



# **Transport Safety Investigation Act 2003**

**Act No. 18 of 2003 as amended**

This compilation was prepared on 1 July 2009  
taking into account amendments up to Act No. 26 of 2009

The text of any of those amendments not in force  
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be  
affected by application provisions that are set out in the Notes section

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

## Part 1—Preliminary

### 1 Short title [see Note 1]

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

### 2 Commencement

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

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent	11 April 2003
2. Sections 3 to 71	A single day to be fixed by Proclamation, subject to subsection (3)	1 July 2003 (see <i>Gazette</i> 2003, No. S229)

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

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

Act receives the Royal Assent, it commences on the first day after the end of that period.

### 3 Definitions

- (1) In this Act, unless the contrary intention appears:

**accident** means an investigable matter involving a transport vehicle where:

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

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

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

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

**accident site premises** means:

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

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

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

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

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

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

***Australian ship*** means:

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

***Australian transport vehicle*** means:

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

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

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

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

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

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

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

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

***Commonwealth entity*** means:

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

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

***constitutional corporation*** means:

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

***consultant*** means a person engaged under section 16B.

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

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

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

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

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

***criminal proceedings*** means criminal proceedings before an Australian court.

***damage*** includes structural failure.

***disclose:***

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

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

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

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

***exempt transport vehicle*** means:

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

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

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

***international agreement*** means a treaty or agreement whose parties are:

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

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

***investigation*** means an investigation under this Act.

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

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

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

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

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

**OBR information** means:

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

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

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

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

**power** includes a function or duty.

**premises** includes any place or vehicle.

**premises powers** means:

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

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

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

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

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

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

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

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

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

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

***safety action statement*** means a statement:

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

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

***special investigator*** means a person appointed as a special investigator under section 63E.

***special premises*** means:

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

***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.

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

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

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

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

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

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

- (2) Regulations made for the purposes of the definition of ***immediately reportable matter*** or ***routine reportable matter*** may prescribe the matter by applying, adopting or incorporating, with or without modification, any matter contained in any other instrument or writing as in force from time to time.

#### **4 Act binds the Crown**

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

#### **5 External Territories**

This Act extends to the external Territories.

#### **6 Application outside Australia**

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

#### **8 Application of *Criminal Code***

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

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

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

## 10 Relationship with other laws

### *State laws*

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

### *Commonwealth laws*

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

## 11 Constitutional limitations on powers and functions

### *Aircraft*

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

### *Ships*

- (2) The powers in this Act, so far as they relate to ships and marine navigation, can only be exercised in relation to:
  - (a) marine navigation conducted in the course of trade or commerce with other countries or among the States; or



- (b) marine navigation:
  - (i) outside Australia; or
  - (ii) within a Territory, or to or from a Territory; or
  - (iii) within a Commonwealth place, or to or from a Commonwealth place; or
  - (iv) on ships owned or operated by a constitutional corporation or Commonwealth entity; or
  - (v) in respect of which a State referral of power is in operation; or
  - (vi) in relation to any other matter with respect to which the Parliament has power to make laws; or
- (c) giving effect to an international agreement; or
- (d) matters of international concern.

*Rail vehicles*

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

*Section does not limit OBR information powers*

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

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

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*Definition*

(5) In this section:

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

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

## **Part 2—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;

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- (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.

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**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*.

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**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

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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.

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*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.

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**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.



## **Part 3—Reporting of accidents etc.**

### **Division 1—Compulsory reporting**

#### **18 Immediate reports**

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

Penalty: Imprisonment for 12 months.

- (2) Subsection (1) does not apply if the person believes, on reasonable grounds, that another responsible person has, or other responsible persons have, already reported the matter, or will as soon as is reasonably practicable report the matter, to a nominated official with all the particulars prescribed by the regulations.

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

- (3) Subsection (1) does not apply if:
- (a) the person has already reported the matter under the *Navigation Act 1912* or the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983*; or
  - (b) the person believes, on reasonable grounds, that another responsible person has already reported, or will as soon as is reasonably practicable report, the matter under either of those Acts.

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

#### **19 Written reports within 72 hours**

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

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

Penalty: 30 penalty units.

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

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

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

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

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

- (4) The Chief Commissioner may, by notice in writing to a responsible person, require the person to give the Chief Commissioner a written report in relation to an immediately reportable matter or a routine reportable matter within the period specified in the notice, by the means prescribed and including the particulars prescribed by the regulations.

