

Safety education and awareness in Australian aviation

Education and awareness has a vital role in maintaining and improving aviation safety across all operation types.

In Australia, a number of government agencies are responsible for promoting safety to operators and the general public. Primarily, these agencies include the Civil Aviation Safety Authority (as the regulator) and the Australian Transport Safety Bureau (as the independent investigator). Airservices Australia also plays an important safety education role in regards to air traffic control.

The ATSB's responsibility for safety education and awareness

As the independent national transport safety investigator, the Australian Transport Safety Bureau (ATSB) is responsible for improving safety across the aviation, marine and rail industries in Australia.

The main objective of the *Transport Safety Investigation Act 2003* (TSI Act) at the time of its introduction was to improve transport safety by providing for reporting of transport safety matters, investigation of transport safety matters and other incidents that might affect safety, and publishing the results of those investigations. The Explanatory Memorandum noted the public reporting of investigation findings may include studies of trends in accidents and other occurrences that have been reported [to the ATSB].

Amendments to the TSI Act at the time of the establishment of the ATSB as an independent Commonwealth Government statutory agency in 2009 included greater clarity with respect to the functions of the ATSB. In particular, the means identified to improve transport safety included assessment of reports of transport safety matters and other safety information prescribed by the regulations, identification of factors that contribute to transport safety or which affect or could affect transport, communication of those factors to relevant sectors of the transport industry and the public and, of particular note, the conduct of public educational programs about matters relating to transport safety.

The inclusion of this broader range of functions was not linked to any change in funding for the ATSB. In addition to meeting its legislative requirements, however, the ATSB recognised the importance of these more detailed and prescriptive functions in improving transport safety. Indeed, the communication of important safety-related information arising from investigations, research and data analysis is a key element in achieving the overall objective of improving transport safety. As a result, in the absence of specific funding for these functions, the ATSB has met these legislative provisions by using resources that would otherwise be directed to investigative activity.

The ATSB's current safety education program

Current resourcing therefore only allows the ATSB to conduct a limited range of safety education and awareness activities to help achieve its legislative responsibilities. This activity includes attendance at a constrained number of industry events, release of investigation and research reports in accordance with tailored communication strategies, proactive media management and use of social media. In the present financial year, the ATSB has also initiated a series of seminars with flying schools and aero clubs.

The need for greater focus on safety education and awareness

Investigation of accidents and incidents remains the central role of the ATSB, but always with the over-arching objective of improving transport safety. The findings of investigations can serve to identify safety issues on which action can be taken to reduce the likelihood of recurrence. A challenging aspect of the investigation process is to broadly communicate key safety messages to the transport industry and to raise awareness of important safety issues and lessons learned. A major initiative has been the inclusion of a 'Safety summary' in each investigation (and research) report, which in a single page describes what happened, what the ATSB found, what has been done as a result, and a broader safety message. This has been a very successful way of communicating concise, consistent and clear messages both to the media and industry. The ATSB has only limited capacity to further that process by actively engaging physically with the relevant part of industry. That said, the repetition of serious incidents and accidents with consistent major contributing factors suggests that detailed investigation alone is not enough and in some circumstances adds little safety value in terms of identifying new issues. It is clear to the ATSB that a shift of emphasis to greater safety education and awareness is necessary.

The mandatory reporting requirements of the TSI Act result in around 15,000 notifications of aviation accidents and incidents each year being provided to the ATSB. These represent around 8,000 separate occurrences. The ATSB enters these occurrences into its Safety Investigation Information Management System (SIIMS), including through coding by occurrence type and contributing factors. Consequently, as the holder of the national aviation occurrence database the ATSB is well positioned to make use of that data to identify emerging trends and safety issues, and to support investigations and other safety research and analysis. However, the full value of that work can only be achieved through comprehensive and effective communications activities.

One of the primary uses of the data collected from industry through mandatory occurrence reporting is the ATSB's formal aviation occurrence trend monitoring process, which is undertaken each quarter. The results of this analysis are shared with other safety agencies (CASA, Airservices and the Department of Defence) and with airlines, industry associations, operators and any organisation identified as relevant to a particular trend. This process aims to identify trends on which either the ATSB or others may be able to take action to address emerging issues before they lead to an accident. For the ATSB, commonly the action required is to generate greater safety awareness across the relevant sector of the transport industry and/or for some educational campaign or program to target the issue.

The ATSB undertakes a program of research and releases a number of research reports each year designed to help inform and educate industry on trends, topical transport safety matters and emerging safety issues. Research reports can identify safety issues and lead to industry actions to improve safety, sometimes through the issue of ATSB recommendations. The findings from this research have the capacity to direct safety awareness and education campaigns that can make a real improvement to aviation safety.

The allocation of resources to and the prioritisation of efforts associated with safety awareness activities is a critical element of the objective to prevent future accidents and incidents.

The ATSB's key communication strategy - SafetyWatch

As a result of its analysis of occurrence data and investigation findings, the ATSB Commission launched the SafetyWatch initiative in 2012. SafetyWatch identifies the safety priority areas in which industry needs to give heightened attention. While these safety priorities will be updated in early 2014, for aviation they currently include:

1. Avoidable accidents in general aviation
2. Safety around non-controlled aerodromes
3. Data input errors in aviation
4. Handling approach to land
5. Under-reporting of safety occurrences
6. R44 helicopter fuel tanks.

SafetyWatch forms the basis of the ATSB's proactive awareness activities. With effective communication and education, the ATSB believes SafetyWatch has the potential to significantly raise awareness of the more significant and ongoing safety concerns identified by the ATSB and as such has the potential to significantly improve safety in Australian transport.

As an example, from its analysis of occurrence data and investigation findings, the ATSB has identified that general aviation pilots tragically continue to die in accidents that are largely avoidable. These accident types involve such things as wire strikes, flying into bad weather, poor fuel management, inappropriate management of full and partial engine failures, low-level flying, over-relying on experience and flying visually at night.

The ATSB currently raises awareness of these 'avoidable accidents' via a series of publications, seminars and videos. While these activities are helping to raise awareness of the safety concerns facing general aviation pilots, it is evident through the recurrence of these accidents that behavioural change requires considerably more direct educational engagement with industry than is currently possible.

With adequate resourcing, the ATSB would be in a much stronger position to develop and deliver an evidence-based program or campaign to tackle the ongoing fatalities occurring in general aviation.

Industry has also flagged support for the ATSB to engage more in safety education and awareness. In its recent *Call for action on regional aviation policy*, the Regional Aviation Association of Australia suggested that the ATSB play a much greater role in fostering and promoting aviation safety.

Leveraging CASA's network to promote safety

With limited resources for safety education and awareness, the ATSB relies heavily on CASA's wider communication channels and contacts to reach the aviation industry. Through CASA's online magazine *Flight Safety Australia* and network of Air Safety Advisors, the ATSB communicates important aviation safety messages identified from investigations and research.

While this serves the purpose of informing industry, it also carries serious risks and limitations. One such risk is the perception that the ATSB's independence as a no-blame investigator is compromised by over relying on CASA's network to reach industry.

The ATSB relies on industry to report accidents and incidents and for its close cooperation during the conduct of investigation. While it is clearly important for the ATSB and CASA to work cooperatively in the mutual interests of aviation safety, it is also important that the ATSB's independence and role as the no-blame safety investigator remains distinct from the role of the regulator. Notwithstanding the legitimate need for the ATSB and CASA to share safety information in pursuit of those mutual interests (which needs to be entirely transparent to industry, including with a clear understanding as to how such information will be used and what limitations and protections will apply), any perceived merging of the ATSB and CASA roles creates potential to undermine the confidence industry has to both report openly to the ATSB and to cooperate in the conduct of investigations.

Outlook for ATSB safety awareness and education

Feedback from industry and the findings from stakeholder research reveal that the ATSB's investigation, research and education activities have had a positive impact in promoting aviation safety, particularly in the past two years. However, the ATSB has found that it is unable to support the full range of requests from industry stakeholders to support and assist with safety education and awareness activities. In addition, the ATSB believes that with sufficient resources, there is significant potential to undertake more comprehensive safety education and awareness activities and scope to further enhance the ATSB's ability to proactively and positively influence transport safety.

Of the \$23.9m funded to the ATSB in 2013–14, around \$1.6m (7 per cent) has been allocated towards safety awareness, education and research activity. On current forward estimates, it will be very difficult to maintain this level of funding unless further funds are diverted from investigation resources or provided from an external source.

AVIATION SAFETY AND REGULATION REVIEW

Submission: Exchange and Use of Safety Information

Australia has a segregated system for reporting occurrences. Notification of both accidents and incidents is made to the Australian Transport Safety Bureau (ATSB) which conducts independent safety investigations and research and trend analysis. The notification of safety defects is made to the Civil Aviation Safety Authority (CASA). CASA also conducts audits and surveillance as part of its regulatory oversight function. There is no database established that combines the data from both agencies on discernable hazards and risks.

The absence of a shared database means that neither agency has ready access to a complete set of data for safety purposes. Some information is shared but there are restrictions. The existing legislation and policy framework needs reform, including by establishing protections that provide assurances to industry about to whom the information is disclosed and how it will be used.

