

Transport Accident Investigation Commission Amendment Act 1999

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**An Act to amend the Transport Accident Investigation
Commission Act 1990**

BE IT ENACTED by the Parliament of New Zealand as follows:

1 Short Title and commencement

- (1) This Act may be cited as the Transport Accident Investigation Commission Amendment Act 1999, and is part of the Transport Accident Investigation Commission Act 1990 (“the principal Act”).
- (2) This Act comes into force on the day after the date on which this Act receives the Royal assent.

Part 1

Amendments to principal Act

2 Title of principal Act amended

The principal Act is amended by repealing the Title, and substituting the following Title:

“An Act—

- “(a) To establish the Transport Accident Investigation Commission, and to define its functions, duties, and powers; and
- “(b) To regulate the disclosure and admissibility of certain transport accident or incident investigation information”.

3 New heading inserted

The principal Act is amended by inserting, immediately before section 2, the following heading:

“Part1

“Preliminary provisions”

4 New heading inserted

The principal Act is amended by inserting, immediately before section 3, the following heading:

“Part2

**“Transport Accident Investigation
Commission”**

5 Accidents to be investigated

Section 13(1) of the principal Act is amended by repealing paragraph (a).

6 Conduct of investigation

- (1) Section 14(3)(c) of the principal Act is amended by adding the expression “; or”.
- (2) Section 14(3) of the principal Act is amended by adding the following paragraphs:
 - “(d) Examine or cause to be examined any recording of a communication between persons on the flight deck of an aircraft and persons in an air traffic control service relating to an accident or incident being investigated by the Commission; or
 - “(e) Examine or cause to be examined any record specified in section 14C(2) that relates to an accident or incident being investigated by the Commission”.
- (3) Section 14 of the principal Act is amended by inserting, after subsection (3), the following subsection:
 - “(3A) Subsection (3) is subject to section 14H”.

7 New Part 3 inserted

The principal Act is amended by inserting, after section 14, the following Part:

“Part 3**“Disclosure and admissibility of transport
accident and incident investigation
information****“14A Interpretation**

For the purposes of this Part, unless the context otherwise requires,—

“**Disclose**, in relation to a record referred to in this Part, includes—

“(a) Relating the whole or part of the contents of the record orally; and

“(b) Producing the record, or a copy of the record, in whole or in part in any form;—

and **disclosed** and **disclosure** have corresponding meanings

“**Proceedings** means—

“(a) Proceedings before a court or tribunal, including—

“(i) A court of inquiry under section 200 of the Armed Forces Discipline Act 1971; and

- “(ii) Proceedings relating to an offence under the Armed Forces Discipline Act 1971; and
- “(b) Proceedings before any Coroner; and
- “(c) An arbitration under the Arbitration Act 1996; and
- “(d) Proceedings before a Commission of Inquiry under the Commissions of Inquiry Act 1908 or a body, other than the Commission, having the powers of such a Commission of Inquiry; and
- “(e) An inquiry or investigation by any person, other than the Commission, having authority to conduct the inquiry or investigation under any Act.

“14B Circumstances of disclosure, and admissibility, of certain investigation records

- “(1) A record specified in subsection (2)—
 - “(a) May only be disclosed—
 - “(i) By the Commission, or other person with the written consent of the Commission, for the purposes of an investigation by the Commission into an accident or incident to which the record relates; or
 - “(ii) Under section 14Q; and
 - “(b) Is not admissible in any proceeding.
- “(2) A record referred to in subsection (1) is—
 - “(a) A statement or submission made to the Commission in the course of an investigation; or
 - “(b) A recording of an interview by a person engaged in an investigation by the Commission that is generated in the course of an investigation, or a transcript of such a recording; or
 - “(c) A note or opinion of a person engaged in an investigation by the Commission that is generated in the course of an investigation; or
 - “(d) Information relating to an investigation that is provided in confidence by the Commission to any other person (unless that information is a record specified in section 14C(2)).
- “(3) Despite subsection (1), a person who made a statement or submission referred to in subsection (2)(a) or who supplied any

statement contained in a record referred to in paragraph (b) or paragraph (c) of subsection (2) may disclose that information contained in the statement or submission to any person.

“14C Circumstances of disclosure of cockpit recordings, and certain investigation records supplied to Commission

- “(1) A record specified in subsection (2) may only be disclosed—
- “(a) By the Commission, or other person with the written consent of the Commission, for the purposes of an investigation by the Commission into an accident or incident to which the record relates; or
 - “(b) By order of the High Court under section 14E or section 14F; or
 - “(c) Under section 14Q.
- “(2) A record referred to in subsection (1) is—
- “(a) A cockpit voice recording from a non-military aircraft or a transcript of a cockpit voice recording from a non-military aircraft; or
 - “(b) A cockpit video recording from a non-military aircraft or a transcript of a cockpit video recording from a non-military aircraft; or
 - “(c) A document or record held by the Commission that contains information about an identifiable natural person that was supplied to the Commission in the course of an investigation (not being information included in any statement, submission, recording, transcript, or note referred to in any of paragraphs (a), (b), or (c) of section 14B(2)).
- “(3) Nothing in subsection prevents a person who is recorded on a record referred to in paragraph (a) or paragraph (b) of subsection (2), or who supplied information contained in a record referred to in subsection (2)(c), from making a statement to any person about the accident or incident.

