



Transport Safety Investigation Act 2003

No. 18, 2003

An Act to provide for investigation of transport accidents and other matters affecting transport safety, and for related purposes

Note: An electronic version of this Act is available in SCALEplus
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No. 18, 2003

An Act to provide for investigation of transport accidents and other matters affecting transport safety, and for related purposes

[Assented to 11 April 2003]

The Parliament of Australia enacts:

Section 1

Part 1—Preliminary

1 Short title

This Act may be cited as the *Transport Safety Investigation Act 2003*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent	11 April 2003
2. Sections 3 to 71	A single day to be fixed by Proclamation, subject to subsection (3)	1 July 2003 (s 2(1); <i>Gazette</i> 2003, S229)

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table is for additional information that is not part of this Act. This information may be included in any published version of this Act.
- (3) If a provision covered by item 2 of the table does not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.

3 Definitions

In this Act, unless the contrary intention appears:

accident means an investigable matter involving a transport vehicle where:

- (a) a person dies or suffers serious injury as a result of an occurrence associated with the operation of the vehicle; or
- (b) the vehicle is destroyed or seriously damaged as a result of an occurrence associated with the operation of the vehicle; or
- (c) any property is destroyed or seriously damaged as a result of an occurrence associated with the operation of the vehicle.

accident site means any of the following sites associated with an accident:

- (a) a site containing the transport vehicle or any of its wreckage;
- (b) a site where there is an impact point associated with the accident;
- (c) if the accident involved destruction or serious damage to property (other than the transport vehicle)—a site containing that property or any of its wreckage;

together with such area around the site as the Executive Director determines to be reasonably necessary to facilitate the investigation of the accident and securing the site.

accident site premises means:

- (a) an accident site; or
- (b) premises that it is necessary to enter in order to get to an accident site.

aircraft means any machine or craft used in air navigation, however propelled or moved.

Australia, when used in a geographical sense, includes the external Territories.

Australian aircraft means:

- (a) an aircraft registered in Australia; or
- (b) an aircraft owned by the Commonwealth, a State or a Territory.

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Australian court means a federal court or a court of a State or Territory.

Australian defence aircraft means an aircraft used by the Australian Defence Force but does not include an aircraft that is registered under the Civil Aviation Regulations.

Australian defence ship means a ship used by the Australian Defence Force.

Australian ship means:

- (a) a ship registered in Australia under the *Shipping Registration Act 1981*; or
- (b) an unregistered ship that has Australian nationality under section 29 of that Act; or
- (c) a ship owned by the Commonwealth, a State or a Territory.

Australian transport vehicle means:

- (a) an Australian aircraft; or
- (b) an Australian ship; or
- (c) a rail vehicle operating in Australia.

civil proceedings means any proceedings before an Australian court, other than criminal proceedings.

Note: Civil proceedings includes a coronial inquiry. See the definition of *court*.

civil transportation facility means an installation in Australia designed or used to facilitate the operation or maintenance of a transport vehicle that is not an exempt transport vehicle.

Commonwealth entity means:

- (a) the Commonwealth; or
- (b) an authority of the Commonwealth; or
- (c) a corporation in which the Commonwealth, or an authority of the Commonwealth, has a controlling interest.

Commonwealth place means a place referred to in paragraph 52(i) of the Constitution, other than the seat of government.

constitutional corporation means:

- (a) a corporation to which paragraph 51(xx) of the Constitution applies; or
- (b) a body corporate that is incorporated in a Territory.

control area means an area in a transport vehicle from which essential operational activities are directed or controlled.

coroner means the head of the relevant State or Territory coronial jurisdiction or a person directed by that head to conduct a coronial inquiry.

coronial inquiry means a coronial inquiry, coronial investigation or coronial inquest under a law of the Commonwealth, a State or a Territory.

court includes any tribunal, authority, person or body that has power to require the production of documents or answering of questions, but does not include a Royal Commission, the Parliament or either House of the Parliament.

crew member, in relation to OBR information, means any person who had operational duties on board the transport vehicle at any time during the recording period of the OBR.

criminal proceedings means criminal proceedings before an Australian court.

damage includes structural failure.

disclose:

- (a) in relation to information, includes divulge or communicate the information in any way; and
- (b) in relation to information contained in a document or other article, also includes produce the document or other article, or make it available, for inspection.

evidential material means anything that may be relevant to an investigation.

Executive Director means the person occupying the position of Executive Director of Transport Safety Investigation referred to in section 12.

Section 3

exempt foreign aircraft means an aircraft used in the military, customs or police services of a foreign country.

exempt foreign ship means a ship used in the military, customs or police services of a foreign country.

exempt transport vehicle means:

- (a) an Australian defence aircraft; or
- (b) an Australian defence ship; or
- (c) an exempt foreign aircraft; or
- (d) an exempt foreign ship.

expert opinion means an opinion that requires specialised knowledge based on training, study or experience.

immediately reportable matter means an investigable matter that is prescribed by the regulations for the purposes of this definition.

international agreement means a treaty or agreement whose parties are:

- (a) Australia and a foreign country; or
- (b) Australia and 2 or more foreign countries.

investigable matter means any transport safety matter that can be investigated by the Executive Director under this Act.

investigation means an investigation under this Act.

investigation warrant means a warrant under Division 4 of Part 5.

nominated official, in relation to a reportable matter, means a person prescribed by the regulations under section 20 in relation to the matter concerned.

non-staff member means a person who is not a staff member.

OBR or ***on-board recording*** has the meaning given by section 48.

Note: See also section 49 which allows the Executive Director to declare that a recording is no longer an OBR.

OBR information means:

- (a) an OBR or any part of an OBR; or

- (b) a copy or transcript of the whole or any part of an OBR, including a copy made before the occurrence of the reportable matter that caused the recording to become an OBR; or
- (c) any information obtained from an OBR or any part of an OBR.

occupier, in relation to premises, includes a person present at the premises who apparently represents the occupier.

operational duties means duties or functions in connection with the operation or safety of the transport vehicle.

power includes a function or duty.

premises includes any place or vehicle.

premises powers means:

- (a) powers under Part 5 to enter premises; or
- (b) powers under Part 5 that are exercisable after entering premises under that Part.

rail vehicle means a vehicle that operates on a railway (including a vehicle that does not have wheels).

railway means a system by which vehicles (including trams) designed to transport passengers or goods are guided:

- (a) by means of parallel rails; or
- (b) by means of a single rail; or
- (c) by any other means prescribed by the regulations.

reportable matter means an immediately reportable matter or a routine reportable matter.

responsible person, in relation to a reportable matter, means a person prescribed by the regulations for the purposes of this definition in relation to the matter concerned.

restricted information means any of the following (but does not include OBR information):

Section 3

- (a) all statements (whether oral or in writing) obtained from persons by a staff member in the course of an investigation (including any record of such a statement);
- (b) all information recorded by a staff member in the course of an investigation;
- (c) all communications with a person involved in the operation of a transport vehicle that is or was the subject of an investigation;
- (d) medical or private information regarding persons (including deceased persons) involved in a transport safety matter that is being or has been investigated;
- (e) in relation to a transport vehicle that is or was the subject of an investigation—information recorded for the purposes of monitoring or directing the progress of the vehicle from one place to another or information recorded in relation to the operation of the vehicle;
- (f) records of the analysis of information or evidential material acquired in the course of an investigation (including opinions expressed by a person in that analysis);
- (g) information contained in a document that is produced to a staff member under paragraph 32(1)(b) or 36(3)(a) or (4)(a).

routine reportable matter means an investigable matter that is prescribed by the regulations for the purposes of this definition.