The release of Annex 19 (Safety Management) to the Convention on International Civil Aviation (Chicago Convention)¹ emphasises the need to improve the systems for the exchange of information between CASA and the ATSB (a copy of Annex 19 is at **Annexure A**). Annex 19 came into effect in November 2013 and contains chapter 5 on Safety Data Collection, Analysis and Exchange. A number of the standards and recommended practices indicate Australia has more work to do on its systems for the collection and processing of data about the occurrence of events that indicate the presence of hazards and risks.

This part of the ATSB's submission sets out what Safety Data Collection and Processing Systems (SDCPS) Australia has in place now. The submission goes on to outline the steps that are being taken to try and improve the systems so they better address the intent of the standards and recommended practices in chapter 5 of Annex 19. The ATSB supports an increase in effort to complete this work.

SAFETY DATA COLLECTION AND PROCESSING

Safety Data Collection

The ATSB gathers information under the mandatory reporting requirements of sections 18 and 19 of the *Transport Safety Investigation Act 2003* (TSI Act) for accidents and incidents.² Safety concerns, other than the accidents and incidents that must be reported under the TSI Act, can be reported confidentially to the ATSB under the voluntary reporting scheme, REPCON.³

CASA gathers information about defects in aircraft and aircraft components reported mandatorily in accordance with regulations 51, 51A, 51B and 52 of the Civil Aviation Regulations 1988.⁴ CASA also

¹ Done at Chicago on 7 December 1944

² Part 2 of the *Transport Safety Investigation Regulations 2003* contains the details of accidents and incidents to be reported to the ATSB. They are reported as immediately reportable matters and routine reportable matters.

³ REPCON is established in accordance with section 20A of the TSI Act through the Transport Safety Investigation (Voluntary and Confidential Reporting Scheme) Regulation 2012.

⁴ See Civil Aviation Advisory Publication (CAAP) 51-1(2): Defect Reporting (Go to: http://www.casa.gov.au/wcmswr/_assets/main/download/caaps/airworth/51_1.pdf).

obtains information about hazards and risks in the industry through its audit and surveillance processes.

The separate ATSB and CASA schemes for the collection of safety information address standards 5.1.1 and 5.1.2 of Annex 19 for the types of reporting systems that a State must establish. ICAO Safety Management Manual (Doc 9859) provides guidance material in support of Annex 19. The type of information collected in accordance with the mandatory and voluntary reporting schemes is consistent with the guidance material provided in the relevant appendices to the Manual.⁵

Safety Data Storage and Sharing

The ATSB has established a database known as the Safety Investigation Information Management System (SIIMS). Information from notification reports and accident and incident investigations is stored in SIIMS. The ATSB uses the information to decide which occurrences to investigate and to conduct research and trend analysis which it communicates to the industry. The ATSB's investigations and research are published on its website at www.atsb.gov.au. Quarterly trend monitoring information is provided directly to industry stakeholders.

The ATSB shares information from individual accident and incident notifications with CASA.⁶ The information is a summarised version of the reporter's text. In addition, to the extent reasonably possible, the ATSB removes directly identifying information such as individual names and addresses. Without notifications information from the ATSB, CASA would not be able to properly fulfil its safety oversight functions set out under section 9 of the *Civil Aviation Act 1988* (CA Act).

CASA maintains its own database of information from its audits and surveillance and the safety defect reports it receives. The ATSB understands that CASA uses the information to determine whether to initiate its own regulatory inquiries and for the purpose of detecting trends in aviation safety so that where necessary, safety action can be taken.

CASA does not normally share, with the ATSB, information from its safety defect reports or from its audits and surveillance about hazards and risks. If the ATSB is conducting an investigation into a specific accident or incident, the ATSB can exercise powers under the TSI Act and require relevant audit and surveillance reports and CASA complies in these circumstances. The ATSB's lack of access to a data set of hazards and risks, discerned from information available to CASA, means the ATSB is limited to its own occurrence data set when it carries out its research and trend analysis function.

Annex 19 Requirements

Australian agencies maintain separate databases. While not all the information in each database needs to be transferrable, combining the data about hazards and risks from specific events would facilitate more effective analysis, consistent with standard 5.2.1 of Annex 19. Standard 5.2.1 states:

Each State shall establish and maintain a safety database to facilitate the effective analysis of information on actual or potential safety deficiencies obtained, including that from its

⁵ Appendix 2 to Chapter 4 (Guidance on a State's Voluntary and Confidential Reporting System); and Appendix 3 to Chapter 4 (Example of a State's mandatory reporting procedure).

⁶ ATSB website at: <http://www.atsb.gov.au/aviation/safety-information-policy-statement.aspx>. CASA website at: http://casa.gov.au/scripts/nc.dll?WCMS:STANDARD::pc=PC_101466.

incident reporting systems, and to determine any actions required for the enhancement of safety.

Note.— The term “safety database” may refer to a single or multiple database(s) and may include the accident and incident database. Provisions on an accident and incident database are included in Annex 13 — Aircraft Accident and Incident Investigation. Additional guidance on a safety database is also included in the Safety Management Manual (SMM) (Doc 9859).

The ICAO Safety Management Manual 4.2.34 says that:

For States with multiple authorities having responsibility for safety regulation, appropriate coordination, integration and accessibility of their SSP [State Safety Program]-related safety databases should be established. This is also pertinent for States where the accident investigation process is performed by an organization independent from the CAA [Civil Aviation Authority].

CASA, the ATSB and the Department have noted through a working group on legislation reform that more needs to be done to better integrate the data held separately. This working group was established in response to industry feedback during consultation in 2012 on a proposal for the ATSB to openly share the reports it receives under its mandatory reporting scheme with CASA.⁷ A number of industry representatives objected to the proposal and also raised concerns about the existing level of information sharing. The objections were based on uncertainty about what CASA may do with the information for regulatory enforcement purposes.

INFORMATION PROTECTION

To facilitate better data exchange, the working group’s first priority has been to try and establish clearly defined boundaries around the disclosure and use of notifications information, particularly for regulatory purposes. The work has resulted in the release of a policy statement concerning the ATSB’s disclosure to CASA of accidents and incidents mandatorily notified to the ATSB. The policy statement is published on both the ATSB and CASA websites.⁸ A copy is at **Annexure B**.

The policy statement is seen as a positive initial step. The statement includes the following commitment from CASA:

CASA may use information reported under the mandatory scheme as the basis for informing its need to initiate its own inquiries in the interests of safety. However, CASA will not rely on the report in taking action unless it is necessary to do so in the demonstrable interests of safety and where there is no alternative source of the information practicably available to CASA.

CASA will not normally recommend the institution of criminal proceedings in matters which come to its attention only because they have been reported under ATSB’s mandatory reporting scheme. The exceptions will be in cases of conduct that should not be tolerated,

⁷ The details are on the ATSB’s website at: <http://www.atsb.gov.au/aviation/reporting-consultation.aspx>

⁸ **ATSB website:** <http://www.atsb.gov.au/aviation/safety-information-policy-statement.aspx>

CASA website: http://casa.gov.au/scripts/nc.dll?WCMS:STANDARD::pc=PC_101466

such as where a person has acted intentionally, knowingly, recklessly or with gross negligence.

In taking any action, CASA will afford affected individuals and organisations natural justice.

The substance of the commitment provided by CASA is consistent with policy approach internationally for the use of notifications information in a number of other countries. A table providing comparisons between the United States, Canada, Europe (with specifics of UK and Denmark shown) and Australia is at **Annexure C**. The CASA statement is also consistent with the recommendations of the ICAO Safety Information Protection Taskforce (SIPTF) concerning changes to Attachment B to Annex 19 to recognise the legitimacy of the regulator having access to information from safety data collection and processing systems where it is in the demonstrable interests of safety. A copy of the final report of the SIPTF, including recommendations, is at **Annexure D**. ICAO is committed to pursuing the work of the SIPTF further following the 38th meeting of the General Assembly.⁹

IMPLEMENTATION

The Policy Statement was formulated by the ATSB and CASA as a platform for working with industry on providing assurances about information originally provided to the ATSB being disclosed to, and used by, CASA. On its own the policy statement is an insufficient framework for the sharing of safety data between CASA and the ATSB. Other countries have elements of a more comprehensive framework such as provisions in legislation for the protection of information and detailed policies and procedures on the use of notifications information for regulatory and enforcement purposes. Recognising that more is required in Australia, CASA and the ATSB have been developing a plan to work on these issues.

Legislation

Legislation is a key issue. The TSI Act itself does not contain any specific protections for the disclosure and use of information mandatorily reported under sections 18 and 19 of the TSI Act; neither does the CA Act when the information is in the possession of CASA.

There are some legal protections derived from other sources. The *Privacy Act 1988* applies to limit the disclosure of information that is personal information and section 70 of the *Crimes Act 1912* makes it an offence for a Commonwealth officer to disclose information other than as authorised. The common law may also act to limit the disclosure and use to purposes for which it was obtained, with *Johns v Australian Securities Commission* (1993) 178 CLR 408 being the relevant authority for this proposition.¹⁰

⁹ At its 38th meeting, the ICAO Assembly adopted resolutions A38-3 'Protection of Certain Accident and Incident Records' and A38-4 'Protecting information from safety data collection and processing systems in order to maintain and improve aviation safety'. The Resolutions instruct ICAO's Council to initiate steps to amend Standards and Recommended Practices and Guidance material, taking into account the findings and recommendations of the SIPTF relating to the disclosure and use of safety information (including information from occurrence notifications, accident investigations and safety management systems).

