



Transport Safety Investigation Amendment Act 2009

No. 20, 2009

An Act to amend the *Transport Safety Investigation Act 2003*, and for related purposes

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

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No. 20, 2009

An Act to amend the *Transport Safety Investigation Act 2003*, and for related purposes

[Assented to 26 March 2009]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Transport Safety Investigation Amendment Act 2009*.

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 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	26 March 2009
2. Schedule 1, items 1 to 24	1 July 2009.	1 July 2009
3. Schedule 1, item 25	Immediately after the commencement of item 20 of Schedule 1 to the <i>Aviation Legislation Amendment (2008 Measures No. 2) Act 2009</i> .	1 July 2009
4. Schedule 1, items 26 to 109	1 July 2009.	1 July 2009
5. Schedule 2	1 July 2009.	1 July 2009

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 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Establishment of the Australian Transport Safety Bureau

Part 1—Main amendments

Transport Safety Investigation Act 2003

1 Section 3 (definition of *accident site*)

Omit “Executive Director”, substitute “Chief Commissioner”.

2 Section 3

Insert:

ATSB or *Australian Transport Safety Bureau* means the Australian Transport Safety Bureau established by section 12.

3 Section 3

Insert:

Chief Commissioner means the Chief Commissioner appointed in accordance with subsection 13(1).

4 Section 3

Insert:

Chief Executive Officer means the Chief Commissioner: see section 15.

5 Section 3

Insert:

Commissioner means the Chief Commissioner and a part-time Commissioner.

6 Section 3

Insert:

consultant means a person engaged under section 16B.

7 Section 3 (definition of *Executive Director*)

Repeal the definition.

8 Section 3 (definition of *investigable matter*)

Omit “Executive Director”, substitute “ATSB”.

9 Section 3 (note to the definition of *OBR* or *on-board recording*)

Omit “Executive Director”, substitute “ATSB”.

10 Section 3

Insert:

part-time Commissioner means a person appointed on a part-time basis under subsection 13(2).

11 Section 3 (paragraphs (a) and (b) of the definition of *restricted information*)

Omit “staff member”, substitute “Commissioner, staff member or consultant”.

12 Section 3 (paragraph (g) of the definition of *restricted information*)

Repeal the paragraph, substitute:

- (g) information that is contained in a document that is produced to the ATSB under paragraph 32(1)(b);
- (h) information that is contained in a document that is produced to the Chief Commissioner under paragraph 36(3)(a) or (4)(a).

13 Section 3 (paragraphs (a) and (b) of the definition of *safety action statement*)

Omit “deficiencies”, substitute “issues”.

14 Section 3 (definition of *Secretary*)

Repeal the definition.

15 Section 3 (definition of *special investigator*)

Omit “section 14”, substitute “section 63E”.

16 Section 3 (definition of *staff member*)

Repeal the definition, substitute:

staff member means:

- (a) the Chief Executive Officer; or
- (b) a person referred to in subsection 16(1); or
- (c) a person whose services are made available to the ATSB under paragraph 16A(1)(a) or under arrangements made under subsection 16A(2); or
- (d) a person to whom the ATSB has delegated a power under section 63B; or
- (e) a person to whom the Chief Commissioner has delegated a power under section 63B or 63C; or
- (f) a person to whom the Chief Executive Officer has delegated a power under section 63D.

17 Section 7

Repeal the section.

18 Subsection 11(1)

Omit “for the purpose of”, substitute “in relation to”.

19 Paragraphs 11(1)(a) and (b)

Omit “improving the safety of”.

20 Subsection 11(2)

Omit “for the purpose of”, substitute “in relation to”.

21 Paragraphs 11(2)(a) and (b)

Omit “improving the safety of”.

22 Subsection 11(3)

Omit “for the purpose of”, substitute “in relation to”.

23 Paragraphs 11(3)(a), (b) and (c)

Omit “improving the safety of”.

24 Part 2

Repeal the Part, substitute:

Part 2—Australian Transport Safety Bureau

Division 1—Establishment, functions and powers of Bureau

12 Establishment of the Australian Transport Safety Bureau (ATSB)

The Australian Transport Safety Bureau (*ATSB*) is established by this section.

12A Constitution of the ATSB

- (1) The ATSB consists of:
 - (a) a Chief Commissioner; and
 - (b) 2 or more Commissioners.
- (2) The performance of a function or the exercise of a power of the ATSB is not affected by a vacancy in the membership of the ATSB.

