



Maritime Legislation Amendment Bill 2007

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Maritime Legislation Amendment Bill 2007

Date introduced: 8 August 2007

House: House of Representatives

Portfolio: Transport and Regional Services

Commencement: Sections 1-3 and Schedule 2 – on Royal Assent.
Schedule 1 – on a day fixed by proclamation (but if provisions do not commence by 1 January 2009, they do not commence at all).

Links: The [relevant links](#) to the Bill, Explanatory Memorandum and second reading speech can be accessed via BillsNet, which is at <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at ComLaw, which is at <http://www.comlaw.gov.au/>.

Objects

The objects of the Bill are to provide for:

- integrating the Australian Maritime College (the AMC) with the University of Tasmania (the University), and
- enabling the Australian Maritime Safety Authority (AMSA) to share information with other government and non government agencies and parties for specific purposes.

Background

Australian Maritime College

General

In 1978, the AMC was established under the *Maritime College Act 1978* (the Maritime College Act) as a national institution for maritime education and training.¹

The Maritime College Act enables the AMC to²

accredit post-compulsory education and training courses and to issue higher education qualifications under the Australian Qualifications Framework.

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1. *Maritime College Act 1978* sections 5(1), 7; Australian Maritime College, *Annual Report 2006*, p. 4, at: <http://www.amc.edu.au/about/annual.report>, accessed on 9 August 2007.
 2. *ibid.*

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Its focus has been on maritime research, education and training. Courses are offered from certificate to doctorate levels in the specialist areas of:³

- maritime engineering
- maritime and logistics management
- marine and coastal conservation, and
- fisheries and the marine environment.

Although the AMC reports to the Minister for Transport and Regional Services (the Minister), it must also meet the legislative and reporting requirements of a higher education institution under the provisions of the *Higher Education Support Act 2003* (the HESA) through which it receives Commonwealth funding for student places and other grants such as capital funding.⁴

In 2005, the AMC had a total student load of 757 making it one of the smaller providers receiving Commonwealth funding. Student load was divided almost equally between students in Vocational Education and Training courses and those in undergraduate courses and a significant proportion, 154, were overseas students.⁵

The AMC is one of three providers receiving funding under the National Institutes programme reflecting the College's 'special position as an institute established under Commonwealth legislation with a mission to provide qualifications for the maritime industry'.⁶ In 2005, the AMC received \$4.2 million from the programme out of its total of \$13.06 million in Commonwealth grants.⁷

The AMC had plans to expand through the establishment of a new campus at Point Nepean in Victoria. In the 2004-05 Budget, the Australian Government made a commitment to provide \$4.9 million in Commonwealth Grant Scheme (CGS) and National Institutes funding over the four years from 2005 to 2008 to the AMC towards the development of a National Centre for Marine and Coastal Conservation at Point Nepean on Victoria's Mornington Peninsula.⁸ This funding was made up of \$2.6 million for 40 new Commonwealth supported places for students to commence at the Centre in 2005 and \$2.3 million in National Institutes funding for infrastructure development. The 40

3. *ibid.*

4. *ibid.*

5. Australian Maritime College, *Annual Report 2005*, p. 16.

6. Higher Education Report, 2005 (DEST, 2007?), p. 40.

7. *ibid.*

8. The Hon. Dr Brendan Nelson, 'Australian Maritime College Point Nepean Campus' [Budget Media Release, 11 May 2004](#).

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Commonwealth supported places were to grow to 109 places by 2009, bringing the Australian Government's total commitment of funding through the Department of Education, Science and Training (DEST) portfolio to \$9.7 million.

On 16 June 2006, in a joint media release, the Treasurer and the Parliamentary Secretary for the Environment and Heritage and Member for Flinders, Greg Hunt, announced the allocation of a further \$27 million in Australian Government funding towards heritage restoration of the Point Nepean site and the development of the Centre. This funding was provided to the Point Nepean Community Trust, the body set up to manage the Commonwealth land on which the Centre is to be established until it is transferred to the Victorian Government as an integrated national park before 2011.⁹

Due to delays in the development of the Centre, the AMC was unable to deliver the Point Nepean places in 2005. A reduced number of Commonwealth supported places is currently being offered in temporary facilities at the [Rosebud campus](#) of the Chisholm Institute of Technical and Further Education and, at this stage, there is no indication of when the Centre is likely to be completed.

