



Queensland

Transport Infrastructure Amendment Act 2004

Act No. 54 of 2004



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**An Act to amend the *Transport Infrastructure Act 1994*, and for
other purposes**

[Assented to 29 November 2004]

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Transport Infrastructure Amendment Act 2004*.

Part 2 Amendment of Transport Infrastructure Act 1994

2 Act amended in this part

This part amends the *Transport Infrastructure Act 1994*.

3 Insertion of new ch 7, pt 6, div 1AA

Chapter 7, part 6—

insert—

‘Division 1AA Preliminary

‘213A Objects

‘(1) The objects of this part are to provide for—

- (a) the reporting of incidents on or involving a railway; and
- (b) the investigation of or inquiry into incidents on or involving a railway, including—
 - (i) investigations or inquiries independent of an accredited person for the railway; and
 - (ii) investigations or inquiries conducted to find out the cause of the incidents and to make

recommendations about improvements to safety of transport by rail.

- ‘(2) The following are not objects of this part—
- (a) to apportion blame to individuals for incidents on or involving a railway;
 - (b) to provide the way to decide the liability of any individual in relation to an incident on or involving a railway;
 - (c) to help in court proceedings between parties, except as expressly provided by this part;
 - (d) to allow any adverse inference to be drawn from the fact that an individual is involved in an investigation or inquiry.
- ‘(3) Subsection (2) does not make evidence inadmissible in a civil or criminal proceeding unless this part states the evidence is not admissible in the proceeding.

‘213B Definitions for pt 6

‘In this part—

civil or criminal proceeding includes an administrative proceeding for the discipline of an individual.

coronial procedure means any of the following under the *Coroners Act 2003*—

- (a) the making of a decision for section 30 of that Act;
- (b) an inquest;
- (c) an investigation;
- (d) a conference under section 34 of that Act.

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 the Legislative Assembly or a commission of inquiry under the *Commissions of Inquiry Act 1950*.

data logger recording means a recording from a device installed on a locomotive or self-propelled rolling stock that

records rolling stock event data related to operational performance of the locomotive or self-propelled rolling stock.

data logger recording information means—

- (a) a data logger recording or part of a data logger recording; or
- (b) a copy or printout of all or part of a data logger recording; or
- (c) any information obtained from a data logger recording or part of a data logger recording.

individual does not include an accredited person.

inquiry means an inquiry conducted by a board of inquiry established or re-established under section 219.

investigation means an investigation under this part of an incident on or involving a railway by a rail safety officer.

relevant person see section 239AE.

restricted information means any of the following, other than data logger recording information—

- (a) a statement, whether oral or in writing, obtained from a person in the course of an investigation or inquiry, including any record of the statement;
- (b) all information recorded in the course of an investigation or inquiry;
- (c) all communications in the course of an investigation or inquiry with a person involved in the operation of rolling stock that is or was the subject of an investigation or inquiry;
- (d) medical or private information regarding persons, including deceased persons, involved in an incident that is being or has been investigated or that is or has been the subject of an inquiry;
- (e) in relation to rolling stock that is or was the subject of an investigation or an inquiry—information recorded for the purposes of monitoring or directing the progress of the rolling stock from 1 place to another or information recorded about the operation of the rolling stock;

- (f) records of the analysis of information or anything else obtained in the course of an investigation or inquiry, including opinions expressed by a person in that analysis;
- (g) information contained in a document that is given to a rail safety officer or board of inquiry in connection with this part.’.

4 Amendment of s 216 (Investigations by rail safety officer)

- (1) Section 216(4), ‘report the results of the investigation’—
omit, insert—
‘give a report of the results of the investigation (the *RSO report*)’.
- (2) Section 216—
insert—
- ‘(5) The chief executive must give the Minister a copy of the RSO report within 14 days after receiving the report.
- ‘(6) The Minister must table in the Legislative Assembly a copy of the RSO report within 14 days after receiving the report.
- ‘(7) The following is not admissible in evidence in any civil or criminal proceeding—
 - (a) the RSO report;
 - (b) any report prepared by the rail safety officer as an interim RSO report;
 - (c) any report prepared by the rail safety officer as a draft RSO report for the purposes of consultation.
- ‘(8) However, subsection (7) has no effect on the use or admissibility of any type of report mentioned in the subsection in a coronial procedure.’.

