



**WORKING PAPER**

**ASSEMBLY — 38TH SESSION**

**TECHNICAL COMMISSION**

**Agenda Item 27: Aviation Safety – Policy**

**CURRENT AND FUTURE WORK ON  
THE APPROPRIATE USE AND PROTECTION OF SAFETY INFORMATION**

(Presented by Australia)

**EXECUTIVE SUMMARY**

Pursuant to Resolutions of the 37<sup>th</sup> Assembly and in accordance with the attendant instructions of the Council, the Air Navigation Commission established a multi-disciplinary Safety Information Protection Task Force (SIP TF) to provide recommendations for new and/or enhanced ICAO provisions and guidance materials related to the protection of safety information. The SIP TF produced findings and recommendations for consideration that propose important amendments to several provisions in Annex 13 and certain provisions in Chapter 5 of new Annex 19, as well as the amendment of existing and the introduction of new provisions in Attachment B to Annex 19. The findings and recommendations take into account the importance of addressing critical safety concerns whilst striking a balance between the need for protection of safety information and the proper administration of justice.

It is also expected that the findings and recommendations of the SIP TF will inform the work of the Safety Management Panel and other ICAO bodies, panels, working and study groups, in the further development, refinement and implementation of rational standards, recommended practices and guidance material designed to ensure the appropriate use and protection of safety information in the interest of maintaining and improving aviation safety.

Australia supports on-going progress consistent with these objectives and proposes updates to the governing Assembly Resolutions with a view to ensuring such progress will continue to be made.

**Action:** The Assembly is invited to:

- a) note the successful completion of the tasks with which the SIP TF was charged, and the remission of the Task Force's findings and recommendations for consideration by the appropriate ICAO bodies, panels, working and study groups;
- b) note the importance of ensuring that the initiative reflected in the work of the SIP TF is maintained; and
- c) consider the proposed amendments to Assembly Resolutions A37-2 and A37-3 accordingly.

<i>Strategic Objectives:</i>	This working paper relates to Safety Strategic Objective.
<i>Financial implications:</i>	No additional resources required.

<i>References:</i>	Annex 13 — <i>Aircraft Accident and Incident Investigation</i> Annex 19 – <i>Safety Management</i> Doc 9958, <i>Assembly Resolutions In Force</i> (as of 8 October 2010), see A37-2 and A37-3. Doc 9935, <i>Report of the High-level Safety Conference (2010)</i> , see Recommendation 2/4 Doc 9914, <i>Report of the Accident Investigation and Prevention (AIG) Divisional Meeting (2008)</i> , see Recommendation 1.7/1 C-DEC 190/6 (28 May 2010) State Letter AN 8/1-IND/11/1 (1 March 2011) <i>Report of the Fourth Meeting of the Safety Information Protection Task Force</i> (21 to 25 January 2013) (SIP TF/4-WP/24) A38-WP/80 – <i>Balancing the Protection and Use of Safety Information</i> A38-WP/82 – <i>Annex 19 - Safety Management</i>
--------------------	---

## 1. INTRODUCTION

1.1 Consistent with the outcomes of the *Accident Investigation and Prevention (AIG) Divisional Meeting* (2008), in accordance with the Council's acceptance (C-DEC 190/6) of the actions on the recommendations of the *High-Level Safety Conference (2010)* and pursuant to Assembly Resolutions A37-2 (Non-disclosure of certain accident and incident records) and A37-3 (Protecting information from safety data collection and processing systems in order to improve aviation safety), the Air Navigation Commission agreed, on 7 December 2010, to establish a multi-disciplinary Safety Information Protection Task Force (SIP TF) to provide findings and recommendations for new and/or enhanced ICAO provisions and guidance materials related to the protection of safety information. The SIP TF terms of reference called for any findings or recommendations to take into account the importance of addressing critical safety concerns whilst striking a balance between the need for protection of safety information and the proper administration of justice.

1.2 Between May 2011 and January 2013, the SIP TF held four formal meetings and several subsidiary meetings and telephone conferences, culminating in the presentation of eight Recommendations, as set out in the *Report of the Fourth Meeting of the SIP TF*.

1.3 Among other things, the SIP TF has recommended important amendments to the provisions of Chapter 5 to Annex 19—*Safety Management*, which becomes applicable on 14 November 2013, and significant amendments to the provisions of Attachment B to Annex 19.

1.4 Having regard to the protection of information generated through accident and incident investigations, the SIP TF recommended amendments to provisions in Annex 13 regarding the non-disclosure of certain accident and incident records; enhanced protections to audio and video content from cockpit voice recordings or cockpit airborne image recordings; enhanced cooperation between accident investigation and judicial authorities; and the upgrade of Recommended Practice 8.8 in Annex 13 to a Standard. The SIP TF further suggested that Attachment E to Annex 13 be consequentially reviewed in light of the amendments recommended to Attachment B to Annex 19.

