



## AMSA BOARD CHARTER

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# AMSA BOARD CHARTER ATTACHMENTS

## **Attachment 1** Resource Management Guides – Department of Finance

- (a) RMG 200 –Duties of Accountable Authorities

[Duties of Accountable Authorities \(RMG 200\)](#)

- (b) RMG 201 – Preventing, detecting and dealing with fraud

[Preventing, detecting and dealing with fraud \(RMG 201\)](#)

- (c) RMG 203 – General duties of Officials

[General duties of officials \(RMG 203\)](#)

- (d) RMG 206 – Accountable Authority Instructions

[Accountable Authority Instructions \(AAs\) - \(RMG 206\)](#)

- (e) RMG 128 – Regulator Performance

[Regulator Performance \(RMG 128\)](#)

## **Attachment 2** Operational legislation with corporate governance implications

## **Attachment 3** Legislation affecting the way AMSA conducts its functions

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## **Attachment 5** WHS Act Section 19 – Primary duty of care

- (a) WHS due diligence responsibilities
- (b) WHS due diligence – record of Board member visits.

## PURPOSE

1. This Charter sets out the roles, responsibilities of the Board of the Australian Maritime Safety Authority.
2. In fulfilling its responsibilities and exercising its powers, the Board at all times recognises its overriding responsibility to act honestly, fairly, diligently and in accordance with the law.

## GOVERNANCE STRUCTURE

### Legislation

3. The Australian Maritime Safety Authority (AMSA) was established by the *Australian Maritime Safety Authority Act* (1990) (the AMSA Act) as a body corporate [s. 5]. Under the direction of the Minister identified in the Administrative Arrangements Order, AMSA is to conduct its functions in order to meet the objects of the AMSA Act. Roles and responsibilities are assigned to the Minister and to AMSA's members (the Board) by the AMSA Act.
4. AMSA is a 'corporate Commonwealth entity' for the purposes of the *Public Governance, Performance and Accountability Act* (2013) (PGPA Act). The PGPA has the following objects in relation to all Commonwealth entities:
  - to establish a coherent system of governance and accountability
  - to establish a performance framework
  - to require:
    - high standards of governance, performance and accountability
    - provision of meaningful information to Parliament and the public
    - proper use and management of public resources
    - cooperative work with others to achieve common objectives.
5. The AMSA Act does not refer to the term 'Board', but rather establishes that the Authority (AMSA) consists of appointed 'members' (including but not limited to the Chairperson and Deputy Chairperson and Chief Executive Officer). The members have specific governance obligations under the AMSA Act. For the purposes of this document 'members' collectively will be referred to as the 'Board' to distinguish their roles, powers and duties from those of AMSA in general.
6. Under the PGPA Act the governing body of a Commonwealth entity (the AMSA 'Board') is determined to be the 'accountable authority' [s. 12] and both the members and the staff of the Authority (AMSA) are 'Officials' [s. 13].
7. There is no criminal or civil liability arising as a result of failure to perform the duties of either an accountable authority or an official under the PGPA Act.

## GENERAL ROLES

### Minister

8. The Minister is the representative of AMSA's owners (the Australian people, through the elected Parliament and the commissioned Government of the day). AMSA was established because it was perceived by the Parliament (at the behest of the Government) to be in the public interest for certain functions to be conducted by a statutory body. It is the role of the Minister to:
- assess whether AMSA is performing the functions for which it was established to a level that meets the public interest
  - propose to Parliament any changes to the range of functions that it would be in the public interest for AMSA to perform
  - ensure that AMSA discharges its functions in a manner consistent with the wider policies and objectives of the Parliament and the Government.

