



# **Inspector of Transport Security Act 2006**

**No. 149, 2006**

**An Act to provide for inquiry into transport  
security matters and offshore security matters, and  
for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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# **Inspector of Transport Security Act 2006**

**No. 149, 2006**

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**An Act to provide for inquiry into transport  
security matters and offshore security matters, and  
for related purposes**

*[Assented to 7 December 2006]*

The Parliament of Australia enacts:

Section 1

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## Part 1—Preliminary

### 1 Short title

This Act may be cited as the *Inspector of Transport Security Act 2006*.

### 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

| 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.   | 7 December 2006 |
| 2. Sections 3 to 93  | A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period. | 7 June 2007     |

Note: This table relates only to the provisions of this Act as originally passed by both Houses of 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 contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.



### 3 Definitions

In this Act:

***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.

***Australian permanent resident*** has the same meaning as in Part 5 of the *Migration Act 1958*.

***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 waters*** means:

- (a) the territorial sea of Australia; and
- (b) the waters of the sea on the landward side of the territorial sea of Australia; and
- (c) the territorial sea of each external Territory; and
- (d) the waters of the sea on the landward side of the territorial sea of each external Territory; and
- (e) inland waters prescribed in regulations.

***Commonwealth agency*** 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;
- and includes the Australian Defence Force.

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**Commonwealth place** means a place referred to in paragraph 52(i) of the Constitution.

**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.

**controller** means:

- (a) in relation to premises other than a security regulated offshore facility—the person apparently in control of the premises; and
- (b) in relation to a security regulated offshore facility—the offshore facility operator; and
- (c) in relation to a transport vehicle other than a security regulated ship—the person apparently in control of the vehicle; and
- (d) in relation to a security regulated ship—the ship operator or master of the ship.

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

**CVR information** has the same meaning as in Part IIIB of the *Civil Aviation Act 1988*.

Note: **CVR** is short for cockpit voice recording.

**defence aspect** of a matter has the meaning given by section 21.

**Defence Minister** means the Minister administering section 1 of the *Defence Act 1903*.

**eligible Judge** has the meaning given by section 78.

**Executive Director** means the person for the time being occupying the position of Executive Director of Transport Safety Investigation referred to in section 12 of the *Transport Safety Investigation Act 2003*.

**final report** means a final report given to the Minister under section 59.

**government agency** means:

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

**inland waters** means waters within Australia other than waters of the sea.

**Inspector** means the person for the time being appointed as the Inspector of Transport Security under section 25.

**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.

**master**, in relation to a security regulated ship, means the person who has command or charge of the ship.

**nominated AAT member** means a member of the Administrative Appeals Tribunal in respect of whom a nomination is in force under section 79.

**OBR information** has the same meaning as in the *Transport Safety Investigation Act 2003*.

Note: **OBR** is short for on-board recording.

**officer** of a government agency includes:

- (a) the head of the government agency; and
- (b) an employee of the government agency; and
- (c) any other person engaged by the government agency, under contract or otherwise, to exercise powers, or perform duties or functions, of the government agency.

**offshore facility operator** has the same meaning as in the *Maritime Transport and Offshore Facilities Security Act 2003*.

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**offshore security matter** has the meaning given by section 13.

**premises** means any place and includes a security regulated offshore facility.

**private living area:**

- (a) in relation to a security regulated ship—has the meaning given by subsection 140(4) of the *Maritime Transport and Offshore Facilities Security Act 2003*; and
- (b) in relation to a security regulated offshore facility—has the meaning given by subsection 140B(4) of that Act.

**proceedings** includes civil proceedings (whether before a court or tribunal) and criminal proceedings, coronial inquiries and disciplinary proceedings or processes.

**protected information** has the meaning given by section 66.

**rail vehicle** means a vehicle (including a tram) that is designed to transport passengers or goods and operates on a railway (including a vehicle that does not have wheels).

**railway** means a system by which vehicles 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.

**restricted information** means information that is restricted information for the purposes of the *Transport Safety Investigation Act 2003*.

**road vehicle** means a vehicle that is designed to transport passengers or goods by land, but does not include a rail vehicle.

**security regulated offshore facility** has the same meaning as in the *Maritime Transport and Offshore Facilities Security Act 2003*.

**security regulated ship** has the same meaning as in the *Maritime Transport and Offshore Facilities Security Act 2003*.

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

**ship operator** has the same meaning as in the *Maritime Transport and Offshore Facilities Security Act 2003*.

**State or Territory waters** means waters, including waters of the sea, that are within the limits of a State or Territory.

**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.

**surface transport aspect** of a transport security matter has the meaning given by section 22.

**territorial sea** has the same meaning as in the *Seas and Submerged Lands Act 1973*.

**transport** means transport by means of a transport vehicle.

**Transport Minister** of a State or Territory means a Minister of that State or Territory responsible for transport or a type of transport.

**transport security matter** has the meaning given by section 12.

**transport vehicle** means an aircraft, ship, rail vehicle or road vehicle.

**voluntarily**: information or a document is given voluntarily if it is not given in response to a request made under section 35, 36 or 37.

#### **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 Application to external territories**

This Act extends to every external Territory.

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**6 Application outside Australia**

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

**7 Relationship with other laws**

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.

**8 Geographical jurisdiction**

Section 15.2 of the *Criminal Code* (extended geographical jurisdiction—category B) applies to offences under this Act.

## **Part 2—Objects and overview of Act**

### **Division 1—Objects**

#### **9 Objects**

- (1) The object of this Act is to improve the security of transport and security regulated offshore facilities by providing for independent inquiry into transport security matters and offshore security matters.
- (2) It is also an object of this Act that, during an inquiry into a matter, the Inspector will not interfere with the investigations of another government agency, or a coronial inquiry, into the matter.
- (3) It is not an object of this Act:
  - (a) to apportion blame in relation to a matter; or
  - (b) to provide the means to determine the liability of any person in relation to a matter; or
  - (c) to allow any adverse inference to be drawn from the fact that a person is the subject of an inquiry into a matter.

## Division 2—Overview

### 10 General overview of Act

- (1) This Act provides for the appointment of an Inspector of Transport Security to inquire into transport security matters and offshore security matters.
- (2) The Inspector may only inquire into such matters in accordance with a direction from the Minister.
- (3) The Inspector is given the powers necessary to conduct an inquiry. These include powers in relation to the gathering of information (see Part 5).
- (4) Once an inquiry is completed, the Inspector must give the Minister a final report setting out his or her conclusions and recommendations, having taken into account submissions made on any draft report (see Divisions 3 and 4 of Part 6).
- (5) If, during the course of an inquiry, the Inspector concludes that a matter demonstrates no security issue, the Inspector must give the Minister an interim report setting out that conclusion and the Minister must revoke the direction under which the inquiry has been conducted (see Division 2 of Part 6).
- (6) The confidentiality of information gathered by the Inspector in the course of an inquiry is protected by limiting the circumstances in which the information may be copied, recorded, used or disclosed (see Parts 5, 6, 7 and 8).
- (7) The “no blame” nature of the Inspector’s inquiry (see subsection 9(3)) is reinforced by provisions that limit the admissibility of reports and the use of draft reports in disciplinary proceedings.



## Part 3—Inquiries

### 11 Minister may initiate inquiry

- (1) Subject to this Part, the Minister may direct the Inspector to inquire into a transport security matter or an offshore security matter.

Note: Under subsection 33(3) of the *Acts Interpretation Act 1901*, the Minister may vary or revoke such a direction.

- (2) The direction must be in writing.
- (3) The direction may specify the period within which the Inspector must give a final report.
- (4) The direction is not a legislative instrument.
- (5) The Inspector is not otherwise subject to direction from the Minister in relation to the inquiry, or any interim, draft or final report in relation to the inquiry.
- (6) The Inspector is not subject to direction from the Secretary in relation to the inquiry, or any interim, draft or final report in relation to the inquiry.

### 12 What is a *transport security matter*?

A *transport security matter* is:

- (a) an incident occurring in the course of transport, or involving a transport vehicle, that:
- (i) the Minister believes on reasonable grounds to be a major incident; and
  - (ii) demonstrates, or may demonstrate, a problem with the security of transport; or
- (b) a state of affairs that suggests, or may suggest, a systemic failure or weakness in the way in which the security of transport is regulated; or
- (c) any other occurrence, circumstance, state of affairs or matter that:

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- (i) the Minister believes on reasonable grounds to be significant; and
- (ii) has, or may have, implications for the security of transport.

**13 What is an *offshore security matter*?**

An *offshore security matter* is:

- (a) an incident occurring on, around or in relation to a security regulated offshore facility, that:
  - (i) the Minister believes on reasonable grounds to be a major incident; and
  - (ii) demonstrates, or may demonstrate, a problem with the security of the facility, or security regulated offshore facilities generally; or
- (b) a state of affairs that suggests, or may suggest, a systemic failure or weakness in the way in which the security of offshore facilities is regulated; or
- (c) any other occurrence, circumstance, state of affairs or matter that:
  - (i) the Minister believes on reasonable grounds to be significant; and
  - (ii) has, or may have, implications for the security of the security regulated offshore facility, or security regulated offshore facilities generally.

**14 Constitutional limitations—air transport**

The Minister must not direct the Inspector to inquire into a transport security matter in relation to an aircraft or air transport unless:

- (a) the matter relates to an aircraft engaged in, or air transport conducted in the course of, trade or commerce with other countries or among the States; or
- (b) the matter affects or involves air transport:
  - (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
- (c) the matter affects or involves an aircraft owned or operated by a constitutional corporation or Commonwealth agency; or
- (d) a State referral of power is in operation in relation to the matter; or
- (e) inquiry into a matter of that kind gives effect to an international agreement; or
- (f) inquiry into a matter of that kind is a matter of international concern; or
- (g) the direction is made for the purpose of improving the security of air transport and the Parliament has the power to make laws in relation to the matter on any other basis.

