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BILLS DIGEST

Information analysis and advice for the Parliament

1 November 2006, no. 50, 2006–07, ISSN 1328-8091

Inspector of Transport Security (Consequential Provisions) Bill 2006

Justine Clarke
Law and Bills Digest Section

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Inspector of Transport Security Bills 2006

Date introduced: 18 October 2006

House: House of Representatives

Portfolio: Transport and Regional Services

Commencement: The formal provisions of both the Inspector of Transport Security Bill 2006 (clauses 1 and 2) and the Inspector of Transport Security (Consequential Provisions) Bill 2006 (clauses 1 to 3) commence on Royal Assent. The substantive provisions of the Inspector of Transport Security Bill (clauses 3 to 93) commence upon Proclamation or, if Proclamation does not occur within 6 months from Royal Assent, on the day after six months from Royal Assent. The operative schedule of the Inspector of Transport Security (Consequential Provisions) Bill 2006 will commence at the same time as the substantive provisions of the other Act.

Purpose

The proposed legislation for an Inspector of Transport Security is made up of two Bills: the Inspector of Transport Security Bill 2006 (the 'Principal Bill') and the Inspector of Transport Security (Consequential Provisions) Bill 2006 (the 'Consequential Bill').

The purpose of the Principal Bill is to:

provide a framework for independent inquiry and recommendations in relation to transport security matters and offshore security matters, to contribute to the improvement of transport security and the security of offshore facilities.¹

The purpose of the Consequential Bill is to amend the *Freedom of Information Act 1982* to exempt information gathered in the course of an inquiry by the Inspector of Transport Security.

Background

Basis of policy commitment

On 4 December 2003 the Government responded to the Secretaries' Committee on National Security² review of aviation security by announcing a number of measures, including that an independent Inspector of Transport Security would be appointed to investigate major transport security incidents.³ It would appear that the Committee's report and recommendations are not publicly available, presumably because the Committee advises the National Security Committee of Cabinet.

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On 11 May 2004 the Government announced its intention to appropriate money for the position of Inspector of Transport Security.⁴ The relevant Budget Paper states:

The Government will provide \$1.6 million over four years to support the establishment within the Department of Transport and Regional Services of an Inspector of Transport Security. The Inspector will investigate major incidents and systemic transport security weaknesses to ensure security vulnerabilities are identified and addressed.⁵

In a Budget media release the then Minister for Transport and Regional Services, the Hon. John Anderson, MP, explained:

The [Inspector of Transport Security (ITS)] ... will investigate major security incidents in the aviation and maritime sectors, and will be able to recommend changes to improve Australia's transport security systems... The ITS will also be able to investigate security incidents involving other modes of transport with the agreement of the responsible state or territory government.⁶

In November 2004 the Government appointed Mr Mick Palmer as the Inspector of Transport Security on a part-time basis.⁷ The appointment was not announced at the time.⁸ In early February 2005 Mr Palmer stood aside in order to conduct the inquiry into the circumstances of the immigration detention of Cornelia Rau. Mr Palmer's action of temporarily standing down as Inspector was not publicly announced at the time.⁹ Mr Palmer spent seven months working on the Cornelia Rau inquiry.¹⁰ Mr Bill Ellis was appointed as Inspector while Mr Palmer worked on the Rau inquiry.¹¹

On 31 October 2005 Mr Palmer told the Senate Rural and Regional Affairs and Transport Legislation Committee hearing supplementary Budget Estimates that:

I am paid a retainer per annum plus a daily rate [of \$2,000 per day]¹² for the days that I work, at the direction of the [M]inister. There was a general direction initially from Minister Anderson with regard to the initial meet and greet and promotional work. It was obviously important to stakeholders to gain an understanding of what was intended by the Inspector of Transport Security arrangements ...¹³

On 23 May 2005 the Government announced that in light of Mr Palmer's initial consultations it would 'put in place legislation to support the role, particularly in the protection of information for no blame inquiries.'¹⁴