1.5 In respect of an amended Attachment B to Annex 19, and a consequentially amended Attachment E to Annex 13, the SIP TF recommended that both Attachments should be elevated to Appendices.

1.6 It is expected that the findings and recommendations of the SIP TF will inform the work of the Safety Management Panel and other ICAO bodies, panels, working and study groups, in the further development, refinement and implementation of rational standards, recommended practices and guidance

material, with a view to the appropriate use and protection of safety information in the interest of maintaining and improving aviation safety.

1.7 Australia supports on-going progress consistent with these objectives and proposes updates to the governing Assembly Resolutions with a view to ensuring such progress will continue to be made, as well as acknowledging the work that has already been achieved.

## 2. DISCUSSION

2.1 The SIP TF has effectively fulfilled its obligation, as set out in the Air Navigation Commission's Terms of Reference for the Task Force, namely, to deliver 'recommendations for development of new and/or existing SARPs and guidance materials intended to assure an appropriate level of protection for: a) safety data and information, other than that related to accident and incident records; and b) certain accident and incident records' (see Attachment B to State letter AN 8/1-IND11/1(1 March 2011).

2.2 A summary of the work and outcomes of the SIP TF is available in A38-WP/80, and the particular contributions of the SIP TF to the future development of safety management SARPs and guidance material are called up in A38-WP/82. The SIP TF's findings and recommendations can be found in the Report of the Fourth (and final) meeting of the SIP TF (see SIP TF/4-WP/24).

2.3 Australia joins, with the many States and other relevant stakeholders, whose nominees participated so constructively in the important work of the truly multi-disciplinary panel of experts comprising the SIP TF, in endorsing the findings and recommendations of the Task Force.

2.4 Complementing this endorsement, Australia likewise recognises the importance of ensuring that the critical work on the appropriate use and protection of safety information, including consideration of the SIP TF's findings and recommendations, can and will continue to move forward actively, meaningfully and with alacrity. Australia would prefer to see the presentation of comprehensive, concrete and substantive proposals for new and/or amended provisions to the relevant body of SARPs and guidance materials, if at all possible before the envisaged Director's General Safety Conference in 2015, and certainly before the next ordinary session of the ICAO Assembly in 2016.

## 3. CONCLUSION

3.1 Having regard to the 37<sup>th</sup> Assembly's explicit commitment to the establishment of a multi-disciplinary panel of experts, which gave rise to the formation of the SIP TF, mindful of the Task Force's successful completion of the tasks with which it was charged and cognizant of the importance of ensuring that the initiative reflected in the work accomplished thus far is maintained, Australia urges the Assembly to reaffirm its commitment to that work, to the principles underpinning the progress that has already been made and to the need for a level of constructive activity and oversight commensurate with the importance of the objectives involved.

3.2 To this end, Australia recommends that Assembly Resolutions A37-2 and A-37-3 be amended as proposed in the appendix to this working paper.

— — — — —



## APPENDIX

### PROPOSED AMENDMENTS TO A37-2

#### Non-disclosure of certain accident and incident records

*Whereas* the primary objective of the Organization continues to be that of ensuring the safety of international civil aviation worldwide;

*Whereas* it is essential that cognizance be taken that it is not the purpose of the investigation of accidents and incidents to apportion blame or liability;

*Recognizing* that it is essential that all relevant information be made available to the accident investigators to facilitate the establishment of the causes and/or contributing factors of accidents and incidents in order to enable preventative action to be taken;

*Recognizing* that the prevention of accidents is essential to safeguard the continued confidence in air transport;

*Recognizing* that public attention will continue to focus on States' investigative actions, including calls for access to accident and incident records;

*Recognizing* that the protection of certain accident and incident records from inappropriate use is essential to ensure the continued availability of all relevant information to accident investigators in future investigations;

*Recognizing* that the use of information, derived from accident investigations, for disciplinary, civil, administrative and criminal proceedings is generally not a means to **maintain or** improve aviation safety;

*Recognizing* that the measures taken so far to ensure the protection of certain accident and incident records may not be sufficient, and *noting* the issuance by ICAO of legal **and other** guidance to assist States in this regard;

*Recognizing* that the legal guidance in Attachment E to Annex **13, and in Attachment B to Annex 19, will continue to assist** ~~has assisted~~ many States in the development and implementation of means to protect certain accident and incident records from inappropriate use;

*Considering* that a balance needs to be struck between the need for the protection of safety information and the need for the proper administration of justice, and that protection should be to a level commensurate with the nature of the information each source generates, as well as with the purpose of disclosure of such information;

*Mindful* that the accident investigation authorities and the civil aviation authorities acknowledged the need for further study by ICAO on the protection of safety information; and

*Recognizing* the **Safety Information Protection Task Force** established pursuant to recommendations of the High-level Safety Conference 2010 and in response to Resolution A37-2, has

promulgated for consideration a number of findings and recommendations with respect to the appropriate use and protection of safety information:

*The Assembly:*

1. *Urges* Contracting States to continue to examine and if necessary adjust their laws, regulations and policies to protect certain accident and incident records in compliance with paragraph 5.12 of Annex 13, in order to mitigate impediments to accident and incident investigations, in consideration of the legal guidance for the protection of information from safety data collection and processing systems issued by ICAO;
2. *Instructs* the Council, ~~to consider to enhance, in view of the results of the work of the multi-disciplinary group, the provisions on the protection of certain accident and incident records with the aim of facilitating the implementation of Annex 13 provisions addressing the protection of safety information, taking into account the necessary interaction between safety and judicial authorities in the context of open reporting culture~~ taking into account the findings and recommendations of the Safety Information Protection Task Force and further work informed by those findings and recommendations, to take such steps as may be necessary to ensure meaningful progress toward the development of new and/or amended provisions in Annex 13, Annex 19 and related guidance material before the next ordinary session of the Assembly; and
3. *Declares* that this resolution supersedes Resolution ~~A36-8~~A37-2.

### **PROPOSED AMENDMENTS TO A37-3**

#### **Protecting information from safety data collection and processing systems in order to maintain and improve aviation safety**

*Whereas* the primary objective of the Organization continues to be that of ensuring the safety of international civil aviation worldwide;

*Recognizing* the importance of the free communication of safety information amongst the stakeholders of the aviation system;

*Recognizing* that the protection of safety information from inappropriate use is essential to ensure the continued availability of all relevant safety information, to enable proper and timely preventive actions to be taken;

*Concerned* by a trend for safety information to be used for disciplinary and punitive enforcement actions and to be admitted as evidence in judicial proceedings;

*Noting* the importance of a balanced environment in which disciplinary action is not taken as consequence of actions by operational personnel that are commensurate with their experience and training, but where gross negligence or wilful violations are not tolerated;

*Mindful* that the use of safety information for other than safety-related purposes may inhibit the provision of such information, with an adverse effect on aviation safety;

*Considering* that a balance needs to be struck between the need for the protection of safety information and the need for the proper administration of justice, and that protection should be to a level commensurate with the nature of the information each source generates, as well as with the purpose of disclosure of such information;

*Recognizing* that technological advances have made possible new safety data collection, processing and exchange systems, resulting in multiple sources of safety information that are essential in order to maintain and improve aviation safety;

*Noting* that existing international laws, as well as national laws, ~~and~~ regulations, policies and practices in many States, may not adequately address the manner in which safety information is protected from inappropriate use;

*Noting* the issuance and continuing development by ICAO of legal guidance aimed at assisting States to enact national laws and regulations, and to introduce supportive policies and practices, to protect information gathered from safety data collection and processing systems, while allowing for the proper administration of justice;

*Recognizing* that the legal guidance in Attachment E to Annex 13, and in Attachment B to Annex 19, will continue to assist ~~has assisted~~ many States in the development and implementation of means to protect information gathered from safety data collection and processing systems;

*Mindful* that the civil aviation authorities acknowledged the need for a ~~further~~ continuing study by ICAO on the protection of safety information; and

*Recognizing* the Safety Information Protection Task Force established pursuant to recommendations of the High-level Safety Conference 2010 and in response to Resolution A37-3, has promulgated for consideration a number of findings and recommendations with respect to the appropriate use and protection of safety information:

*The Assembly:*

1. *Urges* all Contracting States to continue to examine their existing legislation and adjust as necessary, or enact laws and regulations and introduce supportive policies and practices, to protect information gathered from all relevant safety data collection and processing systems based, to the extent possible, on the legal and other guidance developed by ICAO;
2. *Urges* the Council to cooperate with Contracting States and appropriate international organizations regarding the development and implementation of guidance, taking into account the findings and recommendations of the Safety Information Protection Task Force and further work informed by those findings and recommendations, to support the establishment of effective safety-reporting systems, and the achievement of a balanced environment where valuable information derived from all relevant safety data collection and processing systems is readily accessible for the purposes of maintaining and improving aviation safety, while respecting principles of administration of justice and freedom of information;
3. *Instructs* the Council to take appropriate steps to ~~consider to enhance, in view of the results of the work of the multidisciplinary group,~~ ensure that provisions in ICAO Standards and Recommended Practices and guidance materials on the protection of information gathered from safety data collection and processing systems (SDCPS) are enhanced, taking into account the findings and recommendations of the Safety Information Protection Task Force and further work informed by those findings and recommendations, with a view to ensuring and sustaining the availability of safety information required for the management, maintenance and improvement of safety, taking into account the necessary interaction between safety and judicial authorities in the context of open reporting culture; and
4. *Declares* that this resolution supersedes Resolution ~~A36-9~~ A37-3.