### **15 Constitutional limitations—maritime transport**

The Minister must not direct the Inspector to inquire into a transport security matter in relation to a ship or maritime transport unless:

- (a) the matter relates to a ship engaged in, or maritime transport conducted in the course of, trade or commerce with other countries or among the States; or
- (b) the matter affects or involves maritime transport:
  - (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
- (c) the matter affects or involves a ship owned or operated by a constitutional corporation or Commonwealth agency; or
- (d) a State referral of power is in operation in relation to the matter; or
- (e) inquiry into a matter of that kind gives effect to an international agreement; or
- (f) inquiry into a matter of that kind is a matter of international concern; or
- (g) the direction is made for the purpose of improving the security of maritime transport and the Parliament has the

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power to make laws in relation to the matter on any other basis.

**16 Constitutional limitations—rail transport**

The Minister must not direct the Inspector to inquire into a transport security matter in relation to a rail vehicle or rail transport unless:

- (a) the matter relates to a rail vehicle engaged in, or rail transport conducted in the course of, trade or commerce among the States; or
- (b) the matter affects or involves rail transport:
  - (i) outside Australia; or
  - (ii) within the Australian Capital Territory or the Northern Territory, or to or from the Australian Capital Territory or the Northern Territory; or
  - (iii) within a Commonwealth place, or to or from a Commonwealth place; or
- (c) the matter affects or involves a rail vehicle owned or operated by a constitutional corporation or Commonwealth agency; or
- (d) the matter affects or involves rail transport by means of railway tracks owned or operated by a constitutional corporation or Commonwealth agency; or
- (e) a State referral of power is in operation in relation to the matter; or
- (f) inquiry into a matter of that kind gives effect to an international agreement; or
- (g) inquiry into a matter of that kind is a matter of international concern; or
- (h) the direction is made for the purpose of improving the security of rail transport and the Parliament has the power to make laws in relation to the matter on any other basis.

**17 Constitutional limitations—road transport**

The Minister must not direct the Inspector to inquire into a transport security matter in relation to a road vehicle or road transport unless:

- (a) the matter relates to a road vehicle engaged in, or road transport conducted in the course of, trade or commerce among the States; or
- (b) the matter affects or involves road transport:
  - (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
- (c) the matter affects or involves a road vehicle owned or operated by a constitutional corporation or Commonwealth agency; or
- (d) the matter affects or involves a road owned or operated by a constitutional corporation or Commonwealth agency; or
- (e) a State referral of power is in operation in relation to the matter; or
- (f) inquiry into a matter of that kind gives effect to an international agreement; or
- (g) inquiry into a matter of that kind is a matter of international concern; or
- (h) the direction is made for the purpose of improving the security of road transport and the Parliament has the power to make laws in relation to the matter on any other basis.

**18 Constitutional limitations—security regulated offshore facilities**

The Minister must not direct the Inspector to inquire into an offshore security matter in relation to a security regulated offshore facility or security regulated offshore facilities unless:

- (a) the matter relates to a security regulated offshore facility that is, or security regulated offshore facilities that are, used in trade or commerce with other countries or among the States; or

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- (b) the matter affects or involves a security regulated offshore facility that is, or security regulated offshore facilities that are:
  - (i) outside Australia; or
  - (ii) within a Territory; or
  - (iii) owned or operated by a constitutional corporation or Commonwealth entity; or
- (c) the matter occurs in a Territory; or
- (d) the matter:
  - (i) demonstrates, or is reasonably likely to demonstrate, a problem with the security of a security regulated offshore facility, or security regulated offshore facilities, that would have a substantial adverse effect in a Territory; or
  - (ii) suggests, or is reasonably likely to suggest, a systemic failure or weakness in the way in which the security of a security regulated offshore facility, or security regulated offshore facilities are regulated, that would have a substantial adverse effect in a Territory; or
  - (iii) has, or is reasonably likely to have, implications for the security of a security regulated offshore facility, or security regulated offshore facilities, that would have a substantial adverse effect in a Territory; or
- (e) a State referral of power is in operation in relation to the matter; or
- (f) inquiry into a matter of that kind gives effect to an international agreement; or
- (g) inquiry into a matter of that kind is a matter of international concern; or
- (h) the direction is made for the purpose of improving the security of security regulated offshore facilities and the Parliament has the power to make laws in relation to the matter on any other basis.

**19 Meaning of *outside Australia* in sections 14 to 18**

In sections 14 to 18:

***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*.

## **20 Consultation with other Ministers before direction made**

- (1) The Minister must not direct the Inspector to inquire into a transport security matter or an offshore security matter unless the Minister has consulted all other Commonwealth Ministers whose areas of responsibility might be affected by the inquiry.
- (2) The Minister may consult such other persons and organisations as the Minister considers appropriate, before directing the Inspector to inquire into a transport security matter or an offshore security matter.

## **21 Defence aspects of a matter**

- (1) The Minister must not direct the Inspector to inquire into a defence aspect of a transport security matter or of an offshore security matter if, within a reasonable time of having been consulted, the Defence Minister has objected to that aspect of the matter being inquired into.
- (2) A ***defence aspect*** of a transport security matter or an offshore security matter is an aspect of the matter that involves:
  - (a) the operation of the Australian Defence Force in connection with the defence of Australia; or
  - (b) the operation of the Australian Defence Force in connection with international humanitarian aid or United Nations peace-keeping operations; or
  - (c) the management of an emergency or a disaster, to the extent that that management involves the Australian Defence Force; or
  - (d) the use of information in the possession of the Australian Defence Force; or

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- (e) the use of property owned or leased by, or otherwise in the possession of, the Australian Defence Force; or
- (f) the conduct of a member of the Australian Defence Force in the course of performing his or her duties.

**22 Surface transport aspects of a transport security matter**

- (1) The Minister must not direct the Inspector to inquire into a surface transport aspect of a transport security matter unless the Transport Minister of the State or Territory in which that aspect of the matter occurs has agreed to the scope of the inquiry into that aspect of the matter.
- (2) A *surface transport aspect* of a transport security matter is an aspect of the matter that relates to the security of:
  - (a) rail vehicles operating within a particular State or Territory, other than rail vehicles owned or operated by a Commonwealth agency; or
  - (b) road vehicles operating within a particular State or Territory, other than road vehicles owned or operated by a Commonwealth agency; or
  - (c) ships operating within the State or Territory waters of a particular State or Territory, other than security regulated ships or ships owned or operated by a Commonwealth agency.

**23 Geographical reach of inquiry**

*Transport security matters*

- (1) The Minister must not direct the Inspector to inquire into a transport security matter unless:
  - (a) the matter occurs in Australia; or
  - (b) the matter involves an Australian aircraft or an Australian ship; or
  - (c) action facilitating the occurrence of the matter has, or may have, taken place in Australia; or
  - (d) action facilitating the occurrence of the matter has, or may have, been carried out by an Australian citizen, an Australian



permanent resident, or a person who, at the time the direction is given, is in Australia; or

- (e) the Minister believes, on reasonable grounds, that the matter has, or may have, implications for the management of the security of transport in Australia; or
- (f) the matter relates to security arrangements in a place within a foreign country from which transport vehicles depart, and the Minister believes, on reasonable grounds, that those vehicles pose or may pose particular security risks when they enter Australia, Australian waters, or the airspace above Australia.

*Offshore security matters*

- (2) The Minister may direct the Inspector to inquire into an offshore security matter, whether or not the security regulated offshore facility or facilities to which the matter relates are in Australia.
- (3) However, the Minister must not direct the Inspector to inquire into an aspect of an offshore security matter that occurs in a foreign country unless:
  - (a) the matter involves an Australian aircraft or an Australian ship; or
  - (b) action facilitating the occurrence of the matter has, or may have, been carried out by an Australian citizen, an Australian permanent resident, or a person who, at the time the direction is given, is in Australia; or
  - (c) the Minister believes, on reasonable grounds, that the matter has, or may have, implications for the management of the security of security regulated offshore facilities, or the security of transport, in Australia.

## **24 Preservation of certain privileges and immunities**

This Act does not affect:

- (a) a privilege or immunity that is conferred by or under:
  - (i) the *Consular Privileges and Immunities Act 1972*; or
  - (ii) the *Defence (Visiting Forces) Act 1963*; or
  - (iii) the *Diplomatic Privileges and Immunities Act 1967*; or
  - (iv) the *Foreign States Immunities Act 1985*; or

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- (v) the *International Organisations (Privileges and Immunities) Act 1963*; or
- (vi) the *Overseas Missions (Privileges and Immunities) Act 1995*; or
- (b) a privilege or immunity of a similar kind that is conferred by or under any other Act.

## **Part 4—Inspector of Transport Security**

### **Division 1—Appointment**

#### **25 Inspector of Transport Security**

- (1) The Minister may, in writing, appoint a person to be the Inspector of Transport Security.
- (2) A person appointed as Inspector holds office for the period of not more than 5 years specified in the instrument of appointment.
- (3) The Inspector may be appointed on a part-time basis.

#### **26 Conduct of Inspector**

The Inspector must, in performing functions or exercising powers under this Act:

- (a) behave honestly and with integrity; and
- (b) act with care and diligence; and
- (c) treat everyone with respect and courtesy, and without harassment; and
- (d) disclose to the Minister, and take reasonable steps to avoid, any conflict of interest (real or apparent); and
- (e) not make improper use of:
  - (i) inside information; or
  - (ii) his or her status or powers;in order to gain, or seek to gain, a benefit or advantage for himself or herself, or for any other person; and
- (f) while performing functions or exercising powers overseas, at all times behave in a way that upholds the good reputation of Australia.

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**27 Terms and conditions of employment**

The Inspector holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

**28 Remuneration**

- (1) The Inspector is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the Inspector is to be paid the remuneration that is specified in a legislative instrument made by the Minister.
- (2) This section has effect subject to the *Remuneration Tribunal Act 1973*.

**29 Acting appointments**

- (1) The Minister may appoint a person to act as the Inspector:
  - (a) during a vacancy in the office of Inspector (whether or not an appointment has previously been made to the office); or
  - (b) during any period, or during all periods, when the Inspector is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office.
- (2) Anything done by or in relation to a person purporting to act under an appointment is not invalid merely because:
  - (a) the occasion for the appointment had not arisen; or
  - (b) there was a defect or irregularity in connection with the appointment; or
  - (c) the appointment had ceased to have effect; or
  - (d) the occasion to act had not arisen or had ceased.