¹⁰ See also *Apache v Agostini* (2009) 256 ALR 56

While there are other legal protections, consideration needs to be given to whether specific provisions should be included in the TSI Act and CA Act. The work of the SIPTF will assist with a review of Australia's protections as the SIPTF has recommended a number of principles for the protection of information be made mandatory as part of an Annexure to Annex 19.¹¹ These principles include the advice that, 'the sole purpose of protecting safety information from inappropriate use¹² shall be to ensure its continued availability so that proper and timely preventive, corrective or remedial actions can be implemented and aviation safety improved or maintained.'

Through the annunciation of this principle, the SIPTF acknowledged the need for both the investigator and the regulator to use safety data to maintain and improve safety. Through the incorporation of other principles the SIPTF was clear that the protections should be commensurate with the nature of the safety information and generally be limited to use for the purposes for which it was collected.

Policies, Procedures and Guidance Material

Policies, procedures and guidance material will need to document practices such as those for storage and access of information within CASA. CASA's enforcement policy will need to be updated to explain how information is used in this context from notification reports. In addition, the material will need to advise the circumstances in which CASA will seek information from an operator's Safety Management System (SMS) about the same accident or incident it has become aware of through a report forwarded by the ATSB. It is important that protocols for the transfer to, and use by, CASA of information from the ATSB's notifications system work congruently with protocols for CASA's access and use of the same information from an operator's SMS.

OTHER MATTERS

The industry response to the 2012 consultation on sharing ATSB notifications information with CASA has dictated the focus for the ATSB and CASA on providing assurances about the regulatory use of this information. However, there are other matters that need to be addressed in order for Australia to establish best practices in relation to chapter 5 of Annex 19.

TSI Act Reportable Matters

The ATSB advises the Review that the consultation that it undertook in 2012 on sharing notifications information with CASA also included consultation on what matters should be reported to the ATSB. This aspect of the consultation was about revising the regulatory reporting requirements to those accidents and incidents the ATSB is most likely to investigate or to otherwise be used for safety purposes. Parts of the aviation industry indicated that they wished to see greater clarity around some of the individual incidents they had to report as a part of the changes. The ATSB is continuing

¹¹ SIPTF – Fourth Meeting Report SIPTF/4 WP/24, 4A-4

¹² Inappropriate use is defined by the SIPTF to refer to the 'use of safety information for purposes different from the purposes for which it was collected, namely, use of the information for disciplinary, civil, administrative and criminal proceedings against operational personnel, and/or disclosure of the information to the public. The use of such information for demonstrably safety-related purposes by the safety regulator in administrative actions and related proceedings, the use of information in accident and incident investigations, or in safety studies, are not considered inappropriate.' See SIPTF – Fourth Meeting Report SIPTF/4 WP/24, 4A-

this consultation with both CASA and the industry. A short outline of the proposed changes is at **Annexure E**.

Additional Information Protections

The Policy Statement issued by the ATSB and CASA explains how notifications information obtained by the ATSB and forwarded on to CASA will be used by CASA for regulatory purposes. Additional work needs to be undertaken to determine how information from a range of SDCPSs can be disclosed and used. This includes for regulatory purposes and other non-safety purposes.

Recommended 5.3.2 of Annex 19 states:

States should not make available or use safety data referenced in 5.1 or 5.2 [mandatory and voluntary reporting] for other than safety-related purposes, unless exceptionally, an appropriate authority determines in accordance with their national legislation, the value of its disclosure or use in any particular instance, outweighs the adverse impact such action may have on aviation safety.

‘Other than safety-related purposes’ includes disclosure for the purposes of litigation. The phrase can also be applied to disclosures in response to public and media requests for information. Not all these requests are for safety related purposes.

The SDCPS that need to be reviewed against the criteria in recommendation 5.3.2 include the mandatory reporting requirements under the TSI Act and safety defect reporting requirements under the CARs. The voluntary and confidential REPCON scheme does not need the same level of attention as it already exceeds the criteria in recommended practice 5.3.2 of Annex 19. The Transport Safety Investigation (Voluntary and Confidential Reporting Scheme) Regulation 2012 which establishes REPCON is relatively new and was only made into law after consulting with industry. The Regulation contains a range of protections to limit the use of REPCON reports in civil, criminal, administrative and disciplinary proceedings.¹³

ATSB Access to CASA Information

While ATSB and CASA have been seeking to resolve issues with the transfer of notifications information to CASA, the emphasis should not be lost on the need for issues to be resolved with CASA transferring information to the ATSB about hazards and risks it has identified. The ATSB should have access to the safety defect reports CASA obtain under the CARs. Many of these reports involve the occurrence of events that affect or might affect transport safety. Access to these reports will mean that the ATSB can more effectively carry out its TSI Act functions concerning the improvement of transport safety through identifying factors that contribute, or have contributed, to transport safety matters; or affect, or might affect, transport safety.¹⁴

The ATSB is not an auditor of CASA. The ATSB should not have access to every document in CASA’s possession related to CASA’s own audit and surveillance functions. However, where the information CASA has indicates the presence of hazards and risks that relate to something occurring that affected or might have affected aviation safety, it would be helpful if an agreed taxonomy of data

¹³ The voluntary reporting system is also non-punitive in accordance with standard 5.3.1 of Annex 19.

¹⁴ See paragraph 12AA(1)(c) of the TSI Act.

was communicated with the ATSB. Ultimately this would be best achieved through a shared database consistent with standard 5.2.1 of Annex 19.

With respect to the information that the ATSB receives from CASA during an active ATSB investigation under the TSI Act, clause 4.4.6 of the current Memorandum of Understanding (MOU) states:

*CASA agrees that if a CASA Officer is known to have information that could assist the ATSB in the performance of its investigative functions, CASA will undertake to advise the ATSB of the existence of the information.*¹⁵

The ATSB's position is that the intent of this clause is satisfactory to ensure that the ATSB can acquire the necessary primary evidential material to complete its investigation. Again, as the ATSB is not an auditor of CASA it does not need access to every document CASA has concerning itself, an operator or an individual. However, if CASA is aware of the existence of a document in its possession that has direct reference a transport safety matter the ATSB is investigating, then the ATSB should continue to be informed as per the Memorandum of Understanding.

Follow-up of ATSB Safety Findings

ATSB safety investigations produce findings that identify safety issues and other safety factors involved in the occurrence of an accident or incident. Where appropriate, the ATSB identifies persons and organisations that have responsibilities connected to the presence of a safety issue or safety factor. During the course of its investigations the ATSB will seek advice on the safety action being taken. If the safety action advised is not satisfactory, the ATSB will issue a recommendation.

Where safety action is not satisfactory and/or recommendation has been issued, the ATSB has in place processes to follow-up on action being taken. The ATSB believes the safety benefit of this process would be enhanced with advice from CASA on what action it is taking in relation to each of the safety issues and factors identified in an ATSB report. CASA responds when a safety issue or factor is specifically identified as relating to them. However, broader input from CASA on other safety issues and factors would be valuable, given that CASA, as the regulator, has a different set of responsibilities in the safety system to the ATSB, such as the use of regulatory oversight tools to manage risk.

Input from CASA would be consistent recommendation 5.2.2 of Annex 19, which advises:

Each State should, following the identification of preventive actions required to address actual or potential safety deficiencies, implement these actions and establish a process to monitor implementation and effectiveness of the responses.

Note.— Additional information on which to base preventive actions may be contained in the Final Reports on investigated accidents and incidents.

Additional input from CASA would improve the robustness of the existing systems designed to monitor implementation and effectiveness of industry responses to identified safety issues and action. The ATSB and CASA are in a position to work through this matter as part of a review of the MOU between the two agencies.

¹⁵ The MOU between the parties was renewed by an exchange of letters for 12 months from 16 December 2013

CONCLUSION

The ensured availability and effective analytical use of safety information is critical part of the State Safety Program. Australian state safety agencies have recognised that existing systems and relationships need to be updated in accordance with international expectations. Many countries have a similar task ahead of them with Annex 19 coming into force.

With appropriate resourcing, Australia is in a position to develop leading Safety Data Collection and Processing Systems, addressing the issues outlined in this paper. CASA and the ATSB are already working with each other and industry to advance the policy statement on the sharing and protection of notifications information. However, completion of this work will require prioritisation and a sustained effort. The ATSB will make the necessary commitment.

Safety information policy statement

Having considered feedback the ATSB and CASA received on proposed changes to mandatory reporting arrangements,* both agencies have agreed on a safety information policy statement clarifying current arrangements and providing the basis on which further input will be sought from the aviation community to establish an appropriate framework for future development consistent with international best practice.

Safety information

The Australian Transport Safety Bureau (ATSB) is constituted with the primary function of maintaining and improving transport safety, including aviation. The ATSB collects, holds and uses a range of information for this purpose. The ATSB is a part of Australia's aviation safety system and the information gathered by the ATSB may be provided to other agencies for the specific purpose of maintaining and improving aviation safety. It is an additional legislative function for the ATSB to cooperate with these agencies.