For the financial year 2005/06 to the end of April 2006 Mr Palmer worked in the role of Inspector of Transport Security for 52 days.¹⁵ Mr Palmer's current appointment as the Inspector of Transport Security is until 31 December 2006.¹⁶

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Position of significant interest groups and consultation

On 31 October 2005 Mr Palmer told the Senate Committee that in November 2004 and January 2005 he met with key stakeholders in Brisbane, Sydney, Melbourne and Hobart.¹⁷ He stated:

They were stakeholders from aviation and maritime security, both private industry and government. As a result of their concerns, there was strong support for the role of ITS in principle and the functionality of ITS but concern over the lack of guaranteed protection. There was also concern, including from some of the private industry stakeholders, that I may not have the wherewithal to demand entry and demand access to documentation, for example, in situations where it might be necessary. That led me to go back to the government and to the department to suggest that there was a need for legislation to enable the function to roll properly.¹⁸

In introducing the Bill, the Transport Minister, the Hon. Mark Vaile, MP, stated:

In preparing this [B]ill extensive consultation has been undertaken with industry stakeholders and state and territory governments. Issues that have arisen during the consultation process have been, wherever possible, taken into account. The government has worked hard to address concerns raised.¹⁹

However, the Explanatory Memorandum contains no details of the consultations.

ALP/Australian Democrat/Greens/Family First policy position/commitments

The ALP is in favour of an independent Inspector of Transport Security. When the Government first announced its policy commitment in early December 2003, the ALP responded that it is a policy that should have been put in place immediately after 11 September 2001 rather than leaving the investigation of aviation security breaches to the Department of Transport and Regional Services.²⁰ Since that time the ALP has been critical of the delay in introducing legislation to give the Inspector statutory powers and the fact that Mr Palmer has been appointed on a part time basis.²¹

The Australian Democrats also expressed concern that the position of Inspector of Transport Security was 'vacant'²² while Mr Palmer inquired into immigration detention.²³

The Greens and Family First do not appear to have articulated their policy positions on this issue.²⁴

Any consequences of failure to pass

A consequence of a failure to pass the Principal Bill will be that the Inspector will continue to have no statutory power to investigate a major transport security incident. A year ago Mr Palmer told the Senate Committee that such an investigation:

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... would and could only proceed on the basis of cooperation and goodwill from each of the stakeholders. So I would have common-law powers of entry in the absence of specific legislation. ... [Which means, b]y invitation.²⁵

Probably the major feature of the Bill compared to the current situation is the various protections attaching to information given to, or otherwise collected by, the Inspector pursuant to inquiries into transport security incidents. Without such protection, persons may be more reluctant to provide information and thus hamper the effectiveness of the Inspector's operations. Certainly the Bill contains little, if anything, in the way of coercive powers.

Financial implications

Standing appropriations

Neither the Principal Bill nor the Consequential Bill will have a financial impact.²⁶

Main provisions

The main provisions of each Bill are explained thematically rather than in numerical order.

Inspector of Transport Security Bill 2006

The appointment of an Inspector

The Minister may appoint a person as the Inspector (proposed **new subclause 25(1)**) for periods of up to five years at a time (proposed **new subclause 25(2)**). The Inspector may be appointed on a part-time basis (proposed **new subclause 25(3)**).

Proposed **new clause 26** outlines the conduct expected of the Inspector. At least some of them —'respect and courtesy', 'upholds the good reputation of Australia'—appear to be drawn from the *Public Service Act 1999* and presumably reflect the sensitivity of the position. Failure to comply with **new clause 26** is a ground upon which the Minister may terminate the appointment (proposed **new paragraph 31(2)(c)**).

The Inspector's role

The role of the Inspector is to inquire into transport security matters²⁷ and offshore security matters²⁸ in accordance with directions given by the Minister and to prepare reports in relation to those inquiries (proposed **new clause 32**). Proposed **new subclause 10(2)** stipulates that the Inspector may only inquire into such matters—that is, the Inspector cannot initiate his or her own inquiries.