**30 Resignation**

The Inspector may resign his or her appointment by giving the Minister a written resignation.

### **31 Termination**

- (1) The Minister may terminate the appointment of the Inspector for misbehaviour or physical or mental incapacity.
- (2) The Minister may terminate the appointment of the Inspector if:
  - (a) the Inspector:
    - (i) becomes bankrupt; or
    - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
    - (iii) compounds with his or her creditors; or
    - (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
  - (b) the Inspector is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
  - (c) the Inspector fails to comply with section 26; or
  - (d) the Inspector otherwise fails to comply with this Act.

## **Division 2—Functions**

### **32 Functions of the Inspector**

The Inspector has the following functions:

- (a) to inquire into a transport security matter in accordance with a direction of the Minister under section 11;
- (b) to inquire into an offshore security matter in accordance with a direction of the Minister under section 11;
- (c) to prepare reports in relation to those inquiries.

## **Division 3—Powers**

### **33 Powers of Inspector to be used for inquiries**

The powers of the Inspector may only be used for the purpose of carrying out the Inspector's functions under this Act or for a purpose otherwise permitted, either expressly or by implication, under this Act.

**Part 5** Gathering information

**Division 1** Powers relating to information and documents

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**Part 5—Gathering information**

**Division 1—Powers relating to information and documents**

**34 Simplified outline**

The following is a simplified outline of this Division:

This Division gives the Inspector the power to request information that he or she believes is relevant to an inquiry.

Under this Division:

- (a) a request for OBR information can be made to the Executive Director;
- (b) a request for restricted information can be made to the Executive Director, or a government agency or person who holds the information independently of the Executive Director, such as the original source;
- (c) a request for other information or documents that have been obtained or generated by a government agency can be made to the agency or a person who holds the information independently of the agency, such as the original source;
- (d) a request for other information can be made to any person who holds the information.

The flow of information and documents to the Inspector is encouraged by:

- (a) enabling government agencies and others to give information and documents to the Inspector despite any other law;



- (b) providing that offences under the *Transport Safety Investigation Act 2003* that would otherwise apply to prevent the Executive Director from giving information to the Inspector do not apply;
- (c) providing immunities for people who give information and documents to the Inspector.

Once given to the Inspector, the circumstances in which the information and documents can be copied, recorded, used and disclosed in the context of an inquiry are limited.

In particular, disclosure is limited where that disclosure would hinder another agency's investigations or adversely affect its operations. In that case, the information can only be disclosed with the agreement of the source.

### **35 Power to request information from persons generally**

- (1) This section applies in relation to information or documents:
  - (a) that are held by a person; and
  - (b) that the Inspector believes to be relevant to an inquiry conducted in accordance with a direction of the Minister under section 11; and
  - (c) that are not OBR information; and
  - (d) that are not restricted information that the person has been given access to under section 62 of the *Transport Safety Investigation Act 2003*.
- (2) This section does not apply if:
  - (a) the person is a government agency; or
  - (b) the person:
    - (i) is, or has at any time been, an officer of a government agency; and
    - (ii) obtained or generated the information or document in the course of carrying out his or her duties as an officer of the government agency.

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**Division 1** Powers relating to information and documents

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- (3) The Inspector may request the person to:
- (a) give the Inspector the information; or
  - (b) produce to the Inspector the documents.
- (4) The person may comply with the request despite any other law.
- Note: This section constitutes authorisation for the purposes of other laws, such as paragraph 2.1(g) of National Privacy Principle 2 in Schedule 3 to the *Privacy Act 1988*.
- (5) The Inspector may, in the course of conducting an inquiry in accordance with a direction of the Minister under section 11, copy, make a record of, use or disclose information given or documents produced in response to a request under this section.
- (6) A person assisting another person in the exercise of powers or performance of functions under this Act, may, for the purposes of an inquiry conducted in accordance with a direction of the Minister under section 11, copy, make a record of, use or disclose information given or documents produced in response to a request under this section.
- (7) A person commits an offence if:
- (a) information is disclosed to the person; and
  - (b) the information is disclosed in circumstances permitted under subsection (5) or (6); and
  - (c) the information is not disclosed to the person because the person is exercising powers or performing functions under this Act, or assisting another person in the exercise of powers or performance of functions under this Act; and
  - (d) the person does any of the following:
    - (i) copies, or makes a record of, the information;
    - (ii) uses the information;
    - (iii) discloses the information to any other person or to a court, a tribunal or a coroner.

Penalty: Imprisonment for 2 years.

- (8) Subsection (7) does not apply to any conduct that is necessary for the purpose of assisting with an inquiry conducted in accordance with a direction of the Minister under section 11.

Note: A defendant bears an evidential burden in relation to a matter in subsection (8): see subsection 13.3(3) of the *Criminal Code*.

### **36 Power to request information from government agencies**

- (1) This section applies in relation to information or documents:
  - (a) that are held by a government agency; and
  - (b) that the Inspector believes to be relevant to an inquiry conducted in accordance with a direction of the Minister under section 11; and
  - (c) that are not OBR information; and
  - (d) that are not restricted information that the government agency has been given access to under section 62 of the *Transport Safety Investigation Act 2003*.

- (2) The Inspector may request the government agency to:
  - (a) give the Inspector the information; or
  - (b) produce to the Inspector the documents.

- (3) The government agency may comply with the request despite any other law.

Note: This section constitutes authorisation for the purposes of other laws, such as paragraph (1)(d) of Information Privacy Principle 11 in section 14 of the *Privacy Act 1988*.

- (4) The Inspector may, in the course of conducting an inquiry in accordance with a direction of the Minister under section 11, copy, make a record of, use or disclose information given or documents produced by the government agency.
- (5) A person assisting another person in the exercise of powers or performance of functions under this Act (an *assistant*), may, for the purposes of an inquiry conducted in accordance with a direction of the Minister under section 11, copy, make a record of, use or disclose information given or documents produced by the government agency.
- (6) Neither the Inspector nor an assistant may, in the course of the inquiry, disclose information given or documents produced by the government agency, without the prior agreement of the

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government agency, if, in the Inspector's opinion, the disclosure may:

- (a) compromise an investigation that is being conducted by the government agency; or
  - (b) have a substantial adverse effect on the proper and efficient conduct of the operations of the government agency.
- (7) A person commits an offence if:
- (a) information is disclosed to the person; and
  - (b) the information is disclosed in circumstances permitted under subsections (4) and (6), or subsections (5) and (6); and
  - (c) the information is not disclosed to the person because the person is exercising powers or performing functions under this Act, or assisting another person in the exercise of powers or performance of functions under this Act; and
  - (d) the person does any of the following:
    - (i) copies, or makes a record of, the information;
    - (ii) uses the information;
    - (iii) discloses the information to any other person or to a court, a tribunal or a coroner.

Penalty: Imprisonment for 2 years.

- (8) Subsection (7) does not apply to any conduct that is necessary for the purpose of assisting with an inquiry conducted in accordance with a direction of the Minister under section 11.

Note: A defendant bears an evidential burden in relation to a matter in subsection (8): see subsection 13.3(3) of the *Criminal Code*.

**37 Requesting OBR information and restricted information from the Executive Director**

- (1) If the Inspector believes that the Executive Director has OBR information or restricted information that is relevant to an inquiry conducted in accordance with a direction of the Minister under section 11, the Inspector may request the Executive Director to disclose the information to the Inspector.
- (2) The Executive Director may comply with the request, if the Executive Director believes that any adverse effect that the

disclosure may have on current or future investigations under the *Transport Safety Investigation Act 2003* is outweighed by the public interest served by disclosing the information to the Inspector.

*Application of section 53 of the Transport Safety Investigation Act 2003*

- (3) Subsections 53(1) and (2) of the *Transport Safety Investigation Act 2003* do not apply to:
- (a) anything done by the Executive Director under subsection (2) of this section; or
  - (b) anything done by another person for the purpose of assisting the Executive Director in the exercise of his or her power under subsection (2) of this section.

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

*Application of section 60 of the Transport Safety Investigation Act 2003*

- (4) Subsections 60(1) and (2) of the *Transport Safety Investigation Act 2003* do not apply to:
- (a) anything done by the Executive Director under subsection (2) of this section; or
  - (b) anything done by another person for the purpose of assisting the Executive Director in the exercise of his or her power under subsection (2) of this section.

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

*Application of other laws to disclosure by Executive Director under subsection 37(2)*

- (5) The Executive Director may exercise his or her power under subsection (2) despite any other law.

Note: This subsection constitutes authorisation for the purposes of other laws, such as paragraph (1)(d) of Information Privacy Principle 11 in section 14 of the *Privacy Act 1988*.

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- (6) The Inspector, or a person assisting the Inspector in the exercise of powers or the performance of functions under this Act (an *assistant*), may, for the purposes of an inquiry conducted in accordance with a direction of the Minister under section 11:
- (a) copy, make a record of or use OBR information; and
  - (b) copy, make a record of or use restricted information given to the Inspector by the Executive Director; and
  - (c) subject to subsection (7), disclose OBR information, and restricted information given to the Inspector by the Executive Director.
- (7) Neither the Inspector nor an assistant may, for the purposes of an inquiry conducted in accordance with a direction of the Minister under section 11, disclose OBR information, or restricted information given to the Inspector by the Executive Director, without the prior agreement of the Executive Director, if, after consultation with the Executive Director, the Executive Director is of the opinion that the disclosure may:
- (a) compromise an investigation that is being conducted by the Executive Director; or
  - (b) have a substantial adverse effect on the proper and efficient conduct of the operations of the Executive Director.
- (8) A person commits an offence if:
- (a) restricted information that was given to the Inspector by the Executive Director is disclosed to the person; and
  - (b) the information is disclosed in circumstances permitted under paragraph (6)(c); and
  - (c) the information is not disclosed to the person because the person is exercising powers or performing functions under this Act, or assisting another person in the exercise of powers or performance of functions under this Act; and
  - (d) the person does any of the following:
    - (i) copies, or makes a record of, the information;
    - (ii) uses the information;
    - (iii) discloses the information to any other person or to a court, a tribunal or a coroner.

Penalty: Imprisonment for 2 years.