### Board

9. The Minister appoints the Board to represent him/her (and thus the public) in the running of AMSA.<sup>1</sup> It is the role of the Board to:
- determine strategic objectives:
    - determining the overall manner in which the various functions entrusted to AMSA should be performed in order to maximise public benefit
    - providing leadership through strategic thinking to management to achieve the strategic objectives
    - reviewing and agreeing the corporate plan; annual report and annual budget
    - enunciating for the organisation the Board's understanding of the expectations of the Minister within the context of technological change and the external environment
  - take responsibility for AMSA's resources:
    - monitoring the major components in AMSA's profit and loss account and balance sheet
    - monitoring the achievement of the corporate plan and annual budget outcomes
    - monitoring expenditure on major capital works
  - ensure good governance:
    - complying with the *Public Governance, Performance and Accountability Act 2013* and the *Australian Maritime Safety Authority Act 1990*
  - promote careful, diligent and ethical conduct throughout the organisation

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<sup>1</sup> Unlike a corporation, which is created as an entity quite separate from the act of appointing Directors (though both are the prerogative of the shareholders), in a formal sense, AMSA consists of the members who constitute its 'Board'. Despite this legislative distinction, it is convenient, for the purposes of corporate governance, to regard the members of AMSA as akin to the Board of a corporation.

- take responsibility for recommending to the Minister the person to be appointed as Chief Executive Officer.
10. As a governing body, the Board is independent from the management of AMSA. Structures and procedures are in place to ensure that occurs.

## Chairperson

11. The Chairperson is appointed by the Minister. He/she is responsible for ensuring that the Board is well informed and effective. The Chairperson is responsible for ensuring that the meetings are conducted competently and ethically and to provide leadership in formulating the strategic direction for the Board. It is the role of the Chairperson to:
- preside over the Board and take responsibility for the conduct of the Board meetings
  - liaise with the Chief Executive Officer on the interface between the Board and management
  - grant leave to a Board member (other than the Chief Executive Officer) to be absent from a Board meeting or Board meetings.

## Management

12. The Chief Executive Officer is appointed by the Minister on the recommendation of the Board and, under the Board, manages AMSA. It is the role of management (the Chief Executive Officer and his/her senior staff) to:
- manage resources to produce outcomes that achieve the strategic objectives established by the Board
  - provide prompt and regular advice to the Board on any matter relevant to the discharge of its duties.

## STATUTORY POWERS

13. All powers exercisable by the AMSA Board and staff are to be considered in the context of the general statement of the main objects<sup>2</sup> of the AMSA Act, set out in **s.2A**, and the functions<sup>3</sup> of AMSA, set out in **s.6**.

<sup>2</sup> The main objects of this Act are:

- (a) to promote maritime safety;
- (b) to protect the marine environment from:
  - (i) pollution from ships;
  - (ii) other environmental damage caused by shipping;
- (ba) to provide for a national search and rescue service; and
- (c) to promote the efficient provision of services by the Authority.

<sup>3</sup> The functions of the Authority are:

- (a) to combat pollution in the marine environment;
- (b) to provide a search and rescue service;
- (c) to provide, on request, services to the maritime industry on a commercial basis;
- (ca) to provide on request services of a maritime nature on a commercial basis, to:
  - (i) the Commonwealth, a State, the Australian Capital Territory or the Northern Territory; or
  - (ii) an authority or agency of the Commonwealth, a State or either of those Territories;
- (cb) to co-operate with the Executive Director of Transport Safety Investigation in relation to investigations under the *Transport Safety Investigation Act 2003* that relate to ships;
- (d) to perform such other functions as are conferred on it by or under any other Act;
- (e) to provide consultancy and management services relating to any of the matters referred to in this subsection;
- (f) to perform any other prescribed functions relating to any of the matters referred to in this subsection; and
- (g) to perform functions incidental to any of the previously described functions.

