will again be handled by the Commercial Manager - Licensing (and assessed by that person with the support of the Client Liaison Manager and relevant Southern Ports functional areas) to ensure safety, environmental and port operational standards can be met. New or updated management plans for the new product will need to be agreed and added to the licence. Southern Ports will maintain an internal register to track which products each licensed stevedore is licensed to handle.
- (d) Details of licensed stevedores will be maintained and made publicly available by Southern Ports on its website.

### 6.3. Use of Information

- (a) Southern Ports only uses information provided to it by a stevedoring services provider for the purpose for which it was provided, or as specifically authorised by the stevedoring services provider.
- (b) Information created, obtained or processed by Southern Ports in respect of stevedoring licence applications is only used for that express purpose, and the Commercial Manager – Licensing and the Client Liaison Manager will ensure that access to any material retained is appropriately restricted (such that it cannot be accessed by the Commercial Manager – Property and Major Procurement responsible for Port of Esperance commercial arrangements or other personnel involved in stevedoring service provision at Port of Esperance by Southern Ports).

### 6.4. Disputes

Disputes between Southern Ports and a licensed stevedore arising out of or in relation to its stevedoring licence (including without limitation the potential need for suspension or cancellation of its licence) will be governed by the dispute resolution procedures under the respective stevedoring licence with the primary representative for Southern Ports to be the Commercial Manager – Licensing (with appropriate support from the Client Liaison Manager) in the first instance (and thereafter as agreed in a stevedoring licence).

## 7. COMMUNICATION OF PROCEDURE

This Procedure will be communicated to all Southern Ports staff by email and in staff meetings, in port user meetings, and will be available on an ongoing basis on My Ports (Southern Ports intranet).

This Procedure is also available to (prospective) stevedoring service providers at Port of Esperance on request.

All personnel with accountabilities under this Procedure will be trained on its content.

### **8. ENFORCEMENT OF PROCEDURE**

The CEO, COO, CCO, and delegated staff members are responsible for ensuring Southern Ports' compliance with this Procedure. In the event of any breach of it, the COO will take such initial steps as are considered by Southern Ports to be appropriate (in conjunction with Human Resources and Legal functions if necessary) to ensure:

- (a) any potential adverse consequences are mitigated to the satisfaction of affected parties as far as practicable; and/or
- (b) such breach is not repeated.

### **9. RELATED LEGISLATION AND DOCUMENTS**

The applying legislation and documents include, but are not limited to the following:

- *Port Authorities Act 1999 (WA)*
- *Port Authorities Regulations 2001 (WA)*
- *Consumer & Competition Act 2010 (Cth)*