Proposed **new clause 33** provides that the Inspector may only use his or her powers for the purpose of carrying out the Inspector's functions (detailed above in proposed **new clause 32**) or for other purposes permitted by the Act.

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The types of inquiry

The Bill is based on a ‘no-blame’ principle.²⁹ Accordingly, it is not an object of the Bill—nor by extension an inquiry—to apportion blame in relation to a matter or to provide the means to determine the liability of a person in relation to a matter (proposed **new subclauses 9(3)(a) and (b)**).

To understand the types of inquiry envisaged by the Principal Bill it is helpful to set out in full the meaning of ‘transport security matter’.

Proposed **new clause 12** provides:

A transport security matter is:

(a) an incident occurring in the course of transport, or involving a transport vehicle, that:

(i) the Minister believes on reasonable grounds to be a major incident; and

(ii) demonstrates, or may demonstrate, a problem with the security of transport; or

(b) a state of affairs that suggests, or may suggest, a systemic failure or weakness in the way in which the security of transport is regulated; or

(c) any other occurrence, circumstance, state of affairs or matter that:

(i) the Minister believes on reasonable grounds to be significant; and

(ii) has, or may have, implications for the security of transport.

A transport vehicle means an aircraft, ship, rail vehicle or road vehicle (proposed **new clause 3**).

An ‘offshore security matter’ is defined in similar terms to a ‘transport security matter’ except that it is an incident occurring on, around or in relation to a security regulated offshore facility and so on (proposed **new clause 13**). A ‘security regulated offshore facility’ has the same meaning as in the *Maritime Transport and Offshore Facilities Security Act 2003* (proposed **new clause 3**). In effect this means offshore oil and gas production rigs and associated infrastructure that have been designated in the *Gazette*.³⁰

Proposed **new clause 23** outlines the geographical reach of inquiry, namely the necessary links that the transport security matter or the offshore security matter must have with Australia.

Proposed **new clause 7** outlines the Bill’s relationship with other laws. The Explanatory Memorandum states:

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This clause makes it clear that the Bill is not intended to “cover the field” in relation to inquiries into transport security.

The Bill does not prevent a State or Territory from conducting its own inquiries into transport security matters under the laws of that jurisdiction so long as the law of the State or Territory is not directly inconsistent with this Bill.³¹

The Minister’s power to direct the Inspector to inquire

The Minister will be empowered to direct the Inspector to inquire into a transport security matter or an offshore security matter (proposed **new subclause 11(1)**). This type of direction from the Minister is not a legislative instrument (proposed **new subclause 11(4)**). This means that it is exempt from the provisions of the *Legislative Instruments Act 2003* and essentially is not subject to Parliamentary oversight.

Limitations on the Minister’s power to direct the Inspector to inquire

Proposed **new clauses 14–18** set out the circumstances in which the Minister may direct the Inspector to inquire into transport security matters that involve air transport, maritime transport, rail transport, road transport and security regulated offshore facilities. These circumstances reflect the Commonwealth’s constitutional limitations in regulating transport as such regulation has traditionally been the domain of the States. However, it is probable that the combination of the various constitutional powers (notably those regarding interstate or overseas trade or commerce, corporations, and external affairs) are likely to provide sufficient scope to allow the Minister to direct an inquiry be undertaken.

However, if a prospective inquiry involves surface transport aspects,³² the Minister cannot direct an inquiry into such aspects unless the Minister of the State or Territory in which the transport security aspect arose consents to the scope of the inquiry (proposed **new subclause 22(1)**).

Further, before giving an inquiry direction to the Inspector, the Minister must consult with all other Commonwealth Ministers whose areas of responsibility might be affected by the inquiry (proposed **new subclause 20(1)**). An objection from the Defence Minister about the proposed inquiry into a defence aspect³³ of a transport security matter or an offshore security matter will prevent the Minister from directing the Inspector to inquire into that defence aspect (proposed **new subclause 21(1)**).

