

Transport Safety Investigation (Consequential Amendments) Act 2003

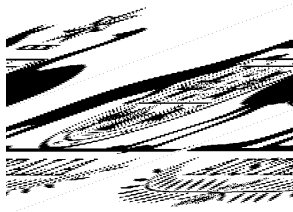
No. 19, 2003

**An Act to make amendments consequential on the
enactment of the *Transport Safety Investigation Act
2003*, and for related purposes**

Note: An electronic version of this Act is available in SCALEplus
(<http://scaleplus.law.gov.au/html/comact/browse/TOCN.htm>)

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Transport Safety Investigation (Consequential Amendments) Act 2003

No. 19, 2003

An Act to make amendments consequential on the enactment of the *Transport Safety Investigation Act 2003*, and for related purposes

[Assented to 11 April 2003]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Transport Safety Investigation (Consequential Amendments) 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 to 3 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. Schedule 1	Immediately after the commencement of section 3 of the <i>Transport Safety Investigation Act 2003</i>	1 July 2003

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 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Air Navigation Act 1920

1 Part 2A

Repeal the Part.

2 Transitional

Despite the repeal of Part 2A of the *Air Navigation Act 1920*, that Part continues to apply in relation to any investigation commenced under that Part before the repeal (including an investigation that had been completed).

Air Services Act 1995

3 Paragraph 8(1)(c)

Repeal the paragraph, substitute:

- (c) co-operating with the Executive Director of Transport Safety Investigation in relation to investigations under the *Transport Safety Investigation Act 2003* that relate to aircraft;

Australian Maritime Safety Authority Act 1990

4 After paragraph 6(1)(ca)

Insert:

- (cb) to co-operate with the Executive Director of Transport Safety Investigation in relation to investigations under the *Transport Safety Investigation Act 2003* that relate to ships; and

Civil Aviation Act 1988

4A Section 4

After “Part III”, insert “or IIIB”.

5 Paragraph 9(3)(a)

Repeal the paragraph, substitute:

- (a) co-operating with the Executive Director of Transport Safety Investigation in relation to investigations under the *Transport Safety Investigation Act 2003* that relate to aircraft;

5A After Part IIIA

Insert:

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.

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.

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 is guilty of 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 is guilty of 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:
- (a) copying or disclosure for the purposes of an investigation under the *Transport Safety Investigation Act 2003*; or

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- (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*.

- (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

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- (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.

Freedom of Information Act 1982

6 Schedule 3

Omit “*Air Navigation Act 1920*, subsection 19CU(1)”.

6A Schedule 3

Insert in the appropriate alphabetical position:

Civil Aviation Act 1988, subsections 32AP(1) and (2)

7 Schedule 3

Insert in the appropriate alphabetical position:

Transport Safety Investigation Act 2003, subsections 53(1) and (2) and 60(1), (2) and (3)

Navigation Act 1912

8 Paragraph 425(1)(ea)

Repeal the paragraph.

9 Subsection 425(1AAA)

Repeal the subsection.

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

(128/02)