- (9) Subsection (8) does not apply to any conduct that is necessary for the purpose of assisting with an inquiry conducted in accordance with a direction of the Minister under section 11.

Note: A defendant bears an evidential burden in relation to a matter in subsection (9): see subsection 13.3(3) of the *Criminal Code*.

### **38 Protection from liability**

If:

- (a) the Inspector, or a person assisting another person in the exercise of powers or performance of functions under this Act (an *assistant*), requests a person to give the Inspector or the assistant information or produce to the Inspector or the assistant a document under this Division and the person does so in the honest and reasonable belief that the request is permitted under this Division; or
- (b) the Inspector or an assistant requests a government agency to give the Inspector or the assistant information or produce to the Inspector or the assistant a document under this Division, and a person does so on behalf of the agency in the honest and reasonable belief that the request is permitted under this Division;

the person is not liable:

- (c) to any proceedings for contravening any other law because of that conduct; or
- (d) to civil proceedings for loss, damage or injury of any kind suffered by another person because of that conduct; or
- (e) to disciplinary action, or to a disciplinary sanction, of any kind because of that conduct.

## Division 2—Search powers

### 39 Simplified outline

The following is a simplified outline of this Division:

This Division sets out the powers of the Inspector to enter and search premises and board and search transport vehicles.

This can only be done with the consent of the controller of the premises or vehicle.

The Inspector may also exercise his or her powers under Division 1 to ask questions while conducting the search.

### 40 Identity cards

- (1) The Inspector must ensure that an identity card is issued to every person who can exercise:
  - (a) powers under this Division to enter premises or to board a transport vehicle; or
  - (b) powers under this Division that are exercisable after entering premises or boarding a transport vehicle under this Division.

Note: Powers mentioned in subsection (1) are exercised either by the Inspector or by a delegate of the Inspector (see section 82 for the power to delegate).

#### *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 commits an offence if:
  - (a) the person has been issued with an identity card for the purposes of this section; and



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- (b) the person ceases to be a person who can exercise powers mentioned in subsection (1); and
- (c) the person does not return the identity card to the Inspector within 7 days of ceasing to be such a person.

Penalty: 5 penalty units.

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

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

*Defence: card lost or destroyed*

- (5) Subsection (3) does not apply 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 powers mentioned in subsection (1).

#### **41 Obligations before entering premises or boarding transport vehicle**

- (1) Before entering premises or boarding a transport vehicle under this Division, a person must take reasonable steps to:
  - (a) identify himself or herself to the controller of the premises or transport vehicle; and
  - (b) notify the controller of the purpose of the entry; and
  - (c) produce his or her identity card for inspection by the controller.
- (2) A person is not entitled to exercise any powers under this Division in relation to premises or a transport vehicle if the person fails to comply with the requirement under subsection (1).

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**42 Security regulated offshore facilities—occupational health and safety requirements**

In exercising a power under this Division within the boundaries of a security regulated offshore facility, a person must take account of occupational health and safety requirements under the laws of the Commonwealth, or of a State or Territory applying at the facility.

**43 Power to enter any premises with consent**

- (1) The Inspector may enter any premises for the purpose of exercising a power set out in section 45 in any area, other than a private living area within a security regulated offshore facility, if the controller of the premises consents to the entry for the purpose of exercising the power.
- (2) The Inspector may enter a security regulated offshore facility for the purpose of exercising a power set out in section 45 in a private living area of the facility if both:
  - (a) the offshore facility operator for the facility; and
  - (b) any person or persons who occupy the private living area; consent to the entry for the purposes of exercising the power.
- (3) The Inspector may only exercise the power in that area if the Inspector is accompanied by the offshore facility operator for the facility or a person nominated by the offshore facility operator.
- (4) Before obtaining consent from a person under this section, the Inspector must inform the person that he or she may refuse consent, or withdraw consent at any time. The Inspector must leave the premises or the area if the consent is withdrawn.
- (5) A consent of a person is not effective for the purposes of this section unless the consent is voluntary.
- (6) A person mentioned in subsection (1) or (2) does not commit an offence if the person refuses to allow the Inspector to enter, or remain on, the premises.

#### **44 Power to board any transport vehicle with consent**

- (1) The Inspector may board a transport vehicle for the purpose of exercising a power set out in section 46 in any area, other than a private living area within a security regulated ship, if the controller of the vehicle consents to the boarding of the transport vehicle for the purpose of exercising the power.
- (2) The Inspector may board a security regulated ship for the purpose of exercising a power set out in section 46 in a private living area of the ship if both:
  - (a) the master; and
  - (b) any person or persons who occupy the private living area; consent to the entry for the purpose of exercising the power.
- (3) The Inspector may only exercise the power in that area if the Inspector is accompanied by the master of the ship or a person nominated by the master.
- (4) Before obtaining consent from a person under this section, the Inspector must inform the person that he or she may refuse consent, or withdraw consent at any time. The Inspector must leave the transport vehicle or the area if the controller asks the Inspector to do so.
- (5) A consent of a person is not effective for the purposes of this section unless the consent is voluntary.
- (6) A person mentioned in subsection (1) or (2) does not commit an offence if the person refuses to allow the Inspector to board, or remain in or on, the transport vehicle or the area.

#### **45 Powers that may be exercised in relation to premises**

The powers that the Inspector may exercise in relation to premises under section 43 are as follows:

- (a) to search the premises and any thing (including a transport vehicle) on the premises;
- (b) to inspect, examine or take measurements of any thing on the premises (including any transport vehicle found on the premises);

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- (c) to take photographs, make video or audio recordings or make sketches of the premises or any thing on the premises;
- (d) to inspect any book, record or document on the premises;
- (e) to take extracts from, or make copies of, any such book, record or document;
- (f) to observe operating procedures for the premises or for equipment on the premises;
- (g) to discuss those operating procedures with the controller or any other person on the premises;
- (h) to take onto the premises such equipment and materials as the Inspector requires for the purposes of exercising powers in relation to the premises;
- (i) to operate equipment on the premises for the purposes of gaining access to a document or record.

**46 Powers that may be exercised in relation to a transport vehicle**

The powers that the Inspector may exercise in relation to a transport vehicle under section 44 are as follows:

- (a) to search the transport vehicle and any thing in or on the transport vehicle;
- (b) to inspect, examine or take measurements of any thing in or on the transport vehicle;
- (c) to take photographs, make video or audio recordings or make sketches of the transport vehicle or any thing in or on the transport vehicle;
- (d) to inspect any book, record or document in or on the transport vehicle;
- (e) to take extracts from, or make copies of, any such book, record or document;
- (f) to observe operating procedures for the transport vehicle or for equipment in or on the vehicle;
- (g) to discuss those operating procedures with the controller or any other person in or on the transport vehicle;
- (h) to take to, and into, the transport vehicle such equipment and materials as the Inspector requires for the purpose of exercising powers in relation to the transport vehicle;

- (i) to operate equipment in or on the transport vehicle for the purposes of gaining access to a document or record.

#### **47 Compensation for damage to electronic equipment**

- (1) This section applies if:
  - (a) as a result of equipment being operated as mentioned in section 45 or 46:
    - (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 a court of competent jurisdiction 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 or 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.

### **Division 3—Where information or documents are volunteered**

#### **48 Protection from liability**

If:

- (a) a person voluntarily gives information or produces a document to a person exercising powers or performing functions under this Act, or assisting another person in the exercise of powers or performance of functions under this Act; and
- (b) the person does so in the honest and reasonable belief that the information or document is relevant to an inquiry conducted by the Inspector in accordance with a direction of the Minister under section 11; and
- (c) the person does not commit an offence under the *Transport Safety Investigation Act 2003* in doing so; and
- (d) the person does not commit an offence under Part IIIB of the *Civil Aviation Act 1988* in doing so;

the person is not liable:

- (e) to any proceedings for contravening any other law because of that conduct; or
- (f) to civil proceedings for loss, damage or injury of any kind suffered by another person because of that conduct; or
- (g) to disciplinary action, or to a disciplinary sanction, of any kind because of that conduct.

## **Division 4—Information generated in the course of conducting an inquiry**

### **49 Copying, making a record of, using or disclosing information generated in the course of an inquiry**

- (1) The Inspector or a person assisting the Inspector in the exercise of powers or the performance of functions under this Act (an *assistant*), may, for the purposes of an inquiry conducted in accordance with a direction of the Minister under section 11, copy, make a record of, use or disclose information generated by the Inspector or the assistant in the course of exercising powers or performing functions under this Act, or assisting another person in the exercise of powers or performance of functions under this Act.
- (2) A person commits an offence if:
  - (a) information is disclosed to the person; and
  - (b) the information is disclosed in circumstances permitted under subsection (1); and
  - (c) the information is not disclosed to the person because the person is exercising powers or performing functions under this Act, or assisting another person in the exercise of powers or performance of functions under this Act; and
  - (d) the person does any of the following:
    - (i) copies, or makes a record of, the information;
    - (ii) uses the information;
    - (iii) discloses the information to any other person or to a court, a tribunal or a coroner.

Penalty: Imprisonment for 2 years.

- (3) Subsection (2) does not apply to any conduct that is necessary for the purpose of assisting with an inquiry conducted in accordance with a direction of the Minister under section 11.

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

## **Part 6—Reports**

### **Division 1—Simplified outline**

#### **50 Simplified outline**

The following is a simplified outline of this Part:

Once an inquiry is completed, the Inspector must make a report to the Minister setting out his or her conclusions and recommendations.

However, before making that final report, the Inspector must give anyone who would be adversely affected by the publication of the report the opportunity to comment on a draft. The Inspector may also release a draft report to another person for the purpose of allowing submissions to be made or advance notice of the contents of the final report to be given.

Some kinds of particularly sensitive information cannot be disclosed in this way.

A person who receives a draft report is allowed to copy, record, use and disclose the report for the purpose of making a submission or remedying a security deficiency identified in the report.

To facilitate frank submissions being given on the draft report, certain immunities are given to those who act honestly and reasonably in making those submissions.

A person cannot be subjected to disciplinary action on the basis of a draft report.

The final report can contain any of the information given to the Inspector in the course of his or her inquiry. However, there are limits on the circumstances in which the Minister may disclose information contained in the report, particularly sensitive information.