Integration with the University of Tasmania

In 2005, it was reported that AMC had tried unsuccessfully to attain full university status and, after the resignation of the Principal, began discussions instead on a merger with the University of Tasmania which has a campus adjacent to the AMC.¹⁰

In October 2006, the AMC and the University signed a [Heads of Agreement](#) which sets out the general principles which the AMC and the University agree should be the framework for integration.¹¹

The Heads of Agreement states that the AMC would become a 'separately constituted institute' of the University and be governed by the University Council with a separate industry focused Board. Elsewhere it is stated that AMC would have a principal or CEO

9. Hon Peter Costello, Treasurer, and Greg Hunt, Parliamentary Secretary for the Environment and Heritage, Member for Flinders, '\$27 Million To Restore Point Nepean And Establish New National Centre For Marine And Coastal Conservation', *Joint Media Release*, 16 June 2006. When combined with an Australian Government [contribution](#) of \$5 million towards the establishment of the Trust, handed over on 10 June 2004, the DEST funding outlined above, and [various other Australian Government contributions](#) announced by the Prime Minister, the total Australian Government commitment to the Point Nepean development is \$48 million.

10. 'College closer to merging with uni', *The Mercury* 30 November 2005.

11. AMC and University of Tasmania, *Heads of Agreement*, October 2006, p. 1.

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who would also be a member of the University's senior management.¹² Provisions in **Part 4 Schedule 1** of the Bill implement the agreement on governance of the AMC in the first five years after integration.

Purpose of integration

The AMC and the University believe that there are mutual benefits arising from integration.

According to the Heads of Agreement,¹³

Integration offers the opportunity for the two institutions to optimise opportunities for staff and students through a renewed or enhanced range of undergraduate and postgraduate courses and research activities, drawing where possible on the strengths of both institutions.

In addition, the AMC and the University have agreed that the purpose of the integration would be to:¹⁴

strengthen the overall provision of maritime and maritime-related education, training and research nationally and internationally to the mutual benefit of UTAS and AMC.

The AMC and the University agreed that the purpose would be achieved by:¹⁵

- a) providing within UTAS a secure, certain and sustainable framework that will assist AMC to continue in its role as the national provider of maritime and maritime-related education, training and research;
- b) an enhanced AMC, building upon its current reputation to develop a strong 'applied marine' focus, committed to innovation and leadership in contemporary, professional and practice-based maritime and maritime-related education, training and research;
- c) AMC building its linkages and collaboration with Australian maritime and maritime-related industries, and expanding its strong links with international maritime and maritime-related industries;
- d) AMC bringing into UTAS its international reputation and distinctive pedagogy;

12. *ibid.*, clause 4. See also *AMC, Australia's National Maritime Institute, University of Tasmania* [no date] at: <http://www.utas.edu.au/unity/amcvision.pdf>, accessed on 9 August 2007.

13. AMC and University of Tasmania, *Heads of Agreement*, *op cit*, subclause 1.1.

14. *ibid.*, subclause 1.2.

15. *ibid.*, paras 1.2(a)-(g).

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e) improving opportunities for collaboration between AMC and UTAS faculties and institutes;

f) establishing the Launceston campus of UTAS as an internationally recognised location for the provision of maritime and maritime-related education, training and research; and

g) strengthening the reputation of both UTAS and AMC.

Australian Maritime College and the University's plan for integration

The Heads of Agreement sets out terms relating to:

- the protection of the AMC's purpose and vision¹⁶
- the AMC's marketing strategies¹⁷
- use and development of AMC sites¹⁸
- management and development of the AMC's educational programs¹⁹
- development of research programs²⁰
- protection of the AMC's staff employment conditions²¹
- protection of student entitlements²²
- annual operational funding arrangements²³
- transfer of assets²⁴
- lines of accountability²⁵
- systems for AMC's quality assurance²⁶

16. *ibid.*, clause 3.

17. *ibid.*, clause 5.

18. *ibid.*, clause 6.

19. *ibid.*, clause 7.

20. *ibid.*, clause 8.

21. *ibid.*, clause 9.

22. *ibid.*, clause 10.

23. *ibid.*, clause 13.

24. *ibid.*, clauses 14, 15.

25. *ibid.*, clauses 17, 18.