Finally, in terms of conducting the inquiry, one of the objects of the Act states the Inspector is not to ‘interfere’ with the investigations of another government agency, or a coronial inquiry into a matter (proposed **new subclause 9(2)**).

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The Inspector's powers

The Inspector is empowered to:

- request information (proposed **new Part 5, Division 1**), and
- enter and search premises and board and search transport vehicles (proposed **new Part 5, Division 2**).

These powers are dealt with in turn.

The Inspector's power to request information

Generally

Where the inspector believes information or documents (but not OBR information³⁴ or restricted information³⁵ under section 62 of the *Transport Safety Investigation Act 2003*) to be relevant to the inquiry the Inspector is empowered to request the information or documents from:

- persons generally (proposed **new clause 35**), and
- government agencies (proposed **new clause 36**).

The person or government agency may comply with the request despite any other law (proposed **new subclauses 35(4) and 36(3)**). There is no explicit obligation to tell persons that they may refuse the request, though presumably this would occur in the normal course of work.

Protection of on board recordings and restricted information

Sections 48-63 of the *Transport Safety Investigation Act 2003* 'contain complex provisions setting out limited circumstances in which "on-board recording" (OBR) information and "restricted information" can be disclosed or otherwise made available to various parties.'³⁶ The Bills Digest to that Act noted that:

According to the explanatory memorandum, it is arguable that the release of CVR [(cockpit voice recording)] information on occasion into the courts and the public domain has in fact had a prejudicial effect on transport safety...³⁷

Proposed **new subclause 37(1)** provides that the Inspector may request the Executive Director of the Transport Safety Investigation ('the Executive Director') to disclose OBR information or restricted information to him or her where the Inspector believes that information to be relevant to the Inspector's inquiry. The Executive Director may comply with the request if he or she considers that the public interest in disclosing the information to the Inspector outweighs any adverse effect that the disclosure may have on current or future investigations under the *Transport Safety Information Act 2003* (proposed **new subclause 37(2)**).

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The Inspector's powers to enter/board and search

The Inspector's powers in relation to *entering and searching premises* are detailed in proposed **new clause 45**. 'Premises' is defined to include a security regulated offshore facility.³⁸ Proposed **new clause 46** details the Inspector's powers in relation to *boarding and searching a transport vehicle*.

In both cases the Inspector or other person authorised to enter/board and search pursuant to the proposed Act must identify himself or herself to the controller of the premises or vehicle (proposed new **subclause 41(1)**) and the controller must consent to the access (proposed **new clauses 43 and 44**). In requesting consent, the Inspector must tell the controller that they can refuse it, or withdraw it at any time.

Where, during the course of a search, electronic equipment is operated in order to access documents/records and the equipment is damaged then the Commonwealth may have to pay compensation (proposed **new clause 47**).

The States and Territories may confer powers on the Inspector

Proposed **new subclause 83(1)** provides that the States and Territories may confer powers and functions on the Inspector.

The Inspector's reports

Proposed **new clause 50** outlines the provisions concerning reports (interim, draft and final).

Upon completion of an inquiry the Inspector must give a final written report to the Minister setting out the Inspector's conclusions and recommendations (proposed **new subclauses 59(1) and (3)**). As the Explanatory Memorandum for the Principal Bill notes 'The Inspector will generally not have the capacity or requirement to publish or otherwise distribute the outcomes of inquiries.'³⁹

The Minister may table the final report (or a part of it) in Parliament if the Minister considers that it is, on balance, in the public interest to do so (proposed **new subclause 64(1)**). The Explanatory Memorandum for the Principal Bill notes that this is due to the 'no blame' nature of the scheme.⁴⁰

Proposed **new subclauses 64(2)–(5)** prevent the Minister from tabling certain information in the final report unless the requirements in those subclauses have been satisfied (eg the OBR or CVR information⁴¹ is already publicly available, the Transport Minister or the State or Territory in which a surface transport aspect of a transport security matter occurred consents to the tabling of that information and so on).

