

Transport Safety Investigation Amendment Bill 2012

Introduced into the House of Representatives on 27 June 2012

Portfolio: Infrastructure and Transport

Committee view

1.2 The committee considers that this bill is compatible with human rights as defined in the *Human Rights (Parliamentary Scrutiny) Act 2011*.

1.3 However, the committee notes that the statement of compatibility states that the disclosure of restricted information and On-Board Recording (OBR) information under the Bill may engage the right to privacy to the extent that the disclosure involves personal information. The committee notes that this disclosure will be the subject of prescribed regulations rather than the subject of the Bill itself and that these regulations will be subject to the requirement to provide a statement of compatibility with human rights.

Purpose of the bill

1.4 This bill amends the *Transport Safety Investigation Act 2003* (TSI Act) to:

- provide state and territory government Ministers with a responsibility for rail a right to request the Australian Transport Safety Bureau (ATSB) to conduct an investigation in their jurisdiction;
- clarify the ATSB's capacity to conduct investigations within, or to or from, a Commonwealth Territory; and
- provide that OBR and restricted information may be disclosed in accordance with the regulations.

Compatibility with human rights

Right to privacy (Article 17 of ICCPR)

1.5 The proposed amendments to Part 6 of the TSI Act, contained within Items 4 and 5 of Schedule 1 to the Bill, provide a defence to any prohibition on copying or disclosing restricted information and OBR information if the copying or disclosing was done by a person performing functions or exercising powers under, or in connection with, the TSI Act or Regulations.

1.6 The explanatory memorandum states that the prohibitions on copying and disclosing OBR and restricted information exist in the TSI Act to encourage persons to cooperate with the ATSB in safety investigation knowing that the information they provide will not be used against them. Similarly, in confidential reporting, the prohibitions on disclosure are to encourage persons who fear reprisal to make a report. However, the explanatory memorandum goes on to state that there also needs to be

Any Member or Senator who wishes to draw matters to the attention of the committee under the *Human Rights (Parliamentary Scrutiny) Act 2011* is invited to do so.

some exceptions in order for investigations and confidential reporting to be effectively able to communicate safety issues to the industry.

1.7 The statement of compatibility states that to the extent that the disclosure involves personal information, the right to privacy may be engaged. However, the statement of compatibility states that this disclosure will be the subject of any prescribed regulation rather than the subject of the Bill itself and that these regulations will be subject to the requirement to provide a statement of compatibility with human rights.

1.8 The statement of compatibility also states that to the extent that any regulations do engage the right to privacy they are expected to advance the right. It is however not clear how the right to privacy would be advanced by regulations that permit the disclosure of personal information.

1.9 The right to privacy contained in Article 17 of the ICCPR provides:

- '1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks.'

1.10 The UN Human Rights Committee notes that paragraph 4 of General Comment 16 states that:

'The introduction of the concept of arbitrariness is intended to guarantee that even interference provided for by law should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances.'