Mandatory reporting

A principal source of safety information is the mandatory reporting scheme established under the *Transport Safety Investigation Act 2003* (TSI Act). The scheme gathers information on occurrences which endanger or could endanger aviation safety. The information is gathered so that it can be used by those with responsibilities within the safety system to discharge their responsibilities to maintain and improve aviation safety.

The scheme requires 'responsible persons' (including aircraft crew, owners, operators, air traffic controllers, licensed aircraft maintenance engineers, ground crew and airport operators) to notify the ATSB of accidents and safety incidents ('safety occurrences').

Where the duty to report rests with an individual, it can be fulfilled by the individual notifying the operator who employs them. The operator then has a duty to pass the information on to the ATSB.

Use of safety information by the ATSB

The ATSB uses safety information to assist in its determination of what to investigate for the purposes of improving safety.

Any information that is the subject of an ATSB investigation will only be used in accordance with the provisions of the TSI Act which provides significant protections to information acquired by the Bureau in the course of its investigation.

The ATSB also uses safety information for the purposes of safety research and analysis. The results of research and analysis are generally made public, but in such a way that either the information is either de-identified or is otherwise protected.

ATSB and CASA information sharing

The Civil Aviation Safety Authority (CASA) is constituted under the *Civil Aviation Act 1988* (CA Act). The primary object of the CA Act is to establish a regulatory framework for maintaining, enhancing and promoting the safety of civil aviation, with particular emphasis on preventing aviation accidents and incidents. CASA's primary function under the CA Act is to conduct the safety regulation of civil air operations in Australia and the operation of Australian aircraft outside Australian territory.

Consistent with the objective of maintaining and improving aviation safety under the Australian aviation safety framework, the ATSB recognises CASA needs access to a range of information about aviation safety occurrences that is collected and held by the ATSB.

What information is shared

The ATSB informs CASA about accidents and serious incidents as soon as the ATSB is informed. The information may contain details such as operator names, registration numbers, times, dates, locations and a description of the event. The ATSB aims, wherever possible, to avoid directly identifying individuals.

CASA is also provided daily with a redacted report of all occurrences entered into the ATSB database. The report contains standard information about occurrences notified to the ATSB, including aircraft registration, so that CASA has enough detail to gather its own information about the occurrence. It does not contain a detailed narrative.

An automated weekly transfer of summaries of information entered in the ATSB's database during that week is also provided to CASA. The aggregate summary does not include identifying information such as aircraft registration, but provides enough information for CASA to be able to analyse safety trends, and to identify actual or potential safety risks to which more immediate attention needs to be directed.

Purpose of information sharing

CASA uses safety information from the ATSB principally for two purposes: to have sufficient information about an occurrence to decide whether to initiate its own, independent regulatory inquiries; and to maintain a database of occurrence information so that trends in aviation safety can be detected and, where necessary, safety action can be taken.

Limits on use of information by CASA

CASA may use information reported under the mandatory scheme as the basis for informing its need to initiate its own inquiries in the interests of safety. However, CASA will not rely on the report in taking action unless it is necessary to do so in the demonstrable interests of safety and where there is no alternative source of the information practicably available to CASA.

CASA will not normally recommend the institution of criminal proceedings in matters which come to its attention only because they have been reported under ATSB's mandatory reporting scheme. The exceptions will be in cases of conduct that should not be tolerated,

such as where a person has acted intentionally, knowingly, recklessly or with gross negligence.

In taking any action, CASA will afford affected individuals and organisations natural justice.

This policy is consistent with contemporary practice in leading aviation States. It is also in line with the new ICAO Annex 19 – Safety Management. Standard 5.1.1 of the Annex requires that:

Each State shall establish a mandatory incident reporting system to facilitate collection of information on actual or potential safety deficiencies.

Recommended practice 5.3.1 states:

State authorities responsible for the implementation of the State Safety Program should have access to appropriate information available in the incident reporting systems.

The regulator and the accident investigator both have responsibilities with respect to the implementation of the State Safety Program. This policy outlines what each agency requires accident and incident information for in order to be able to perform their respective complementary functions. It also makes clear what limitations currently govern the use of information by CASA. Having regard to international developments, the ATSB and CASA will seek the views of industry participants and the wider Australian aviation community on the implementation and further development of this policy.

* In 2012, the ATSB sought comments on proposed regulatory changes covering [mandatory reporting of accidents and incidents and confidential reporting](#) of safety concerns in Australia. CASA sought comments on proposed new [Part 119](#) of the Civil Aviation Safety Regulations dealing with the certification and management of Air Transport Operators.

Country or other Entity	What is reported	Who is it reported to	What does the regulator get	What can the regulator do with it?	Public
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MANDATORY AVIATION ACCIDENT AND INCIDENT NOTIFICATIONS REGIMES INTERNATIONALLY

United States	Accidents and serious incidents. See: Title 49 of the Code of Federal Regulations, Part 830 (US)	The National Transportation Safety Board (NTSB).	NTSB and FAA coordinate on the investigation with FAA person connected to the NTSB investigation or investigation delegated to FAA. NTSB must provide records to the FAA. See clause 11 of FAA Order 8020.11C 'Aircraft Accident and Incident Notification, Investigation and Reporting' .	FAA Order 2150.3B covers the FAA's enforcement program. Clause 10c.(1) advises that accident and incident records may be used as evidence in enforcement investigations.	Details including summary and registration are provided for accidents being investigated by NTSB (see Accident and Database Synopses). For incident reports the FAA Accident/Incident Data System (AIDS) database includes details other than an individual's name.
	Incidents The United States does not have a specific program for the mandatory collection of incident reports. However, an example includes the Air Traffic Organization which is part of the FAA (see	The FAA	The FAA gets full details of the report.	FAA Order 2150.3B covers the FAA's enforcement program. Clause 10c.(1) advises that accident and incident records may be used as evidence in enforcement investigations.	For incident reports the FAA Accident/Incident Data System (AIDS) database includes details other than an individual's name.

Country or other Entity	What is reported	Who is it reported to	What does the regulator get	What can the regulator do with it?	Public
	<p>clause 60 of FAA Order JO 8020.16A)</p> <p><i>Note: The United States also has the Aviation Safety Action Program (ASAP) (see FAA Advisory Circular 120-66B) and the Aviation Safety Reporting System (ASRS).</i></p>				

Country or other Entity	What is reported	Who is it reported to	What does the regulator get	What can the regulator do with it?	Public
European Union	<p>Occurrences: including accidents, serious incidents & incidents</p> <p>A proposed new EU Regulation would provide an encompassing regime for occurrence reporting, repealing Directive 2003/42/EC and amending EU Regulation 996/2010</p> <p><i>The proposed new EU Regulation was adopted by the European Commission on 18 December 2012. It is expected to go before the European Parliament during 2014.</i></p>	In accordance with Article 6.2 of the proposed new EU Regulation, a report could be given directly to regulator, investigator or other authority.	<p>Article 6.6 states that both the regulator and the investigator must have access to information stored on a national database from occurrence reports.</p> <p>Personal information is only to be made available to the extent necessary for maintaining and improving aviation safety.</p>	<p>Article 16.3 states that member states are to refrain from instituting proceedings for unpremeditated or inadvertent infringements that come to their attention only through a report made in accordance with the regulation (does not apply in cases of gross negligence).</p> <p>‘Proceedings’ in this context is intended to refer to judicial proceedings. Paragraph [30] of the preamble states that a non-punitive environment should not prevent the adoption of actions necessary to maintain or enhance the level of aviation safety. Article 13.4 states that member states are to use the reported information to determine appropriate corrective or preventative action.</p>	<p>Member states may publish ‘dissidentified’ occurrence reports.</p> <p>Dissidentified is defined as removing all personal details pertaining to the reporter and technical details leading to the identity of the reporter or third parties.</p>
United Kingdom	Accidents and serious incidents	AAIB	Full details (see: Civil Aviation Publication (CAP))	The Chief Executive of the UK Civil Aviation Authority (CAA)	AAIB publishes monthly bulletins of accidents and

Country or other Entity	What is reported	Who is it reported to	What does the regulator get	What can the regulator do with it?	Public
	Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996		382 'Mandatory Occurrence Reporting, cl.8.2)	advises in CAP 382 to that: - the CAA will use occurrence reports to take licence action if it is no longer satisfied the licence holder is competent, medically fit and a fit person to exercise the privileges. - it will not instigate prosecutions for unpremeditated and inadvertent breaches of the law, except in the case of gross negligence.	serious incidents, including registration number, times, dates and locations
	Incidents Article 226 of Air Navigation Order 2009 and CAP 382	UK Civil Aviation Authority (CAA)	Full report – it is reported to the regulator.	As above for accidents and serious incidents.	- Not published but requests for deidentified data are accepted. See paragraph 9.6 of CAP 382
Denmark	Accidents and incidents See: sections 135 and 137 of the Air Navigation Act (DK) See also BL 5-40 Order on the Duty to report Aircraft Accidents and Incidents	Danish Accident Investigation Board.	Report referred to regulator.	No protections. Section 149a. of the Air Navigation Act only provides protection from punishment under the Air Navigation Act for occurrences that are not accidents or incidents.	Investigation reports published.