“14D Admissibility of cockpit recordings, and certain investigation records supplied to Commission

- “(1) A record specified in section 14C(2) is not admissible in—
- “(a) Civil proceedings other than proceedings of a kind to which section 14F applies; and

- “(b) Proceedings under the Armed Forces Discipline Act 1971.
- “(2) A record specified in section 14C(2) is not admissible against a member of the flight crew of a military or a non-military aircraft in any proceedings.
- “(3) Nothing in subsection (2) affects the admissibility of a record specified in section 14C(2) against a person other than a member of the flight crew of a military or a non-military aircraft.
- “(4) A record specified in section 14C(2) is only admissible in particular civil proceedings of a kind to which section 14F applies if it was disclosed in relation to those proceedings in accordance with an order made under section 14E or section 14F.
- “(5) Nothing in this section renders admissible any record that is inadmissible under any other enactment or rule of law.

“14E Disclosure of record relating to accident or incident before civil proceedings commenced

- “(1) This section applies to any civil proceedings if the amount of the damages claimed or intended to be claimed exceeds the amount specified from time to time as the maximum civil jurisdiction of District Courts under the District Courts Act 1947; but does not apply to proceedings under the Employment Contracts Act 1991.
- “(2) A person who is or may be intending to commence civil proceedings of a kind specified in subsection (1) may apply to the High Court for the disclosure of a record specified in section 14C(2).
- “(3) The Court may order the disclosure of a record to a person who applies under subsection (2) if—
- “(a) It appears to the Court that—
- “(i) The person is or may be entitled to claim relief in proceedings of a kind specified in subsection (1); and
- “(ii) It is impossible or impracticable for the person to formulate the person’s claim without reference to the record sought; and
- “(b) The Court determines, on the balance of probabilities, that the interests of justice in the disclosure of the record

outweigh the adverse domestic and international impact the disclosure may have on the investigation to which the record relates or any future investigation into an accident or incident.

“14F Disclosure of record relating to accident or incident in civil proceedings

- “(1) This section applies to any civil proceedings if the amount of the damages claimed exceeds the amount specified from time to time as the maximum civil jurisdiction of District Courts under the District Courts Act 1947; but does not apply to proceedings under the Employment Contracts Act 1991.
- “(2) A party to civil proceedings to which this section applies may apply to the High Court for the disclosure of a record specified in section 14C(2).
- “(3) The Court may order the disclosure of a record under this section if the Court determines, on the balance of probabilities, that the interests of justice in the disclosure of the record outweigh the adverse domestic and international impact the disclosure may have on the investigation to which the record relates or any future investigation into an accident or incident.

“14G Provisions relating to application under section 14E or section 14F

- “(1) Subject to this section, an application under section 14E or section 14F must be made and dealt with in accordance with the rules of court applicable to interlocutory applications.
- “(2) The applicant must notify the following persons of the making of the application:
- “(a) The person who has possession of the record:
 - “(b) Any natural person who is the subject of the record or, if that person is deceased, that person’s next of kin:
 - “(c) The owner of the record.
- “(3) A person who is served with a notice of an application, and any other person who satisfies the Court that he or she has a legitimate interest in the application, may appear before the Court and be heard in respect of the application.

- “(4) Only the following persons are permitted to be present at the hearing of an application under this section:
- “(a) The Judge or Master and officers of the Court:
 - “(b) The applicant and the applicant’s counsel:
 - “(c) Other parties to the proceedings to which the application relates (or intended parties in the case of an application under section 14E) and their counsel:
 - “(d) Witnesses:
 - “(e) Any person referred to in subsection (3).
- “(5) The Judge or Master may exclude any witness or person referred to in subsection (3) from any part of the hearing of the application.
- “(6) The Court may adjourn the hearing of an application under section 14E or section 14F at any time if it appears to the Court, on the application of any person or on the Court’s own motion, that the making of a disclosure order will prejudice any investigation into an accident or incident that is being undertaken by the Commission.
- “(7) Subsection (6) does not limit any other power of the Court to adjourn proceedings.

“14H Court may order record to be produced

- “(1) For the purpose of determining whether a record should be disclosed under section 14E or section 14F, the Court may order any person who has the possession of the record to produce it to the Court.
- “(2) Subject to section 14J, the Court may deal with the record as it thinks fit.