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The only proceedings in which a final report will be admissible are coronial inquiries (proposed **new clause 65**).

Confidentiality regime and some exceptions

The Second Reading Speech for the Principal Bill notes:

This Bill balances two competing policy interests. One is to establish a ‘no-blame’ legislative framework to encourage the provision of information to the Inspector that will contribute to improving transport security. The second is to ensure that, where information acquired by the Inspector in the conduct of an inquiry indicates that a serious offence is imminent, the legislation provides that the Inspector may disclose this information to the appropriate law enforcement bodies.⁴²

These two policy interests are reflected in the confidentiality regime and some exceptions to it.

Protected information

‘Protected information’ is defined in proposed **new clause 66**. The Explanatory Memorandum to the Principal Bill explains:

In general terms, information generated or obtained in the course of an inquiry is considered protected information unless it is publicly available or in the open access period prescribed in the *Archives Act 1983*...

‘Protected information’ also excludes OBR information and CVR information, which are protected under the *Transport Safety Investigation Act 2003* and the *Civil Aviation Act 1988* respectively. The exclusion of such information from the definition of protected information is intended to remove the overlap between the confidentiality regimes under the aforementioned legislation and the new regime created by Part 7 of this Bill. ...

Restricted information given to the Inspector by the Executive Director of the Australian Transport Safety Bureau is also excluded from the definition of ‘protected information’. Such information is subject to separate (but substantially similar) protections under **clause 73**.⁴³ [Emphasis added]

Proposed **new subclause 67(1)** makes it a criminal offence for a person who has obtained or generated protected information in the course of an inquiry from copying, recording, using or disclosing it. The maximum penalty is imprisonment for 2 years. Proposed **new subclause 67(2)** outlines the circumstances in which **new subclause 67(1)** will not apply, including where the information is permitted to be copied, recorded, used or disclosed by the proposed Act.

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The Explanatory Memorandum explains that:

Restrictions on the use and disclosure of protected information reinforce the notion that information gathered or generated in the course of an inquiry under this Bill should not be used for other purposes such as judicial proceedings (particularly criminal proceedings).⁴⁴

There are some situations in which the Inspector may disclose protected information (see proposed **new clauses 68, 69 and 70**).

Proposed **new subclause 68(1)** provides that the Inspector may disclose protected information to a government agency where the Inspector has reasonable grounds that a serious offence is imminent and the information may be relevant to the prevention of the offence. The receiving government agency may only deal with the protected information for the purpose of preventing the imminent serious offence (proposed **new subclause 68(2)**). Contravention of **subclause 68(2)** is a criminal offence punishable by a maximum penalty of imprisonment of not more than 2 years.

OBR information, CVR information and restricted information

Proposed **new Part 8** provides that the Inspector can, for the purposes of this proposed Act, copy, make a record of, use and disclose OBR information, CVR information and restricted information given to the Inspector by the Executive Director of the Transport Safety Investigation despite the provisions of the Transport Safety Investigation Act, the Civil Aviation Act and any other law (propose **new clause 72**).

Proposed **new subclause 77(1)** empowers the Inspector to apply to an eligible Judge⁴⁵ or nominated AAT member⁴⁶ for an order allowing the Inspector to disclose OBR information, CVR information, or restricted information to another government agency if the Inspector suspects on reasonable grounds that a serious offence is imminent and the information may be relevant to the prevention of the offence.

Protections

Protection from liability for people who provide information

Proposed **new clause 38** provides protection from liability (including civil liability and disciplinary action) for a person who is *requested to provide information* under proposed **new Part 5, Division 1** (the Inspector's powers relating to information and documents) and who does so in the honest and reasonable belief that the request is permitted under the Division.

There is a similar provision in relation to a person who *volunteers information or documents* that they consider to be relevant so long as in doing so the person does not commit an offence under the *Transport Safety Investigation Act* or the *Civil Aviation Act* (proposed **new clause 48**).