Royal Commission means a Commission that has been commissioned by the Governor-General to conduct an inquiry, and includes any member of such a Commission.

safety action statement means a statement:

- (a) setting out any safety deficiencies identified during the course of an investigation that should be addressed; or
- (b) setting out any steps taken by persons to remedy safety deficiencies identified during the course of an investigation.

Secretary means the Secretary of the Department.

ship means any vessel used in navigation by water, however propelled or moved.

special investigator means a person appointed as a special investigator under section 14.

special premises means:

- (a) accident site premises; or
- (b) a vehicle.

staff member means:

- (a) the Executive Director; or
- (b) an APS employee who is assisting the Executive Director in exercising powers under this Act; or
- (c) a person to whom the Executive Director has delegated any of the Executive Director's powers under this Act.

Note: For the definition of ***APS employee***, see section 17AA of the *Acts Interpretation Act 1901*.

State referral of power means the referral of a matter to the Parliament of the Commonwealth as mentioned in paragraph 51(xxxvii) of the Constitution.

transport means transport by means of a transport vehicle.

transport safety means the safety of transport by means of transport vehicles.

transport safety matter means a transport safety matter specified in section 23.

transport vehicle means an aircraft, ship or rail vehicle.

4 Act binds the Crown

- (1) This Act binds the Crown in each of its capacities.
- (2) However, this Act does not make the Crown liable to be prosecuted for an offence.

5 External Territories

This Act extends to the external Territories.

Section 6

6 Application outside Australia

This Act extends to acts, omissions, matters and things outside Australia, unless the contrary intention appears.

7 Objects of this Act

- (1) The main object of this Act is to improve transport safety by providing for:
 - (a) the reporting of transport safety matters; and
 - (b) independent investigations into transport accidents and other incidents that might affect transport safety; and
 - (c) the making of safety action statements and safety recommendations that draw on the results of those investigations; and
 - (d) publication of the results of those investigations in the interests of transport safety.
- (2) Another object of this Act is that, during the investigation of a transport safety matter under this Act, there be co-operation between the Executive Director and any other Commonwealth agency or person having powers under another law of the Commonwealth to also investigate the matter.
- (3) The following are not objects of this Act:
 - (a) apportioning blame for transport accidents or incidents;
 - (b) providing the means to determine the liability of any person in respect of a transport accident or incident;
 - (c) assisting in court proceedings between parties (except as expressly provided by this Act);
 - (d) allowing any adverse inference to be drawn from the fact that a person is subject to an investigation under this Act.

8 Application of *Criminal Code*

- (1) Chapter 2 of the *Criminal Code* applies to all offences against this Act.

Note: This Act contains various defences to offences against this Act. See also Part 2.3 of the *Criminal Code* for other defences that may apply to offences against this Act.

- (2) Section 15.4 of the *Criminal Code* (extended geographical jurisdiction—category D) applies to all offences against this Act.

9 Penalties specified at foot of sections or subsections

- (1) This section applies if a maximum penalty is specified at the foot of a provision of this Act, being a provision that is either:
- (a) a section of this Act that is not divided into subsections; or
 - (b) a subsection of a section of this Act.
- (2) If the provision is expressed to create an offence, then the offence is punishable, on conviction, by a penalty up to the maximum specified.
- (3) If the provision is not expressed to create an offence, then a person who contravenes the provision is guilty of an offence against the provision that is punishable, on conviction, by a penalty up to the maximum specified.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: See also section 4B of the *Crimes Act 1914*.

10 Relationship with other laws

State laws

- (1) This Act is not intended to exclude the operation of any law of a State or Territory to the extent that the law is capable of operating concurrently with this Act.

Commonwealth laws

- (2) This Act is intended to prevail over any other law of the Commonwealth to the extent of any inconsistency.

Section 11

11 Constitutional limitations on powers and functions

Aircraft

- (1) The powers in this Act, so far as they relate to aircraft and air navigation, can only be exercised for the purpose of:
- (a) improving the safety of air navigation conducted in the course of trade or commerce with other countries or among the States; or
 - (b) improving the safety of air navigation:
 - (i) outside Australia; or
 - (ii) within a Territory, or to or from a Territory; or
 - (iii) within a Commonwealth place, or to or from a Commonwealth place; or
 - (iv) on aircraft owned or operated by a constitutional corporation or Commonwealth entity; or
 - (v) in respect of which a State referral of power is in operation; or
 - (vi) in relation to any other matter with respect to which the Parliament has power to make laws; or
 - (c) giving effect to an international agreement; or
 - (d) matters of international concern.

Ships

- (2) The powers in this Act, so far as they relate to ships and marine navigation, can only be exercised for the purpose of:
- (a) improving the safety of marine navigation conducted in the course of trade or commerce with other countries or among the States; or
 - (b) improving the safety of marine navigation:
 - (i) outside Australia; or
 - (ii) within a Territory, or to or from a Territory; or
 - (iii) within a Commonwealth place, or to or from a Commonwealth place; or
 - (iv) on ships owned or operated by a constitutional corporation or Commonwealth entity; or

- (v) in respect of which a State referral of power is in operation; or
- (vi) in relation to any other matter with respect to which the Parliament has power to make laws; or
- (c) giving effect to an international agreement; or
- (d) matters of international concern.

Rail vehicles

- (3) The powers in this Act, so far as they relate to rail vehicles and rail transport, can only be exercised for the purpose of:
 - (a) improving the safety of rail transport conducted in the course of trade or commerce among the States; or
 - (b) improving the safety of rail transport conducted to or from the Northern Territory; or
 - (c) improving the safety of rail transport:
 - (i) within a Commonwealth place, or to or from a Commonwealth place; or
 - (ii) on rail vehicles owned or operated by a constitutional corporation or Commonwealth entity; or
 - (iii) on railway tracks owned or operated by a constitutional corporation or Commonwealth entity; or
 - (iv) in respect of which a State referral of power is in operation; or
 - (v) in relation to any other matter with respect to which the Parliament has power to make laws.

Section does not limit OBR information powers

- (4) This section does not affect any powers in this Act that are expressly conferred in relation to an OBR or OBR information.

Note: The definition of **OBR** in section 48 applies constitutional limitations to the provisions of this Act that apply expressly to OBRs and OBR information.

Definition

- (5) In this section:

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outside Australia means outside the baseline from which the breadth of the territorial sea is measured under section 7 of the *Seas and Submerged Lands Act 1973*.

Note: A reference to Australia in any other provision of this Act includes a reference to the coastal sea of Australia: see section 15B of the *Acts Interpretation Act 1901*.

Part 2—Administration

12 Executive Director of Transport Safety Investigation

For the purposes of this Act, the Secretary must create the position of Executive Director of Transport Safety Investigation under subsection 77(1) of the *Public Service Act 1999*.

13 Delegation

- (1) Subject to this section, the Executive Director may, by writing, delegate to any person such of the Executive Director's powers under this Act as are specified in the instrument of delegation.

Note 1: See also section 34AB of the *Acts Interpretation Act 1901*, which deals with the effect of delegation powers.

Note 2: Functions and duties can also be delegated. See the definition of *power* in section 3.

Limitations on delegation

- (2) The Executive Director must not delegate his or her power under section 14 or 25.
- (3) The Executive Director must not delegate his or her powers under section 32 to anyone other than:
- (a) an SES employee; or
 - (b) a person who holds or performs the duties of an APS Executive Level 1 or 2 position or an equivalent position; or
 - (c) a person employed by any authority or body constituted by or under a law of the Commonwealth, where the skills and responsibilities that are expected of the person are equivalent to, or exceed, the skills and responsibilities expected of a person covered by paragraph (a) or (b); or
 - (d) a special investigator.

Note: For the definition of *SES employee*, see section 17AA of the *Acts Interpretation Act 1901*.