26. *ibid.*, clause 19.

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- conflict resolution systems,²⁷ and
- review mechanisms.²⁸

These terms complement and, in many cases, provide the detail for proposed provisions in the Bill, which are generally broader in scope. Please refer to the Main provisions section for examples of such terms.

The merger of the two higher education providers fits broadly within the Government's policy for a diversified higher education sector. The Minister in a wide-ranging speech on the need for diversity called for universities to 'differ from each other in terms of mission, discipline mix, course offerings, modes of delivery, management and in academic structure.'²⁹ The guarantee of the AMC's continuing profile, at least for five years, as a specialist provider of maritime education and training and one which attracts significant numbers of overseas students will assist the University in differentiating itself from other providers. The Minister envisages such diversity 'will mean either the same number, or, perhaps, fewer universities. I do not propose to force universities into mergers. These marriages must be voluntary, but I encourage universities to look at their future, and determine which direction to take – merge or reform.'³⁰ Financial assistance for such reform or mergers will be available through a new Diversity and Structural Adjustment Fund announced in the 2007-2008 Budget with funds of \$208.6 million over four years. It would seem appropriate that the University of Tasmania would be able to access the Fund to assist with the integration.³¹

Australian Maritime Safety Authority

General

AMSA, a Commonwealth Authority, was established under the *Australian Maritime Safety Authority Act 1990* (Australian Maritime Safety Authority Act)³² and commenced operating in 1991.³³

27. See: *ibid.*, clauses 23, 25.

28. *ibid.*, clause 24.

29. J. Bishop (Minister for Education, Science and Training), [Speech Curtin Institute Public Policy Forum, 24 July 2006](#).

30. *ibid.*

31. The fund will also incorporate the existing Collaboration and Structural Reform Fund and some funding from the current Learning and Teaching Performance Fund. J. Bishop (Minister for Education, Science and Training), [New Diversity and Structural Adjustment Fund for universities, Media Release, BUDB, 09/07](#).

32. *Australian Maritime Safety Authority Act 1990* s 5.

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AMSA falls within the portfolio of the Department of Transport and Regional Services (DOTARS).³⁴

AMSA's main role is primarily:³⁵

- maritime safety
- aviation and marine search and rescue operations, and
- to protect marine environment.

Department of Transport and Regional Services

DOTARS aims to promote and ensure safe and secure transport, which is accessible, environmentally responsible and sustainable.³⁶

DOTARS³⁷

conducts research, analysis and safety investigations; provides safety information and advice based upon these investigations; and performs regulatory functions.

Maritime transport, which includes shipping, is within the DOTARS portfolio.³⁸

Financial implications

According to the Explanatory Memorandum to the Bill, there are no financial implications for the Government arising from the Bill.³⁹ However there are some issues regarding funding of the AMC.

33. See: AMSA, *Corporate Plan 2006-2007-2008-2009* at: <http://www.amsa.gov.au/Publications/Corporate/CORPORATE%20PLAN%20-%202006-07,08-09.pdf>, accessed on 9 August 2007.

34. See: <http://www.dotars.gov.au/department/dotars/legislation.aspx>, accessed on 9 August 2007.

35. AMSA, *Sixteenth Annual Report 2005-2006*, p. 2.

36. See: <http://www.dotars.gov.au/department/dotars/about.aspx>, accessed on 9 August 2007.

37. *ibid.*

38. See: <http://www.dotars.gov.au/department/dotars/legislation.aspx>, accessed on 9 August 2007.

39. *Explanatory Memorandum*, Maritime Legislation Amendment Bill 2007, p. 1.

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Australian Maritime College

The consolidated net assets of the AMC to be transferred to the University are valued at \$61.4 million.⁴⁰ In the 2007-2008 Budget Papers, the transfer of the AMC's assets is funded by a budget measure of \$61.4 million from DOTARS as a one-off administered expense to 'gift the assets of the Australian Maritime College to the University of Tasmania'.⁴¹

When the *Maritime Legislation Amendment Act 2007* commences, the AMC will no longer be an independent entity. It is anticipated that there will be obligations that are outstanding at the time of integration, particularly financial reporting obligations. It is proposed in **item 15** of the Bill that in the University funding agreement (between the University and DEST), 'AMC institute funding' would be specified (or a method to calculate the portion) in the first five years post integration. **Item 17** of the Bill requires, in the first five years after integration, an annual review of AMC funding under the HESA and also stipulates reporting conditions on governance and performance indicators.