5 Amendment of s 217 (Power of rail safety officer to investigate incident)

- (1) Section 217(4)—
omit, insert—

- ‘(4) If the rail safety officer reasonably believes it necessary for the purposes of the investigation, the rail safety officer may require a person to—
- (a) answer questions relevant to the incident; or
 - (b) produce documents or other things relevant to the incident.’.
- (2) Section 217(10)—
omit, insert—
- ‘(9A) It is not a reasonable excuse for a person to fail to comply with the requirement that complying with the requirement might tend to incriminate the person or make the person liable to a penalty.
- ‘(9B) Subsection (9C) applies to the following (*primary evidence*)—
- (a) any help given by an individual to a rail safety officer in investigating an incident in response to a requirement under subsection (2);
 - (b) any answer given by an individual to a question mentioned in subsection (4)(a) to a rail safety officer in investigating an incident in response to a requirement under subsection (4)(a);
 - (c) a document or other thing mentioned in subsection (4)(b) produced by an individual to a rail safety officer in investigating an incident, and the fact of that production, in response to a requirement under subsection (4)(b);
 - (d) the results of an alcohol test, drug test or medical examination of an individual mentioned in subsection (5).
- ‘(9C) The following is not admissible in evidence against an individual in any civil or criminal proceeding—
- (a) primary evidence;
 - (b) any information, or document or other thing, obtained as a direct or indirect result of primary evidence (*derived evidence*).

- ‘(9D) Subsection (9C) does not prevent primary evidence or derived evidence being admitted in evidence in criminal proceedings about the falsity or misleading nature of the primary evidence.
- ‘(10) When making a requirement of an individual under this section, a rail safety officer must—
- (a) warn the individual it is an offence to fail to comply with the requirement unless the individual has a reasonable excuse; and
 - (b) advise the individual that—
 - (i) it is not a reasonable excuse that complying with the requirement might tend to incriminate the individual or make the individual liable to a penalty; and
 - (ii) anything obtained under the requirement, and any evidence derived directly or indirectly from anything obtained under the requirement, is not admissible in evidence against the individual in any civil or criminal proceeding.’

6 Amendment of s 220 (Role of board of inquiry)

Section 220—

insert—

- ‘(5) The following is not admissible in evidence in any civil or criminal proceeding—
- (a) a report under this section;
 - (b) any report prepared by the board as an interim report under this section;
 - (c) any report prepared by the board as a draft report under this section for the purposes of consultation.
- ‘(6) However, subsection (5) has no effect on the use or admissibility of any type of report mentioned in the subsection in a coronial procedure.’

7 Amendment of s 235 (Self-incrimination)

- (1) Section 235 (1), after ‘incriminate the person’—

insert—

‘or make the person liable to a penalty’.

(2) Section 235(2)—

omit, insert—

‘(2) The following is not admissible in evidence against an individual in any civil or criminal proceeding—

(a) any answer given at the inquiry by the individual, and any document or other thing produced at the inquiry by the individual and the fact of that production, in response to a requirement under this division (*primary evidence*);

(b) any information, or document or other thing, obtained as a direct or indirect result of primary evidence (*derived evidence*).

‘(3) Subsection (2) does not prevent primary evidence or derived evidence being admitted in evidence in criminal proceedings about the falsity or misleading nature of the primary evidence.’.

8 Insertion of new ch 7, pt 6, divs 4 and 5

After section 239—

insert—

‘Division 4 Protection of particular information

‘239AALimitations on disclosure etc. of restricted information

‘(1) A person who is or has been a relevant person must not make a record of restricted information.

Maximum penalty—2 years imprisonment.

‘(2) A person who is or has been a relevant person must not disclose restricted information to any person or to a court.

Maximum penalty—2 years imprisonment.