12AA Functions of the ATSB

- (1) The ATSB's function is to improve transport safety by means that include the following:
 - (a) receiving and assessing reports of transport safety matters, reportable matters, and other safety information that is prescribed by the regulations;
 - (b) independently investigating transport safety matters;
 - (c) identifying factors that:
 - (i) contribute, or have contributed, to transport safety matters; or
 - (ii) affect, or might affect, transport safety;
 - (d) communicating those factors to relevant sectors of the transport industry and the public in any way, including in any one or more of the following ways:
 - (i) by making safety action statements;
 - (ii) by making safety recommendations;
 - (iii) by issuing safety advisory notices;

- (e) reporting publicly on those investigations;
 - (f) conducting public educational programs about matters relating to transport safety;
 - (g) any other means prescribed by the regulations.
- (2) The ATSB also has the following functions:
- (a) cooperating with:
 - (i) an agency of the Commonwealth, a State or Territory that has functions or powers relating to transport safety or functions affected by the ATSB's function of improving transport safety; and
 - (ii) a person who has, under a law of the Commonwealth, a State or Territory, functions or powers relating to transport safety or functions affected by the ATSB's function of improving transport safety; and
 - (iii) a national authority or other body of another country that has functions or powers relating to transport safety or functions affected by the ATSB's function of improving transport safety;
 - (b) doing anything incidental to its function of improving transport safety.
- (3) The following are not functions of the ATSB:
- (a) to apportion blame for transport safety matters;
 - (b) to provide the means to determine the liability of any person in respect of a transport safety matter;
 - (c) to assist in court proceedings between parties (except as provided by this Act, whether expressly or impliedly);
 - (d) to allow any adverse inference to be drawn from the fact that a person was involved in a transport safety matter.
- However, even though blame or liability may be inferred, or an adverse inference may be made, by a person other than the ATSB, this does not prevent the ATSB from carrying out its functions.
- (4) To avoid doubt, subsection (3) does not prevent the prosecution of any offence under this Act.

12AB Independence of the ATSB and Chief Commissioner

- (1) Subject to section 21, the ATSB is not subject to direction from anyone in relation to the performance of its functions or the exercise of its powers.
- (2) The Chief Commissioner is not subject to direction from anyone in relation to the exercise of his or her powers. However, when exercising his or her powers, the Chief Commissioner must act consistently with the ATSB in the performance of its functions or the exercise of its powers.

Note: This means that the ATSB and the Chief Commissioner would not, for example, be subject to direction from anyone in relation to:

- (a) how a particular investigation will be carried out; or
- (b) the content of a public report on a particular investigation.

12AC Minimal disruption to transport services

In exercising powers under this Act, the ATSB and the Chief Commissioner must have regard to the desirability of minimising any resulting disruption to transport by means of transport vehicles.

12AD International obligations

- (1) The ATSB must ensure that the ATSB's powers under this Act are exercised in a manner that is consistent with Australia's obligations under international agreements (as in force from time to time) that are identified by the regulations for the purpose of this section.
- (2) The Chief Commissioner must ensure that the Chief Commissioner's powers under this Act are exercised in a manner that is consistent with Australia's obligations under international agreements (as in force from time to time) that are identified by the regulations for the purpose of this section.
- (3) In exercising powers under this Act, the ATSB and the Chief Commissioner must also have regard to any rules, recommendations, guidelines, codes or other instruments (as in force from time to time) that are promulgated by an international organisation and that are identified by the regulations for the purposes of this section.

12AE Minister may give the ATSB notices about its strategic direction

- (1) The Minister may, by written instrument, notify the ATSB of the Minister's views on the appropriate strategic direction for the ATSB.
- (2) Subject to section 12AB, the ATSB must have regard to a notification given under subsection (1).
- (3) A notification given under subsection (1) is not a legislative instrument.

Division 2—Appointment of Commissioners

13 Appointment

- (1) The Chief Commissioner is to be appointed by the Minister by written instrument, on a full-time basis.

Note: The Chief Commissioner is also the Chief Executive Officer: see section 15.
- (2) Other Commissioners are to be appointed by the Minister by written instrument, on a part-time basis.
- (3) A person is eligible to be appointed as a Commissioner only if the person has a high level of expertise in one or more areas relevant to the ATSB's functions.
- (4) A person's appointment as a Commissioner is not invalid because of a defect or irregularity in connection with the person's appointment.

13A Term of appointment

- (1) The Chief Commissioner holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.
- (2) A part-time Commissioner holds office for the period specified in the instrument of appointment. The period must not exceed 3 years.

Note: A Commissioner is eligible for reappointment: see subsection 33(4A) of the *Acts Interpretation Act 1901*.

13AA Remuneration and allowances

- (1) A Commissioner is to be paid such remuneration as is determined by the Remuneration Tribunal. If no determination of that remuneration is in operation, the Commissioner is to be paid such remuneration as is prescribed.
- (2) A Commissioner is to be paid the allowances that are prescribed.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

13AB Leave of absence

- (1) The Chief Commissioner has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Minister may grant to the Chief Commissioner leave of absence, other than recreation leave, on the terms and conditions as to remuneration that the Minister determines.
- (3) The Chief Commissioner may grant leave of absence to a part-time Commissioner on the terms and conditions that the Chief Commissioner determines.

13AC Outside employment

- (1) The Chief Commissioner must not engage in paid employment outside the duties of the Chief Commissioner's office without the Minister's written consent.
- (2) A part-time Commissioner must not engage in any paid employment that conflicts or may conflict with the proper performance of his or her duties without the Minister's written consent.

13AD Resignation

- (1) A Commissioner may resign by giving to the Minister a signed notice of resignation.
- (2) If the Chief Commissioner resigns, he or she also resigns his or her position as the Chief Executive Officer.