It is not clear if the AMC will continue to receive National Institute programme funding or what will happen with the appropriations for Point Nepean and the Point Nepean site. The second reading speech states that 'an agreement is to be negotiated between the Department of Transport and Regional Services and the University defining how the University will deal with the land assets to be transferred to it as a result of the integration'. However, unlike the details of the reporting requirements on funding and governance specified in **Part 4** of the Bill, the conditions of an agreement on land are not specified in the Bill.

Australian Maritime Safety Authority

As the Bill authorises AMSA to share its information with government agencies and others, the question arises of what would be the implementation and maintenance costs for AMSA.

According to the Explanatory Memorandum, AMSA's information sharing activities are proposed to be audited and governed by internal procedures.⁴² In addition, there is likely

40. The net book value of the AMC's assets at 31 December 2006 was \$52.7 million: Australian Maritime College, *Annual Report 2006*, p. 50.

41. *Budget Measures 2007-2008*, Budget Paper No 2, p. 297; *Portfolio Budget Statements, 2007-2008*, Transport and Regional Services, pp. 13 and 25.

42. *Explanatory Memorandum*, op cit, p. 14.

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to be the need to enter into formal agreements with those parties with whom AMSA will share information.

It may be argued that AMSA would incur additional costs (up-front and ongoing) as a result of these proposed additional activities.

Key issues

Several issues arise relating to the implementation of the Bill.

Australian Maritime College

The key issue that arises in relation to integration is what review and monitoring mechanisms would be in place after five years elapses (the Bill only proposes annual review during the first five years).

Proposed protections afforded to the staff, funding, course structure and status of the AMC following integration are only in place for five years.

Australian Maritime Safety Authority

Key issues relating to proposed provisions relating to AMSA concern:

- what would be the cost implications for AMSA of its additional authorised activities, and
- on what basis would any additional costs be funded.

Main provisions

Schedule 1 Part 2

Item 2 proposes that the Maritime College Act be repealed.

Schedule 1 Part 3

The Heads of Agreement sets out terms that complement proposed provisions in the Bill and that provide for the practical implementation of those provisions, as agreed by the AMC and the University (the parties). Examples of complementary terms in the Heads of Agreement follow the related items in the Bill below.

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Division 1

Division 1 proposes what would happen with the AMC's assets, liabilities and legal proceedings upon integration.

Item 3 proposes that the AMC's assets immediately before integration will automatically become the University's assets at the time of integration, without conveyance, transfer or assignment of those assets.

Clause 6 of the Heads of Agreement sets out terms relating to the use, management and development of AMC sites.

According to subclause 6.1, the parties agree that the AMC will continue to be based on its current sites. In addition, in subclause 6.2, the parties agree that while AMC sites will be designated for training, education, community activities and research relating to maritime and maritime related areas, it is recognised that there should be scope for expanding AMC activities onto the University sites and relocating related University activities and programs onto AMC sites.

Clause 14 of the Heads of Agreement relates to the AMC's financial assets.

According to subclause 14.1, the parties agree that the University will become the legal owner of the AMC's financial assets upon integration but that those financial assets will be made available for the AMC's use. Subclause 14.2 provides for how AMC trusts, bequests, grants, prizes and scholarships will be managed and applied for the benefit of the AMC, as well as its staff and students.

Clause 15 relates to the AMC's physical assets.

According to subclause 15.1, the parties agree that at the time of integration, all assets of the AMC will be vested in the University at the time of integration. However, the parties also agree that the AMC would have priority access to those assets in order to support its educational programs, teaching and administration.

Item 4 proposes that the AMC's liabilities immediately before integration will automatically become the University's liabilities at the time of integration, without conveyance, transfer or assignment of those liabilities.

Subclause 14.4 of the Heads of Agreement contains terms stating that the University will become liable to pay the AMC's liabilities upon integration.

Item 5 contains proposals regarding registration of certificates that relate to vesting of land.

Item 6 contains similar proposals regarding certificates that relate to vesting of assets other than land.

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Item 7 proposes that from the time of integration, the University would be substituted for the AMC as a party to proceedings that are pending immediately before integration.

