

Extract of the Civil Aviation Act 1988

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Part IIIB—Protection of CVR (cockpit voice recording) information

32AN Definitions

In this Part:

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

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

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.

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 CVR information, means any person who had operational duties on board the aircraft at any time during the recording period of the CVR.

criminal proceedings means criminal proceedings before an Australian court.

CVR or *cockpit voice recording* has the meaning given by section 32AO.

CVR information means:

- (a) a CVR or any part of a CVR; or
- (b) a copy or transcript of the whole or any part of a CVR; or
- (c) any information obtained from a CVR or any part of a CVR.

damages proceedings means civil proceedings for damages in respect of personal injury, death or damage to property.

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.

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

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.

32AO Definition of CVR or cockpit voice recording

- (1) A recording is a **CVR** (or **cockpit voice recording**) for the purposes of this Part if:
 - (a) the recording consists of (or consists mainly of) sounds or images, or sounds and images, of persons on the flight deck of an aircraft; and
 - (b) the recording was made in order to comply with a law of the Commonwealth; and
 - (c) either of the following applies:
 - (i) any part of the recording was made while the aircraft was on a constitutional journey, or was made incidentally to such a journey;
 - (ii) at the time when the recording was made, the aircraft was owned or operated by a constitutional corporation or Commonwealth entity; and
 - (d) the recording is not an on-board recording for the purposes of the *Transport Safety Investigation Act 2003*.

- (2) 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.

32AP Copying or disclosing CVR information

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

Penalty: Imprisonment for 2 years.

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

Penalty: Imprisonment for 2 years.

- (3) Subsection (1) or (2) does not apply to:
- (aa) copying or disclosure that is necessary for the purposes of checking whether equipment used to make a cockpit voice recording is functioning and reliable, provided the conditions set out in subsection (3A) are met; or
 - (a) copying or disclosure for the purposes of an investigation under the *Transport Safety Investigation Act 2003*; 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 CVR information to a court in criminal proceedings against a person who is not a crew member; or
 - (d) disclosure of CVR information to a court in criminal proceedings against a person who is a crew member for an offence against a law of the Commonwealth, a State or a Territory punishable by a maximum penalty of imprisonment for life or more than 2 years, where:
 - (i) the offence does not arise as a result of an act done or omitted to be done in good faith in the performance of the person's duties as a crew member; and
 - (ii) the court makes a public interest order under subsection (4) in relation to the CVR information; or
 - (e) disclosure to a court in damages proceedings where the court makes a public interest order under subsection (4) in relation to the CVR information.

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

- (3A) The conditions that must be met for the purposes of paragraph (3)(aa) are:
- (a) the person who copies or discloses the CVR information for the purposes of checking the equipment is authorised to do so under the regulations; and
 - (b) that person honestly and reasonably believes on the information available to him or her that:
 - (i) the cockpit voice recording does not relate to a reportable matter (as defined for the purposes of the *Transport Safety Investigation Act 2003*); and
 - (ii) the cockpit voice recording does not relate to an offence under the law of the Commonwealth, or of a State or Territory; and
 - (iii) the crew members in relation to the CVR information were notified in writing, before the cockpit voice recording was made, of the intention to copy or disclose the CVR information for the purposes of checking whether the equipment used to make the recording is functioning and reliable.
- (4) If the court is satisfied that, in the circumstances of the case, the public interest in the proper determination of a material question of fact outweighs:
- (a) the public interest in protecting the privacy of members of crews of aircraft; and

- (b) any adverse domestic and international impact that the disclosure of the information might have on any future investigation under the *Transport Safety Investigation Act 2003*; then the court may order such disclosure.
- (5) The court may direct that CVR information, or any information obtained from the CVR 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 CVR 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).

32AQ CVR information no ground for disciplinary action

A person is not entitled to take any disciplinary action against a crew member on the basis of CVR information.

32AR Admissibility of CVR information in criminal proceedings against crew members

CVR information, and any information or thing obtained as a direct or indirect result of the use of CVR information, is not admissible in evidence in criminal proceedings against a crew member, except where:

- (a) the CVR information has been disclosed in the proceedings because of the operation of paragraph 32AP(3)(d); or
- (b) the criminal proceedings are for an offence against this Part.

32AS Admissibility of CVR information in civil proceedings

- (1) CVR information is not admissible in evidence in civil proceedings unless the court makes a public interest order under subsection (3) in relation to the CVR information.
- (2) A party to damages 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 CVR information be admissible in evidence in the proceedings.
- (3) If such an application is made, the court must examine the CVR information and if the court is satisfied that:
 - (a) a material question of fact in the proceedings will not be able to be properly determined from other evidence available to the court; and
 - (b) the CVR information or part of the CVR information, if admitted in evidence in the proceedings, will assist in the proper determination of that material question of fact; and

- (c) in the circumstances of the case, the public interest in the proper determination of that material question of fact outweighs:
 - (i) the public interest in protecting the privacy of members of crews of aircraft; and
 - (ii) any adverse domestic and international impact that the disclosure of the information might have on any future investigation under the *Transport Safety Investigation Act 2003*;

then the court may order that the CVR information, or that part of the CVR information, be admissible in evidence in the proceedings.

32AT Examination by a court of CVR information under subsection 32AS(3)

- (1) This section applies if a court examines CVR information under subsection 32AS(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 CVR information, or any information obtained from the CVR 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.

32AU Where a court makes an order under subsection 32AS(3)

- (1) This section applies if CVR information is admitted as evidence under subsection 32AS(3).
- (2) In relation to proceedings against a crew member, the CVR information is not evidence for the purpose of the determination of the liability in the proceedings of the crew member.
- (3) In relation to any proceedings, the court may direct that the CVR information or any information obtained from the CVR 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.