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Immunity for failure to act

Proposed **new clause 85**:

... protects the Minister, the Inspector (or delegates) and other persons from legal (but not disciplinary) proceedings in the event of failure to take specific actions in exercising powers or performing functions contained in the Bill or in the course of doing anything permitted by this Bill.⁴⁷

Delegation

Under proposed **new clause 82**, the Inspector can delegate, in writing, any of his or her powers to quite junior Australian Public Service staff - to Executive Level 1 (often known as an Assistant Director), as well as private sector contractors. In the latter case, these contractors must satisfy specific criteria set out in regulations. Proposed **new clause 82** also allows the Executive Director of the Australian Transport Safety Bureau to delegate their powers under the Bill down to a APS Executive Level 1 officer. There is no explicit provision that persons exercising delegated powers are subject to the direction of the Inspector or the Executive Director.

Inspector of Transport Security (Consequential Provisions) Bill 2006

The Explanatory Memorandum for this Bill states that:

... the Bill protects the information generated or gathered in the course of inquiries from being released under an FOI claim and supports the other confidentiality provisions in the Inspector of Transport Security Bill 2006.⁴⁸

The Bill does this by amending Schedule 3 of the *Freedom of Information Act 1982* (the FOI Act), which concerns secrecy provisions. The Bill inserts the following references to the proposed *Inspector of Transport Security Act 2006* into Schedule 3:

- Subsection 35(7) – the criminal offence provision for unauthorised dealing with information requested from persons generally
- Subsection 36(7) – the criminal offence provision for unauthorised dealing with information requested from government agencies
- Subsection 37(8) – the criminal offence provision for unauthorised dealing with restricted information given to the Inspector by the Executive Director of Transport Safety Investigation
- Subsection 49(2) – the criminal offence provision for unauthorised dealing with information generated in the course of an inquiry
- Subsection 56(1) – the criminal offence provision for unauthorised dealing with a draft report of the Inspector

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- Subsection 60(5) – the criminal offence provision for unauthorised dealing with a final report of the Inspector
- Subsection 63(3)
 - disclosure by the Minister of a final report containing OBR information or CVR information which is not publicly available or in circumstances where it need not have been given to a Commonwealth Minister or a Minister of a State or Territory or
 - disclosure by the Minister of a part of a final report that contains restricted information given by the Executive Director of Transport Safety Investigation which is not publicly available or in circumstances where it need not have been given to a Commonwealth Minister or a Minister of a State or Territory
- Subsection 63(4) – the criminal offence provision for unauthorised dealing with a final report that contains OBR information or CVR information
- Subsection 63(5) – the criminal offence provision for unauthorised dealing with a final report that contains restricted information given by the Executive Director of Transport Safety Investigation
- Subsection 67(1) – the criminal offence provision for unauthorised dealing with protected information
- Paragraph 67(7)(a) – a court or a coroner cannot require a person to disclose protected information that the person is prohibited from disclosing
- Subsection 68(2) – the criminal offence provision for unauthorised dealing by a government agency of protected information obtained from the Inspector in relation to an imminent serious offence
- Subsection 69(2) – unauthorised dealing by a government agency of protected information obtained from the Inspector where the Inspector does not consider it to be directly relevant to an inquiry but it may be relevant to the prevention or prosecution of an offence
- Subsection 75(2) – the criminal offence provision for unauthorised dealing of restricted information given to the Inspector by the Executive Director under subsection 37(2)
- Paragraph 75(8)(a) – a court or a coroner cannot require a person to disclose restricted information that the person is prohibited from disclosing, and
- Subsection 77(9) – unauthorised dealing by a government agency of information disclosed on the order of an eligible Judge or AAT member.

Accordingly, documents that have been disclosed in breach of these provisions will be exempt documents (subsection 38(1) of the FOI Act) and people will not have a legally enforceable right to obtain access to these documents under the FOI Act (subsection 11(1) of the FOI Act).