## Minister

14. Under the **AMSA Act**, the Minister has power to:
- give AMSA written directions as to the performance of its functions (except those directions as to the performance of functions conferred on AMSA by an Act other than the AMSA Act (i.e., its regulatory functions) are to be of a general nature only) **[s.8]**
  - determine the amount of financial detriment to AMSA as a result of complying with a Ministerial direction **[s.9]**
  - advise AMSA of his/her views on an appropriate strategic direction for AMSA or the manner in which AMSA should perform its functions **[s.9A]** (this would usually take the form of a Ministerial “Statement of Expectations”)
  - direct AMSA to provide documents or information to a nominee **[s.9B]**
  - specify an office in the portfolio Department the occupier of which would be an ex officio member of the AMSA Board **[s.13(1)(d)]**
  - appoint members of the Board **[s.13(4)]**
  - grant the Chairperson of the Board leave of absence **[s.17(3)]**
  - appoint a person to act as Chairperson, Deputy Chairperson or Board member **[s.18]**
  - terminate the appointment of a member of the Board (other than the Chief Executive Officer):
    - for misbehaviour or physical or mental incapacity **[s.21(1)]**
    - if a member becomes bankrupt or applies for relief under bankruptcy laws **[s.21(2)(a)]**
    - if a member engages in paid employment that, in the Minister’s opinion, conflicts with the proper performance of member’s duties, or being absent without leave from three consecutive meetings **[s.21(2)(c)]**
    - if, in the Minister’s opinion, the member’s performance has been unsatisfactory for a significant period of time **[s.21(2)(e)]**
  - terminate the appointment of one or more members of the Board (other than the Chief Executive Officer) if:
    - in the Minister’s opinion, AMSA’s performance has been unsatisfactory for a significant period of time **[s.21(3)]**
    - AMSA has failed to comply with requirements to keep the Minister informed, under the AMSA Act or under section 19 of PGPA Act **[s.21(3A)]**
  - convene a meeting of the Board **[s.22(3)]**
  - direct a variation to AMSA’s corporate plan **[s.26(2)]**
  - approve or disapprove proposed charges **[s.47(6) & (10)]**

- appoint the Chief Executive Officer, after receiving a recommendation from the Board **[s.49(1)]**
  - grant the Chief Executive Officer leave (other than recreation leave) **[s.51A(2)]**
  - appoint an acting Chief Executive Officer **[s.54(1)]**.
15. Under the **PGPA Act**, the Minister has power to:
- request the Auditor-General to examine and report on AMSA's annual performance statement **[s. 40(1)]**
  - have full and free access to AMSA's accounts and records **[s.41(3)]**.

## Board

16. Because 'the Board' is synonymous with 'the Authority' under the **AMSA Act**, the Board possesses each and every power given to AMSA in that Act and any other piece of relevant legislation. However, many such powers relate to regulatory and administrative functions and are more properly the responsibility of management, although some would be exercised by management with differing degrees of Board oversight and supervision. These would include entering into contracts, acquiring and disposing of real and personal property and entering partnerships. AMSA has a set of delegations and procedures supporting those actions.
17. Other powers under the **AMSA Act** are, however, only appropriate for exercise by the Board. These are:
- to regulate proceedings at its meetings, including permitting members to participate by electronic medium etc, and allowing other persons to attend meetings **[s.23]**
  - to fix charges **[s.47(1)]** subject to the approval of the Minister **[s.47(6)]**
  - to recommend to the Minister a person to be appointed as Chief Executive Officer **[s.49(1)]** or to act as Chief Executive Officer **[s.54(1)]**
  - to terminate the term of office of the Chief Executive Officer **[s.53]**
  - to determine the terms and conditions of AMSA staff **[s.55]**.
18. Most of AMSA's functions are discharged under the authority of individual operational Acts. These are discussed more fully at **Attachment 2**.

## Chairperson

19. Under the **AMSA Act**, the Chairperson has the power to grant leave to other members of the AMSA Board, other than the Chief Executive Officer, to be absent from a meeting or meetings **[s.17(4)]**. The Chairperson presides at all meetings at which he/she is present **[s.22(4)]**. The Chairperson has power to call a Board meeting and must call a meeting if requested to do so by two or more members **[s.22(2)]**. The Chairperson has a deliberative and, where necessary, a casting vote at Board meetings **[s.22(8)]**.

20. The Chairperson also has power under certain other Commonwealth Acts (for example, the *Freedom of Information Act 1982*) which operate to vest power in the person who occupies the position of 'Principal Officer' of a Commonwealth authority. The 'Principal Officer' in these Acts is the person entitled to preside at a meeting of the Board. Such powers are usually procedural and are suitable for delegation to an AMSA employee.