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- (4) The Executive Director must not delegate his or her powers under section 40 or 41 to anyone other than:
 - (a) an SES employee; or
 - (b) a person who holds or performs the duties of an APS Executive Level 1 or 2 position or an equivalent position; or
 - (c) a person employed by any authority or body constituted by or under a law of the Commonwealth, where the skills and responsibilities that are expected of the person are equivalent to, or exceed, the skills and responsibilities expected of a person covered by paragraph (a) or (b).
- (5) The Executive Director must not delegate his or her powers under section 35 (in so far as that section applies to residential premises) to anyone other than:
 - (a) an APS employee; or
 - (b) a person employed by any authority or body constituted by or under a law of the Commonwealth.
- (6) The Executive Director must not delegate powers to a person unless the Executive Director is satisfied that the person satisfies the criteria prescribed by the regulations.

Delegate to comply with directions

- (7) In exercising powers under a delegation, the delegate must comply with any directions of the Executive Director.

Interpretation

- (8) A reference in this Act to the Executive Director, in a provision relating to the exercise of any of the Executive Director's powers, includes a reference to a person to whom that power has been delegated.

Example 1: If a provision of this Act allows the Executive Director to require a person to attend before the Executive Director to answer questions, then a delegate can require a person to appear before the delegate to answer questions.

Example 2: If a provision of this Act imposes an obligation on the Executive Director in connection with the exercise of a power of the Executive Director, then the same obligation will apply to a delegate exercising that power.

14 Special investigators

The Executive Director may, by writing, appoint a person as a special investigator for the purposes of this Act if the Executive Director is satisfied that the person satisfies the criteria prescribed by the regulations.

Note: The Executive Director may delegate most of his or her powers under this Act to a special investigator: see section 13.

15 Independence

Subject to section 21, the Executive Director is not subject to directions from the Minister or the Secretary in respect of the exercise of the Executive Director's powers under this Act.

16 Minimal disruption to transport services

In exercising powers under this Act, the Executive Director must have regard to the desirability of minimising any resulting disruption to transport by means of transport vehicles.

17 International obligations

- (1) The Executive Director must ensure that the Executive Director's powers under this Act are exercised in a manner that is consistent with Australia's obligations under international agreements (as in force from time to time) that are identified by the regulations for the purposes of this section.

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- (2) In exercising powers under this Act, the Executive Director must also have regard to any rules, recommendations, guidelines, codes or other instruments (as in force from time to time) that are promulgated by an international organisation and that are identified by the regulations for the purposes of this section.

Part 3—Compulsory reporting of accidents etc.

18 Immediate reports

- (1) If a responsible person has knowledge of an immediately reportable matter, then the person must report it to a nominated official as soon as is reasonably practicable and by the means prescribed by the regulations.

Maximum penalty: Imprisonment for 6 months.

- (2) Subsection (1) does not apply if the person believes, on reasonable grounds, that another responsible person has already reported the matter to a nominated official.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2). See subsection 13.3(3) of the *Criminal Code*.

- (3) Subsection (1) does not apply if:

- (a) the person has already reported the matter under the *Navigation Act 1912* or the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983*; or
- (b) the person believes, on reasonable grounds, that another responsible person has already reported the matter under either of those Acts.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3). See subsection 13.3(3) of the *Criminal Code*.

19 Written reports within 72 hours

- (1) If a responsible person has knowledge of an immediately reportable matter or a routine reportable matter, then the person must within 72 hours give a written report of the matter (containing

the particulars prescribed by the regulations) to a nominated official.

Maximum penalty: 60 penalty units.

- (2) Subsection (1) does not apply if the person believes, on reasonable grounds, that another responsible person has already given such a report to a nominated official.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2). See subsection 13.3(3) of the *Criminal Code*.

- (3) Subsection (1) does not apply if:

- (a) the person has already reported in writing on the matter under the *Navigation Act 1912* or the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983*; or
- (b) the person believes, on reasonable grounds, that another responsible person has already reported in writing on the matter under either of those Acts.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3). See subsection 13.3(3) of the *Criminal Code*.

20 Nominated officials for receiving reports

- (1) The regulations must prescribe a list of the persons who are nominated officials in relation to reportable matters.
- (2) Persons may be identified in the list by name or by reference to a particular position or office.

Part 4—Investigations and reports

Division 1—Investigations

21 Investigations

- (1) Subject to section 22:
 - (a) the Executive Director may investigate any transport safety matter; and
 - (b) the Executive Director must investigate a transport safety matter if directed in writing by the Minister to do so.

Note: See also section 11, which puts constitutional limits on the exercise of powers and functions under this Act.

- (2) The Executive Director may discontinue an investigation at any time.
- (3) The Executive Director must, within 28 days of discontinuing an investigation, make publicly available, by electronic or other means, a statement setting out the reasons for discontinuing the investigation.

22 Restriction on investigations of transport safety matters

- (1) A transport safety matter cannot be investigated under this Act unless:
 - (a) the occurrence occurs in Australia; or
 - (b) the occurrence involves an Australian transport vehicle; or
 - (c) the occurrence occurs outside Australia and any of the following apply:
 - (i) evidence relating to the occurrence is found in Australia;
 - (ii) the appropriate authority of another country has requested the Executive Director to conduct, or to participate in, an investigation into the occurrence;
 - (iii) the Executive Director considers that it is necessary to conduct, or to participate in, an investigation into the

occurrence and the agreement of the appropriate authority of another country is obtained for the Executive Director to conduct, or to participate in, such an investigation;

- (iv) Australia has a right or obligation, under an international agreement, to participate in an investigation into the occurrence.
- (2) Subject to subsection (3), a transport safety matter cannot be investigated under this Act if the matter:
- (a) involves, or relates to, an exempt transport vehicle; and
 - (b) does not involve, or relate to, any transport vehicle that is not an exempt transport vehicle; and
 - (c) does not involve, or relate to, a civil transportation facility.
- (3) Subsection (2) does not prevent an investigation of a transport safety matter that involves an Australian defence ship or Australian defence aircraft if an appropriate authority in the Australian Defence Force has requested the Executive Director to conduct an investigation into the matter. If the Executive Director decides to investigate the matter, then the Executive Director must publish, by electronic or other means, details of the request.

23 Transport safety matters

- (1) Each of the following occurrences involving a transport vehicle is a *transport safety matter* for the purposes of this Act:
- (a) the transport vehicle is destroyed;
 - (b) the transport vehicle is damaged;
 - (c) the transport vehicle is abandoned, disabled, stranded or missing in operation;
 - (d) a person dies as a result of an occurrence associated with the operation of the transport vehicle;
 - (e) a person is injured or incapacitated as a result of an occurrence associated with the operation of the transport vehicle;
 - (f) any property is damaged as a result of an occurrence associated with the operation of the transport vehicle;

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- (g) the transport vehicle is involved in a near-accident;
- (h) the transport vehicle is involved in an occurrence that affected, or could have affected, the safety of the operation of the transport vehicle.

Other matters

- (2) For the purposes of this Act, a **transport safety matter** also includes something that occurred that affected, is affecting, or might affect, transport safety.

24 Offence to hinder etc. an investigation

- (1) A person is guilty of an offence if:
 - (a) the person engages in conduct; and
 - (b) the person is reckless as to whether the conduct will adversely affect an investigation:
 - (i) that is being conducted at that time; or
 - (ii) that could be conducted at a later time into an immediately reportable matter; and
 - (c) the conduct has the result of adversely affecting such an investigation (whether or not the investigation had commenced at the time of the conduct); and
 - (d) the conduct is not authorised by the Executive Director.

Maximum penalty: Imprisonment for 6 months.