- (5) The Chief Commissioner must not require a responsible person to give a report under subsection (4) unless either:

- (a) the Chief Commissioner is satisfied that:
  - (i) the person has knowledge of the immediately reportable matter or routine reportable matter; but
  - (ii) the person is one to whom subsection (1) does not apply because of the operation of subsection (2) or (3); or
- (b) the Chief Commissioner is satisfied that:
  - (i) the person is one to whom subsection (1) applies despite the operation of subsection (2) or (3); and
  - (ii) the person may have information that was not communicated in a report given under subsection (1).

- (6) The responsible person must comply with the notice.

Penalty: 30 penalty units.

- (7) A prosecution of a person for an offence against subsection (1) may be commenced at any time within 6 years after the commission of the offence.

## **20 Nominated officials for receiving reports**

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

## **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).

## **Part 4—Investigations and reports**

### **Division 1—Investigations**

#### **21 Investigations**

(1) Subject to section 22:

- (a) the ATSB may investigate any transport safety matter; and
- (b) the ATSB must investigate a transport safety matter if directed in writing by the Minister to do so.

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

(2) The ATSB may discontinue an investigation at any time.

(3) The ATSB must, within 28 days of discontinuing an investigation, make publicly available, by electronic or other means, a statement setting out the reasons for discontinuing the investigation.

#### **22 Restriction on investigations of transport safety matters**

(1) A transport safety matter cannot be investigated under this Act unless:

- (a) the occurrence occurs in Australia; or
- (b) the occurrence involves an Australian transport vehicle; or
- (c) the occurrence occurs outside Australia and any of the following apply:

- (i) evidence relating to the occurrence is found in Australia;
- (ii) the appropriate authority of another country has requested the ATSB to conduct, or to participate in, an investigation into the occurrence;
- (iii) the ATSB considers that it is necessary to conduct, or to participate in, an investigation into the occurrence and the agreement of the appropriate authority of another country is obtained for the ATSB to conduct, or to participate in, such an investigation;

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

## 23 Transport safety matters

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

*Other matters*

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

**24 Offence to hinder etc. an investigation**

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

Penalty: Imprisonment for 12 months.

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

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

- (3) Subsection (1) does not apply if the conduct was:
- (a) the withdrawal of the person's consent to the Chief Commissioner entering premises under section 34; or
  - (b) the refusal to give any assistance to the Chief Commissioner (in relation to that entry) after the withdrawal of that consent.

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

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



## **Division 2—Investigation reports**

### **25 Reports on investigations**

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

### **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:

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- (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).

## **26 Draft reports**

- (1) The ATSB may provide a draft report, on a confidential basis, to any person whom the ATSB considers appropriate, for the purpose of:
  - (a) allowing the person to make submissions to the ATSB about the draft report; or

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

Penalty:

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

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

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

**27 Reports not admissible in evidence**

*Final report*

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

*Draft report*

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

## **Part 5—Investigation powers**

### **Division 1—Preliminary**

#### **28 Powers only exercisable in relation to an investigation**

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

#### **29 Identity cards**

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

Note 1: Premises powers are exercised either by the Chief Commissioner or by a delegate of the Chief Commissioner.

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

##### *Form of identity card*

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

##### *Offence*

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

Penalty: 1 penalty unit.

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

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

*Defence: card lost or destroyed*

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

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

*Identity card must be carried*

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

**30 Obligations of Chief Commissioner before entering premises**

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

**31 Powers conferred on magistrates**

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

## **Division 2—Requirement to attend before ATSB**

### **32 ATSB may require persons to attend and answer questions etc.**

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

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- (d) fail to produce to the ATSB the specified evidential material in accordance with the requirement.

Penalty: 30 penalty units.

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

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



## **Division 3—Powers in relation to premises**

### **33 Power to enter special premises without consent or warrant**

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

### **34 Power to enter any premises with occupier's consent**

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

### **35 Power to enter any premises with warrant**

- (1) The Chief Commissioner may enter any premises under an investigation warrant.