Note: Subsection (2) does not prevent a person who is both the Chief Commissioner and the Chief Executive Officer from being re-appointed only as a part-time Commissioner.

- (3) The resignation takes effect on the day on which it is received by the Minister or, if a later day is specified in the resignation, on that later day.

13AE Disclosure of interests to the Minister

A Commissioner must give written notice to the Minister of all interests, pecuniary or otherwise, that the Commissioner has or acquires and that conflict or could conflict with the proper performance of the ATSB's functions.

13AF Other terms and conditions

A Commissioner holds office on such terms and conditions (if any) in relation to matters not provided for by this Act as are determined, in writing, by the Minister.

13AG Termination of appointment

All Commissioners

- (1) The Minister may terminate the appointment of a Commissioner:
- (a) for misbehaviour or physical or mental incapacity; or
 - (b) if the Commissioner:
 - (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
 - (c) if the Commissioner fails, without reasonable excuse, to comply with section 13AE.

Additional grounds: Chief Commissioner

- (2) The Minister may terminate the appointment of the Chief Commissioner if:

- (a) the Commissioner is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
- (b) the Commissioner engages, except with the Minister's written consent, in paid employment outside the duties of his or her office.

Additional grounds: part-time Commissioners

- (3) The Minister may terminate the appointment of a part-time Commissioner if:
 - (a) the Commissioner engages, except with the Minister's written consent, in paid employment that conflicts or may conflict with the proper performance of the Commissioner's duties; or
 - (b) the Commissioner is absent, except on leave of absence granted under section 13AB, from 3 consecutive meetings of the ATSB.

13AH Acting Chief Commissioner

- (1) The Minister may appoint a person to act as the Chief Commissioner:
 - (a) during a vacancy in the office of the Chief Commissioner, (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when the Chief Commissioner:
 - (i) is absent from duty or from Australia; or
 - (ii) is, for any reason, unable to perform the duties of the office.
- (2) To avoid doubt, a part-time Commissioner or staff member (within the meaning of paragraph (b) of the definition of that expression) may be appointed to act as the Chief Commissioner.
- (3) 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 is 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.

Note: See sections 20 and 33A of the *Acts Interpretation Act 1901*.

Division 3—ATSB procedures

Subdivision A—Meetings

14 Times and places of meetings

- (1) The Chief Commissioner must hold such meetings as are necessary for the efficient performance of the ATSB's functions.
- (2) Meetings are to be held at such times and places as the Chief Commissioner decides.

14A Conduct of meetings

Presiding at meetings

- (1) The Chief Commissioner presides at all meetings at which he or she is present.
- (2) If the Chief Commissioner is not present at a meeting, a person appointed to act as the Chief Commissioner must be present and preside.

Quorum

- (3) At a meeting of the ATSB, a quorum is constituted by 2 Commissioners.

Rules of procedure

- (4) The ATSB may, subject to this Subdivision, regulate proceedings at its meetings as it considers appropriate.

Note: Section 33B of the *Acts Interpretation Act 1901* provides for participation in meetings by telephone etc.

Voting

- (5) The person presiding at a meeting of the ATSB has a deliberative vote and, if the votes are equal, also has a casting vote.

Minutes

- (6) The ATSB must ensure that minutes of its meetings are kept.

14AA Disclosure of interests

- (1) If a Commissioner has an interest, pecuniary or otherwise, in a matter being considered, or about to be considered, at the meeting, the Commissioner must disclose the nature of that interest to the other Commissioners.
- (2) The disclosure must be made as soon as possible after the relevant facts have come to the Commissioner's knowledge.
- (3) The disclosure must be recorded in the minutes of the meeting.
- (4) Unless the ATSB otherwise determines, the Commissioner:
- (a) must not be present during the ATSB's deliberation on the matter; and
 - (b) must not take part in the ATSB's decision on the matter.
- (5) A determination under subsection (4) must be recorded in the minutes of the meeting.

Subdivision B—Decisions without meetings

14AB Decisions without meetings

- (1) A decision is taken to have been made at a meeting of the ATSB if:
- (a) without meeting, a majority of Commissioners indicate agreement with the proposed decision in accordance with the method determined by the ATSB under subsection (2); and
 - (b) all Commissioners were informed of the proposed decision, or reasonable efforts were made to inform all Commissioners of the proposed decision.
- (2) Subsection (1) applies only if the ATSB:
- (a) has determined that it applies; and
 - (b) has determined the method by which Commissioners are to indicate agreement with proposed decisions.

14AC Record of decisions

The ATSB must keep a record of decisions made in accordance with section 14AB.

Division 4—Chief Executive Officer

15 Chief Executive Officer

- (1) There is to be a Chief Executive Officer of the ATSB.
- (2) The Chief Commissioner is the Chief Executive Officer.

15A Functions of the Chief Executive Officer

- (1) The Chief Executive Officer is to manage the ATSB in accordance with the policies determined by the ATSB.
- (2) All acts and things done in the name of, or on behalf of, the ATSB by the Chief Executive Officer are taken to have been done by the ATSB.