## Management

21. Under the **AMSA Act**, anything done in the name of, or on behalf of, AMSA by the Chief Executive Officer is to be taken to have been done by AMSA **[s.49(4)]**. It is this provision, and the delegations which the Chief Executive Officer puts in place, which gives managers and staff authority to discharge their functions.
22. As mentioned above, most of AMSA's functions are discharged under the authority of individual operational Acts (see **Attachment 2 – operational legislation**). The specific powers in the AMSA Act that are generally exercised by management (with appropriate Board oversight) are:
- AMSA may provide its services both within and outside Australia **[s.6(2)]**
    - subject to any Ministerial direction issued under s.8 of the AMSA Act, AMSA may provide services at its discretion **[s.6(3)]**
    - AMSA is entitled to be reimbursed for financial detriment suffered as a result of complying with a Ministerial direction issued under s.8 of the AMSA Act **[s.9]**
  - AMSA may:
    - enter into contracts **[s.10(2)(a)]**
    - acquire, hold and dispose of real and personal property **[s.10(2)(b)]**
    - join in the formation of companies **[s.10(2)(c)]**
    - enter partnerships **[s.10(2)(d)]**
    - let on hire plant, machinery, equipment or goods belonging to AMSA **[s.10(2)(e)]**
    - borrow money from the Commonwealth **[s.39]** and elsewhere **[s.40]**
    - give security over its assets **[s.42]**
    - engage consultants **[s.56]**
    - delegate its powers to an officer of AMSA **[s.58]**.



## RESPONSIBILITIES AND DUTIES

### Minister

23. Under the **AMSA Act**, the Minister has the responsibility to respond to a corporate plan within 60 days **[s.26(1)]**.
24. Under the **PGPA Act**, the Minister has the responsibility to table AMSA's Annual Report in Parliament **[s.46(1)]**.

### Board

25. The **AMSA Act** sets out some of the responsibilities of the Board, some of which are specific limitations on the exercise of the Board's powers:
  - AMSA must not perform any of its functions otherwise than for a purpose in respect of which the Parliament has the power to make laws (i.e., what AMSA does must be within the constitutional power of the Commonwealth) **[s.6(4)]**
  - the provision of search and rescue services must not be in a manner inconsistent with Australia's obligations under relevant international Conventions **[s.6(5)]**; indeed, all AMSA's functions must be performed in a manner consistent with any agreement between Australia and another country **[s.7]**
  - AMSA must take account of any notices given to it by the Minister advising the Minister's views on the appropriate strategic direction of AMSA and the manner in which AMSA should perform its functions **[s.9A(2)]**
  - the Board must give to the Minister notice of any proposed determination of charges **[s.47(3)]**, any notice AMSA receives under the *Competition and Consumer Act 2010* (95L(3)) **[s.47(4)]**, and a copy of the report of any inquiry by the *Competition and Consumer Act 2010* (95P) **[s.47(5)]**.
26. Most of the obligations of the Board in a corporate governance sense are contained in the **PGPA Act**. The obligations can be summarised as follows:

### General duties of the Board as the accountable authority under the PGPA Act

- to govern AMSA **[s.15]**
- to establish and maintain systems relating to risk and control **[s.16]**
- to encourage cooperation with others **[s.17]**
- to take into account the risks and effects of imposing requirements on others **[s.18]**
- to keep the Minister and Minister for Finance informed **[s.19]**
- to ensure that AMSA complies with government policy orders that apply to it **[s.22]**.

### Corporate Plan and Annual Report

27. Under the PGPA Act the Board must:
  - prepare a corporate plan **[s.35]**
  - keep records about AMSA's performance **[s.37]**

- measure and assess AMSA's performance in achieving its purposes [s.38]
- prepare an annual performance statement which provides information about AMSA's performance for inclusion in the annual report [s.39].

28. The Board must give an annual report to the Minister [s.46(1)].

### Budget estimates and financial reporting

29. The Board must:

- prepare budget estimates [s.36]
- prepare annual financial statements and provide those statements to the Auditor-General [s.42].

### Conduct of Officials

30. The **PGPA Act** sets out the duties of 'officials' of corporate Commonwealth entities (including AMSA). The definition of 'official' [s. 13] includes an individual who is a member of the accountable authority for a Commonwealth entity (AMSA's Board). An AMSA Official must:

- exercise the degree of care and diligence that a reasonable person would exercise if he or she were an official of a Commonwealth entity authority in similar circumstances [s.25]
- act honestly, in good faith and for a proper purpose [s.26]
- not improperly use his or her position to gain advantage for him/herself or to cause detriment [s.27]
- not improperly use information obtained because they are an Official, to gain an advantage (for himself or herself, or another person) or to cause detriment to AMSA or to another person [s.28].