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

**36 Powers after entering premises**

- (1) After entering premises under this Division, the Chief Commissioner may do any of the following:
  - (a) search the premises, and any thing on the premises, for evidential material;
  - (b) make photos, video recordings, sound recordings or other records of the premises or evidential material;
  - (c) make copies of evidential material found on the premises;
  - (d) examine, take measurements of, conduct tests on, or take samples of, evidential material;
  - (e) operate equipment on the premises in order to access evidential material;
  - (f) in the case of evidential material that is equipment, operate the evidential material;
  - (g) remove evidential material from the premises with the consent of:
    - (i) if it is practicable to obtain the consent of the owner of the material—the owner; or

- (ii) if it is not practicable to obtain the consent of the owner of the material—the occupier of the premises;

Note: See also subsection (2).

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

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

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

#### *Obtaining consent*

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

#### *Special premises*

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

#### *Entry under an investigation warrant*

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

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*Offence*

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

Penalty: 30 penalty units.

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

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

**37 Occupier to provide Chief Commissioner with facilities and assistance**

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

Penalty: 30 penalty units.

**38 Occupier entitled to be present during search**

- (1) If:
- (a) an investigation warrant in relation to premises is being executed; and
  - (b) the occupier of the premises is present at the premises;
- then the occupier is entitled to observe the search being conducted.
- (2) The right to observe the search being conducted ceases if the occupier impedes the search.
- (3) This section does not prevent 2 or more areas of the premises being searched at the same time.

**39 Power to stop and detain transport vehicles**

- (1) This section applies if the Chief Commissioner believes, on reasonable grounds, that:
- (a) evidential material is in or on a transport vehicle; and

- (b) it is necessary to exercise other powers under this Division in order to prevent the material from being removed from Australia or from being interfered with or to prevent its concealment, loss, deterioration or destruction.
- (2) The Chief Commissioner may stop and detain the vehicle for the purpose of exercising those other powers. The Chief Commissioner may do so with such assistance, and by such force, as is necessary and reasonable.
- (3) The Chief Commissioner must not detain the vehicle for longer than is necessary and reasonable to exercise those other powers.

## **Division 4—Investigation warrants**

### **40 Issue of investigation warrants**

#### *Application for warrant*

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

#### *Issue of warrant*

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

#### *Content of warrant*

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

## **41 Investigation warrants by telephone, fax etc.**

### *Application for warrant*

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

### *Issue of warrant*

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

### *Obligations of magistrate and Chief Commissioner once warrant issued*

- (6) If the magistrate completes and signs the warrant:
  - (a) the magistrate must:
    - (i) tell the Chief Commissioner what the terms of the warrant are; and
    - (ii) tell the Chief Commissioner the day on which and the time at which the warrant was signed; and

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

*Authority of warrant*

- (9) A form of warrant duly completed under subsection (6) is authority for the same powers as are authorised by the warrant signed by the magistrate.
- (10) If:
  - (a) it is material, in any proceedings, for a court to be satisfied that an exercise of a power was authorised by this section; and
  - (b) the warrant signed by the magistrate authorising the exercise of the power is not produced in evidence;



the court must assume, unless the contrary is proved, that the exercise of the power was not authorised by such a warrant.

#### **42 False statements etc. in application for warrant etc.**

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

Penalty: Imprisonment for 2 years.

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

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

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

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

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

- (4) The Chief Commissioner must not:

- (a) state in a document that purports to be a form of warrant under section 41 the name of a magistrate unless that magistrate issued the warrant; or
- (b) state on a form of warrant under that section a matter that, to the Chief Commissioner's knowledge, departs in a material particular from the form authorised by the magistrate; or
- (c) purport to execute, or present to another person, a document that purports to be a form of warrant under that section that the Chief Commissioner knows:
  - (i) has not been approved by a magistrate under that section; or
  - (ii) departs in a material particular from the terms authorised by a magistrate under that section; or

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- (d) give to a magistrate a form of warrant under that section that is not the form of warrant that the Chief Commissioner purported to execute.

Penalty: Imprisonment for 2 years.

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

## **Division 5—Protection orders**

### **43 Protection orders by Chief Commissioner**

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

Penalty: Imprisonment for 12 months.

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

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

- (5) The Chief Commissioner must not unreasonably withhold a permission under subsection (1).

## **Division 6—Securing accident sites**

### **44 Securing accident sites**

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

Penalty: 10 penalty units.

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

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

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

## **Division 7—Miscellaneous**

### **45 Retention, testing etc. of evidential material**

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

Note: Part 6 deals with the protection of OBR information and restricted information.
- (8) In this section:

*owner* includes an agent of the owner.