Country or other Entity	What is reported	Who is it reported to	What does the regulator get	What can the regulator do with it?	Public
	<p>Occurrences</p> <p>BL 8-10 Regulations on Mandatory Reporting of Flight Safety Occurrences</p> <p>Flight Safety Occurrence is defined as:</p> <p>Any operational interruption, defect, fault or other irregular circumstance that has or may have influenced flight safety and that has not resulted in an accident or serious incident.</p>	Danish Civil Aviation Authority.	<p>Regulator receives the report.</p> <p>Original report stored for five years but names of individuals not included in database.</p>	<p>Section 149a of the Air Navigation Act provides protection from punishment under the Air Navigation Act for occurrences that are not accidents and incidents.</p> <p>Note: subsection 135(2) defines an incident broadly as: an occurrence, other than an accident, associated with the operation of an aircraft which affects or could affect the safety of operation.</p>	Deidentified statistical summaries published.
Canada	<p>Accidents and serious incidents.</p> <p>Transport Safety Board Regulations section 6</p>	Transport Safety Board (TSB)	<p>The MOU between the TSB and Transport Canada says that the TSB will notify the Civil Aviation Contingency Operations (CACO) Centre as soon as possible. Formal notification given within 48hrs of action intended to be taken and a report</p>	<p>No restrictions. Policy for selecting administrative action is at 10.2 and chapter 12 of the Transport Canada's Aviation Enforcement Manual.</p>	<p>Civil Aviation Daily Occurrence Reporting System: Rego, times, dates, locations etc.</p>

Country or other Entity	What is reported	Who is it reported to	What does the regulator get	What can the regulator do with it?	Public
			made including rego, times, dates, locations and description of occurrence. Under MOU 'Minister' appoints representative to TSB investigation for exchange of information.		
	Incidents Civil Aviation Regulation 807.1 requires the holder of an Air Traffic Service Operations Certificate to report occurrence information.	Transport Canada	Full report	No restrictions. Policy for selecting administrative action is at 10.2 and chapter 12 of the Transport Canada's Aviation Enforcement Manual .	Civil Aviation Daily Occurrence Reporting System : Rego, times, dates, locations etc.
Australia Accident and incidents reportable under the Transport Safety Investigation Act 2003 and Regulations	Australian Transport Safety Bureau (ATSB)	The report is made to the ATSB.	CASA gets the information outlined on the ATSB's web page .	Published policy, agreed between ATSB and CASA for the disclosure and use of accident and incident notifications. CASA will not use the report for administrative action unless it is demonstrably in the interests of safety and there is no alternative source of information. Further, CASA will not recommend the institution of criminal proceedings unless a person has acted intentionally, knowingly, recklessly or with	ATSB publishes weekly summaries on the website minus registration details and directly identifying personal information.

Country or other Entity	What is reported	Who is it reported to	What does the regulator get	What can the regulator do with it?	Public
				gross negligence.	

SIPTF/4



International Civil Aviation Organization

SAFETY INFORMATION PROTECTION TASK FORCE

FOURTH MEETING

Montréal, 21 to 25 January 2013

The material in this report has not been considered by the International Civil Aviation Organization. The views expressed therein should be taken as advice of a group of experts to the Secretariat but not as representing the views of the Organization.

FOREWORD

1. On 7 December 2010, the Air Navigation Commission agreed to establish a Safety Information Protection Task Force (SIP TF) with the following terms of reference:
2. **Background:** The collection, voluntary reporting, analyzing and confidential sharing of sensitive safety information is essential to ICAO's mandate to improve the safety of international civil aviation; however, the success of these collection mechanisms depends, in part, on the existence of effective legal safeguards that allow analysis and investigations to proceed in a way that protects and encourages meaningful reporting and cooperation among the participants in those processes.
3. **Scope:** The SIP TF will make findings and recommendations for new and/or enhanced ICAO provisions and guidance materials related to the protection of safety information, including paragraph 5.12 and Attachment E to Annex 13, with the aim of facilitating their implementation. These findings and recommendations will take into account the importance of addressing critical safety concerns, while striking a balance between the need for the protection of safety information and the need for the proper administration of justice, and bearing in mind that the level of protection should be commensurate with the nature of the information generated by each source and the purpose that disclosure of such information would serve. The SIP TF will identify and document any limitations to its findings and recommendations.
4. **Deliverables:** The deliverables of the SIP TF will consist of products and outputs that may include recommendations for development of new and/or amendments to 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.
5. **Timelines and working methodologies:** The deliverables mentioned above are expected within 18 months from the date of the establishment of the SIP TF. The SIP TF will hold face-to-face meetings at the start of its work and, if necessary, at its conclusion to finalize the deliverables. It is anticipated that all other work will be conducted remotely, with teleconferences and/or online meetings held regularly. The Secretary of the SIP TF will also provide oral status updates to the Air Navigation Commission regularly.
6. **Membership:** The SIP TF will comprise a multidisciplinary membership of safety and legal experts. Ensuring adequate geographical representation, the membership of the SIP TF should include Member States and international organizations.

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* Recommendations annotated “RSPP” relate to proposals for amendment of Standards, Recommended Practices and Procedures for Air Navigation Services or guidance material in an Annex.

SAFETY INFORMATION PROTECTION TASK FORCE (SIPTF)**FOURTH MEETING****Montréal, 21 to 25 January 2013****HISTORY OF THE MEETING****1. DURATION**

1.1 The fourth meeting of the Safety Information Protection Task Force (SIPTF/4) was held at the International Civil Aviation Organization (ICAO) Headquarters in Montréal, Canada from 21 to 25 January 2013.

2. ATTENDANCE

2.1 The meeting was attended by members and advisors nominated by 11 ICAO Member States and 6 international organizations, as shown in the list below:

Members	Advisors	Nominated By
Dr. Jonathan Aleck	Mr. Patrick Hornby	Australia
N/A	Mr. Peter Wolfgang Beer	Austria
Mr. Fernando Luis Volkmer		Brazil
Mr. Mark Clitsome		Canada
Mr. Fernando Ortiz	Mr. Claudio Espinoza	Chile
N/A	Mr. Philippe Plantin de Hugues	France
Mr. Wing Keong Chan	Ms. Siew Huay Tan Mr. Dalen Tan Ms. Pang Min Li	Singapore
N/A	Ms. Bongi Mtlokwa Mr. Frank Masoga	South Africa
Ms. María Jesús Guerrero Lebron	Mr. Pablo Hernandez-Coronado	Spain
Mr. Rob Carter		United Kingdom
Mr. David L. Mayer	Mr. Tony Fazio Ms. Cynthia A. Dominik Mr. Loren Groff Ms. Gail Robertson	United States
Mr. Eugene Hoeven	Mr. Bernard Gonsalves	CANSO
Mr. Frank Manuhutu	Ms. Delphine Micheaux-Naudet Mr. Fredrik Kämpfe	EU

Mr. Roderick van Dam

EUROCONTROL

N/A

Mr. Gary Doernhoefer

IATA

Capt. Paul McCarthy

IFALPA

Mr. Kenneth P. Quinn

FSF

3. OFFICERS AND SECRETARIAT

3.1 Dr. Jonathan Aleck (Australia) and Mr. Kenneth P. Quinn (Flight Safety Foundation) acted as Chairperson and Vice-Chairperson of the meeting, respectively.

3.2 The Secretary of the meeting was Mr. John Illson, Chief of the Integrated Safety Management Section, who was assisted by Ms. Jimena Blumenkron, Technical Officer, Mrs. Elizabeth Gnehm, Technical Coordinator, Mr. Danial Zeppetelli, Consultant, and Ms. Ashleigh Tomlinson, Intern of the same section as well as Ms. Tatiana Pak, Consultant of the State Aviation Safety Tools Unit.

4. GENERAL NOTES

4.1 During its fourth meeting, the SIP TF considered and finalized its recommendations for new provisions or amendments to existing Standards and Recommended Practices (SARPs) and guidance materials related to the use and protection of safety information.

4.2 Recommendations related to the use and protection of safety information of the kind contemplated by the activities mentioned in Agenda Items 3, 4, 5 and 6 considered these issues in the following contexts:

- a) **Judicial Proceedings** (including criminal and civil proceedings and the discovery processes in connection with such proceedings; police investigations and other formal inquiries).
- b) **Administrative Action and Proceedings** (including actions to vary, suspend or cancel authorisations for (a) safety-related purposes (remedial and protective) and (b) punitive purposes (punishment and deterrence)).
- c) **Disciplinary Action and Proceedings** (referring to actions taken by, and arising in the context of, a service provider's organization).
- d) **Exchanges between Actors within the Aviation Safety System** (including exchanges within and between States, regional and international organizations).
- e) **Public Forums and Arenas** (including disclosures to, by and in the media and under public information access legislation).

4.3 See Safety Information Protection Task Force (SIP TF), Summary of Discussions, Teleconference of 12 June 2012 (22/6/12).