Division 5—Staff and consultants

16 Staff

- (1) The staff of the ATSB are to be persons engaged under the *Public Service Act 1999*.
- (2) For the purposes of the *Public Service Act 1999*:
 - (a) the Chief Executive Officer and the staff of the ATSB together constitute a Statutory Agency; and
 - (b) the Chief Executive Officer is the Head of that Statutory Agency.

16A Staff to be made available to the ATSB

- (1) The ATSB is to be assisted by:
 - (a) officers and employees of Agencies (within the meaning of the *Public Service Act 1999*), and of authorities of the Commonwealth, whose services are made available to the

ATSB in connection with the performance of its functions or the exercise of its powers; and

- (b) persons whose services are made available under arrangements made under subsection (2).
- (2) The Chief Executive Officer may arrange with the appropriate authority or officer of the government of a State or Territory for the State or Territory to make officers or employees available to the ATSB to perform services in connection with the performance of the ATSB's functions or the exercise of its powers.
- (3) An arrangement under subsection (2) may provide for the Commonwealth to reimburse a State or Territory with respect to the services of a person or persons to whom the arrangement relates.
- (4) When performing services for the ATSB under this section, a person is subject to the directions of the Chief Executive Officer.

16B Consultants

- (1) The ATSB may engage persons having suitable qualifications and experience as consultants to the ATSB.
- (2) The terms and conditions of engagement are to be determined by the Chief Executive Officer.

25 Subsections 19(4) and (5)

Omit "Executive Director" (wherever occurring), substitute "Chief Commissioner".

26 Sections 21 and 22

Omit "Executive Director" (wherever occurring), substitute "ATSB".

27 Section 24

Omit "Executive Director" (wherever occurring), substitute "Chief Commissioner".

28 Subsections 25(1) and (2)

Omit "Executive Director", substitute "ATSB".

29 Subsection 25(2)

Omit “he or she”, substitute “it”.

30 Subsection 25(3)

Omit “Executive Director”, substitute “ATSB”.

31 Subsection 26(1)

Omit “Executive Director” (wherever occurring), substitute “ATSB”.

32 Paragraph 26(4)(b)

Omit “deficiencies”, substitute “issues”.

33 Subsection 29(1)

Omit “Executive Director”, substitute “Chief Commissioner”.

34 Subsection 29(1) (note 1)

Omit “Executive Director” (wherever occurring), substitute “Chief Commissioner”.

35 Paragraph 29(3)(c)

Omit “Executive Director”, substitute “Chief Commissioner”.

36 Subsection 30(1)

Omit “Executive Director” (first occurring), substitute “Chief Commissioner”.

Note: The heading to section 30 is altered by omitting “**Executive Director**” and substituting “**Chief Commissioner**”.

37 Paragraph 30(1)(b)

Omit “Executive Director’s”, substitute “Chief Commissioner’s”.

38 Subsection 30(2)

Omit “Executive Director” (wherever occurring), substitute “Chief Commissioner”.

39 Division 2 of Part 5 (heading)

Repeal the heading, substitute:

Division 2—Requirement to attend before ATSB

40 Subsection 32(1)

Omit “Executive Director” (wherever occurring), substitute “ATSB”.

Note: The heading to section 32 is altered by omitting “**Executive Director**” and substituting “**ATSB**”.

41 Subsection 32(3)

Omit “Executive Director” (first occurring), substitute “Chief Commissioner”.

42 Subsection 32(3)

Omit “Executive Director” (second occurring), substitute “ATSB”.

43 Subsections 32(4), (5) and (7)

Omit “Executive Director” (wherever occurring), substitute “ATSB”.

44 Sections 33, 34, 35, 36, 37, 39, 40 and 41

Omit “Executive Director” (wherever occurring), substitute “Chief Commissioner”.

Note 1: The heading to section 37 is altered by omitting “**Executive Director**” and substituting “**Chief Commissioner**”.

Note 2: The heading to subsection 41(6) is altered by omitting “*Executive Director*” and substituting “*Chief Commissioner*”.

45 Subsection 42(1)

Omit “Executive Director”, substitute “Chief Commissioner”.

46 Subsection 42(1) (note)

Repeal the note, substitute:

Note: This obligation also applies to delegates of the Chief Commissioner: see section 63C.

47 Subsection 42(4)

Omit “Executive Director” (first occurring), substitute “Chief Commissioner”.

48 Paragraph 42(4)(b)

Omit “Executive Director’s”, substitute “Chief Commissioner’s”.

49 Paragraphs 42(4)(c) and (d)

Omit “Executive Director”, substitute “Chief Commissioner”.

50 Sections 43 and 44

Omit “Executive Director” (wherever occurring), substitute “Chief Commissioner”.

Note: The heading to section 43 is altered by omitting “**Executive Director**” and substituting “**Chief Commissioner**”.

51 Paragraph 45(1)(a)

Omit “Executive Director”, substitute “ATSB”.

52 Paragraph 45(1)(c)

Omit “Executive Director”, substitute “Chief Commissioner”.

53 Subsections 45(2), (3), (4), (5), (6) and (7)

Omit “Executive Director” (wherever occurring), substitute “Chief Commissioner”.