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If, in the course of an inquiry, the Inspector forms the view that a matter into which he or she is conducting an inquiry demonstrates no significant problem in, and has no significant implications for, the security of transport or security regulated offshore facilities, the Inspector must make a report to this effect to the Minister. This is an interim report.

As a result of an interim report, the direction under which the inquiry is being conducted will be revoked, and so the inquiry will come to an end.

Reports are not admissible in proceedings.

## **Division 2—Interim reports**

### **51 Interim report—no security issue found**

- (1) If, in the course of an inquiry conducted in accordance with a direction of the Minister under section 11, it becomes apparent to the Inspector that a transport security matter or an offshore security matter demonstrates no significant problem in, and has no significant implications for, the security of transport or security regulated offshore facilities, the Inspector must give an interim report to the Minister setting out his or her conclusions.
- (2) The Minister must, as soon as practicable after receiving the interim report, revoke the direction under which the inquiry is being conducted.
- (3) Nothing in this section affects the power of the Minister to revoke or amend a direction under section 11 for any other reason.
- (4) The Inspector may include protected information, OBR information, CVR information, and restricted information given to the Inspector by the Executive Director, in the interim report.

### **52 Disclosure of interim reports**

*Circumstances in which interim report may be disclosed*

- (1) Subject to subsections (3) to (6), the Minister may:
  - (a) give a copy of all or part of the interim report to any person or government agency, if the Minister believes that it is, on balance, in the public interest to do so; and
  - (b) table a copy of the interim report, or part of the interim report, in the Parliament, if the Minister thinks that it is, on balance, in the public interest to do so.

*Disclosure to State or Territory in which a surface transport aspect of a transport security matter occurs*

- (2) Subject to subsections (3) to (6), the Minister must disclose any part of the interim report that relates to a surface transport aspect of a transport security matter to the Transport Minister of the State or Territory in which that aspect of the matter occurred.

*Interim reports containing protected information*

- (3) The Minister must not give a person or government agency a copy of, or table in the Parliament, any part of an interim report that contains protected information given to the Inspector by a government agency, without the prior agreement of that agency, if the disclosure of the information may:
- (a) compromise an investigation that is being conducted by the government agency; or
  - (b) have a substantial adverse effect on the proper and efficient conduct of the operations of the government agency.

*Interim reports containing OBR information or CVR information*

- (4) The Minister must not give a person or government agency a copy of, or table in the Parliament, any part of an interim report that contains OBR information or CVR information, unless the information is already publicly available.

*Interim reports containing restricted information given to the Inspector by the Executive Director*

- (5) The Minister must not give to a person or government agency, or table in the Parliament, any part of an interim report that contains restricted information given to the Inspector by the Executive Director, without the prior agreement of the Executive Director, if the disclosure of the information may:
- (a) compromise an investigation that is being conducted by the Executive Director; or
  - (b) have a substantial adverse effect on the proper and efficient conduct of the operations of the Executive Director.

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*Interim reports relating to surface transport aspects of a matter*

- (6) The Minister must not give a person or government agency a copy of, or table in the Parliament, any part of an interim report that relates to a surface transport aspect of a transport security matter without the agreement of the Transport Minister of the State or Territory in which that aspect of the matter occurred.

**53 Admissibility of interim reports**

An interim report is not admissible in any proceedings.

## **Division 3—Draft reports**

### **54 Information that may be included in draft reports**

The Inspector may include protected information, OBR information, CVR information, and restricted information given to the Inspector by the Executive Director, in a draft report.

### **55 Disclosure of draft reports**

*Disclosure to persons who may be adversely affected by a report*

- (1) Subject to subsections (4) to (8), the Inspector must make reasonable efforts to give any person or government agency who may be adversely affected by material in a draft report if the material were disclosed to another person, so much of the draft report as contains that material, for the purposes of:
  - (a) allowing the person or government agency to make submissions to the Inspector about the material; or
  - (b) giving the person or government agency advance notice of the likely form of the final report.

*Disclosure to State or Territory in which a surface transport aspect of a transport security matter occurs*

- (2) Subject to subsections (4) to (8), the Minister must disclose any part of a draft report that relates to a surface transport aspect of a transport security matter to the Transport Minister of the State or Territory in which that aspect of the matter occurred.

*Disclosure to other persons*

- (3) Subject to subsections (4) to (8), if the Inspector believes it is appropriate, the Inspector may give all or part of a draft report to any person or government agency for the purposes of:
  - (a) allowing the person or government agency to make submissions to the Inspector about the draft report; or

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- (b) giving the person or government agency advance notice of the likely form of the final report.

*Draft reports containing protected information*

- (4) The Inspector must not give a person or government agency a copy of any part of a draft report that contains protected information given to the Inspector by a government agency, without the prior agreement of that agency, if the disclosure of the information may:
  - (a) compromise an investigation that is being conducted by the agency; or
  - (b) have a substantial adverse effect on the proper and efficient conduct of the operations of the agency.

*Draft reports containing OBR information or CVR information*

- (5) The Inspector may only give a part of a draft report that contains OBR information or CVR information to a person or government agency under paragraph (1)(a) or (3)(a) if it is necessary to do so to allow the person or government agency to understand the conclusions made in the draft.
- (6) The Inspector may only give a part of a draft report that contains OBR information or CVR information to a person or government agency under paragraph (1)(b) or (3)(b) if the information is already publicly available.

*Draft reports containing restricted information given to the Inspector by the Executive Director*

- (7) The Inspector must not, without the prior agreement of the Executive Director, give any part of a draft report that contains restricted information given to the Inspector by the Executive Director to a person or government agency, if the disclosure may:
  - (a) compromise an investigation that is being conducted by the Executive Director; or
  - (b) have a substantial adverse effect on the proper and efficient conduct of the operations of the Executive Director.

*Draft reports relating to surface transport aspects of a matter*

- (8) The Inspector must not give any part of a draft report that relates to a surface transport aspect of a transport security matter to a person or government agency without the agreement of the Transport Minister of the State or Territory in which that aspect of the matter occurred.

**56 Copying, recording, disclosing and using draft report**

- (1) A person commits an offence if:
- (a) the person receives a draft report under section 55 or as a result of a disclosure permitted under subsection (2) of this section; and
  - (b) the person does any of the following:
    - (i) copies, or makes a record of, any part of the report;
    - (ii) uses any part of the report;
    - (iii) discloses any of the contents of the report to any person or to a court, tribunal or coroner.

Penalty: Imprisonment for 2 years.

- (2) Subsection (1) does not apply to any conduct that is necessary for the purpose of:
- (a) preparing submissions on the draft report; or
  - (b) taking steps to remedy security deficiencies that are identified in the draft report.

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

- (3) A person who receives a draft report under section 55, or as a result of a disclosure permitted under subsection (2) of this section, cannot be required to disclose it to a court, tribunal or coroner.
- (4) A person who receives a draft report under section 55, or as a result of a disclosure permitted under subsection (2) of this section, is not entitled to take any disciplinary action against an employee of the person on the basis of information in the report.

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**57 Submissions on a draft report**

A person who acts honestly and reasonably in making a submission to the Inspector on a draft report is not liable:

- (a) to any proceedings for contravening any other law because of that conduct; or
- (b) to civil proceedings for loss, damage or injury of any kind suffered by another person because of that conduct; or
- (c) to disciplinary action, or to a disciplinary sanction, of any kind because of that conduct.

**58 Admissibility of draft reports**

A draft report is not admissible in any proceedings.



## **Division 4—Final reports**

### **59 Final report**

- (1) The Inspector must give a final report in writing to the Minister in relation to each inquiry conducted on the direction of the Minister under section 11, provided the direction has not been revoked.
- (2) The Inspector must give the Minister the final report:
  - (a) if the Minister specifies a period under subsection 11(3) within which the Inspector's inquiry is to be completed—before the end of that period; or
  - (b) otherwise—as soon as practicable after the Inspector's inquiry is completed.
- (3) The final report must set out the Inspector's conclusions and recommendations as a result of the inquiry.
- (4) The Inspector may include protected information, OBR information, CVR information, and restricted information given to the Inspector by the Executive Director, in the final report.
- (5) If the Inspector has provided a draft report to a person or government agency under section 55, the Inspector must take into account, in preparing the final report, any submissions made by the person or government agency in response to that draft report.
- (6) The Inspector may make recommendations to the Minister on whether all, or a specified part, of the final report should be disclosed to another person, and if so, to whom.

### **60 Disclosure by the Minister to another person**

#### *Disclosure to Ministers whose area of responsibility affected*

- (1) Subject to sections 61, 62 and 63, the Minister must give to a Commonwealth Minister or a Minister of a State or Territory a copy of that part of the final report that contains a particular conclusion or recommendation, if the conclusion or recommendation affects an area of responsibility of that Minister.

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*Disclosure to State or Territory in which a surface transport aspect of a transport security matter occurs*

- (2) Subject to sections 61, 62 and 63, the Minister must disclose any part of a final report that relates to a surface transport aspect of a transport security matter to the Transport Minister of the State or Territory in which that aspect of the matter occurred.

*Disclosure to other persons*

- (3) Subject to sections 61, 62 and 63, the Minister may give a copy of all or part of the final report to any person or government agency, if the Minister believes that it is, on balance, in the public interest to do so.

*Minister may impose conditions on further disclosure*

- (4) The Minister may impose conditions on copying, making a record of, using or disclosing the final report, or the part of the final report, given to a person or government agency under subsection (3).
- (5) A person commits an offence if:
- (a) the person is given a copy of the final report, or a part of the final report, under this section; and
  - (b) the person acts in contravention of a condition imposed under subsection (4).

Penalty: Imprisonment for 2 years.

**61 Final reports containing protected information**

The Minister must not give a person or government agency a copy of a part of a final report that contains protected information given to the Inspector by a government agency without the prior agreement of the Minister responsible for that government agency, if the disclosure of the information may:

- (a) compromise an investigation that is being conducted by the government agency; or
- (b) have a substantial adverse effect on the proper and efficient conduct of the operations of the government agency.