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Agenda Item 1: OPENING OF THE MEETING

1.1 OPENING REMARKS

1.1.1 The fourth meeting of the Safety Information Protection Task Force (SIPTF/4) was opened by the Director of the Air Navigation Bureau, Ms. Nancy Graham, at 0900 hours on 21 January 2013. In her opening remarks, Ms. Graham welcomed SIP TF Participants and thanked them for the close collaboration of all parties represented in this group of experts. She indicated that the international community is eager to see the recommendations derived from this initiative, which are considered instrumental in the establishment and maintenance of effective safety management processes for the further enhancement of aviation safety.

1.1.2 Mr. Christian Schleifer-Heingärtner, President of the Air Navigation Commission (ANC), also welcomed participants and introduced the members of the ANC in attendance at the SIPTF/4. His opening remarks are presented at Appendix A to this agenda item.

1.1.3 The Chair of the SIP TF, Dr. Aleck, and the Vice-Chair of the SIP TF, Mr. Quinn, then delivered their opening remarks, which are presented at Appendix B and Appendix C to this agenda item.

1.2 REVIEW AND APPROVAL OF THE AGENDA

1.2.1 The meeting revised and approved the agenda as follows:

Agenda Item	Subject	Lead
Agenda Item 1	Opening of the meeting	Chair, Vice-Chair and Secretariat
Agenda Item 2	Recent developments	
2.1	Update on Annex 19	Secretariat
2.2	WG3 final report (incl. report from the listening session held in Washington on 5 December 2012)	WG3 Rapporteur and WG3 Liaison
2.3	State, regional and international recent developments	
Agenda Item 3	Information generated through accident and incident investigations	
Agenda Item 4	Information generated through safety management activities	
Agenda Item 5	Information generated by international and/or regional organizations	
Agenda Item 6	Review and approval of meeting report	Chair and Vice-Chair
Agenda Item 7	Any other business	Secretary

1.2.2 SIP TF participants and members of the Secretariat then introduced themselves as requested by the Secretary.

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APPENDIX A**ADDRESS BY THE PRESIDENT OF THE AIR NAVIGATION COMMISSION
MR. CHRISTIAN SCHLEIFER**

Ladies and gentlemen,

1. On behalf of the Air Navigation Commission and on my own behalf, I wish to welcome you all to the Fourth meeting of the Safety Information Protection Task Force.
2. The Task Force has before it a very important and difficult task, namely, to ensure a balance between the need for the protection of safety information and the need for the proper administration of justice. In this regard, I would like to thank the Chairman and the Vice-Chairman for ably steering the work of the Task Force and their excellent leadership.
3. The aviation community in general and the Commission in particular, have high expectations on the outcome of the work of the Task Force. It is expected that the results of your work will help further refine provisions of the new Annex on safety management once it has been adopted.
4. I realize that there might be some sensitive issues that still require further deliberation. However, we are here to seek common ground, not to create divergence. In this regard, I appeal to all of you to work in the spirit of cooperation and compromise. It is my hope that the Task Force will be able to complete its work during this meeting.
5. I am therefore counting on you, Mr. Chairman, with the cooperative efforts of the Members of the Task Force present and the assistance of the Secretariat, to ensure that this meeting produces a productive outcome that will conclusively determine the next steps to be taken on this important issue.
6. I would also like to ask you, Mr. Chairman, to brief the Commission on the outcome of the meeting on Friday morning. Of course, all Members of the Task Force are invited to participate in this informal briefing.
7. In closing, let me express my sincere gratitude to all of you for your devotion to this work and your continued support of ICAO's safety initiatives. I wish you fruitful deliberations in the days to come.

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APPENDIX B**ADDRESS BY THE CHAIR OF THE SIP TF
DR. JONATHAN ALECK**

Good morning and welcome back,

1. I want to thank you all, once again, for your continuing commitment and valuable contributions to the important work we are doing.
2. I also want to take this opportunity to make, and to reiterate, some critical points, which I believe can usefully inform our progress—especially in what is almost certain to be our final plenary meeting.
3. First, I commend you on your fidelity to the purposes and objectives of the Task Force, and remind you that our role is to advise the Secretariat in their preparation of advice and recommendations to the Air Navigation Commission (ANC), and through the Commission, to the Safety Management Panel. We are not a ‘decision-making’ body.
4. Supportive as our role may be, the report of our findings and conclusions, and the documentation we produce, will accompany the advice the Secretariat passes to the ANC, and will be available to the Commission, to the Council and to others who will be making authoritative decisions on the matters we have canvassed.
5. Second, I want to commend you also on the objectivity and reason that have governed our discussions and submissions on issues about which we have strongly held views. Passion is powerful, but it can subsume reason, and it is vitally important that we continue to keep our passion in check. We will do better to shed more light, than to generate more heat.
6. If I might paraphrase the cogent remarks an eminent American jurist made in a judicial opinion almost a century ago—related quite directly, as it happens, to the appropriate acquisition and use of information: ‘The greatest dangers to liberty [and safety alike] lurk in insidious encroachment by men of zeal, well meaning but without understanding.’²
7. None of us here, however, is ‘without understanding’. That is why you are members of this multi-disciplinary task force. And that is part of the reason our work has been so challenging. The issues we are addressing are not simple or easy; and the answers we propose cannot be glib or simplistic.
8. Clarifying our positions and stating our views succinctly, as we must do, need not and should not reflect a failure or a reluctance to engage with the complex and controversial issues before us. And it is because we have not failed, or yet shown that kind of reluctance, that our journey has been what it has been. We have worked hard, from afar and remarkably quickly—even if not as quickly as some would have liked.
9. Given a clear week—or perhaps even a long week-end—there are few of us here, I dare say, who do not believe we could have drafted revised provisions for the Annexes, their attachments and supportive guidance and advisory comments—in precisely the terms we would like to see. For reasons I

² *Olmstead v. United States*, 277 US 438, 479 (1928) (Brandeis, J., dissenting).

am sure I do not need to elaborate on, however, that option is simply not available. We are many, and there are many more with equally diverse views and differing perspectives, who will need to find our work products acceptable. That is the nature of the process; and to compromise that process runs the risk of subverting the principles on which this organisation is based.

10. Finally, I want to re-emphasise the importance of finding, not a single balance, but the multiplicity of balances our recommendations must strike. Our challenge is not simply—and ‘simply’ is hardly the right word in any case—one of balancing the interests of *justice* with the interests of *safety*. As I have said before, reducing the issues to that kind of dichotomy is fraught with risk and danger.

11. What we can and must do is to develop premises on which decisions affecting *safety* will instructively inform decisions that can have profound implications for the interests of *justice*. The context in which this will occur is a decidedly *legal* context—but it is a context that embraces a much wider field of affairs, with nuances and variations of which those premises must take account. And if by *justice* we mean *fairness*, then we do well to remember that the United Nations, of which organisation ICAO is a part, is bound by an institutional commitment to the rule of law, of which fairness is at the very least an integral element.

12. We are looking for grounds on which the interests of *safety* can be balanced—reasonably and fairly—with the interests of *privacy*, and with the corresponding (and sometimes competing) *public interest* to know things which might arguably be kept private, in whole or in part.

13. We are looking for grounds on which the interests of *safety* can be balanced—again, reasonably and fairly—with the interest of employees not to be treated unfairly on account of what we may conveniently call ‘honest mistakes’. But we are also looking to balance the interests of safety with the legitimate interests of air service providers to employ and retain professionals with necessarily high levels of skill, ability and knowledge.

14. Just as importantly—perhaps more so—we are striving to strike a balance between particular safety-related interests in the capture, analysis and prospective use of information of various kinds in the longer term, with a view to reducing the risks of accidents and incidents of a similar kind, with the more immediate safety-related interests of employing that kind of information in the effort to reduce or eliminate the risk of harm, injury or death, pending the rectification of shortcomings and deficiencies identified and high-lighted by the information in question.

15. In the process, we are obliged to consider defining and redefining terms that have for too long remained vague and ambiguous—to the detriment of safety as much as justice; and we must do so in workable ways that do not alienate those whose judgements we want to inform, or in ways that may serve to compromise the very interests of safety we are so keen to preserve, protect and advance.