- ‘(3) A person who has, or had, access to restricted information under section 239AD¹ must not—
- (a) make a record of the information; or
 - (b) disclose the information to any person or to a court.
- Maximum penalty—2 years imprisonment.
- ‘(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) without limiting paragraph (a), disclosure to any board of inquiry; or
 - (c) disclosure to a court in criminal proceedings for an offence against this part; or
 - (d) disclosure to a court in civil proceedings if—
 - (i) the chief executive issues a certificate under subsection (6); and
 - (ii) the court makes an order under subsection (7).
- ‘(5) In a proceeding for an offence against subsection (1), (2) or (3), the onus is on the defendant to adduce or point to evidence that suggests a reasonable possibility that subsection (4) applies.
- ‘(6) The chief executive may issue a certificate about restricted information stating that the disclosure of the information is not likely to interfere with any current or future investigation or inquiry.
- ‘(7) 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 or inquiries is outweighed by the public interest in the administration of justice, the court may order the disclosure.
- ‘(8) A court in which a disclosure mentioned in subsection (4)(c) or (d) is made may direct that the restricted information, or

¹ Section 239AD (Chief executive may authorise persons to have access to restricted information)

any information obtained from the restricted information, must not—

- (a) be published or communicated to any person; or
 - (b) be published or communicated other than in the way, and to the persons, the court states.
- ‘(9) If a person is prohibited by this section from disclosing restricted information—
- (a) the person can not 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 proceeding, other than a proceeding against the person under this section.

‘239AB Release of restricted information in the interests of safety of transport by rail

- ‘(1) The chief executive may disclose restricted information to any person if the chief executive considers that the disclosure is necessary or desirable for the purposes of safety of transport by rail.
- ‘(2) However, the chief executive may only disclose restricted information that is, or that contains, personal information in the circumstances prescribed under a regulation.
- ‘(3) In this section—

personal information means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

‘239AC Authorisation of coroner to have access to restricted information

- ‘(1) This section applies if a coroner requests or requires the chief executive to give restricted information to the coroner.

- ‘(2) The chief executive must give the restricted information to the coroner.

‘239AD Chief executive may authorise persons to have access to restricted information

‘The chief executive may authorise someone other than a relevant person to have access to restricted information if the chief executive considers that it is necessary or desirable to do so.

‘Division 5 Relevant persons

‘239AE Meaning of *relevant person*

‘A *relevant person* is 1 of the following—

- (a) the chief executive;
- (b) a rail safety officer—
 - (i) who is required to investigate an incident under section 216(2);² or
 - (ii) who is not required to investigate an incident under section 216(2) but who is investigating the incident for the purpose of finding out its cause as opposed to finding evidence of a suspected offence; or
 - (iii) whose services are made available to a board of inquiry under section 222;
- (c) another person made available to help a board of inquiry in any capacity.

‘239AF Certification by chief executive of relevant person’s involvement in investigation

‘The chief executive may issue a certificate stating that a stated person who is or has been a relevant person is involved,

2 Section 216 (Investigations by rail safety officer)

- ‘(3) Subsection (2) does not prevent the primary evidence or derived evidence being admitted in evidence in criminal proceedings about the falsity or misleading nature of the primary evidence.
- ‘(4) Also, subsection (2) has no effect on the use or admissibility of a report in a coronial procedure.
- ‘(5) It is declared that the statement, information, or document or other thing mentioned in subsection (2) is taken to be restricted information for the purposes of chapter 7, part 6.
- ‘(6) In this section—

derailment means the derailment of the tilt train operated by Queensland Rail derailed on or about 16 November 2004 at Berajondo.

relevant employee means an individual involved in the derailment who at the time of the derailment was an employee of a railway operator for the rolling stock involved in the derailment.’.

10 Amendment of sch 6 (Dictionary)

Schedule 6—

insert—

‘*civil or criminal proceeding*, for chapter 7, part 6, and section 531, see section 213B.

coronial procedure, for chapter 7, part 6, and section 531, see section 213B.

individual, for chapter 7, part 6, and section 531, see section 213B.

inquiry, for chapter 7, part 6, see section 213B.

investigation, for chapter 7, part 6, see section 213B.

relevant person, for chapter 7, part 6, see section 239AE.

restricted information, for chapter 7, part 6, see section 213B.’.

‘Transport Infrastructure Act 1994, chapter 7, part 6, division 4’.