- (2) Subsection (1) does not apply if the conduct was necessary:
 - (a) to ensure the safety of persons, animals or property; or
 - (b) to remove deceased persons or animals from an accident site; or
 - (c) to move a transport vehicle, or the wreckage of a transport vehicle, to a safe place; or
 - (d) to protect the environment from significant damage or pollution.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2). See subsection 13.3(3) of the *Criminal Code*.

- (3) Subsection (1) does not apply if the conduct was:

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- (a) the withdrawal of the person's consent to the Executive Director entering premises under section 34; or
- (b) the refusal to give any assistance to the Executive Director (in relation to that entry) after the withdrawal of that consent.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3). See subsection 13.3(3) of the *Criminal Code*.

- (4) The Executive Director must not unreasonably withhold an authorisation under paragraph (1)(d).
- (5) In this section:
conduct includes omission.

Division 2—Investigation reports

25 Reports on investigations

- (1) The Executive Director must, as soon as practicable after an investigation has been completed, publish, by electronic or other means, a report in relation to the investigation.
- (2) The Executive Director may, at any time before an investigation has been completed, publish, by electronic or other means, a report in relation to the investigation if he or she considers that the publication of the report is necessary or desirable for the purposes of transport safety.
- (3) A published report may include submissions that were made by persons to the Executive Director in response to a draft report, safety action statements or safety recommendations.
- (4) A published report must not include the name of an individual unless the individual has consented to that inclusion.
- (5) In this section:

report means any one or more of the following:

- (a) a report;
- (b) safety action statements;
- (c) safety recommendations.

26 Draft reports

- (1) The Executive Director may provide a draft report, on a confidential basis, to any person whom the Executive Director considers appropriate, for the purpose of:
 - (a) allowing the person to make submissions to the Executive Director about the draft report; or
 - (b) giving the person advance notice of the likely form of the published report.

- (2) A person who receives a draft report under subsection (1) or (4) must not:
- (a) make a copy of the whole or any part of the report; or
 - (b) disclose any of the contents of the report to any other person or to a court.

Maximum penalty:

- (a) in the case of a contravention of paragraph (a) – 20 penalty units; or
 - (b) in the case of a contravention of paragraph (b) – imprisonment for 2 years.
- (3) Strict liability applies to the element of the offence against subsection (2) that the draft report is received under subsection (1) or (4).
- (4) Subsection (2) does not apply to any copying or disclosure that is necessary for the purpose of:
- (a) preparing submissions on the draft report; or
 - (b) taking steps to remedy safety deficiencies that are identified in the draft report.

Note: A defendant bears an evidential burden in relation to a matter in subsection (4). See subsection 13.3(3) of the *Criminal Code*.

- (5) A person who receives a draft report under subsection (1) or (4) cannot be required to disclose it to a court.
- (6) A person who receives a draft report under subsection (1) or (4) is not entitled to take any disciplinary action against an employee of the person on the basis of information in the report.
- (7) A draft report provided under subsection (1) must not include the name of an individual unless the individual has consented to that inclusion.

27 Reports not admissible in evidence

Final report

- (1) A report under section 25 is not admissible in evidence in any civil or criminal proceedings.
- (2) Subsection (1) does not apply to a coronial inquiry.

Draft report

- (3) A draft report under section 26 is not admissible in evidence in any civil or criminal proceedings.

Part 5—Investigation powers

Division 1—Preliminary

28 Powers only exercisable in relation to an investigation

The powers in this Part may only be exercised for the purposes of an investigation.

29 Identity cards

- (1) The Executive Director must ensure that an identity card is issued to every person who can exercise premises powers.

Note 1: Premises powers are exercised either by the Executive Director or by a delegate of the Executive Director.

Note 2: For *premises powers* see section 3.

Form of identity card

- (2) The identity card must:
- (a) be in the form prescribed by the regulations; and
 - (b) contain a recent photograph of the person.

Offence

- (3) A person is guilty of an offence if:
- (a) the person has been issued with an identity card for the purposes of this section; and
 - (b) the person ceases to be a person who can exercise premises powers; and
 - (c) the person does not return the identity card to the Executive Director as soon as practicable.

Maximum penalty: 1 penalty unit.

- (4) The offence under subsection (3) is an offence of strict liability.

Note: For *strict liability* see section 6.1 of the *Criminal Code*.

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Defence: card lost or destroyed

- (5) However, the person is not guilty of the offence if the identity card was lost or destroyed.

Note: A defendant bears an evidential burden in relation to the matter in subsection (5). See subsection 13.3(3) of the *Criminal Code*.

Identity card must be carried

- (6) A person to whom an identity card is issued under this section must carry it at all times when exercising premises powers.

30 Obligations of Executive Director before entering premises

- (1) Before entering premises under this Part, the Executive Director must take reasonable steps to:
- (a) notify the occupier of the premises of the purpose of the entry; and
 - (b) produce the Executive Director's identity card for inspection by the occupier.
- (2) The Executive Director is not entitled to exercise any powers under this Part in relation to premises if the Executive Director fails to comply with the requirement under subsection (1).

31 Powers conferred on magistrates

- (1) A power conferred on a magistrate by this Part is conferred on the magistrate in a personal capacity and not as a court or a member of a court. The magistrate need not accept the power conferred.
- (2) A magistrate exercising such a power has the same protection and immunity as if the magistrate were exercising that power as, or as a member of, the court of which the magistrate is a member.
- (3) A warrant under this Part in respect of premises in a State or Territory may be issued by a magistrate of another State or Territory. This subsection is enacted to avoid doubt.

Division 2—Requirement to attend before Executive Director

32 Executive Director may require persons to attend and answer questions etc.

- (1) Where the Executive Director considers it necessary to do so for the purposes of an investigation, the Executive Director may:
 - (a) require a person to attend before the Executive Director and answer questions put by any person relating to matters relevant to the investigation; or
 - (b) require a person to produce specified evidential material to the Executive Director.
- (2) Subsection (1) does not apply in relation to a person in his or her capacity as a coroner.
- (3) The requirement under subsection (1) must be by a notice in writing. The notice must be signed by the Executive Director and must specify the time and place at which the person is required to attend before the Executive Director or produce the evidential material specified in the notice. That time must be reasonable having regard to the circumstances.
- (4) When a person attends before the Executive Director under paragraph (1)(a), the Executive Director may require the questions to be answered on oath or affirmation. For that purpose, the Executive Director may:
 - (a) require the person to take an oath or make an affirmation that the answers the person will give to the questions will be true; and
 - (b) administer an oath or affirmation to the person.
- (5) A person to whom a requirement is given in accordance with this section must not:
 - (a) fail to attend before the Executive Director in accordance with the requirement; or

Part 5 Investigation powers

Division 2 Requirement to attend before Executive Director

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- (b) refuse to take an oath or make an affirmation when required by the Executive Director to do so; or
- (c) refuse or fail to answer a question lawfully put to the person; or
- (d) fail to produce to the Executive Director the specified evidential material in accordance with the requirement.

Maximum penalty: 30 penalty units.

Note: Self-incrimination is not an excuse for failing to answer a question.
See section 47.

- (6) Strict liability applies to the element of the offence against subsection (5) that the requirement is given in accordance with this section.
- (7) A person who attends before the Executive Director in accordance with a requirement under paragraph (1)(a) or (b) is entitled to be paid, in relation to that attendance, fees and allowances for expenses fixed by, or calculated in accordance with, the regulations.