16. With these considerations—and others no doubt—in mind, let us get back, and get down, to the work ahead of us.

APPENDIX C**ADDRESS BY THE VICE-CHAIR OF THE SIP TF
MR. KENNETH QUINN**

1. I would echo the Chair's remarks and thank members of the Task Force and the Secretariat for your diligence and efforts in working on the proposed findings and recommendations to further protect safety information. I would also like to thank the Chair and compliment him for his able stewardship of such a large, multidisciplinary group. I have confidence in the Task Force's success, in large part because of the talent and commitment by members of the Task Force, but most particularly by our Chair's leadership.
2. We are blessed to have a Task Force that is filled with extraordinary talent and rich experience in accident investigation, civil aviation regulation, and legal counsel. In many ways, the presence and participation of Task Force members Roderick van Dam and Paul Louis Arslanian should serve to inspire us to arrive at bold and practical Standards and Recommended Practices and guidance material. Their distinguished careers represent the very best of our craft, their eloquence and diplomacy our ideals, and their commitment to aviation safety a model for us all.
3. Still, this journey on the road to better safety information protection is fraught with pitfalls and jargon, competing tensions of different systems, complicated by national cultures that do not readily admit mistakes and seek guidance, or criminalize too frequently, often in the absence of willful misconduct or gross negligence. It is important to recognize that our Task Force and its individual members and States already had achieved great success. Our friends in Latin America, working through the RASG-PA, have produced model legislation on safety protection. Brazil and other states have begun actively training judges and others to create greater sensitivity over the need to protect voluntary and mandatory occurrence reporting.
4. Our colleagues in the United States have seen laws passed under FAA Reauthorization preventing the disclosure of voluntarily submitted occurrences under ASAP, FOQA, and ASIAs in the context of Freedom of Information Act-type laws and exemptions, with de-identification a key. The NTSB and FAA, with leaders like David Mayer and Tony Fazio on this Task Force, along with airlines and their unions, have reached a landmark agreement to share occurrence reporting under ASIAs, but under strict guidelines to prevent public disclosure and misuse. The agreement does not allow any of the parties to use aggregate FOQA, ASAP, ATSAP or other non-publicly available data to measure an individual data contributor's performance or safety, which represent important safeguards.
5. The strides they are making in the US with ASIAs are truly remarkable. ASIAs began in 2007 and now has 44 members and receives voluntary data representing 95 percent of all commercial air carrier operations. It connects 131 data and information sources across the industry and is integrated into the Commercial Aviation Safety Team (CAST) process. Many of CAST's safety enhancements have been derived from forward-looking data analysis in ASIAs. We commend everyone involved in this effort, but challenge them to find ways to internationalize their methods and experiences, or we will find ourselves in a situation where the safe get safer, yet regions without such robust systems and protections continue to experience much higher accident rates.

6. Our European friends have been particularly busy, and applying our discussions in real time to make significant regulatory improvements to further protect safety information. In many ways, Eurocontrol's efforts, led by my friend Roderick Van Dam, has led the way. Their Just Culture Task Force has long extolled the virtues of blameless and open reporting systems and engaged in extensive dialogue with the judiciary and prosecutors. We are particularly pleased to see the promulgation of EC Regulation No. 996/2010, which is directly applicable law binding in Member States, and look forward to seeing Member State adoption of laws consistent with its principles and enforcement of its protections. Regulation 996 sets forth clear rights for safety investigations, urges close collaboration with judicial authorities, emphasizes the need for strict application of rules on confidentiality to ensure the future availability of valuable sources of information, and endorsed the promotion of a non-punitive environment to facilitate spontaneous reporting of occurrences. Two years later, we are seeing laws as in France (Ordonnance n°2012-872 July, 12, 2012) implementing some of the EC provisions, underscoring the need for advance arrangements and specifying that in the wake of a crash the safety investigation takes precedence over the judicial authority. These are very favourable developments.

7. In December 2012, thanks in part to the leadership of our own Task Force Member Delphine Michaux-Naudet, the EC proposed further directly applicable law to establish the appropriate environment to ensure that all occurrences that could endanger aviation safety are reported and collected. The Commission proposal includes provisions to encourage aviation professionals to report safety related information by protecting them from punishment except in cases of gross negligence. The proposal ensures that the information collected is not just guaranteed to be held confidential, but also can only be made available and used for the purpose of maintaining or improving aviation safety. The text reaffirms the obligation to de-identify occurrence reports and limits the access to fully identified data only to certain persons. The rule establishes that employees shall not be subject to prejudice from their employer on the basis of the information reported, except in cases of gross negligence. We commend Delphine and the Commission for their forward-thinking progress, and look forward to these proposals having the binding effect of law.

8. Trained judges are now turning down requests to obtain safety information for use in civil liability trials in Brazil and Spain. The Attorney-General in places like Singapore are meeting with people like our distinguished colleague Siew Huay Tan and talking about formation of specialized units trained in aviation's unique safety reporting systems and structure. Attempts to criminalize aviation accidents are being met with acquittals, both at trial and on appeal.

9. So much progress has already been made, but continued threats to aviation safety exist, as many remain justifiably concerned about the misuse of incident and accident data. A new paper from our friends at IATA, with our distinguished colleague Gary Doernhaefer here, reminds us that in the face of the growing phenomenon of the misuse of safety information, some airlines and their legal advisers are justifiably re-considering whether and to what extent an airline should cooperate in accident investigations. Rather than assisting in improving safety, this will lead to industry actors engaging in defensive conduct from the outset. The risk of this growing trend is that important witnesses may refrain from cooperating fully with investigators or prosecutors or will do so to the minimum extent possible. That lack of cooperation will lead to the loss of valuable information on the causes of an incident or accident and the ways of avoiding future accidents.

10. So as this industry continues to build on its stellar aviation safety record, and shifts to preventative and predictive systems to detect trends to improve safety instead of relying on forensic evidence after a crash, our charge could not be more important.

11. Simply stated, the current formulation of existing ICAO Standards and Recommended Practices, and guidance material, have not kept pace with the urgent need to provide better safety information

protection. Existing guidance is too ambiguous, too subjective, and too buried in an attachment to an Annex that concerns itself with accident investigations, not safety management systems. Our colleagues at the SMP have given us a good start with a solid formulation in Recommended Practice 5.3.2 of the proposed Annex 19, and we are glad to welcome them here, but we can and must do more and hopefully arrive at practical consensus on new Standards and Recommended Practices, guidance material, and training modules to help States to develop new laws to protect safety systems to prevent the next crash.

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Agenda Item 2: Recent developments**2.1 UPDATE ON THE PROPOSED ANNEX 19 - SAFETY MANAGEMENT**

2.1.1 The ICAO Secretariat presented to the meeting a progress report on the establishment of the proposed Annex 19 – *Safety Management*, as well as a summary of the continuing work of the Safety Management Panel (SMP). The proposed Annex 19, resulting from the Air Navigation Commission's final review conducted in November 2012, is scheduled to be presented to the ICAO Council for adoption in March 2013 with an anticipated applicability date of 14 November 2013. The items included in the SMP current work programme, approved by the ANC in June 2012, were also highlighted. Information paper SIPTF4-IP/1 — *Update on Annex 19 and the Safety Management Panel Work Programme* and a presentation on this matter as delivered by the SMP Secretary are accessible at: <https://portal3.icao.int/SIPTF/SIP%20Library/Annex%2019%20update%20and%20SMP%20WP.pptx>.

2.1.2 Clarification was requested on the status of Appendices to ICAO Annexes. The SIP TF Secretary indicated that Appendices comprise material grouped separately for convenience, which may be in the form of a Standard or a Recommended Practice, as found in the body of an Annex. Clarification was also provided regarding coordination between the SIP TF and the work being conducted regarding further development of the proposed Annex 19. The Secretariat indicated that it will continue to ensure close coordination between members of the groups in relation to the development of all safety management provisions. It was further mentioned that the future work of the SIP TF will be decided pending the results of this meeting.

2.2 WG3 FINAL REPORT (INCL. REPORT FROM THE LISTENING SESSION HELD IN WASHINGTON ON 5 DECEMBER 2012)

2.2.1 The WG3 Rapporteur provided an overview of the WG3 Final Report, including its work packages and recommendations. The work of WG3 was based on the findings of the 37th ICAO Assembly on the sharing of safety information and the protection of safety data, and the need to strike a balance between the appropriate protection of safety information and the proper administration of justice. Successful and realistic proposals for the enhancement of safety data protection have to recognize and reconcile the existing national and international legislation and regulatory processes and their limitations. These are often related to national constitutional or specific legislative requirements that are generally recognised and respected at the ICAO (international) level as well as at the regional level.

2.2.2 WG3 has identified a number of main themes to fulfil the SIP TF's objectives. In particular, WG3 found that considerable progress can be made in advancing safety information protection with deliverables in the areas of training, support, education, outreach and communication through the use of innovative implementation tools and tactics, to balance the protection of safety data with the administration of justice.

2.2.3 The WG3 Final Report constitutes an important building block for the recommendations of the SIP TF. The proposed activities related to the findings of WG3 may continue to be applied well beyond the active life of the SIP TF. On-going activities such as training and support, cooperation, communication, and advanced arrangements with other stakeholders will further balance aviation safety interests through the enhancement of safety data protection.

2.2.4 The WG3 Coordinator thanked the WG3 Rapporteur and emphasized the need to continue communications on this matter. The Vice-Chair further emphasized that a series of best practices assembled in addition to the standardization activities conducted by ICAO would add value in this regard. Differences between cultures, jurisdictions and legal systems need to be taken into consideration in developing a harmonized approach that can be used for the development of ICAO SARPs to support changes in law and prosecutorial discretion. It was also highlighted that there is a need to consider proposals that supplement SARPs and appropriate modalities to achieve the desired goals.

2.2.5 The WG3 Liaison further mentioned that the work done will enable better communication with the judicial community on the need for the protection of information related to the establishment of safety management activities for the enhancement of safety.

2.2.6 The Chair thanked WG3 for its work and indicated that it is expected to have longevity with a view to the promotion of the outcomes of the SIP TF. Recognizing this, it was suggested that WG 3 may evolve into a group available to ICAO for consultation in the future.