Item 8 proposes that any records or documents that the AMC has in its custody immediately before integration, would be transferred to the Commonwealth's custody at or after the time of integration.

Items 8(3) and 8(4) propose provisions particularly relating to the records and documents, which are subject to the *Commonwealth Authorities and Companies Act 1997* and transferred into the Commonwealth's custody following integration.

Division 2

Item 9 proposes that, unless otherwise determined by the Minister or provided by the regulations, references to the AMC, staff or students of the AMC in instruments that are in force immediately before integration would be regarded as references to the University, its staff or students respectively.

'Instrument' is defined in **Part 1 item 1** of the Bill and would include:

- an agreement
- an order
- a legislative instrument, and
- regulations.

However, 'instrument' would not include:

- the Heads of Agreement
- statute as defined in the Maritime College Act, or
- an Act.

The Minister's determination is not a legislative instrument.

Item 10 proposes that, unless otherwise determined by the Minister or provided by the regulations, anything done by the AMC before integration is taken to have been done by the University for the purposes of Commonwealth law.

'Doing' something includes making an instrument.

In addition, the Minister's determination is not a legislative instrument.

Item 11 proposes that the Board of the new AMC institute would have to satisfy existing and outstanding AMC financial statements and other reporting requirements at integration.

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Division 3

Items 12-14 propose miscellaneous provisions in relation to **Part 3** about stamp duty and other State of Territory exemption for the Commonwealth Government, authenticity of certificates made or issue, as well as regulation making powers.

Schedule 1 Part 4

Item 15 proposes that AMC institute funding is the part of University funding specified or calculated in the University funding agreement for a post integration year. 'Post integration year' is defined in **proposed item 1** and means the year commencing at the time of integration or any of the four years following that first year.

Clause 13 of the Heads of Agreement sets out terms regarding annual operational funding of the AMC institute.

In particular, paragraph 13.1(c) sets out the formula that would be used to calculate the total amount of University funding allocated to the AMC institute.

Item 16 contains provisions that would apply to the review of integration.

Item 16(2) proposes that during the period of 28 days immediately after the three month period, which commences at the time of integration (the initial post integration period), the Minister would have to consider whether all of the funding conditions in that initial post-integration period have been met.

The proposed funding conditions are set out in a table immediately after **item 16(2)**. Please see below.

The Minister must provide written certification to the Education Minister of whether the Minister is satisfied that these conditions have been met.

If the Minister is not satisfied that these conditions have been met, the Minister must give written reasons for his or her dissatisfaction to the Education Minister.

Item 16(1) proposes that the University only receives AMC institute funding if the Minister is satisfied that those funding conditions have been met. Else, the University may have to repay the AMC institute funding for a post integration year.

Clause 24 of the Heads of Agreement sets out terms relating to internal reviews of integration.

Item 17 contains provisions that would apply to annual reviews of integration during the first five years.

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Item 17(2) proposes that during the period of 60 days immediately after each post integration year, the Minister would have to consider whether all of the funding conditions relating to that post-integration year have been met.

The proposed funding conditions are set out in a table immediately after **item 17(2)**. Please see below.

The Minister must provide written certification to the Education Minister of whether the Minister is satisfied that these conditions have been met.

If the Minister is not satisfied that these conditions have been met, the Minister must give written reasons for his or her dissatisfaction to the Education Minister.

Item 17(1) proposes that the University only receives AMC institute funding for a post integration year if the Minister is satisfied that those funding conditions have been met. Else, the University may have to repay the AMC institute funding for the year.

Item 18 contains provisions that would apply to a review of integration before the first five years elapse.

Item 18(1) proposes that the Minister would have to get the following reviewed:

- the integration, and
- the AMC institute's objectives, effectiveness and efficiency.

This review would have to be done within the last six months of the five year period beginning from the time of integration.

Items 18(2) and (3) propose the manner and form that the review must take.

Items 18(4) and (5) propose that the reviewer provide the Minister with a written report, which must be tabled in Parliament within 15 sitting days of the Minister receiving it.

Item 19 proposes that the Minister has delegation powers to the Secretary, an SES employee or acting SES employee of DOTARS. The delegate must comply with any written directions by the Minister.

Initial post-integration funding period funding conditions

These conditions are set out in a table immediately after **item 16**.