31. Failure to comply with these standards of conduct could lead to termination of an appointment as an AMSA Board member [s.30 PGPA Act].

32. AMSA has a Code of Conduct employees are expected to abide by clarifying values and principles, linking them with standards of professional conduct. AMSA's Code of Conduct is provided on AMSA's webpage: [Code of conduct](#)

33. The *National Anti-Corruption Commission Act 2022* (NACC Act) establishes the National Anti-Corruption Commission (NACC) as an independent Commonwealth agency to detect, investigate and report on serious or systemic corrupt conduct in the Commonwealth public sector. The NACC will also educate the public service, and the public, about corruption risks and prevention.

34. For the purposes of this Act, a person engages in corrupt conduct if:

- they are a public official and they breach public trust
- they are a public official and they abuse their office as a public official
- they are a public official or former public official and they misuse information they have gained in their capacity as a public official

The term public official is defined in the NACC Act, and includes people who are staff members of a Commonwealth Agency [s.10 NACC Act].

35. A staff member of a commonwealth agency includes:
- in the case of an agency other than a parliamentary office—the head of the agency;
  - if the agency is a Commonwealth entity—an official (within the meaning of the PGPA Act) of the entity;
36. As provided in paragraph 6, above, under the PGPA Act the governing body of a Commonwealth entity (the AMSA 'Board') is determined to be the 'accountable authority' [s. 12 PGPA]. A member of the accountable authority will also be an 'Official' for the purposes of s. 13 PGPA.
37. As an 'Official' within the meaning of the NACC Act, the Board are deemed to be staff members of AMSA for the purposes of the NACC [s.12 NACC].
38. The NACC commences in July 2023 and will have compulsory information-gathering powers, including notices to give information or produce documents, summonses to give sworn evidence, search warrants, and warrants to authorise arrests if they hold information or documents potentially relevant to a NACC investigation, whether as a witness or a subject of the investigation.

### Disclosure of interests

39. The **PGPA Act** requires Officials of a Commonwealth entity to disclose material personal interests that relate to the affairs of that entity. The PGPA Rules then establish ongoing management of that interest.
40. The Board Secretariat maintains a register of the declarations of interests provided by Board Members. The register is updated and circulated to Board Members at each Board meeting. Board Members who have any concerns about whether or not a possible conflict of interest should be notified should raise the matter with the Chairperson or the Corporate Secretary.

## Accountable Authority Instructions (AAI's)

41. The PGPA Act places a number of duties on AMSA's Board [s15-19], including establishing and maintaining systems relating to risk and control [s.16], and ensuring officials comply with finance laws [s16]. It is up to the Board to determine how these duties are met, and to consider how they might demonstrate that their duties are being met.
42. The Department of Finance advises that issuing instructions and operational guidance (e.g., business rules or guidelines) is one way to ensure that internal controls are in place, and that officials behave in a manner consistent with the Board's duties. Issuing instructions and guidance also helps to demonstrate the discharge of duties.
43. Accountable Authority Instructions (AAIs) are written instruments that assist the accountable authority in meeting their general duties under the PGPA Act and establishing appropriate internal controls for the entity.
44. The Board authorised the Chief Executive Officer (CEO) to issue AAIs on their behalf using [s58(1)] of the *Australian Maritime Safety Act 1990*. AMSA's AAIs are based on the Department of Finance's model AAIs and the Board is provided with a status update annually.

## Board Committees:

45. The Board operates through two standing Committees:
  - The Board has established an Audit, Risk and Finance Committee in compliance with section 45 of the PGPA Act and *Public Governance, Performance and Accountability Rule* (PGPA Rule) – section 17 *Audit Committees for Commonwealth Entities*. The Audit Risk and Finance Committee operates under a Charter approved by the Board which includes the mandatory functions required by the PGPA Rule. The Chairperson and Chief Executive Officer are not members of the Committee but attend meetings at the invitation of the Chair. All Board members have access to papers for the Board Audit and Risk Committee.
  - The Board has established the Remuneration Committee to assist the Board in relation to remuneration matters. The members of this Committee are the Chairperson and two other members of the Board. The Chief Executive Officer attends meetings at the invitation of the Chairperson. The Remuneration Committee:
    - assesses the performance of the Chief Executive Officer and making recommendations to the Board in relation to remuneration (consistent with the Remuneration Tribunal determination requirements)
    - receives advice from the CEO in providing guidance on remuneration to be paid to the senior executives.
46. Board Committees do not have authority to make decisions on behalf of the Board unless the Board has specifically delegated powers to the Committee.
47. The Board Audit and Risk Committee operates in accordance with a written Charter, approved by the Board and consistent with AMSA's enabling legislation. The Board Remuneration Committee operates under a Terms of Reference.