## **62 Final reports relating to surface transport aspects of a matter**

The Minister must not give any part of a final report that relates to a surface transport aspect of a transport security matter to a person or government agency without the agreement of the Transport Minister of the State or Territory in which that aspect of the matter occurred.

## **63 Final reports containing OBR information, CVR information, and restricted information given to the Inspector by the Executive Director**

- (1) The Minister must not give a copy of a part of a final report that contains OBR information or CVR information to a person or government agency unless:
  - (a) the information is already publicly available; or
  - (b) both:
    - (i) the other person is a Commonwealth Minister or a Minister of a State or Territory (the *responsible Minister*) whose area of responsibility is affected by recommendations made in the report; and
    - (ii) the responsible Minister would not be able to implement those recommendations without being given the report.
- (2) The Minister must not give a copy of a part of a final report that contains restricted information given to the Inspector by the Executive Director to a person or government agency unless:
  - (a) the information is already publicly available; or
  - (b) both:
    - (i) the other person is a Commonwealth Minister or a Minister of a State or Territory (the *responsible Minister*) whose area of responsibility is affected by recommendations made in the report; and
    - (ii) the responsible Minister would not be able to implement those recommendations without being given that part of the report.
- (3) Except for the purposes of implementing the recommendations, the responsible Minister must not disclose to any other person:

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- (a) in a case where a final report is given to the Minister under subsection (1)—the final report; or
  - (b) in a case where a part of the final report is given to the Minister under subsection (2)—that part of the final report.
- (4) A person commits an offence if:
- (a) the person receives, either under subsection (1) or as a result of a disclosure permitted under subsection (6), a final report that contains OBR information or CVR information; and
  - (b) the person does any of the following:
    - (i) copies, or makes a record of, the final report;
    - (ii) uses the final report;
    - (iii) discloses any of the contents of the final report to any person or to a court, tribunal or coroner.

Penalty: Imprisonment for 2 years.

- (5) A person commits an offence if:
- (a) the person receives, either under subsection (2) or as a result of a disclosure permitted under subsection (6), a part of a final report that contains restricted information given to the Inspector by the Executive Director; and
  - (b) the person does any of the following:
    - (i) copies, or makes a record of, that part of the final report;
    - (ii) uses that part of the final report;
    - (iii) discloses any of the contents of that part of the final report to any person or to a court, tribunal or coroner.

Penalty: Imprisonment for 2 years.

- (6) Subsections (4) and (5) do not apply to any conduct that is necessary for the purpose of implementing a recommendation made in a final report.

Note: A defendant bears an evidential burden in relation to a matter in subsection (6): see subsection 13.3(3) of the *Criminal Code*.

#### **64 Tabling report in the Parliament etc.**

- (1) Subject to this section, the Minister may table a copy of a final report, or part of a final report, in the Parliament, if the Minister thinks that it is, on balance, in the public interest to do so.
- (2) The Minister must not table in the Parliament any part of a final report that contains protected information given to the Inspector by a government agency without the prior agreement of the Minister responsible for that government agency, if the disclosure may:
  - (a) compromise an investigation that is being conducted by the government agency; or
  - (b) have a substantial adverse effect on the proper and efficient conduct of the operations of the government agency.
- (3) The Minister must not table in the Parliament any part of a final report that relates to a surface transport aspect of a transport security matter without the agreement of the Transport Minister of the State or Territory in which that aspect of the matter occurred.
- (4) The Minister must not table in the Parliament any part of a final report that contains OBR information or CVR information, unless the information is already publicly available.
- (5) The Minister must not, without the prior agreement of the Executive Director, table in the Parliament any part of a final report that contains restricted information given to the Inspector by the Executive Director, if the disclosure may:
  - (a) compromise an investigation that is being conducted by the Executive Director; or
  - (b) have a substantial adverse effect on the proper and efficient conduct of the operations of the Executive Director.

#### **65 Admissibility of final reports**

A final report is not admissible in any proceedings, except coronial inquiries.

## Part 7—Protected information

### 66 What is *protected information*?

*Protected information* is any information or document obtained or generated by any person in the course of exercising powers or performing functions under this Act, or assisting another person in the exercise of powers or performance of functions under this Act, but does not include:

- (a) information that is already publicly available; or
- (b) anything kept in a library, art gallery or museum for the purposes of reference, study or exhibition; or
- (c) Commonwealth records as defined by subsection 3(1) of the *Archives Act 1983* that are in the open access period for the purposes of that Act; or
- (d) OBR information; or
- (e) CVR information; or
- (f) restricted information that is given to the Inspector by the Executive Director.

Note 1: The copying, recording and disclosure of OBR information and restricted information given to the Inspector by the Executive Director continues to be dealt with under the *Transport Safety Investigation Act 2003*, subject to provisions of this Act that modify the operation of that Act.

Note 2: The copying and disclosure of CVR information continues to be dealt with under the *Civil Aviation Act 1988*, subject to provisions of this Act that modify the operation of that Act.

### 67 Offence—copying, recording, using or disclosing protected information

- (1) A person commits an offence if:
  - (a) the person obtains or generates information or a document in the course of exercising powers or performing functions under this Act, or assisting another person in the exercise of powers or performance of functions under this Act; and
  - (b) the information is protected information; and

- (c) the person does any of the following:
  - (i) copies, or makes a record of, the information;
  - (ii) uses the information;
  - (iii) discloses the information to any person or to a court, a tribunal or a coroner.

Penalty: Imprisonment for 2 years.

- (2) Subsection (1) does not apply if:
  - (a) the information is copied, recorded, used or disclosed in circumstances in which that conduct is permitted, either expressly or by implication, under this Act; or
  - (b) the information is copied, recorded, used or disclosed for the purposes of proceedings for an offence against this Act; or
  - (c) the information is copied, recorded, used or disclosed for the purposes of proceedings for an offence against section 137.1 or 137.2 of the *Criminal Code* (false or misleading information or documents) that relates to this Act; or
  - (d) the information is copied, recorded, used or disclosed for the purposes of proceedings for an offence against section 149.1 of the *Criminal Code* (obstruction of Commonwealth public officials) that relates to this Act; or
  - (e) the information is disclosed to a court in a civil proceeding or to a coronial inquiry in relation to which:
    - (i) the Minister issues a certificate under subsection (3); and
    - (ii) the court or coroner makes an order under subsection (5); or
  - (f) the information is disclosed to a court in a criminal proceeding in relation to which:
    - (i) the Minister issues a certificate under subsection (4); and
    - (ii) the court makes an order under subsection (5).

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

- (3) The Minister may issue a certificate in relation to the disclosure of protected information in a civil proceeding or a coronial inquiry, stating that the disclosure of the information is not likely to

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interfere with an inquiry conducted in accordance with a direction of the Minister under section 11.

- (4) The Minister may issue a certificate in relation to the disclosure of protected information, stating that the disclosure of the information in a criminal proceeding is not likely to interfere with an inquiry conducted in accordance with a direction of the Minister under section 11, if:
  - (a) the criminal proceeding is in relation to an alleged offence against a law of the Commonwealth, or of a State or Territory, punishable by a maximum penalty of imprisonment for more than 2 years; and
  - (b) the disclosure of the information is necessary to establish a chain of dealing with evidence.
- (5) If the court or coroner is satisfied that any adverse impact that the disclosure of the information might have on any current or future inquiry under this Act is outweighed by the public interest in the administration of justice, the court or coroner may order such disclosure.
- (6) The court or coroner may direct that the protected information, or any information obtained from the protected information, must not:
  - (a) be published or communicated to any person; or
  - (b) be published or communicated except in such manner, and to such person, as the court or coroner specifies.
- (7) If a person is prohibited by this section from disclosing protected information, then:
  - (a) the person cannot be required by a court or coroner to disclose the information; and
  - (b) any information disclosed by the person in contravention of this section is not admissible in any proceedings (other than proceedings against the person under this section).

**68 Disclosing information where serious offence imminent**

- (1) The Inspector may disclose protected information to a government agency, if the Inspector believes on reasonable grounds that:
  - (a) the commission of an offence is imminent; and



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- (b) the offence is an offence against a law of the Commonwealth, or of a State or Territory, punishable by a maximum penalty of imprisonment for more than 2 years; and
  - (c) the information may be relevant to the prevention of the offence.
- (2) The government agency must not copy, make a record of, use or disclose the protected information obtained from the Inspector for any purpose that is not related to the prevention of an offence against a law of the Commonwealth, or of a State or Territory, punishable by a maximum penalty of imprisonment for more than 2 years.

**69 Disclosing information where not directly relevant to an inquiry**

- (1) The Inspector may disclose protected information to a government agency, if:
- (a) the information was voluntarily disclosed to the Inspector or a person assisting another person in the exercise of powers or performance of functions under this Act; and
  - (b) the Inspector believes on reasonable grounds that:
    - (i) the information is not directly relevant to an inquiry conducted in accordance with a direction of the Minister under section 11; and
    - (ii) the information may be relevant to the prevention or prosecution of an offence against a law of the Commonwealth, or of a State or Territory.
- (2) The government agency must not copy, make a record of, use or disclose the protected information obtained from the Inspector for any purpose that is not related to the prevention or prosecution of an offence against a law of the Commonwealth, or of a State or Territory.

**70 Disclosing information to the Executive Director**

- (1) The Inspector may disclose protected information to the Executive Director if:
- (a) the Executive Director requests the Inspector to do so under subsection (2); and

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- (b) the Inspector believes that any adverse effect that the disclosure may have on a current or future inquiry under this Act is outweighed by the public interest served by disclosing the information to the Executive Director.
- (2) The Executive Director may request the Inspector to disclose protected information to the Executive Director if he or she believes that the Inspector has the information and that the information is relevant to an investigation that is being conducted by the Executive Director.

**71 Immunity where copying, recording, using or disclosing protected information permitted under this Act**

- (1) This section applies where:
  - (a) a person copies, makes a record of, uses or discloses protected information in circumstances in which the person is permitted to do so under this Act, either expressly or by implication; or
  - (b) a person copies, makes a record of, uses or discloses protected information in circumstances in which the person honestly and reasonably believes he or she is permitted to do so under this Act, either expressly or by implication.
- (2) The person may copy, make a record of, use or disclose the protected information, despite any other law.