Division 3—Powers in relation to premises

33 Power to enter special premises without consent or warrant

- (1) The Executive Director may enter special premises without the occupier's consent and without obtaining a warrant if:
 - (a) the Executive Director believes on reasonable grounds that it is necessary to do so; and
 - (b) the investigation is an investigation into an immediately reportable matter.
- (2) The Executive Director may enter the special premises with such assistance, and by such force, as is necessary and reasonable.
- (3) Before entering special premises under subsection (1), the Executive Director must take reasonable steps to give to the occupier of the premises a written notice setting out the occupier's rights and obligations under this Division in relation to the powers that may be exercised under section 36 upon entry.
- (4) The Executive Director is not entitled to exercise any of those powers in relation to special premises the Executive Director has entered under subsection (1) if the Executive Director fails to comply with the requirement under subsection (3).

34 Power to enter any premises with occupier's consent

- (1) The Executive Director may enter any premises with the consent of the occupier of the premises.
- (2) Before obtaining the consent of a person to enter premises under this Division, the Executive Director must inform the person that the person may refuse consent.
- (3) A consent of a person is not effective for the purposes of this section unless the consent is voluntary.

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35 Power to enter any premises with warrant

- (1) The Executive Director may enter any premises under an investigation warrant.
- (2) Before entering premises under an investigation warrant, the Executive Director must:
 - (a) announce that the Executive Director is authorised to enter the premises; and
 - (b) give any person at the premises an opportunity to allow entry to the premises.
- (3) However, the Executive Director is not required to comply with subsection (2) if the Executive Director believes on reasonable grounds that immediate entry to the premises is required:
 - (a) to ensure the safety of a person; or
 - (b) to ensure that the effective execution of the warrant is not frustrated.
- (4) If the occupier of the premises is present at the premises, the Executive Director must make available to the occupier a copy of the warrant or a copy of the form of warrant.
- (5) In executing the warrant, the Executive Director may use such force against persons and things as is necessary and reasonable in the circumstances.

36 Powers after entering premises

- (1) After entering premises under this Division, the Executive Director may do any of the following:
 - (a) search the premises, and any thing on the premises, for evidential material;
 - (b) make photos, video recordings, sound recordings or other records of the premises or evidential material;
 - (c) make copies of evidential material found on the premises;
 - (d) examine, take measurements of, conduct tests on, or take samples of, evidential material;

- (e) operate equipment on the premises in order to access evidential material;
- (f) in the case of evidential material that is equipment, operate the evidential material;
- (g) remove evidential material from the premises with the consent of:
 - (i) if it is practicable to obtain the consent of the owner of the material—the owner; or
 - (ii) if it is not practicable to obtain the consent of the owner of the material—the occupier of the premises;

Note: See also subsection (2).

- (h) secure evidential material, pending the obtaining of a warrant to seize it;

Note: Under subsection (3), evidential material may be able to be seized without a warrant if the premises are special premises.

- (i) take equipment and material onto the premises, and use it, for any of the above purposes.

Obtaining consent

- (2) Before obtaining the consent of a person to remove evidential material from premises under paragraph (1)(g), the Executive Director must inform the person of the purpose for which the material is required and that the person may refuse consent. A consent of a person is not effective for the purposes of that paragraph unless the consent is voluntary.

Special premises

- (3) If the premises are special premises and entry is not under an investigation warrant, the Executive Director may also:
 - (a) require a person on the premises to answer questions or produce evidential material; and
 - (b) seize that evidential material, or any other evidential material found on the premises, if the material is directly relevant to the investigation concerned and the Executive Director believes, on reasonable grounds, that it is necessary to seize the material in order to prevent it being interfered with or to prevent its concealment, loss, deterioration or destruction.

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Entry under an investigation warrant

- (4) If the entry is under an investigation warrant, the Executive Director may also:
- (a) require a person on the premises to answer questions or produce evidential material to which the warrant relates; and
 - (b) seize that evidential material or any other evidential material found on the premises to which the warrant relates.

Offence

- (5) A person is guilty of an offence if the person refuses or fails to comply with a requirement under subsection (3) or (4).

Maximum penalty: 30 penalty units.

Note: Self-incrimination is not an excuse for failing to answer a question. See section 47.

- (6) Strict liability applies to the element of the offence against subsection (5) that the requirement is under subsection (3) or (4).

37 Occupier to provide Executive Director with facilities and assistance

The occupier of premises in relation to which an investigation warrant is being executed must provide the Executive Director and any person assisting the Executive Director with all reasonable facilities and assistance for the effective exercise of their powers.

Maximum penalty: 30 penalty units.

38 Occupier entitled to be present during search

- (1) If:
- (a) an investigation warrant in relation to premises is being executed; and
 - (b) the occupier of the premises is present at the premises;
- then the occupier is entitled to observe the search being conducted.
- (2) The right to observe the search being conducted ceases if the occupier impedes the search.

- (3) This section does not prevent 2 or more areas of the premises being searched at the same time.

39 Power to stop and detain transport vehicles

- (1) This section applies if the Executive Director believes, on reasonable grounds, that:
 - (a) evidential material is in or on a transport vehicle; and
 - (b) it is necessary to exercise other powers under this Division in order to prevent the material from being removed from Australia or from being interfered with or to prevent its concealment, loss, deterioration or destruction.
- (2) The Executive Director may stop and detain the vehicle for the purpose of exercising those other powers. The Executive Director may do so with such assistance, and by such force, as is necessary and reasonable.
- (3) The Executive Director must not detain the vehicle for longer than is necessary and reasonable to exercise those other powers.

Division 4—Investigation warrants

40 Issue of investigation warrants

Application for warrant

- (1) The Executive Director may apply to a magistrate for a warrant under this section in relation to premises.

Issue of warrant

- (2) The magistrate may issue the warrant if the magistrate is satisfied, by information on oath, that there are reasonable grounds for suspecting that:
 - (a) there is evidential material on the premises; or
 - (b) there may be evidential material on the premises within the next 72 hours.
- (3) However, the magistrate must not issue the warrant unless the Executive Director or some other person has given to the magistrate, either orally or by affidavit, such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought.

Content of warrant

- (4) The warrant must:
 - (a) authorise the Executive Director, with such assistance and by such force as is necessary and reasonable:
 - (i) to enter the premises; and
 - (ii) to exercise the powers set out in section 36; and
 - (iii) to seize evidential material to which the warrant relates; and
 - (b) state whether the entry is authorised to be made at any time of the day or night or during specified hours of the day or night; and
 - (c) specify the day (not more than one week after the issue of the warrant) on which the warrant ceases to have effect; and

- (d) state the purpose for which the warrant is issued.

41 Investigation warrants by telephone, fax etc.

Application for warrant

- (1) If, in an urgent case, the Executive Director considers it necessary to do so, the Executive Director may apply to a magistrate by telephone, fax or other electronic means for a warrant under section 40 in relation to premises.
- (2) The magistrate may require communication by voice to the extent that it is practicable in the circumstances.
- (3) Before applying for the warrant, the Executive Director must prepare an information of the kind mentioned in subsection 40(2) in relation to the premises that sets out the grounds on which the warrant is sought.
- (4) If it is necessary to do so, the Executive Director may apply for the warrant before the information is sworn.

Issue of warrant

- (5) If the magistrate is satisfied:
 - (a) after having considered the terms of the information; and
 - (b) after having received such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought;that there are reasonable grounds for issuing the warrant, the magistrate may complete and sign the same warrant that the magistrate would issue under section 40 if the application had been made under that section.