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Concluding comments

The provisions of both the Principal Bill and the Consequential Bill do not appear to be particularly controversial. Rather, there has been controversy about the fact that the Inspector was appointed almost two years ago yet the legislation that would empower the Inspector to undertake investigations has only recently been introduced in the Parliament. In late November 2005 Senator Kerry O'Brien, the Shadow Minister for Transport, concluded that information provided to a Senate Committee, of which he had been a member, suggested that 'to date [the position of Inspector of Transport Security] has been simply an expensive "meet and greet" exercise.'⁴⁹

As a final comment, it is worth noting that proposed **new clause 83** of the Bill enables States and Territories to confer powers and functions on the Inspector. The drafting of that clause appears to be designed to avoid the constitutional problems in such schemes arising from the decision of the High Court in *R v Hughes* (2000).⁵⁰ The constitutional issues involved in such schemes are discussed in the Bills Digest for the Trade Practices Amendment (Australian Energy Market) Bill 2004.⁵¹

Endnotes

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1. Explanatory Memorandum, Inspector of Transport Security Bill 2006, p. 2.
 2. This Committee is chaired by the Secretary of the Department of the Prime Minister and Cabinet and consists of Secretaries of other relevant Commonwealth Departments. The Committee advises the National Security Committee of Cabinet. National Counter-Terrorism Committee, *National Counter-Terrorism Plan*, June 2003, p. 3.
 3. J. Anderson (Deputy Prime Minister; Minister for Transport and Regional Services), *Enhanced Aviation Security Package Announced*, media release, Parliament House, Canberra, 4 December 2003.
 4. *Budget Measures 2004-05*, 2004-05 Budget Paper No. 2, 2004, p. 98; J. Anderson (Deputy Prime Minister; Leader of the Nationals; Minister for Transport and Regional Services), *Strengthening Australia's Transport Security*, Budget media release, Parliament House, Canberra, 11 May 2004.
 5. *ibid.* (*Budget Measures*).
 6. J. Anderson, *Strengthening Australia's Transport Security*, *op. cit.*
 7. J. Anderson (Deputy Prime Minister; Leader of the Nationals; Minister for Transport and Regional Services), *Inspector of Transport Security*, media release, Parliament House, Canberra, 23 May 2005.
 8. K. Beazley, 'Grievance Debate: National Security', House of Representatives, *Debates*, 23 May 2005, p. 64. A search of the Parliamentary Library's databases on ParlInfo did not reveal any Government announcement.
 9. *ibid.*