54 Sections 49, 50, 51, 52, 53 and 56

Omit “Executive Director” (wherever occurring), substitute “ATSB”.

Note: The heading to section 49 is altered by omitting “**Executive Director’s declaration**” and substituting “**declaration of ATSB**”.

Note: The heading to section 50 is altered by omitting “**Executive Director’s**” and substituting “**ATSB**”.

Note: The heading to section 52 is altered by omitting “**Executive Director**” and substituting “**ATSB**”.

55 Subsection 59(1)

Omit “Executive Director” (first and second occurring), substitute “ATSB”.

56 Subsection 59(1)

Omit “Executive Director” (third occurring), substitute “Chief Commissioner”.

57 Subsections 60(1) and (2)

Repeal the subsections, substitute:

Commissioners, staff members and consultants

- (1) A person commits an offence if:
- (a) the person is, or has been, a Commissioner, staff member or consultant; and
 - (b) the person makes a record of information; and
 - (c) the information is restricted information.

Penalty: Imprisonment for 2 years.

- (2) A person commits an offence if:
- (a) the person is, or has been, a Commissioner, staff member or consultant; and
 - (b) the person discloses information to any person or to a court; and
 - (c) the information is restricted information.

Penalty: Imprisonment for 2 years.

58 Subparagraph 60(4)(c)(i)

Omit “Executive Director”, substitute “ATSB”.

59 Subsection 60(5)

Omit “Executive Director”, substitute “ATSB”.

60 Sections 61 and 62

Omit “Executive Director” (wherever occurring), substitute “ATSB”.

Note: The heading to section 62 is altered by omitting “**Executive Director**” and substituting “ATSB”.

61 After Part 6

Insert:

Part 6A—Reporting requirements

63A Annual report

Annual report to be given to Minister

- (1) The ATSB must, as soon as practicable after 30 June in each financial year, prepare and give to the Minister a report (an **annual report**) on the ATSB's operations during that year.

Note: See also section 34C of the *Acts Interpretation Act 1901*, which contains provisions about annual reports.

Contents of annual report

- (2) The ATSB must include in the report the following:
 - (a) prescribed particulars of transport safety matters investigated by the ATSB during the financial year;
 - (b) a description of investigations conducted by the ATSB during the financial year that the Chief Commissioner considers raise significant issues in transport safety;
 - (c) the financial statements required by section 49 of the *Financial Management and Accountability Act 1997*;
 - (d) an audit report on those statements under section 57 of the *Financial Management and Accountability Act 1997*.

62 Before section 64

Insert:

63B Delegation by the ATSB

- (1) Subject to subsections (2) and (3), the ATSB may, by writing, delegate to any person all or any of its powers under this Act, other than the power to publish a report under section 25.

Note 1: Functions and duties can also be delegated: see the definition of **power**.

Note 2: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

Limitations on delegation

- (2) The ATSB must not delegate its powers to a person unless the ATSB is satisfied that the person satisfies the criteria prescribed by the regulations.
- (3) The ATSB must not delegate its powers under section 32 to anyone other than:
 - (a) the Chief Commissioner; or
 - (b) an SES employee; or
 - (c) a person who holds or performs the duties of an APS Executive Level 1 or 2 position or an equivalent position; or
 - (d) a person employed by any authority or body constituted by or under a law of the Commonwealth, where the skills and responsibilities that are expected of the person are equivalent to, or exceed, the skills and responsibilities expected of a person covered by paragraph (b) or (c); or
 - (e) a special investigator.

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

- (4) If the Chief Commissioner (the *first delegate*) is delegated powers under subsection (3), the Chief Commissioner may, in writing, delegate any of those powers to a person (the *second delegate*) mentioned in the following paragraphs:
 - (a) an SES employee;
 - (b) a person who holds or performs the duties of an APS Executive Level 1 or 2 position or an equivalent position;
 - (c) a person employed by any authority or body constituted by or under a law of the Commonwealth, where the skills and responsibilities that are expected of the person are equivalent to, or exceed, the skills and responsibilities expected of a person covered by paragraph (a) or (b);
 - (d) a special investigator.

However, if the first delegate is subject to directions in relation to the exercise of a power delegated, the first delegate must give corresponding directions to the second delegate.

- (5) A power that is exercised by a person under a delegation under subsection (4) is taken, for the purposes of this Act, to have been exercised by the ATSB.

Delegate to comply with directions

- (6) In exercising powers under a delegation, the delegate must comply with any directions of the ATSB.

Note: See sections 34AA to 34A of the *Acts Interpretation Act 1901*.

63C Delegation by the Chief Commissioner

- (1) Subject to subsections (2) to (5), the Chief Commissioner may, by writing, delegate to any person all or any of his or her powers under this Act, other than the power to appoint a special investigator under section 63E.

Note 1: Functions and duties can also be delegated: see the definition of *power*.