Obligations of magistrate and Executive Director once warrant issued

- (6) If the magistrate completes and signs the warrant:
 - (a) the magistrate must:

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- (i) tell the Executive Director what the terms of the warrant are; and
 - (ii) tell the Executive Director the day on which and the time at which the warrant was signed; and
 - (iii) tell the Executive Director the day (not more than one week after the magistrate completes and signs the warrant) on which the warrant ceases to have effect; and
 - (iv) record on the warrant the reasons for issuing the warrant; and
 - (b) the Executive Director must:
 - (i) complete a form of warrant in the same terms as the warrant completed and signed by the magistrate; and
 - (ii) write on the form the name of the magistrate and the day on which and the time at which the warrant was signed.
- (7) The Executive Director must also, not later than the day after the day of expiry or execution of the warrant, whichever is the earlier, send to the magistrate:
- (a) the form of warrant completed by the Executive Director; and
 - (b) the information referred to in subsection (3), which must have been duly sworn.
- (8) When the magistrate receives those documents, the magistrate must:
- (a) attach them to the warrant that the magistrate completed and signed; and
 - (b) deal with them in the way in which the magistrate would have dealt with the information if the application had been made under section 40.

Authority of warrant

- (9) A form of warrant duly completed under subsection (6) is authority for the same powers as are authorised by the warrant signed by the magistrate.
- (10) If:

- (a) it is material, in any proceedings, for a court to be satisfied that an exercise of a power was authorised by this section; and
 - (b) the warrant signed by the magistrate authorising the exercise of the power is not produced in evidence;
- the court must assume, unless the contrary is proved, that the exercise of the power was not authorised by such a warrant.

42 False statements etc. in application for warrant etc.

- (1) The Executive Director must not, in an application for an investigation warrant, make a statement knowing that:
 - (a) the statement is false or misleading; or
 - (b) the statement omits any matter or thing without which the statement is misleading.

Maximum penalty: Imprisonment for 2 years.

Note: This obligation applies also to delegates of the Executive Director. See section 13, which provides that references to the Executive Director include references to a delegate.

- (2) Subsection (1) does not apply as a result of paragraph (1)(a) if the statement is not false or misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2): see subsection 13.3(3) of the *Criminal Code*.

- (3) Subsection (1) does not apply as a result of paragraph (1)(b) if the statement did not omit any matter or thing without which the statement is misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3): see subsection 13.3(3) of the *Criminal Code*.

- (4) The Executive Director must not:
 - (a) state in a document that purports to be a form of warrant under section 41 the name of a magistrate unless that magistrate issued the warrant; or
 - (b) state on a form of warrant under that section a matter that, to the Executive Director's knowledge, departs in a material particular from the form authorised by the magistrate; or

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- (c) purport to execute, or present to another person, a document that purports to be a form of warrant under that section that the Executive Director knows:
 - (i) has not been approved by a magistrate under that section; or
 - (ii) departs in a material particular from the terms authorised by a magistrate under that section; or
- (d) give to a magistrate a form of warrant under that section that is not the form of warrant that the Executive Director purported to execute.

Maximum penalty: Imprisonment for 2 years.

- (5) Strict liability applies to the element of the offence against paragraph (4)(a) or (c) that the document purports to be a form of warrant under section 41.
- (6) Strict liability applies to the element of the offence against paragraph (4)(b) or (d) that the form of warrant is under section 41.

Division 5—Protection orders

43 Protection orders by Executive Director

- (1) For the purpose of protecting evidence that might be relevant to an investigation, the Executive Director may direct that specified things, or things in a specified class of things, must not be removed or interfered with except with the permission of the Executive Director.
- (2) The Executive Director may revoke or vary such a direction.
- (3) A person must not contravene such a direction.

Maximum penalty: Imprisonment for 12 months.

- (4) Subsection (3) does not apply if the conduct concerned was necessary:
 - (a) to ensure the safety of persons, animals or property; or
 - (b) to remove deceased persons or animals from an accident site;
or
 - (c) to move a transport vehicle, or the wreckage of a transport vehicle, to a safe place; or
 - (d) to protect the environment from significant damage or pollution.

Note: A defendant bears an evidential burden in relation to the matter in subsection (4). See subsection 13.3(3) of the *Criminal Code*.

- (5) The Executive Director must not unreasonably withhold a permission under subsection (1).

Division 6—Securing accident sites

44 Securing accident sites

- (1) The Executive Director may secure the perimeter of an accident site by whatever means the Executive Director considers appropriate.
- (2) A person is guilty of an offence if:
 - (a) while the perimeter is secured, a person enters the accident site, or remains on the accident site; and
 - (b) the person does not have the permission of the Executive Director to do so.

Maximum penalty: 10 penalty units.

- (3) Subsection (2) does not apply if the person entered the accident site, or remained on the accident site:
 - (a) to ensure the safety of persons, animals or property; or
 - (b) to remove deceased persons or animals from the accident site; or
 - (c) to move a transport vehicle, or the wreckage of a transport vehicle, to a safe place; or
 - (d) to protect the environment from significant damage or pollution.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3). See subsection 13.3(3) of the *Criminal Code*.

- (4) The Executive Director must not unreasonably withhold a permission under paragraph (2)(b).

Division 7—Miscellaneous

45 Retention, testing etc. of evidential material

- (1) This section applies to evidential material that:
 - (a) is produced to the Executive Director under section 32; or
 - (b) is removed from premises under paragraph 36(1)(g); or
 - (c) is seized by the Executive Director under this Part.
- (2) The Executive Director must provide a receipt for the material.
- (3) The Executive Director may make copies of the material.
- (4) The Executive Director may examine or test the material, even though that might result in damage or destruction of the material or a reduction in its value.
- (5) Subject to subsection (6), the Executive Director must return the material when it is no longer needed for the purposes of an investigation. However, if there is no owner or the Executive Director cannot, despite making reasonable efforts, locate the owner, the Executive Director may dispose of the material in such manner as the Executive Director thinks appropriate.
- (6) If a relevant body requests in writing particular evidential material for the purposes of:
 - (a) an investigation under another law of the Commonwealth or under a law of a State or Territory; or
 - (b) a coronial inquiry;then the Executive Director must make that material available to that body unless, in the opinion of the Executive Director, making that material available would be likely to interfere with any investigation to which the material relates.
- (7) However, the Executive Director must not make evidential material available under subsection (6) to the extent that the material is, or contains, OBR information or restricted information.

Note: Part 6 deals with the protection of OBR information and restricted information.

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(8) In this section:

owner includes an agent of the owner.

relevant body means:

- (a) another Department; or
- (b) an agency of the Commonwealth; or
- (c) a State or Territory Government; or
- (d) an agency of a State or Territory; or
- (e) a coroner.

46 Compensation for damage to electronic equipment

(1) This section applies if:

- (a) as a result of electronic equipment being operated as mentioned in section 36:
 - (i) damage is caused to the equipment; or
 - (ii) the data recorded on the equipment is damaged; or
 - (iii) programs associated with the use of the equipment, or with the use of the data, are damaged or corrupted; and
- (b) the damage or corruption occurs because:
 - (i) insufficient care was exercised in selecting the person who was to operate the equipment; or
 - (ii) insufficient care was exercised by the person operating the equipment.

(2) The Commonwealth must pay the owner of the equipment, or the user of the data or programs, such reasonable compensation for the damage or corruption as the Commonwealth and the owner or user agree on.

(3) However, if the owner or user and the Commonwealth fail to agree, the owner or user may institute proceedings in the Federal Court of Australia for such reasonable amount of compensation as the Court determines.

(4) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises, or the occupier's employees and agents, if they were available at the time, provided

any appropriate warning or guidance on the operation of the equipment.

- (5) Compensation is payable out of money appropriated by the Parliament.
- (6) For the purposes of subsection (1):

damage, in relation to data, includes damage by erasure of data or addition of other data.

47 Self-incrimination not an excuse

- (1) A person is not excused from answering a question or producing evidential material in response to a requirement under this Part on the ground that the answer, or the production of the material, might tend to incriminate the person or make the person liable to a penalty.
- (2) However, if the person is an individual, then:
 - (a) the answer or the production of the material; and
 - (b) any information or thing (including any document) obtained as a direct or indirect result of the answer or the production of the material;are not admissible in evidence against the person in any civil or criminal proceedings.
- (3) Subsection (2) does not prevent an answer being admitted in evidence in criminal proceedings in respect of the falsity of the answer.
- (4) Subsections (2) and (3) have effect despite anything else in this Act.