Note: This section constitutes authorisation for the purposes of other laws, such as paragraph (1)(d) of Information Privacy Principle 11 in section 14 of the *Privacy Act 1988*.

- (3) The person is not liable:
  - (a) to any proceedings for contravening any other law because of that conduct; or
  - (b) to civil proceedings for loss, damage or injury of any kind suffered by another person because of that conduct; or
  - (c) to disciplinary action, or to a disciplinary sanction, of any kind because of that conduct.

## **Part 8—OBR information, CVR information, and restricted information given to the Inspector by the Executive Director**

### **72 Simplified outline**

This is a simplified outline of this Part:

Part 6 of the *Transport Safety Investigation Act 2003* provides for the protection of OBR information and restricted information.

Part IIIB of the *Civil Aviation Act 1988* provides for the protection of CVR information.

This Part ensures that the Inspector can, for the purposes of this Act, copy, make a record of, use and disclose that information, despite the provisions of those Acts or any other law.

It remains an offence under section 53 of the *Transport Safety Investigation Act 2003* to copy or disclose OBR information except in circumstances in which a defence is available under that Act or this Act.

It remains an offence under section 32AP of the *Civil Aviation Act 1988* to copy or disclose CVR information except in circumstances in which a defence is available under that Act or this Act.

There is no offence under the *Transport Safety Investigation Act 2003* dealing with the copying, recording, use or disclosure by the Inspector of restricted information given to the Inspector by the Executive Director under subsection 37(2) of this Act. This Part includes an offence to protect the confidentiality of that information.

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### **73 Application of other laws to copying, recording, use and disclosure of OBR information**

- (1) Subsections 53(1) and (2) of the *Transport Safety Investigation Act 2003* do not apply to the copying or disclosure of OBR information, if that conduct is permitted, either expressly or by implication, under this Act.

Note 1: Section 53 of the *Transport Safety Investigation Act 2003* creates offences relating to the copying and disclosure of OBR information.

Note 2: A defendant bears an evidential burden in relation to a matter in subsection (1); see subsection 13.3(3) of the *Criminal Code*.

- (2) Section 55 of the *Transport Safety Investigation Act 2003* does not apply to criminal proceedings for an offence against this Act.

Note: Section 55 of the *Transport Safety Investigation Act 2003* deals with the admissibility of OBR information in criminal proceedings.

### **74 Application of other laws to copying, recording, use and disclosure of CVR information**

- (1) Subsections 32AP(1) and (2) of the *Civil Aviation Act 1988* do not apply to the copying or disclosure of CVR information, if that conduct is permitted, either expressly or by implication, under this Act.

Note 1: Section 32AP of the *Civil Aviation Act 1988* creates offences relating to the copying and disclosure of CVR information.

Note 2: A defendant bears an evidential burden in relation to a matter in subsection (1); see subsection 13.3(3) of the *Criminal Code*.

- (2) Section 32AR of the *Civil Aviation Act 1988* does not apply to criminal proceedings for an offence against this Act.

Note: Section 32AR of the *Civil Aviation Act 1988* deals with the admissibility of CVR information in criminal proceedings.

### **75 Application of other laws to copying, recording, use and disclosure of restricted information given to the Inspector by the Executive Director**

- (1) Subsections 60(1), (2) and (3) of the *Transport Safety Investigation Act 2003* do not apply to making a record of or disclosing restricted

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information given to the Inspector by the Executive Director, if that conduct is permitted, either expressly or by implication, under this Act.

Note 1: Section 60 of the *Transport Safety Investigation Act 2003* creates offences relating to the making of a record of, or the disclosure of, restricted information by a person who is a staff member for the purposes of that Act, or who has received restricted information under section 62 of that Act.

Note 2: A defendant bears an evidential burden in relation to a matter in subsection (1): see subsection 13.3(3) of the *Criminal Code*.

- (2) A person commits an offence if:
- (a) the person:
    - (i) copies, or makes a record of, information; or
    - (ii) uses information; or
    - (iii) discloses information; and
  - (b) the information is restricted information given to the Inspector by the Executive Director under subsection 37(2); and
  - (c) the person has obtained the information in the course of exercising a power or performing a function under this Act, or assisting another person in the exercise of powers or performance of functions under this Act.

Penalty: Imprisonment for 2 years.

- (3) Subsection (2) does not apply if:
- (a) the information is copied, recorded, used or disclosed in circumstances in which that conduct is permitted, either expressly or by implication, under this Act; or
  - (b) the information is copied, recorded, used or disclosed for the purposes of proceedings for an offence against this Act; or
  - (c) the information is copied, recorded, used or disclosed for the purposes of proceedings for an offence against section 137.1 or 137.2 of the *Criminal Code* (false or misleading information or documents) that relates to this Act; or
  - (d) the information is copied, recorded, used or disclosed for the purposes of proceedings for an offence against section 149.1 of the *Criminal Code* (obstruction of Commonwealth public officials) that relates to this Act; or

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- (e) the information is disclosed to a court in a civil proceeding or to a coronial inquiry in relation to which:
  - (i) the Minister issues a certificate under subsection (4); and
  - (ii) the court or coroner makes an order under subsection (6); or
- (f) the information is disclosed to a court in a criminal proceeding in relation to which:
  - (i) the Minister 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 (3); see subsection 13.3(3) of the *Criminal Code*.

- (4) The Minister may issue a certificate in relation to the disclosure of restricted information given to the Inspector by the Executive Director under subsection 37(2), stating that the disclosure of the information in a civil proceeding or a coronial inquiry is not likely to interfere with an inquiry conducted in accordance with a direction of the Minister under section 11 or with an investigation under the *Transport Safety Investigation Act 2003*.
- (5) The Minister may issue a certificate in relation to the disclosure of restricted information given to the Inspector by the Executive Director under subsection 37(2), stating that the disclosure of the information in a criminal proceeding is not likely to interfere with an inquiry conducted in accordance with a direction of the Minister under section 11, or with an investigation under the *Transport Safety Investigation Act 2003*, if:
  - (a) the criminal proceeding is in relation to an alleged offence against a law of the Commonwealth, or of a State or Territory, punishable by a maximum penalty of imprisonment for more than 2 years; and
  - (b) the disclosure of the information is necessary to establish a chain of dealing with evidence.
- (6) If the court or coroner is satisfied that any adverse impact that the disclosure of the information might have on any current or future inquiry under this Act is outweighed by the public interest in the

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administration of justice, the court or coroner may order such disclosure.

- (7) The court or coroner 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 person, as the court or coroner specifies.
- (8) If a person is prohibited by this section from disclosing restricted information, then:
  - (a) the person cannot be required by a court or coroner to disclose the information; and
  - (b) any information disclosed by the person in contravention of this section is not admissible in any proceedings (other than proceedings against the person under this section).

**76 Immunity where copying, recording, using or disclosing OBR information, CVR information, or restricted information given by the Executive Director, permitted under this Act**

- (1) This section applies where:
  - (a) a person copies, makes a record of, uses or discloses OBR information, CVR information, or restricted information given to the Inspector by the Executive Director, in circumstances in which the person is permitted to do so either expressly or by implication under this Act; or
  - (b) a person copies, makes a record of, uses or discloses OBR information, CVR information, or restricted information given to the Inspector by the Executive Director, in circumstances in which the person honestly and reasonably believes he or she is permitted to do so, either expressly or by implication under this Act.
- (2) The person may copy, make a record of, use or disclose the information, despite any other law.

Note: This section constitutes authorisation for the purposes of other laws, such as paragraph (1)(d) of Information Privacy Principle 11 in section 14 of the *Privacy Act 1988*.

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- (3) The person is not liable:
  - (a) to any proceedings for contravening any other law because of that conduct; or
  - (b) to civil proceedings for loss, damage or injury of any kind suffered by another person because of that conduct; or
  - (c) to disciplinary action, or to a disciplinary sanction, of any kind because of that conduct.

**77 Disclosing OBR information, CVR information, and restricted information given by the Executive Director, where serious offence imminent**

- (1) The Inspector may apply to an eligible Judge or nominated AAT member for an order under subsection (7) allowing the Inspector to disclose OBR information, CVR information, or restricted information given to the Inspector by the Executive Director, to another government agency, if the Inspector suspects on reasonable grounds that:
  - (a) the commission of an offence is imminent; and
  - (b) the offence is an offence against a law of the Commonwealth, or of a State or Territory, punishable by a maximum penalty of imprisonment for more than 2 years; and
  - (c) the information may be relevant to the prevention of the offence.
- (2) The application may be made in writing or, if the Inspector thinks it is necessary because of urgent circumstances, by telephone.
- (3) The application must be accompanied by:
  - (a) a statement by the Inspector, or a delegate of the Inspector, of his or her grounds for suspecting that an offence of the kind mentioned in paragraph (1)(b) is imminent; and
  - (b) a statement by the Inspector, or a delegate of the Inspector, explaining why the information may be relevant to the prevention of the offence; and
  - (c) a statement by the Executive Director, or a delegate of the Executive Director, that, in his or her opinion, the effect that the disclosure may have on current or future investigations under the *Transport Safety Investigation Act 2003* is



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- outweighed by the public interest served by disclosing the information to the agency or court; and
- (d) the proposed terms of the order.
- (4) If the application is made in writing, the accompanying statements and the proposed terms of the order must be in writing.
- (5) If the application is made by telephone:
- (a) the accompanying statements may be given by telephone, provided the person making the statement gives the Judge or AAT member to whom the statement is made, on the next day after the statement is made that is not a Saturday, Sunday or public holiday in the place where it is made, an affidavit containing:
    - (i) a copy of the statement made to the Judge or AAT member by telephone; and
    - (ii) a statement that the copy is a true record of the statement made to the Judge or AAT member by telephone; and
  - (b) the proposed terms of the order must be communicated to the Judge or AAT member by telephone; and
  - (c) the Inspector must inform the Judge or AAT member to whom the application is made of the urgent circumstances on the basis of which the Inspector believes a telephone application is necessary.
- (6) An eligible Judge or nominated AAT member may order that OBR information, CVR information, or restricted information given to the Inspector by the Executive Director, be disclosed to a government agency if:
- (a) the Judge or AAT member is satisfied that:
    - (i) an offence of the kind mentioned in paragraph (1)(b) is imminent; and
    - (ii) the information may be relevant to the prevention of the offence; and
  - (b) having regard to the following matters, it is appropriate to make the order:
    - (i) the extent to which the privacy of any person may be affected by the disclosure;