*relevant body* means:

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

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

- (1) This section applies if:
    - (a) as a result of electronic equipment being operated as mentioned in section 36:
      - (i) damage is caused to the equipment; or
      - (ii) the data recorded on the equipment is damaged; or
      - (iii) programs associated with the use of the equipment, or with the use of the data, are damaged or corrupted; and
    - (b) the damage or corruption occurs because:
      - (i) insufficient care was exercised in selecting the person who was to operate the equipment; or
      - (ii) insufficient care was exercised by the person operating the equipment.
  - (2) The Commonwealth must pay the owner of the equipment, or the user of the data or programs, such reasonable compensation for the damage or corruption as the Commonwealth and the owner or user agree on.
  - (3) However, if the owner or user and the Commonwealth fail to agree, the owner or user may institute proceedings in the Federal Court of Australia for such reasonable amount of compensation as the Court determines.
  - (4) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises, or the occupier's employees and agents, if they were available at the time, provided any appropriate warning or guidance on the operation of the equipment.
  - (5) Compensation is payable out of money appropriated by the Parliament.
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- (6) For the purposes of subsection (1):

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

#### **47 Self-incrimination not an excuse**

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

## Part 6—Protection of OBR information and restricted information

### Division 1—OBR information

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

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



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

#### **49 OBR ceasing to be an OBR under declaration of ATSB**

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

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

**50 ATSB certificate about disclosure of OBR information**

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

**51 Release of OBR information in the interests of transport safety**

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

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

**52 ATSB may authorise persons to have access to OBR information**

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

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

**53 Copying or disclosing OBR information**

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

Penalty: Imprisonment for 2 years.

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

Penalty: Imprisonment for 2 years.

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

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

- (4) If the court is satisfied that any adverse domestic and international impact that the disclosure of the information might have on any current or future investigations is outweighed by the public interest in the administration of justice, the court may order such disclosure.
- (5) The court may direct that OBR information, or any information obtained from the OBR information, must not:
- (a) be published or communicated to any person; or
  - (b) be published or communicated except in such manner, and to such persons, as the court specifies.
- (6) If a person is prohibited by this section from disclosing OBR information, then:

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- (a) the person cannot be required by a court to disclose the information; and
- (b) any information disclosed by the person in contravention of this section is not admissible in any civil or criminal proceedings (other than proceedings against the person under this section).

**54 OBR information no ground for disciplinary action**

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

**55 OBR information not admissible in criminal proceedings against crew members**

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

**56 Admissibility of OBR information in civil proceedings**

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

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

- (2) A party to the proceedings may, at any time before the determination of the proceedings, apply to the court in which the proceedings have been instituted for an order that OBR information be admissible in evidence in the proceedings.
- (3) If:
  - (a) such an application is made; and
  - (b) the ATSB has issued a certificate under section 50 in relation to the OBR information;then:
  - (c) the court must examine the OBR information; and

- (d) if the court is satisfied that:
- (i) a material question of fact in the proceedings will not be able to be properly determined from other evidence available to the court; and
  - (ii) the OBR information or part of the OBR information, if admitted in evidence in the proceedings, will assist in the proper determination of that material question of fact; and
  - (iii) any adverse domestic and international impact that the disclosure of the information might have on any current or future investigations is outweighed by the public interest in the administration of justice;
- the court may order that the OBR information, or that part of the OBR information, be admissible in evidence in the proceedings.

- (4) This section does not apply to a coronial inquiry.

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

- (1) This section applies if a court examines OBR information under subsection 56(3).
- (2) The only persons who may be present at the examination are:
  - (a) the person or persons constituting the court, other than the members of the jury (if any); and
  - (b) the legal representatives of the parties to the proceedings; and
  - (c) such other persons (if any) as the court directs.
- (3) The court may direct that the OBR information, or any information obtained from the OBR information, must not:
  - (a) be published or communicated to any person; or
  - (b) be published or communicated except in such manner, and to such persons, as the court specifies.

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

- (1) This section applies if OBR information is admitted as evidence under subsection 56(3).

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

**59 Use of OBR information in coronial inquiries**

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

*Coroner's determination about disclosure*

- (2) After examining the OBR information in camera, the coroner may make a determination that the information, or part of the information, should no longer be protected from disclosure.
- (3) The coroner cannot make such a determination unless the coroner considers that:
  - (a) the information concerned is relevant to the inquiry and cannot be obtained by other means; and
  - (b) any adverse domestic and international impact that the disclosure of the information might have on any current or future investigations is outweighed by the public interest.