Part 6—Protection of OBR information and restricted information

Division 1—OBR information

48 Definition of *OBR* or *on-board recording*

- (1) A recording is an *OBR* (or *on-board recording*) for the purposes of this Act if:
 - (a) the recording consists of (or consists mainly of) sounds or images, or sounds and images, of persons in the control area of a transport vehicle; and
 - (b) the recording was made in order to comply with a law in force in any country; and
 - (c) any part of the recording was made at the time of the occurrence of an immediately reportable matter that involved the transport vehicle; and
 - (d) at least one of the following applies:
 - (i) any part of the recording was made while the transport vehicle was on a constitutional journey, or was made incidentally to such a journey;
 - (ii) the recording was made in order to comply with a law of the Commonwealth;
 - (iii) at the time when the recording was made, the transport vehicle was owned or operated by a constitutional corporation or Commonwealth entity;
 - (iv) the immediately reportable matter occurred when the transport vehicle was on a route ordinarily used by transport vehicles on constitutional journeys;
 - (v) the immediately reportable matter also involved another transport vehicle that was on a constitutional journey, or was owned or operated by a constitutional corporation or Commonwealth entity.
- (2) A recording is also an *OBR* (or *on-board recording*) for the purposes of this Act if:

- (a) the recording consists of (or consists mainly of) sounds or images, or sounds and images, of persons in the control area of a transport vehicle; and
 - (b) the recording was made in order to comply with a law in force in any country; and
 - (c) any part of the recording was made at the time of the occurrence of an immediately reportable matter that involved the transport vehicle.
- (3) An **OBR** (or **on-board recording**) does not include a recording that is of a kind declared by the regulations not to be an OBR for the purposes of this Act.
- (4) In this section:
- constitutional journey** means:
- (a) a journey in the course of trade or commerce with other countries or among the States; or
 - (b) a journey within a Territory, or to or from a Territory; or
 - (c) a journey within a Commonwealth place, or to or from a Commonwealth place.

49 OBR ceasing to be an OBR under Executive Director's declaration

- (1) The Executive Director may, by published notice, declare that a recording, or a part of a recording, identified in the notice is not to be treated as an OBR on and after a date specified in the notice.
- (2) If the Executive Director decides not to investigate the transport safety matter to which an OBR relates, the Executive Director must, by published notice, declare that the OBR is not to be treated as an OBR on and after a date specified in the notice.
- (3) If:
 - (a) the Executive Director decides to investigate the transport safety matter to which an OBR relates; and
 - (b) the Executive Director is satisfied that any part of the OBR is not relevant to the investigation;

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the Executive Director must, by published notice, identify that part and declare that part is not to be treated as an OBR on and after a date specified in the notice.

- (4) The Executive Director cannot revoke or vary a notice published under this section.
- (5) When an OBR, or part of an OBR, ceases to be an OBR because of a notice published under this section, then any related OBR information also ceases to be OBR information.

50 Executive Director's certificate about disclosure of OBR information

The Executive Director may issue a certificate in relation to OBR information, stating that the disclosure of the information is not likely to interfere with any investigation.

51 Release of OBR information in the interests of transport safety

- (1) The Executive Director may disclose OBR information to any person if the Executive Director considers that the disclosure is necessary or desirable for the purposes of transport safety.
- (2) However, the Executive Director may only disclose OBR information that is, or that contains, personal information in the circumstances prescribed by the regulations.
- (3) In this section:

personal information has the same meaning as in the *Privacy Act 1988*.

52 Executive Director may authorise persons to have access to OBR information

The Executive Director may authorise a non-staff member to have access to OBR information if the Executive Director considers that it is necessary or desirable to do so.

Note: The non-staff member is subject to confidentiality requirements of section 53.

53 Copying or disclosing OBR information

- (1) A person is guilty of an offence if:
- (a) the person makes a copy of information; and
 - (b) the information is OBR information.

Maximum penalty: Imprisonment for 2 years.

- (2) A person is guilty of an offence if:
- (a) the person discloses information to any person or to a court;
and
 - (b) the information is OBR information.

Maximum penalty: Imprisonment for 2 years.

- (3) Subsection (1) or (2) does not apply to:
- (a) anything done by a person in exercising powers under this Act or in connection with this Act; or
 - (b) copying or disclosure for the purposes of the investigation of any offence against a law of the Commonwealth, a State or a Territory; or
 - (c) disclosure of OBR information to a court in criminal proceedings against a person who is not a crew member; or
 - (d) disclosure to a court in civil proceedings where:
 - (i) the Executive Director issues a certificate under section 50 in relation to the OBR information; and
 - (ii) the court makes a public interest order under subsection (4) of this section in relation to the OBR information; or
 - (e) disclosure of OBR information in respect of which a coroner has made a determination under subsection 59(2).

Note: A defendant bears an evidential burden in relation to a matter in subsection (3). See subsection 13.3(3) of the *Criminal Code*.

- (4) If the court is satisfied that any adverse domestic and international impact that the disclosure of the information might have on any current or future investigations is outweighed by the public interest in the administration of justice, the court may order such disclosure.

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- (5) The court may direct that OBR information, or any information obtained from the OBR information, must not:
 - (a) be published or communicated to any person; or
 - (b) be published or communicated except in such manner, and to such persons, as the court specifies.
- (6) If a person is prohibited by this section from disclosing OBR information, then:
 - (a) the person cannot be required by a court to disclose the information; and
 - (b) any information disclosed by the person in contravention of this section is not admissible in any civil or criminal proceedings (other than proceedings against the person under this section).

54 OBR information no ground for disciplinary action

A person is not entitled to take any disciplinary action against an employee of the person on the basis of OBR information.

55 OBR information not admissible in criminal proceedings against crew members

OBR information, and any information or thing obtained as a direct or indirect result of the use of OBR information, is not admissible in evidence in criminal proceedings against a crew member (other than proceedings for an offence against this Act).

56 Admissibility of OBR information in civil proceedings

- (1) OBR information is not admissible in evidence in civil proceedings unless:
 - (a) the Executive Director issues a certificate under section 50 in relation to the OBR information; and
 - (b) the court makes a public interest order under subsection (3) of this section in relation to the OBR information.

Note: See also section 59, which deals with the use of OBR information in coronial inquiries.

- (2) A party to the proceedings may, at any time before the determination of the proceedings, apply to the court in which the proceedings have been instituted for an order that OBR information be admissible in evidence in the proceedings.
- (3) If:
- (a) such an application is made; and
 - (b) the Executive Director has issued a certificate under section 50 in relation to the OBR information;
- then:
- (c) the court must examine the OBR information; and
 - (d) if the court is satisfied that:
 - (i) a material question of fact in the proceedings will not be able to be properly determined from other evidence available to the court; and
 - (ii) the OBR information or part of the OBR information, if admitted in evidence in the proceedings, will assist in the proper determination of that material question of fact; and
 - (iii) any adverse domestic and international impact that the disclosure of the information might have on any current or future investigations is outweighed by the public interest in the administration of justice;the court may order that the OBR information, or that part of the OBR information, be admissible in evidence in the proceedings.
- (4) This section does not apply to a coronial inquiry.