## Meetings

48. The Board meets six times a year and at such other times as are necessary, with all meetings convened by the Chairman. Members may participate in person, by telephone, closed-circuit television or any other means of communications. The Corporate Secretary supports the Board and its Committees and is the point of reference for all dealings between Board / Committees and Management.
49. At a Board meeting five members constitute a quorum. Should a vote be necessary to come to a resolution the vote is decided on the basis of the majority decision of those members present and voting. The Chairperson has a “deliberative vote, and if necessary, also has a casting vote” **[AMSA Act s.22]**.
50. A resolution without a meeting is to be taken to have passed if four or more members indicate agreement with the resolution **[AMSA Act s.24]**.

## Induction

51. New members will be offered a formal induction program. The content of the program is determined by the Chief Executive Officer, and the program is co-ordinated by the Board Secretariat. Relevant information and briefings will be provided in relation to AMSA and its operations to assist them to meet their Board responsibilities.
52. On appointment a new Board member will receive a ‘Board Information Folder’. All further instalments and updates to the Board Information Folder will be provided in soft copy on ‘shared Microsoft One Drive’. The Board Information Folder includes the Board Charter and associated documentation and provides the fundamental information to members including:
  - Remuneration and Financial Arrangements
  - Arrangements for Board meetings
  - Board Audit and Risk Committee Charter
  - *Australian Maritime Safety Authority Act 1990*
  - Organisational Structure
  - Annual Report and Corporate Plan
  - Employment Principles
    - AMSA Code of Conduct
    - AMSA Values
    - Workplace Harassment and Prevention Policy
  - *Public Governance, Performance and Accountability Act 2013* and associated documentation
  - General Principles governing AMSA Media, Policy and Procedures
  - AMSA General Procurement Policies and Procedures and associated documents
  - Corporate Authorisation Policy and associated documents
  - Yearly Board and Board Audit and Risk Committee program (six months in advance of each calendar year) including:
    - standard meeting administration and core tasks of the Board
    - proposed interstate meeting programs
    - matters for decision

- matters for discussion
- matters for noting.

## Performance Evaluation and Board Charter Review

53. The Chairperson will initiate a self-assessment of the performance of the Board at least once every two years. The review will involve input from each Board member, senior management and any other relevant stakeholders as determined by the Board.
54. The Board will review its Charter every two years. Amendments to the Charter may be proposed by Board Members or the Board Secretariat.

## Board Skills Matrix

55. Making use of the Board Skills Matrix, the Chairperson may provide advice to the portfolio Department and the Minister on skills gaps and Authority needs, to inform Board member recruitment decisions.

## Confidentiality

56. Agendas, meeting papers and minutes for Board meetings are 'Board-in-Confidence' with the security classification 'Official Sensitive'. AMSA will not disclose these other than as required by law.
57. 'Board-in-Confidence' means that Board Members and staff attending Board meetings will maintain confidentiality of discussions and papers. This includes the outcomes of meetings until decisions have been formally notified.

## Role of the Board Secretariat

58. The Board is supported by the Board Secretariat, which is currently comprised of a Corporate Secretary and the Board Coordinator.
59. The Corporate Secretary is accountable directly to the Board through the Chairperson on matters relating to the proper functioning of the Board.
60. The Agency will cover all costs required to effectively manage the affairs of the Board to fulfil their duties. The Board Secretariat will manage the budget and associated expenditure. The Board Secretariat will keep records of financial expenditure relating to the activities of the Board.
61. Responsibilities of the Board Secretariat include:
  - organising Board and Board Committee meetings and ensuring that proper and accurate minutes are taken of those meetings
  - maintaining proper and timely records of Board and Board Committee minutes, resolutions, correspondence and other records
  - ensuring Board Members receive appropriate papers for meetings
  - reinforcing the Board's requirements in relation to the quality, completeness and timeliness of Board papers
  - monitoring the completion of actions arising from Board and Board Committee meetings
  - assisting the Chairperson with the effective functioning of the Board