*Coroner's direction about publication or communication*

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

Penalty: Imprisonment for 2 years.

## **Division 2—Restricted information**

### **60 Limitations on disclosure etc. of restricted information**

#### *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.

#### *Non-staff members*

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

Penalty: Imprisonment for 2 years.

#### *Defences*

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

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

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

*Certificate*

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

*Courts*

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

**61 Release of restricted information in the interests of transport safety**

- (1) The ATSB may disclose restricted information to any person if the ATSB considers that the disclosure is necessary or desirable for the purposes of transport safety.



(2) However, the ATSB may only disclose restricted information that is, or that contains, personal information in the circumstances prescribed by the regulations.

(3) In this section:

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

## **62 ATSB may authorise persons to have access to restricted information**

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

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

### **Division 3—Miscellaneous**

#### **63 Powers of Parliament and Royal Commissions not affected**

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

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

## **Part 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*.

## Part 7—Miscellaneous

### 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

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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.

### **64 Immunity**

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

### **65 Certification 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.

**66 Staff members etc. not compellable as witnesses**

- (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.
- (2) A Commissioner or staff member is not compellable to give an expert opinion in any civil or criminal proceedings in relation to a matter related to transport safety.
- (3) This section does not apply to a coronial inquiry.

**67 Attendance fees where staff members etc. attend coronial inquiry**

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

**68 Legal representation for staff members 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.

### **70 Compensation for acquisition of property**

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

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*acquisition of property* has the same meaning as in paragraph 51(xxxi) of the Constitution.

*just terms* has the same meaning as in paragraph 51(xxxi) of the Constitution.

**71 Regulations**

The Governor-General may make regulations prescribing matters:

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

**Table of Acts****Notes to the *Transport Safety Investigation Act 2003*****Note 1**

The *Transport Safety Investigation Act 2003* as shown in this compilation comprises Act No. 18, 2003 amended as indicated in the Tables below.

For all relevant information pertaining to application, saving or transitional provisions *see* Table A.

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Transport Safety Investigation Act 2003</i>	18, 2003	11 Apr 2003	Ss. 3–71: 1 July 2003 ( <i>see Gazette</i> 2003, No. S229) Remainder: Royal Assent	
<i>Transport Safety Investigation Amendment Act 2009</i>	20, 2009	26 Mar 2009	Schedule 1 (items 1–24, 26–67, 104–109) and Schedule 2: 1 July 2009 Schedule 1 (item 25): (a)	Sch. 1 (items 104–109)
<i>Aviation Legislation Amendment (2008 Measures No. 2) Act 2009</i>	26, 2009	26 Mar 2009	Schedule 1 (items 12–24): 1 July 2009 Schedule 1 (items 27–29): Royal Assent	Sch. 1 (items 27–29)

## Act Notes

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- (a) Subsection 2(1) (item 3) of the *Transport Safety Investigation Amendment Act 2009* provides as follows:
- (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.

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Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
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

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**Table of Amendments****Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Part 1</b>	
S. 3.....	am. Nos. 20 and 26, 2009
S. 7.....	rep. No. 20, 2009
S. 9.....	rep. No. 26, 2009
S. 11.....	am. No. 20, 2009
<b>Part 2</b>	
Part 2 .....	rs. No. 20, 2009
<b>Division 1</b>	
S. 12.....	rs. No. 20, 2009
S. 12A .....	ad. No. 20, 2009
Ss. 12AA–12AE .....	ad. No. 20, 2009
<b>Division 2</b>	
S. 13.....	rs. No. 20, 2009
S. 13A .....	ad. No. 20, 2009
Ss. 13AA–13AH .....	ad. No. 20, 2009
<b>Division 3</b>	
<b>Subdivision A</b>	
S. 14.....	rs. No. 20, 2009
S. 14A .....	ad. No. 20, 2009
S. 14AA.....	ad. No. 20, 2009
<b>Subdivision B</b>	
Ss. 14AB, 14AC.....	ad. No. 20, 2009
<b>Division 4</b>	
S. 15.....	rs. No. 20, 2009
S. 15A .....	ad. No. 20, 2009
<b>Division 5</b>	
S. 16.....	rs. No. 20, 2009
Ss. 16A, 16B .....	ad. No. 20, 2009
S. 17.....	rep. No. 20, 2009
<b>Part 3</b>	
Heading to Part 3.....	rs. No. 20, 2009
<b>Division 1</b>	
Heading to Div. 1 of Part 3.....	ad. No. 20, 2009
S. 18.....	am. No. 26, 2009
S. 19.....	am. Nos. 20 and 26, 2009
<b>Division 2</b>	
Div. 2 of Part 3 .....	ad. No. 20, 2009
S. 20A .....	ad. No. 20, 2009