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10. K. Beazley (Leader of the Opposition), *A Full-Time Inspector of Transport Security*, media release, Sydney, 12 August 2006.
11. S. Rochfort, 'Questions over flurry of airport security reviews: Concerns raised as fifth inquiry imminent', *The Sydney Morning Herald*, 29 July 2005, p. 6.
12. M. Palmer, Evidence to Senate Rural and Regional Affairs and Transport Legislation Committee, Parliament of Australia, Canberra, 31 October 2005, p. 88.
13. *ibid.*, p. 87.
14. J. Anderson, *Inspector of Transport Security*, *op. cit.*
15. K. Beazley, *A Full-Time Inspector of Transport Security*, *op. cit.*
16. *ibid.*
17. M. Palmer, Evidence to Senate, *op. cit.*, p. 87.
18. *ibid.*, p. 92.
19. House of Representatives, *Debates*, 18 October 2006, p. 6.
20. M. Ferguson (Shadow Minister for Urban and Regional Development; Shadow Minister for Transport and Infrastructure), *Aviation Security Package Too Little Too Late*, media release, Parliament House, Canberra, 4 December 2003.
21. K. Beazley, *A Full-Time Inspector of Transport Security*, *op. cit.*; A. Bevis (Shadow Minister for Homeland Security, Aviation and Transport Security), *Transport Security Like a Snail on Sleeping Pills*, media release, Parliament House, Canberra, 18 October 2006.
22. It would appear that Mr Ellis' appointment as Inspector was not publicly announced at the time.
23. L. Allison (Leader of the Australian Democrats), *Democrats Call for Govt to Fix Baggage Handling & Release Report*, media release, Parliament House, Canberra, 31 May 2005.
24. A search of the Parliamentary Library's databases on ParInfo did not reveal any press releases by these parties.
25. M. Palmer, Evidence to Senate, *op. cit.*, p. 94.
26. Explanatory Memorandum, Inspector of Transport Security *op. cit.*, p. 4.
27. Defined in proposed **new clause 12** of the Principal Bill.
28. Defined in proposed **new clause 13** of the Principal Bill.
29. Explanatory Memorandum, Inspector of Transport Security *op. cit.*, p. 7.
30. Subsection 17B(1) of the *Maritime Transport and Offshore Facilities Security Act 2003*.
31. Explanatory Memorandum, Inspector of Transport Security *op. cit.*, p. 6.
32. Defined in proposed **new subclause 22(2)** of the Principal Bill.
33. Defined in proposed **new subclause 21(2)** of the Principal Bill.
34. 'OBR' is short for on-board recording. The term OBR information is defined in proposed **new clause 3** of the Principal Bill as having the same meaning as in the *Transport Safety Investigation Act 2003*. That is, OBR information is an OBR, part of an OBR, a copy or transcript of any OBR or information obtained from any OBR (section 3 of the Transport Safety Investigation Act).

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35. Defined in section 3 of the *Transport Safety Investigation Act 2003*. In sum, it is statements, medical or private information and other communications such as records of analysis of information obtained in investigations but not OBR information.
36. Matthew L. James and Angus Martyn, 'Transport Safety Investigation Bill 2002', *Bills Digest*, no. 27, Parliamentary Library, Canberra, 2002–03.
37. *ibid.*
38. Proposed **new clause 3** of the Principal Bill.
39. Explanatory Memorandum, Inspector of Transport Security *op. cit.*, p. 3.
40. *ibid.*, p. 27.
41. 'CVR' is short for cockpit voice recording. The term CVR information is defined in proposed **new clause 3** of the Principal Bill as having the same meaning as in Part IIIB of the *Civil Aviation Act 1988*. That is, CVR information is a CVR, part of a CVR, a copy or transcript of any CVR or any information obtained from any CVR (section 32AN of the Civil Aviation Act).
42. Second Reading Speech, Inspector of Transport Security Bill 2006.
43. Explanatory Memorandum, Inspector of Transport Security *op. cit.*, p. 27–28.
44. *ibid.*, p. 28.
45. Proposed **new clause 78** of the Principal Bill provides that an eligible Judge is a person who is a Judge of a Federal court who has given written consent to be nominated by the Attorney-General as an eligible Judge for the purpose of this proposed Act and whom the Attorney-General has declared in writing to be an eligible Judge.
46. Proposed **new clause 79** of the Principal Bill provides that a nominated AAT member is a person who is the President, a Deputy President or senior member (currently enrolled as a legal practitioner in Australia and who has been so enrolled for 5 or more years) of the Administrative Appeals Tribunal who the Attorney-General has nominated by writing to make orders under proposed **new subclause 77(7)**.
47. Explanatory Memorandum, Inspector of Transport Security *op. cit.*, p. 36.
48. Explanatory Memorandum, Inspector of Transport Security (Consequential Provisions) Bill 2006, p. 2.
49. K. O'Brien (Shadow Minister for Transport), 'Aviation Security and its impact on the aviation industry', paper presented to the Asia Pacific Airport and Aviation Security Summit, 28 November 2005, p. 5.
50. (2000) 202 CLR 535.
51. Peter Prince, 'Trade Practices Amendment (Australian Energy Market) Bill 2004', *Bills Digest*, no. 172, Parliamentary Library, Canberra, 2003–04.

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