- assisting with the flow of information from the Board to Management and from Management to the Board
- assisting the Chairperson and the other non-executive Board Members in relation to administrative and other requirements including by assisting with management of correspondence
- maintain safe custody of Instruments of Delegations by the Board

## Other legislation

62. Other Acts of Parliament affect the way in which AMSA may carry out its functions. Although, like operational powers, these do not directly impose duties on Board members and are predominantly a matter for management, Board members may be vulnerable where non-compliance with such legislation is construed as a breach of duty under the PGPA Act. A summary of these Acts is at **Attachment 3**.
63. As well as legislation, there are numerous directives, guidelines and policies emanating from Ministers and departments. The most relevant policies are summarised at **Attachment 4**. Note that the degree of government endorsement varies between directives; some are the result of Cabinet consideration while others arise from Minister-to-Minister correspondence.
64. While these in most cases do not impose a direct legal responsibility on the Board, the PGPA Act requires the Board to ensure that the AMSA complies with a General Policy Order to the extent that the Order applies to the Authority **[s.22]**. Failure to ensure compliance with government policy has the potential of opening Board members to accusations of failure to use ‘care and diligence’ under the PGPA Act.
65. Under the *Work Health and Safety Act 2011* (WHS Act), the Board must ensure, so far as is reasonably practicable, the health and safety of workers and others who are influenced or directed by AMSA – Section 19 of the WHS Act. Both Section 19 and the Board’s due diligence obligations can be found at **Attachment 5 (a & b)**.

## Application of the AMSA Seal

66. AMSA has a corporate Seal **[s.5 (2) (b)]** and may execute documents under Seal **[s.5 (3)]** although transactions requiring application of a seal are becoming increasingly rare and are only required in some jurisdictions for real estate transactions for example.
67. The approval to affix the Seal should be, where possible, included in the Board decision process. In cases where no specific Board discussion is necessary, then the approval to affix the Seal can be made by any two Board members (e.g., Chairperson and CEO).
68. The Board made one exception (2019) to the rule, allowing the CEO to affix the AMSA Seal on all delegation Credentials to the International Maritime Organization required for attendance at meetings without Board approval. The application of the Seal in these cases is of a more diplomatic nature and the ability of the CEO to exercise this function on behalf of Australia is actually delegated from the Minister for Foreign Affairs.
69. The AMSA Seal must be affixed in the presence of another member of the Board, General Counsel or Secretary to the AMSA Board.
70. The Corporate Secretary is custodian of the Seal and will report to the Board under ‘reportable transactions’ if the Seal is used.

## Board access to management and other staff

71. Board Members have full access to management and corporate information through the Chairperson, the Chief Executive Officer and the Board Secretariat.
72. While Board Members are entitled to request documents or information through the CEO or the Board Secretariat at any time, such requests should be made in consultation with the Chairperson or, where appropriate, the Chair of the appropriate Committee.
73. Board Members should not make direct requests of managers or staff. In addition to arranging for specific information to be provided to a Board Member, the Board Secretariat can also arrange for a Board Member to receive a special management presentation on a particular item.

## Chairperson

74. Under the **AMSA Act** the Chairperson has responsibility for presiding over meetings [s.22(4)]. The Chairperson also has the procedural, administrative responsibilities vested in the 'Principal Officer' under the *Freedom of Information Act 1982* (FOI Act), and the *Safety, Rehabilitation and Compensation Act 1988*. These include the making of decisions under the FOI Act and the provision of information to Comcare.

## Management

75. The **AMSA Act** provides that, in performing its functions and exercising its powers, AMSA must, where appropriate, consult with government, commercial, industrial, consumer and other relevant bodies and organisations [s.12].
76. Under the AMSA Act, the Chief Executive Officer must not engage in outside paid employment without Board approval [s.50].
77. The term 'official' is defined in the **PGPA Act** to include any person who is in, or forms part of, the entity. The duties relating to officials set out in paragraphs 28 to 29 above therefore apply to all AMSA staff, including management.