“14I Restriction on publication of reports of proceedings

- “(1) No person may publish any report of an application under section 14E or section 14F without the leave of the Court.
- “(2) Despite subsection (1), a person may publish—
- “(a) The names and addresses of the parties:
 - “(b) The name of the presiding Judge or Master:
 - “(c) The order made by the Court.

“14J Further provisions relating to disclosure of record

- “(1) If the High Court makes a disclosure order under section 14E or section 14F, the order relates only to the parts of the record that are relevant to the purpose for which the disclosure was ordered, and any part of the record that is not relevant must not be disclosed.
- “(2) The record must only be used for the purpose for which the disclosure was ordered, and no person is permitted to copy the record or make notes from the record without the leave of the Court.
- “(3) The record must be returned to the person who produced the record to the Court when the record is no longer needed for the purpose for which the disclosure was ordered.
- “(4) No record that is ordered to be disclosed under section 14E or section 14F may be broadcast or published in the media.

“14K Certain actions do not constitute disclosure

The following actions do not constitute disclosure of a record referred to in section 14B or section 14C:

- “(a) The inclusion of the whole or part of a record in any findings or recommendations published, or report made, by the Commission after an investigation:
- “(b) The return of a recording to its owner with the consent of all the individuals recorded on it:
- “(c) The broadcast or publication in the media of any information disclosed to any person under section 14B(3) or any statement made under section 14C(3).

“14L Offences relating to disclosure of records

- “(1) Every person commits an offence who discloses a record specified in section 14B(2) or section 14C(2) in breach of section 14B or section 14C.
- “(2) Every person commits an offence who contravenes section 14J(2).
- “(3) Every person who commits an offence against this section is liable on summary conviction,—
- “(a) In the case of an individual, to a fine not exceeding \$10,000:

“(b) In the case of a body corporate, to a fine not exceeding \$25,000.

“14M Offences relating to publication of reports of proceedings or publication of records

“(1) Every person commits an offence who contravenes section 14I or section 14J(4).

“(2) Every person who commits an offence against this section is liable on summary conviction,—

“(a) In the case of an individual, to a fine not exceeding \$10,000;

“(b) In the case of a body corporate, to a fine not exceeding \$25,000.

“14N Admissibility of accident or incident findings, recommendations, or report

No findings or recommendations published, or report made after an investigation by the Commission are admissible as evidence in any proceedings except—

“(a) A Coroner’s inquest; or

“(b) An application for review of a decision of the Commission.

“14O Commission investigators not compellable to give opinion evidence in certain proceedings

No person engaged in an investigation by the Commission is compellable to give evidence in any proceedings to which the Commission is not a party as to—

“(a) That person’s opinion concerning any aspect of an investigation; or

“(b) Any matter included in any analysis, findings, or recommendations made following an investigation.

“14P No search warrant may be issued for record specified in section 14B(2) or section 14C(2)

No Judge, Justice, Community Magistrate, or Registrar may issue a search warrant in respect of a record specified in section 14B(2) or section 14C(2).

“14Q Disclosure of personal information under Privacy Act 1993

- “(1) A record specified in any of paragraphs (a), (b), and (c) of section 14B(2) or section 14C(2) may be disclosed to the supplier of that record pursuant to a request made in accordance with principle 6 of the Privacy Act 1993.
- “(2) For the purposes of subsection (1), a person is the supplier of a record if the person—
- “(a) Made a statement or submission referred to in section 14B(2)(a); or
 - “(b) Is recorded on a recording or transcript referred to in paragraph (a) or paragraph (b) of section 14C(2); or
 - “(c) Gave the information contained in a record referred to in paragraph (b) or paragraph (c) of section 14B(2) or section 14C(2)(c).
- “(3) To avoid doubt, a person to whom a record is disclosed under this section may not disclose that record to any person in breach of section 14B(1) or section 14C(1).
- “(4) Nothing in this section limits sections 27 to 29 of the Privacy Act 1993.
- “(5) This section is subject to section 14(3).

“14R Application of Official Information Act 1982 to record specified in section 14B(2) or section 14C(2)

Nothing in the Official Information Act 1982 applies to a record specified in section 14B(2) or section 14C(2).”

8 Savings provision

Nothing in this Act applies to—

- (a) An accident or incident that occurred before the date on which this Act comes into force; or
- (b) Any proceedings commenced before the date on which this Act comes into force.

9 Sections 15 and 16 repealed

Sections 15 and 16 of the principal Act are repealed.

Part 2**Amendment to Civil Aviation Act 1990****10 Civil Aviation Act 1990 amended**

Section 24 of the Civil Aviation Act 1990 is amended by inserting, after subsection (3), the following subsection:

“(3A) The right of access and the powers conferred by any of subsections (1) to (3) may not be used to gain a right of access to, to inspect, or to require the production or surrender of a record specified in paragraph (a) or paragraph (b) of section 14C(2) of the Transport Accident Investigation Commission Act 1990.”