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Part 4</b>	
<b>Division 1</b>	
Ss. 21, 22.....	am. No. 20, 2009
S. 24.....	am. Nos. 20 and 26, 2009
<b>Division 2</b>	
S. 25.....	am. No. 20, 2009
S. 25A.....	ad. No. 20, 2009
S. 26.....	am. Nos. 20 and 26, 2009
<b>Part 5</b>	
<b>Division 1</b>	
S. 29.....	am. Nos. 20 and 26, 2009
Note to s. 29(1).....	am. No. 20, 2009
Heading to s. 30.....	am. No. 20, 2009
S. 30.....	am. No. 20, 2009
<b>Division 2</b>	
Heading to Div. 2 of Part 5.....	rs. No. 20, 2009
Heading to s. 32.....	am. No. 20, 2009
S. 32.....	am. Nos. 20 and 26, 2009
<b>Division 3</b>	
Ss. 33–35.....	am. No. 20, 2009
S. 36.....	am. Nos. 20 and 26, 2009
Heading to s. 37.....	am. No. 20, 2009
S. 37.....	am. Nos. 20 and 26, 2009
S. 39.....	am. No. 20, 2009
<b>Division 4</b>	
S. 40.....	am. No. 20, 2009
Subhead. to s. 41(6).....	am. No. 20, 2009
S. 41.....	am. No. 20, 2009
S. 42.....	am. Nos. 20 and 26, 2009
Note to s. 42(1).....	rs. No. 20, 2009
<b>Division 5</b>	
Heading to s. 43.....	am. No. 20, 2009
S. 43.....	am. Nos. 20 and 26, 2009
<b>Division 6</b>	
S. 44.....	am. Nos. 20 and 26, 2009
<b>Division 7</b>	
S. 45.....	am. No. 20, 2009
<b>Part 6</b>	
<b>Division 1</b>	
Heading to s. 49.....	am. No. 20, 2009
S. 49.....	am. No. 20, 2009

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
Heading to s. 50.....	am. No. 20, 2009
Ss. 50, 51.....	am. No. 20, 2009
Heading to s. 52.....	am. No. 20, 2009
S. 52.....	am. No. 20, 2009
S. 53.....	am. Nos. 20 and 26, 2009
S. 56.....	am. No. 20, 2009
S. 59.....	am. Nos. 20 and 26, 2009
<b>Division 2</b>	
S. 60.....	am. Nos. 20 and 26, 2009
S. 61.....	am. No. 20, 2009
Heading to s. 62.....	am. No. 20, 2009
S. 62.....	am. No. 20, 2009
<b>Part 6A</b>	
Part 6A.....	ad. No. 20, 2009
S. 63A.....	ad. No. 20, 2009
<b>Part 7</b>	
Ss. 63B–63E.....	ad. No. 20, 2009
S. 65.....	rs. No. 20, 2009
S. 66.....	am. No. 20, 2009
Heading to s. 67.....	am. No. 20, 2009
S. 67.....	am. No. 20, 2009
Ss. 68, 69.....	rs. No. 20, 2009

**Table A**

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**Table A**

**Application, saving or transitional provisions**

*Transport Safety Investigation Amendment Act 2009* (No. 20, 2009)

**Schedule 1**

**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*.

**Table A**

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- (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.

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*Aviation Legislation Amendment (2008 Measures No. 2) Act 2009*  
(No. 26, 2009)

**Schedule 1**

**27 Application of amendments of section 18 of the *Transport Safety Investigation Act 2003***

The amendments made by items 15 to 18 apply in relation to immediately reportable matters that occur on or after the commencement of Part 3 of this Schedule.

**28 Application of amendments of section 19 of the *Transport Safety Investigation Act 2003***

The amendments made by items 19 and 20 apply in relation to immediately reportable matters and routine reportable matters that occur on or after the commencement of Part 3 of this Schedule.

**29 Application of amendment of section 24 of the *Transport Safety Investigation Act 2003***

The amendment made by item 21 applies in relation to conduct engaged in on or after the commencement of Part 3 of this Schedule.