Note 2: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

Limitations on delegation

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

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

- (3) The Chief Commissioner must not delegate his or her powers under section 35 (in so far as that section applies to residential premises) to anyone other than:
- (a) an APS employee; or
 - (b) a person employed by any authority or body constituted by or under a law of the Commonwealth.
- (4) The Chief Commissioner must not delegate his or her powers under section 40 or 41 to anyone other than:

- (a) an SES employee; or
 - (b) a person who holds or performs the duties of an APS Executive Level 1 or 2 position or an equivalent position; or
 - (c) a person employed by any authority or body constituted by or under a law of the Commonwealth, where the skills and responsibilities that are expected of the person are equivalent to, or exceed, the skills and responsibilities expected of a person covered by paragraph (a) or (b).
- (5) The Chief Commissioner must not delegate his or her powers to a person unless the Commissioner is satisfied that the person satisfies the criteria prescribed by the regulations.

Delegate to comply with directions

- (6) In exercising powers under a delegation, the delegate must comply with any directions of the Chief Commissioner.

Note: See sections 34AA to 34A of the *Acts Interpretation Act 1901*.

63D Delegation by the Chief Executive Officer

- (1) Subject to subsections (2) and (3), the Chief Executive Officer may, by writing, delegate to any person all or any of his or her powers under this Act.

Note 1: Functions and duties can also be delegated: see the definition of *power*.

Note 2: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

Limitation on delegation

- (2) The Chief Executive Officer must not delegate his or her powers under this Act to anyone other than:
- (a) an SES employee; or
 - (b) a person who holds or performs the duties of an APS Executive Level 2 position.
- (3) The Chief Executive Officer must not delegate his or her powers to a person unless the Chief Executive Officer is satisfied that the person satisfies the criteria prescribed by the regulations.

Delegate to comply with directions

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

Note: See sections 34AA to 34A of the *Acts Interpretation Act 1901*.

63E Special investigators

The Chief Commissioner may, by written instrument, appoint a person as a special investigator for the purposes of this Act if the Chief Commissioner is satisfied that the person satisfies the criteria prescribed by the regulations.

63 Section 65

Repeal the section, substitute:

65 Certification of involvement in investigation

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

64 Subsection 66(1)

Repeal the subsection, substitute:

- (1) A person who is or has been a Commissioner, staff member or consultant is not obliged to comply with a subpoena or similar direction of a court to attend and answer questions relating to an investigable matter if the ATSB has issued a certificate under section 65 for the person in relation to the matter.

65 Subsection 66(2)

Before “staff member”, insert “Commissioner or”.

66 Subsection 67(1)

Repeal the subsection, substitute:

- (1) If:
- (a) a Commissioner, staff member or consultant appears as a witness in a coronial inquiry; and

- (b) the Commissioner, staff member or consultant is asked to give an expert opinion; and
 - (c) the ATSB has issued a certificate under section 65 for the Commissioner, staff member or consultant in relation to a matter that is being investigated at the coronial inquiry;
- then the State or Territory concerned is liable to pay a fee to the Commonwealth in respect of the expenses of that attendance.

Note: The heading to section 67 is altered by inserting “etc.” after “staff members”.

67 Sections 68 and 69

Repeal the sections, substitute:

68 Legal representation for staff members etc. at coronial inquiry

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

then the Commissioner, staff member or consultant 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 Commissioner, staff member or consultant has in circumstances not covered by subsection (1).

69 Exercise of powers under State and Territory laws

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

- (2) A Commissioner, staff member or consultant may exercise powers that are conferred on them by any law of a Territory that relates to transport safety.

Part 2—Consequential amendments

Air Services Act 1995

68 Paragraph 8(1)(c)

Repeal the paragraph, substitute:

- (c) cooperating with the Australian Transport Safety Bureau in relation to investigations under the *Transport Safety Investigation Act 2003* that relate to aircraft;

Australian Maritime Safety Authority Act 1990

69 Paragraph 6(1)(cb)

Repeal the paragraph, substitute:

- (cb) to cooperate with the Australian Transport Safety Bureau in relation to investigations under the *Transport Safety Investigation Act 2003* that relate to aircraft and ships; and

Civil Aviation Act 1988

70 Paragraph 9(3)(a)

Repeal the paragraph, substitute:

- (a) cooperating with the Australian Transport Safety Bureau in relation to investigations under the *Transport Safety Investigation Act 2003* that relate to aircraft;

Inspector of Transport Security Act 2006

71 Section 3

Insert:

ATSB means the Australian Transport Safety Bureau established under section 12 of the *Transport Safety Investigation Act 2003*.

72 Section 3 (definition of *Executive Director*)

Repeal the definition.

73 Section 34

Omit “Executive Director” (wherever occurring), substitute “ATSB”.

74 Subsection 37(1)

Omit “Executive Director” (wherever occurring), substitute “ATSB”.

Note: The heading to section 37 is altered by omitting “**Executive Director**” and substituting “ATSB”.

75 Subsection 37(2)

Omit “Executive Director” (first occurring), substitute “ATSB”.

76 Subsection 37(2)

Omit “Executive Director” (second occurring), substitute “Chief Commissioner of the ATSB”.

77 Paragraphs 37(3)(a) and (b)

Omit “Executive Director”, substitute “ATSB”.

78 Subsection 37(4)

Repeal the subsection, substitute:

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 anything done by a person for the purpose of assisting the ATSB in the exercise of its 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*.

