



OSG  
- 5 NOV. 2013

THE AUSTRALIAN REPRESENTATIVE  
ON THE COUNCIL OF THE  
INTERNATIONAL CIVIL AVIATION ORGANIZATION

---

*Our Reference: ENV 2/1*

5 November 2013

Mr. Raymond Benjamin  
Secretary General  
International Civil Aviation Organization  
Montreal, Quebec  
CANADA

Dear Mr. Benjamin

**Resolution A38/17/2 on International Aviation and Climate change**

I refer to Resolution A38/17/2 on International Aviation and Climate change. I would like to advise you that Australia would like to formally submit the attached *reservation* to the above-mentioned Assembly Resolution.

Yours sincerely

KERRY N MACAULAY

**Reservation by Australia to Resolution A38/17/2 on international aviation and climate change.**

Australia does not accept paragraph 16 (b) of Resolution 38/17/2 adopted by the 38<sup>th</sup> Assembly on 3 October 2013.

Paragraph 16 (b) of Resolution 38/17/2 resolves that any route to or from a developing State whose international civil aviation activities is below the threshold of 1 per cent of total revenue tonne kilometres of international civil aviation activities would be exempt from any market based measure ahead of implementation of the global scheme.

Following the 37<sup>th</sup> Assembly, the ICAO Secretariat analysis confirmed the distortionary market impacts which would be caused by the application of this approach to *de minimis* exemptions from markets based measures. The application of the considerable *de minimis* threshold in this Resolution will potentially exempt carriers on routes from major aviation states resulting in substantial market distortion and carbon leakage.

Further, Australia does not accept preambular paragraph 10 and proposed principle (p) in the Annex to Resolution 38/17/2 where these provisions import the United Nations Framework Convention on Climate Change (UNFCCC) principle of common but differentiated responsibilities and respective capabilities into the ICAO context. This undermines the longstanding ICAO principles of non-discrimination and fair and equal treatment, and may lead to confusing and/or discriminatory outcomes. ICAO has been able to accommodate any special arrangements needed for the less advanced countries or operators through the consideration of special circumstances and respective capabilities.

Further, Australia does not accept any understanding of the principle of special circumstances and respective capabilities based on differentiation between countries based on their status as developed or developing. Any such distinction would also undermine the longstanding ICAO principles of non-discrimination and fair and equal treatment. Accordingly, Australia applies this understanding to all paragraphs referring to special circumstances and/or respective capabilities in Resolution 17/2 adopted by the 38th Assembly on 3 October 2013, in particular paragraphs 6, 7, 20, 21 and proposed principle (p) in the Annex to Resolution 38/17/2.