Condition 1.1 sets out the establishment of the AMC as an institute within the University, its objectives; the functions and powers of the AMC Board; and that the AMC will have a Principal.

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Subclauses 1.2, 7.2 and 7.7 of the Heads of Agreement are examples of terms in that document complementing the objectives of the AMC institute set out in condition 1.1 of the Bill.

Other terms in clause 7 of the Heads of Agreement set out provisions stating how the AMC's educational programs will be managed and developed in accord with the objectives of the AMC institute.

Clause 8 of the Heads of Agreement sets out terms relating to research activities.

Clause 4 of the Heads of Agreement sets out the terms relating to the governance and structure of the AMC as an institute of the University. In particular, subclauses 4.2 and 4.3 relate to the AMC Board.

Clause 17 of the Heads of Agreement sets out the detailed terms relating to the management structures of the AMC institute.

Condition 2.1 sets out the status and rights of students of the AMC (who were students immediately before integration) during the initial post integration period.

Clause 10 of the Heads of Agreement complements this proposal.

Condition 3.1 sets out the status and rights of staff of the AMC (who were staff immediately before integration) at integration. In particular, their University employment terms and conditions will not be less favourable to these staff than the AMC employment terms and conditions.

Subclauses 9.3 and 9.4 of the Heads of Agreement set out terms complementing this proposal.

Clause 9, in general, sets out terms containing the details of AMC staff transfer to the University at integration.

Condition 4.1 states that during this period, financial assets, which are equivalent to the AMC's financial assets transferred to the University under **Part 3** of the Bill, will be set apart for the AMC institute.

See subclause 14.1 of the Heads of Agreement as discussed above.

Condition 5.1 states that during this period, the AMC institute will have priority access to undisposed land and other assets of the AMC, which were transferred to the University under **Part 3** of the Bill.

See subclause 15.1 of the Heads of Agreement as discussed above.

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Post integration year funding conditions

These conditions relate to each and any post integration year and are set out in a table immediately after **item 17**.

For examples of complementary terms in the Heads of Agreement, please refer to previous discussion of such terms.

Condition 1.1 sets out the establishment of the AMC as an institute within the University (in second and subsequent post integration years), its objectives; the functions and powers of the AMC Board; and that the AMC will have a Principal.

Conditions 2.1 and **2.2** set out the constitution of the AMC Board and the areas of expertise that the AMC Board must have.

Conditions 3.1, 3.2 and **3.3** set out requirements relating to the report that the AMC Board must prepare and give to the Minister. This report must include information relating to a performance assessment of the AMC institute, a risk analysis and a strategic plan.

Condition 4.1 sets out the priority of access that the AMC institute will have to the undisposed land and other assets of the AMC, which were transferred to the University under **Part 3** of the Bill. This will not apply to the first post integration year.

Condition 5.1 sets out requirements on the University in disposing of any land and other assets of the AMC, which were transferred to the University under **Part 3** of the Bill.

Condition 6.1 states that the University will provide the Minister with written notification of any significant reduction of the AMC institute's operations, at least 12 months before the reduction.

Schedule 1 Part 5

Part 5 proposes consequential amendments to the following Acts:

- *Higher Education Support Act 2003*
- *Legislative Instruments Act 2003*
- *Public Works Committee Act 1969*, and
- *Remuneration Tribunal Act 1973*.

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Schedule 2

Item 1 proposes that a **new section 11** be inserted into the Australian Maritime Safety Authority Act enabling AMSA to share information that it obtains for the following purposes:

- maritime domain awareness, which includes maritime security
- maritime safety
- marine environment protection, and
- maritime transport efficiency.

This information may be provided to anyone on terms (if any) to be decided by AMSA.

Conclusion

Australian Maritime College

The integration of the AMC and the University is supported by both providers and the terms in the Heads of Agreement are broadly implemented in the provisions of the Bill. The Bill has mechanisms to protect the academic and financial viability of the AMC; employment rights of staff, and the rights of students for five years. The merger of the two higher education providers fits broadly within the Government's policy for a diversified higher education sector.

Australian Maritime Safety Authority

The Bill proposes broad powers for AMSA that relate to sharing its information.

These proposals are likely to involve additional administrative costs for AMSA in modifying its current information sharing framework and implementing the changes.

The question remains of how additional costs will be funded.

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