79 Subsection 37(5)

Omit “Executive Director may exercise his or her”, substitute “ATSB may exercise its”.

Note: The heading to subsection 37(5) is altered by omitting “*Executive Director*” and substituting “*the ATSB*”.

80 Paragraphs 37(6)(b) and (c)

Omit “Executive Director”, substitute “ATSB”.

81 Subsection 37(7)

Repeal the subsection, substitute:

- (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 ATSB, without the prior agreement of the Chief Commissioner of the ATSB, if, after consultation with the ATSB, the Chief Commissioner of the ATSB is of the opinion that the disclosure may:
- (a) compromise an investigation that is being conducted by the ATSB; or
 - (b) have a substantial adverse effect on the proper and efficient conduct of the operations of the ATSB.

82 Paragraph 37(8)(a)

Omit “Executive Director”, substitute “ATSB”.

83 Subsection 51(4)

Omit “Executive Director”, substitute “ATSB”.

84 Subsection 52(5)

Repeal the subsection, substitute:

Interim reports containing restricted information given to the Inspector by the ATSB

- (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 ATSB, without the prior agreement of the Chief Commissioner of the ATSB, if the disclosure of the information may:
- (a) compromise an investigation that is being conducted by the ATSB; or
 - (b) have a substantial adverse effect on the proper and efficient conduct of the operations of the ATSB.

85 Section 54

Omit “Executive Director”, substitute “ATSB”.

86 Subsection 55(7)

Repeal the subsection, substitute:

Draft reports containing restricted information given to the Inspector by the ATSB

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

87 Subsection 59(4)

Omit “Executive Director”, substitute “ATSB”.

88 Section 63

Omit “Executive Director” (wherever occurring), substitute “ATSB”.

Note: The heading to section 63 is altered by omitting “**Executive Director**” and substituting “ATSB”.

89 Subsection 64(5)

Repeal the subsection, substitute:

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

90 Paragraph 66(f)

Omit “Executive Director”, substitute “ATSB”.

91 Section 66 (note 1)

Omit “Executive Director”, substitute “ATSB”.

92 Subsection 70(1)

Omit “Executive Director” (wherever occurring), substitute “ATSB”.

93 Subsection 70(2)

Repeal the subsection, substitute:

- (2) The ATSB may request the Inspector to disclose protected information to the ATSB if it considers that the Inspector has the information and that the information is relevant to an investigation that is being conducted by the ATSB.

94 Part 8 (heading)

Repeal the heading, substitute:

**Part 8—OBR information, CVR information, and
restricted information given to the
Inspector by the ATSB**

95 Section 72

Omit “Executive Director”, substitute “ATSB”.

96 Section 75

Omit “Executive Director” (wherever occurring), substitute “ATSB”.

Note: The heading to section 75 is altered by omitting “**Executive Director**” and substituting “ATSB”.

97 Paragraphs 76(1)(a) and (b)

Omit “Executive Director”, substitute “ATSB”.

Note: The heading to section 76 is altered by omitting “**Executive Director**” and substituting “ATSB”.

98 Subsection 77(1)

Omit “Executive Director”, substitute “ATSB”.

Note: The heading to section 77 is altered by omitting “**Executive Director**” and substituting “ATSB”.

99 Paragraph 77(3)(c)

Omit “Executive Director, or a delegate of the Executive Director”, substitute “Chief Commissioner of the ATSB, or a delegate of the Chief Commissioner”.

100 Subsection 77(6)

Omit “Executive Director”, substitute “ATSB”.

101 Subsection 82(2)

Omit “Executive Director”, substitute “ATSB”.

102 Subsection 82(2)

Omit “Executive Director’s”, substitute “ATSB’s”.

103 At the end of section 82

Add:

- (3) The Chief Commissioner of the ATSB may, by writing, delegate all or any of his or her powers and functions under this Act 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.

Part 3—Saving and transitional provisions

104 Definitions

In this Part:

ATSB has the same meaning as in the new law.

Chief Commissioner has the same meaning as in the new law.

Executive Director has the same meaning as in the old law.

new law means the *Transport Safety Investigation Act 2003* as in force immediately after this item commences.

old law means the *Transport Safety Investigation Act 2003* as in force immediately before this item commences.

105 Continuation of existing investigations under the *Transport Safety Investigation Act 2003*

- (1) If, before 1 July 2009, the Executive Director was conducting an investigation under the old law, then the ATSB may continue the investigation.
- (2) Anything done by, or in relation to, the Executive Director under such an investigation is taken, for the purposes of the operation of any law on and after 1 July 2009, to have been done by, or in relation to, the ATSB or the Chief Commissioner, as the case requires.
- (3) The Minister may, by writing, determine that subitem (2) does not apply in relation to a specified thing done by, or in relation to, the Executive Director.
- (4) To avoid doubt, doing a thing includes making an instrument.
- (5) A determination under subitem (3) is not a legislative instrument.