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- (ii) the seriousness of the offence;
  - (iii) the likelihood that the disclosure of the information would assist the agency in the prevention of the offence;
  - (iv) the likelihood that the offence would be prevented without the disclosure of the information to the agency;
  - (v) the effect that the disclosure may have on current or future investigations under the *Transport Safety Investigation Act 2003*.
- (7) The order may include conditions or restrictions on the disclosure of the information.
- (8) If the application for the order was made by telephone, the Judge or AAT member must, as soon as practicable after making the order:
- (a) inform the Inspector or, if the application was made by a delegate of the Inspector, the delegate, of:
    - (i) the terms of the order; and
    - (ii) the day on which it was made; and
    - (iii) the time at which it was made; and
  - (b) give the order to the Inspector or delegate.
- (9) The government agency to which information is disclosed on the order of the Judge or AAT member must not copy, make a record of, use or disclose the information for any purpose that is not related to the prevention of an offence against a law of the Commonwealth, or of a State or Territory, punishable by a maximum penalty of imprisonment for more than 2 years.
- (10) The Judge or AAT member may copy, make a record of, use or disclose any information given to the Judge or AAT member under this section for the purposes of exercising the powers under this section.
- (11) A person assisting the Judge or AAT member in the exercise of powers under this section may copy, make a record of, use or disclose information given to that person in the course of providing that assistance, but only for the purpose of providing that assistance.

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## 78 Eligible Judge

- (1) In this Act:

*eligible Judge* means a Judge in relation to whom a consent under subsection (2) and a declaration under subsection (3) are in force.

*Judge* means a person who is a Judge of a court created by the Parliament.

- (2) A Judge may, by writing, consent to be nominated by the Attorney-General under subsection (3).
- (3) The Attorney-General may, by writing, declare Judges in relation to whom consents are in force under subsection (2) to be eligible Judges for the purposes of this Act.
- (4) An eligible Judge has, in relation to the performance or exercise of a function or power conferred on an eligible Judge by this Act, the same protection and immunity as a Justice of the High Court has in relation to proceedings in the High Court.
- (5) Any function or power conferred on an eligible Judge under this Act is so conferred only in a personal capacity and not as a court or a member of a court.

## 79 Nominated AAT member

- (1) The Attorney-General may, by writing, nominate a person who holds one of the following appointments to the Administrative Appeals Tribunal to make orders under subsection 77(7):
- (a) President;
  - (b) Deputy President;
  - (c) senior member.
- (2) Despite subsection (1), the Attorney-General must not nominate a person who holds an appointment as a senior member unless the person:
- (a) is enrolled as a legal practitioner of the High Court, of another federal court or of the Supreme Court of a State or of the Northern Territory or the Australian Capital Territory;
- and

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- (b) has been so enrolled for not less than 5 years.
- (3) A nomination ceases to have effect if:
  - (a) the nominated AAT member ceases to hold an appointment of a kind set out in subsection (1); or
  - (b) the Attorney-General, by writing, withdraws the nomination.
- (4) A nominated AAT member has, in relation to the performance or exercise of a function or power conferred on a nominated AAT member by this Act, the same protection and immunity as a Justice of the High Court has in relation to proceedings in the High Court.

## **Part 9—Miscellaneous**

### **80 Inspector to minimise disruption to transport**

In exercising powers and performing functions under this Act, the Inspector must have regard to the desirability of minimising any resulting disruption to:

- (a) transport by means of transport vehicles; and
- (b) the operation of security regulated offshore facilities.

### **81 Inspector to act consistently with Australia's international obligations**

The Inspector, and each delegate of the Inspector, must exercise the Inspector's powers and perform the Inspector's functions under this Act 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.

### **82 Delegation**

- (1) The Inspector may, by writing, delegate all or any of the Inspector's powers and functions to:
  - (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 who:
    - (i) is engaged by the Commonwealth, under contract or otherwise, to exercise powers, or perform functions, of the Inspector under this Act; and
    - (ii) satisfies the criteria prescribed by the regulations.
- (2) The Executive Director may, by writing, delegate all or any of the Executive Director's powers and functions under this Act to:
  - (a) an SES employee; or

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- (b) a person who holds or performs the duties of an APS Executive Level 1 or 2 position or an equivalent position.

**83 States and Territories may confer powers and functions on Inspector**

- (1) A law of a State or Territory may confer powers and functions on the Inspector.
- (2) In enacting subsection (1), it is the intention of the Parliament to rely on all powers available to it under the Constitution.
- (3) To the extent that the Inspector has a power or function that is conferred, or taken to be conferred, by the law of a State or Territory:
  - (a) that power or function is not taken to be conferred by Commonwealth law; and
  - (b) subsection (1) is not taken to authorise the conferral of the power or function;  
if the conferral or authorisation would contravene a constitutional doctrine restricting the powers and functions that may be conferred on authorities or officers of the Commonwealth, or would otherwise exceed the legislative power of the Commonwealth.
- (4) If, to ensure the validity of the conferral of a power or function purportedly conferred on the Inspector by a law of a State or Territory, it is necessary that the power or function be conferred by a law of the Commonwealth, rather than by a law of a State, the power or function is taken to be conferred by this Act to the extent necessary to ensure that validity.
- (5) If, because of subsection (4), this Act is taken to confer a power or function upon the Inspector, it is the intention of the Parliament to rely on all powers available to it under the Constitution to support the conferral of the power or function.
- (6) Subsections (4) and (5) do not limit subsection (1).

**84 Immunity for actions under this Act**

- (1) This section does not apply to the copying, recording use or disclosure of protected information, OBR information, CVR information, or restricted information.
- (2) This section applies where a person acts:
  - (a) in the exercise of a power, or the performance of a function under this Act; or
  - (b) in the honest and reasonable belief that the person is exercising a power, or performing a function under this Act; or
  - (c) as otherwise permitted, either expressly or by implication, under this Act; or
  - (d) in the honest and reasonable belief that he or she is acting as otherwise permitted, either expressly or by implication, under this Act.
- (3) The person is not liable:
  - (a) to any proceedings for contravening any other law because of that conduct; or
  - (b) to civil proceedings for loss, damage or injury of any kind suffered by another person because of that conduct; or
  - (c) to disciplinary action, or to a disciplinary sanction, of any kind because of that conduct.

**85 Immunity for failure to act**

- (1) This section applies in the following circumstances:
  - (a) the Minister fails to take action in the course of doing any thing:
    - (i) in the exercise of a power, or the performance of a function under this Act; or
    - (ii) in the honest and reasonable belief that the Minister is exercising a power, or performing a function under this Act; or
    - (iii) permitted, either expressly or by implication, to be done under this Act; or

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- (iv) that the Minister honestly and reasonably believes is permitted, either expressly or by implication, to be done under this Act;
  - (b) the Inspector fails to take action in the course of doing any thing:
    - (i) in the exercise of a power, or the performance of a function under this Act; or
    - (ii) in the honest and reasonable belief that the Inspector is exercising a power, or performing a function under this Act; or
    - (iii) permitted, either expressly or by implication, to be done under this Act; or
    - (iv) that the Inspector honestly and reasonably believes is permitted, either expressly or by implication, to be done under this Act;
  - (c) a person fails to take action in the course of doing any thing:
    - (i) permitted to be done under a delegation under section 82; or
    - (ii) that the person honestly and reasonably believes is permitted to be done under a delegation under section 82.
- (2) Neither the Minister, the Inspector nor the person is liable:
- (a) to any proceedings for contravening any other law because of that conduct; or
  - (b) to civil proceedings for loss, damage or injury of any kind suffered by another person because of that conduct.

### **86 Certification by Inspector of a person's involvement in an inquiry**

The Inspector may issue a certificate stating that a specified person:

- (a) is exercising or has exercised powers under this Act in relation to a specified matter; or
- (b) is performing or has performed functions under this Act in relation to a specified matter; or



- (c) is assisting or has assisted another person in the exercise of powers or the performance of functions under this Act in relation to a specified matter.

### **87 Compellability as a witness**

- (1) A person is not obliged to comply with a subpoena or similar direction of a court or tribunal to attend and answer questions relating to a matter if:
  - (a) the person:
    - (i) is exercising or has exercised powers under this Act in relation to the matter; or
    - (ii) is performing or has performed functions in relation to the matter; or
    - (iii) is assisting or has assisted another person in the exercise of powers or the performance of functions under this Act in relation to the matter; and
  - (b) the Inspector has issued a certificate under section 86 for the person in relation to the matter.
- (2) This section does not apply to a coronial inquiry.
- (3) This section has effect despite any other law.

### **88 Fees for attendance at coronial inquiries**

- (1) If:
  - (a) a person:
    - (i) is exercising or has exercised powers under this Act in relation to the matter; or
    - (ii) is performing or has performed functions under this Act in relation to the matter; or
    - (iii) is assisting or has assisted another person in the exercise of powers or the performance of functions under this Act in relation to the matter; and
  - (b) the person appears as a witness in a coronial inquiry; and
  - (c) the person is asked to give an expert opinion; and

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- (d) the Inspector has issued a certificate under section 86 in relation to the 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.

**89 Legal representation at coronial inquiry**

- (1) If a person appears as a witness in a coronial inquiry and:
  - (a) the person is asked to give an expert opinion; or
  - (b) the Inspector has issued a certificate under section 86 for the person in relation to a matter that is being investigated at the coronial inquiry;then the person 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 person has in circumstances not covered by subsection (1).

**90 Operation of section 503A of the *Migration Act 1958* not affected**

Nothing in this Act affects the operation of section 503A of the *Migration Act 1958*.

**91 Powers of Parliament and Royal Commissions not affected**

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

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

**92 Compensation for acquisition of property**

- (1) If the operation of this Act would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in a court of competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.
- (3) 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.

**93 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.

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*[Minister's second reading speech made in—  
House of Representatives on 18 October 2006  
Senate on 6 November 2006]*

(154/06)