57 Examination by a court of OBR information under subsection 56(3)

- (1) This section applies if a court examines OBR information under subsection 56(3).
- (2) The only persons who may be present at the examination are:
- (a) the person or persons constituting the court, other than the members of the jury (if any); and
 - (b) the legal representatives of the parties to the proceedings; and

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- (c) such other persons (if any) as the court directs.
- (3) The court may direct that the OBR information, or any information obtained from the OBR information, must not:
 - (a) be published or communicated to any person; or
 - (b) be published or communicated except in such manner, and to such persons, as the court specifies.

58 Where a court makes an order under subsection 56(3)

- (1) This section applies if OBR information is admitted as evidence under subsection 56(3).
- (2) The OBR information is not evidence for the purpose of the determination of the liability in the proceedings of a crew member.
- (3) The court may direct that the OBR information or any information obtained from the OBR information, must not:
 - (a) be published or communicated to any person; or
 - (b) be published or communicated except in such manner, and to such persons, as the court specifies.

59 Use of OBR information in coronial inquiries

- (1) If the coroner requests OBR information that is in the possession of the Executive Director, then the Executive Director must make the information available to the coroner unless, in the opinion of the Executive Director, making the information available would be likely to interfere with any investigation into the transport safety matter to which the OBR concerned relates.

Coroner's determination about disclosure

- (2) After examining the OBR information in camera, the coroner may make a determination that the information, or part of the information, should no longer be protected from disclosure.
- (3) The coroner cannot make such a determination unless the coroner considers that:

- (a) the information concerned is relevant to the inquiry and cannot be obtained by other means; and
- (b) any adverse domestic and international impact that the disclosure of the information might have on any current or future investigations is outweighed by the public interest.

Coroner's direction about publication or communication

- (4) The coroner may direct that the OBR information or any information obtained from the OBR information, must not:
 - (a) be published or communicated to any person; or
 - (b) be published or communicated except in such manner, and to such persons, as the coroner specifies.
- (5) A person must not contravene such a direction.

Maximum penalty: Imprisonment for 2 years.

Division 2—Restricted information

60 Limitations on disclosure etc. of restricted information

Staff members

- (1) A person who is or has been a staff member is guilty of an offence if:
- (a) the person makes a record of information; and
 - (b) the information is restricted information.

Maximum penalty: Imprisonment for 2 years.

- (2) A person who is or has been a staff member is guilty of an offence if:
- (a) the person discloses information to any person or to a court; and
 - (b) the information is restricted information.

Maximum penalty: Imprisonment for 2 years.

Non-staff members

- (3) A person who has, or had, access to restricted information under section 62 must not:
- (a) make a record of the information; or
 - (b) disclose the information to any person or to a court.

Maximum penalty: Imprisonment for 2 years.

Defences

- (4) Subsection (1), (2) or (3) does not apply to:
- (a) anything done by a person in performing functions under this Act or in connection with this Act; or
 - (b) disclosure to a court in criminal proceedings for an offence against this Act; or
 - (c) disclosure to a court in civil proceedings where:

- (i) the Executive Director issues a certificate under subsection (5); and
- (ii) the court makes an order under subsection (6).

Note: A defendant bears an evidential burden in relation to a matter in subsection (4). See subsection 13.3(3) of the *Criminal Code*.

Certificate

- (5) The Executive Director may issue a certificate in relation to restricted information, stating that the disclosure of the information is not likely to interfere with any investigation.

Courts

- (6) If the court is satisfied that any adverse domestic and international impact that the disclosure of the information might have on any current or future investigations is outweighed by the public interest in the administration of justice, the court may order such disclosure.
- (7) The court may direct that the restricted information, or any information obtained from the restricted information, must not:
 - (a) be published or communicated to any person; or
 - (b) be published or communicated except in such manner, and to such persons, as the court specifies.
- (8) If a person is prohibited by this section from disclosing restricted information, then:
 - (a) the person cannot be required by a court to disclose the information; and
 - (b) any information disclosed by the person in contravention of this section is not admissible in any civil or criminal proceedings (other than proceedings against the person under this section).

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61 Release of restricted information in the interests of transport safety

- (1) The Executive Director may disclose restricted information to any person if the Executive Director considers that the disclosure is necessary or desirable for the purposes of transport safety.
- (2) However, the Executive Director may only disclose restricted information that is, or that contains, personal information in the circumstances prescribed by the regulations.
- (3) In this section:

personal information has the same meaning as in the *Privacy Act 1988*.

62 Executive Director may authorise persons to have access to restricted information

The Executive Director may authorise a non-staff member to have access to restricted information if the Executive Director considers that it is necessary or desirable to do so.

Note: The non-staff member is subject to the confidentiality requirements of section 60.

Division 3—Miscellaneous

63 Powers of Parliament and Royal Commissions not affected

Nothing in this Part affects the information-gathering powers of:

- (a) the Parliament or a House of the Parliament; or
- (b) a Royal Commission.

Part 7—Miscellaneous

64 Immunity

A person is not subject to any liability, action, claim or demand for anything done or omitted to be done in good faith in connection with the exercise of powers under this Act.

65 Certification by Executive Director of staff member's involvement in investigation

The Executive Director may issue a certificate stating that a specified person who is or has been a staff member is involved, or has been involved, in an investigation under this Act into a specified matter.

66 Staff members etc. not compellable as witnesses

- (1) A person who is or has been a staff member is not obliged to comply with a subpoena or similar direction of a court to attend and answer questions relating to an investigable matter if the Executive Director has issued a certificate under section 65 for the person in relation to that matter.
- (2) A staff member is not compellable to give an expert opinion in any civil or criminal proceedings in relation to a matter related to transport safety.
- (3) This section does not apply to a coronial inquiry.

67 Attendance fees where staff members attend coronial inquiry

- (1) If a staff member appears as a witness in a coronial inquiry and:
 - (a) the staff member is asked to give an expert opinion; or
 - (b) the Executive Director has issued a certificate under section 65 for the staff member in relation to a matter that is being investigated at the coronial inquiry;

then the State or Territory concerned is liable to pay a fee to the Commonwealth in respect of the expenses of that attendance.

- (2) The amount of the fee, and the due date for payment, are to be determined under the regulations.
- (3) If the fee remains unpaid, then it can be recovered by the Commonwealth as a debt in a court of competent jurisdiction.

68 Legal representation for staff members at coronial inquiry

- (1) If a staff member appears as a witness in a coronial inquiry and:
 - (a) the staff member is asked to give an expert opinion; or
 - (b) the Executive Director has issued a certificate under section 65 for the staff member in relation to a matter that is being investigated at the coronial inquiry;then the staff member is entitled to legal representation in respect of that appearance.
- (2) This section does not, by implication, affect any entitlement to legal representation that a staff member has in circumstances not covered by subsection (1).

69 Staff members may exercise powers under State and Territory laws

- (1) Staff members may exercise powers that are conferred on them by any law of a State that relates to transport safety, provided that the law does not provide that such powers may only be exercised by a staff member or members.
- (2) Staff members may exercise powers that are conferred on them by any law of a Territory that relates to transport safety.

70 Compensation for acquisition of property

- (1) If:
 - (a) apart from this section, the operation of this Act would result in the acquisition of property from a person otherwise than on just terms; and

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- (b) the acquisition would be invalid because of paragraph 51(xxxi) of the Constitution;
then the Commonwealth is liable to pay compensation of a reasonable amount to the person in respect of the acquisition.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may take proceedings in the Federal Court for the recovery from the Commonwealth of such reasonable amount of compensation as the Court determines.
- (3) Compensation is payable out of money appropriated by the Parliament.
- (4) In this section:
- acquisition of property* has the same meaning as in paragraph 51(xxxi) of the Constitution.
- just terms* has the same meaning as in paragraph 51(xxxi) of the Constitution.

71 Regulations

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

[Minister's second reading speech made in—
House of Representatives on 20 June 2002
Senate on 15 October 2002]

(126/02)