106 Exercise of powers in relation to completed investigations

The ATSB, or the Chief Commissioner, may perform functions or exercise powers under:

- (a) the old law; or

- (b) Part 2A of the *Air Navigation Act 1920* (as continued in force by clause 2 of Schedule 1 to the *Transport Safety Investigation (Consequential Amendments) Act 2003*); or
- (c) the *Navigation (Marine Casualty) Regulations 1990* (as continued in force by subitem 108(2) of this Schedule);

in relation to an investigation that was completed before 1 July 2009 under any of those laws.

107 Performance of functions and exercise of powers in relation to voluntary reporting schemes

The ATSB, or the Chief Commissioner, may perform functions or exercise powers conferred on the Executive Director under:

- (a) the *Navigation (Confidential Marine Reporting Scheme) Regulations 2008*; and
- (b) the *Air Navigation (Confidential Reporting) Regulations 2006*; and
- (c) Division 13.K.1 of Part 13 of the *Civil Aviation Safety Regulations 1998*;

on and after the date that this item commences until the regulations mentioned in paragraphs (a), (b) and (c) are repealed.

108 Validation of acts done under investigations conducted under the *Navigation Act 1912*

- (1) To avoid doubt, any thing done by a person:
 - (a) in the performance or purported performance of a function; or
 - (b) in the exercise or purported exercise of a power;under an investigation conducted under the *Navigation (Marine Casualty) Regulations 1990* is taken always to have been validly performed or exercised, as it would have been had paragraph 425(1)(ea) and subsection 425(1AAA) of the *Navigation Act 1912* not been repealed by items 8 and 9 of the *Transport Safety Investigation (Consequential Amendments) Act 2003*.
- (2) For the purpose of paragraph 106(c) of this Part, paragraph 425(1)(ea) and subsection 425(1AAA) of the *Navigation Act 1912* continue in force, despite their repeal by items 8 and 9 of the *Transport Safety Investigation (Consequential Amendments) Act 2003*.

109 Saving regulations

The repeal of Part 2 of the *Transport Safety Investigation Act 2003* by item 24 of this Schedule does not affect the continuity of any regulations made for the purposes of section 17 of that Act.

Schedule 2—Other amendments

Transport Safety Investigation Act 2003

1 Section 3

Insert:

committee of management of an unincorporated association means a body (however described) that governs, manages or conducts the affairs of the association.

2 Section 3 (at the end of the definition of *restricted information*)

Add:

- ; (i) information contained in a report made under a voluntary reporting scheme;
- (j) information obtained or generated by the ATSB in the course of considering a report made under a voluntary reporting scheme;
- (k) records of the analysis of information contained in a report made under a voluntary reporting scheme (including opinions expressed by a person in that analysis).

3 Section 3

Insert:

voluntary reporting scheme means a scheme established by regulations made under section 20A.

4 Part 3 (heading)

Repeal the heading, substitute:

Part 3—Reporting of accidents etc.

Division 1—Compulsory reporting

5 At the end of Part 3

Add:

Division 2—Voluntary reporting

20A Voluntary reporting scheme

- (1) The regulations may establish a scheme for the voluntary and confidential reporting of issues that affect, or might affect, transport safety to the ATSB.
- (2) The regulations may prescribe:
 - (a) the purposes of the scheme; and
 - (b) the manner in which reports are to be made; and
 - (c) the use and disclosure by the ATSB of:
 - (i) information contained in a report; or
 - (ii) information the ATSB obtains or generates in the course of considering the report; and
 - (d) any other matters necessary or incidental to the establishment or operation of a scheme in accordance with subsection (1).

6 After section 25

Insert:

25A Responses to reports of, or containing, safety recommendations

- (1) This section applies if:
 - (a) the ATSB publishes a report under section 25 in relation to an investigation; and
 - (b) the report is, or contains, a recommendation that a person, unincorporated association, or an agency of the Commonwealth or of a State or Territory, take safety action.
- (2) The person, association or agency to whom the recommendation is made must give a written response to the ATSB, within 90 days of the report being published, that sets out:
 - (a) whether the person, association or agency accepts the recommendation (in whole or in part); and
 - (b) if the person, association or agency accepts the recommendation (in whole or in part)—details of any action that the person, association or agency proposes to take to give effect to the recommendation; and

- (c) if the person, association or agency does not accept the recommendation (in whole or in part)—the reasons why the person, association or agency does not accept the recommendation (in whole or in part).
- (3) A person commits an offence if:
- (a) the person is someone to whom a recommendation is made in a report published under section 25; and
 - (b) the person fails to give a written response to the ATSB within 90 days setting out the things required by paragraphs (2)(a), (b) and (c) (as applicable).
- Penalty: 30 penalty units.
- (4) Subsection (3) applies to an unincorporated association as if it were a person.
- (5) An offence against subsection (3) that would otherwise be committed by an unincorporated association is taken to have been committed by each member of the association's committee of management, at the time the offence is committed, who:
- (a) made the relevant omission; or
 - (b) aided, abetted, counselled or procured the relevant omission; or
 - (c) was in any way knowingly concerned in, or party to, the relevant omission (whether directly or indirectly or whether by any act or omission of the member).

*[Minister's second reading speech made in—
House of Representatives on 12 February 2009
Senate on 11 March 2009]*

(14/09)

40 *Transport Safety Investigation Amendment Act 2009* *No. 20, 2009*