2.2.7 The meeting endorsed the Report presented by WG 3 as providing an important contribution to the work of the SIP TF and agreed that the proposals contained therein should inform the further deliberations and recommendations of the SIP TF. Subject to the approval of the Secretariat, the meeting agreed that aspects of WG 3's activities should continue after the work of the SIP TF has been concluded. The final WG3 report is available at <https://portal.icao.int/SIPTF/SIP%20Library/SIP%20TF%20WG%203%20Final%20Report.pdf>. The presentation delivered on WG3's report and the listening session can be accessed at <https://portal3.icao.int/SIPTF/SIP%20Library/WG3%20report.pptx>, but a brief summary is presented at the Appendix to this agenda item.

2.2.8 The Vice-Chair provided a summary of the listening session held in Washington D.C. on 5 December 2012. Participants included Air Line Pilots Association (ALPA), Airlines for America (A4A), Flight Safety Foundation (FSF), Air Charter Safety Foundation, Airbus, Boeing, plaintiffs' lawyers, defense counsel, French counsel for DGAC France, 8 Ottobre Fondazione 2001 and the National Air Disaster Alliance. The main points addressed were as follows:

- a) The listening session presents a balanced perspective and a model for outreach and communication;
- b) Near consensus that information gathered for safety purposes should be used for safety purposes, and not for criminal/civil liability;
- c) ICAO Regional Aviation Safety Group – Pan America (RASG-PA) model legislation may be useful to States; and
- d) Broad consensus about the need for advance arrangements.

2.2.9 The meeting discussed the contributions of families of victims groups and the need to maintain open communications with such groups. Noting that some of these groups have expressed an interest in being involved in the investigation process, it was considered that this can be a very sensitive issue.

2.2.10 A participant in the listening session commented on the need to impose penalties in the event that provisions for the protection of information are violated, further indicating that a law without

enforcement mechanisms will not be effective. It was suggested that a recommendation related to this issue may be required from the SIP TF.

Recommendation 2/1 — WG3 ACTIVITIES

The Secretariat should determine the role of WG 3 following the completion of the SIP TF's work as well as a means to facilitate the dissemination of the SIP TF outcomes to ICAO Member States.

2.4 STATE, REGIONAL AND INTERNATIONAL DEVELOPMENTS

2.4.1 The Chair of the SIP TF opened the floor for SIP TF participants to offer brief comments on recent pertinent and significant developments related to the use and protection of safety information at the national, regional and international levels.

2.4.2 A participant nominated by the EU provided an update on the current revision of the legislation in place in Europe, including Directive 2003/42/EC on occurrence reporting in civil aviation. The purpose of revising the EU legislation is to contribute to the transition towards more proactive and evidence-based safety systems in the EU States. The legislative proposal contains a number of provisions limiting the use of safety information collected through occurrence reporting systems to the purpose of maintaining or improving aviation safety. In addition, it protects the reporter of the information from punishment except in cases of conduct amounting at least to gross negligence and includes a number of additional provisions aiming at ensuring the continued availability of safety information. The legislative proposal is currently under discussion and, subject to the applicable decision-making processes, the final legislation could be adopted around the end of the year. The presentation delivered can be accessed at: <https://portal3.icao.int/SIPTF/SIP%20Library/EU-Occurrence%20reporting.ppt>.

2.4.3 The Chair noted that while “gross negligence” is mentioned in this legislation, wilful misconduct is not. Another participant mentioned that the term “without prejudice” could prevent some States from taking appropriate remedial action, which is one responsibility of the regulator.

2.4.4 The Chair reflected that, while a general understanding of relevant concepts is important, in some cases definitions or specific descriptions are needed. For example, in so far as administrative action is concerned, it is important to make a clear distinction between remedial and corrective actions, on the one hand, and punitive or disciplinary actions, on the other. If definitions cannot be agreed upon, an alternative would be to describe the intent within the provisions.

2.4.5 In some cases, access to safety information may be needed to determine whether wilful misconduct or gross negligence has occurred. One participant expressed a concern with having the decision of what constitutes wilful misconduct or gross negligence be left to individuals who do not have the expertise to make such a determination. As these are decidedly legal concepts, it is important that these determinations be made by legally informed persons, if not necessarily made by the competent legal authorities in every case. There was no consensus regarding which authority should have the final determination. In the European environment, remedial actions are considered to be necessary and appropriate for the maintenance and improvement of safety and are considered neither prejudicial nor punitive. In addition, the proposed European legislation defines different levels of protection based on

each circumstance as opposed to defining the term “non-punitive”. The circumstances under which a reporter may be disciplined are clearly defined.

2.4.6 The European model was highlighted as an example of a system that has been tested and discussed among various authorities and one that has been implemented by independent judiciaries operating in different legal frameworks. It was suggested that the SIP TF should reflect upon this model in deciding how ICAO should consider development of policies and Standards related to the use and protection of safety information.

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APPENDIX

SUMMARY OF WG3 FINAL REPORT³

Findings and Recommendations

1. Need for training initiatives

Finding Training and education are part of the essential enablers for establishing a balanced long-term approach towards protecting safety data that takes into account the necessary interaction and interdependence between safety and judicial authorities.

Recommendation Long-term training should be conducted primarily in regional training initiatives that are ‘two-way,’ so that the law enforcement and the judiciary are trained in safety information principles and guidance and aviation personnel are trained in judicial principles.

ICAO should establish and regularly update a repository of training and education activities related to the relations of the judiciary and other interested parties with the protection of safety data. This repository should also include a list of qualified instructors. The repository should employ a ‘tool kit approach’ to make available ‘ready to use’ solutions in a variety of media (video, webinar, computer-based training, CDs, etc.), and encourage direct interaction between safety and judicial personnel.

2. Need for communication measures in the short-term

Finding WG 3 finds that stakeholder input, transparency and inclusiveness are key aspects to obtaining and protecting safety information. These concepts build bridges and trust from the affected community.

Recommendation WG 3 recommends that short-term communication should be focused on carefully planned and organized active listening sessions, following up on the listening session in December 2012, inviting interested parties/public to provide written and oral statements on the subjects under consideration. Special consideration and sensitivity is necessary if the outreach includes family/victims groups and it is recommended that communication to stakeholders is carefully coordinated and planned.

3. Need for communication measures in the long-term

Finding Due to continuously changing facts, circumstances and personnel, a clear need exists for continuous communication efforts to explain the principles and purposes of safety information, beyond the life-span of the SIP TF.

³ Except to the extent that they are expressly reflected in the Recommendations of the SIP TF, the Findings and Recommendations of WG3 should not be regarded as having been adopted by the SIP TF as a whole.

- Recommendation** Contracting States and stakeholders should coordinate and fund continued, long-term communication efforts on safety information protections.
- ICAO should play a clear role in ensuring continued, long-term outreach efforts on safety information protection, including sponsorship of appropriate tool kits, identifying qualified personnel to conduct communication sessions and identifying or sponsoring appropriate venues to discuss safety information protection.

4. Need for alternative means due to legal/jurisdictional limitations

- Finding** For a variety of reasons, notably legal and jurisdictional limitations, legislative or regulatory change to provide further protection of safety information may not be possible or will be limited.

- Recommendation** Contracting States should consider alternative means to protect safety information short of positive change in law, through increased dialogue and readily available reference material.

The Eurocontrol “Model Prosecution Policy” describes a useful template with a number of elements to be implemented unilaterally within national prosecutorial systems. It addresses the criminal investigation and prosecution processes related to civil aviation accidents and incidents which have been reported under mandatory or voluntary reporting schemes.

The most important provision of the Model Policy guidance is the recognition that no prosecution should be brought against individuals for actions, omissions or decisions that reflect the conduct of a reasonable person even when those actions, omissions or decisions may have caused an unpremeditated or inadvertent infringement of the applicable law.

It furthermore provides guidance material on the coordination between safety investigation bodies and judicial authorities (in line with EU regulation No 996/2010), and the protection of incident reports filed under mandatory and voluntary occurrence reporting schemes, accident and incident reports as well as witness declarations received in the context of safety investigations proceedings.

Several other useful examples exist at state or regional level to address protection of safety information within aviation legislation (e.g. EU Regulation 996/2010, model law developed by ICAO RASG-PA, draft Brazil legislation, new U.S. protection on freedom of information-type requests).

ICAO should create a repository to take the initiative to examine regional legal frameworks and initiatives to identify commonalities and existing best practices – with a view to developing model legal frameworks.

- Finding** It is of crucial importance that the safety and judicial authorities agree in advance the regime of access to safety information they want to apply in concrete cases; ad-hoc

decisions without such long-term perspective should be avoided.

Recommendation ICAO Contracting States should implement “advance arrangements” (ref. EU R996/2012, NTSB-FBI MOU) between aviation entities (AIBs, CAAs etc) and law enforcement, prosecutors, and judicial authorities.

5. Need for clear definition of Just Culture

Finding The Just Culture concept has great potential as a facilitator for a more balanced protection of safety information. However, stakeholders do not seem to have the same understanding of the concept. In order for the Just Culture concept to create the intended effects, its meaning and function should be clear to everyone. The general notion is that employees, particularly front-line employees, should be encouraged to come forward and admit mistakes or even non-compliance with aviation safety regulations in a non-judgmental atmosphere, without fear of undue reprisal, discipline, criminal sanction or [punitive] certificate action, unless those actions evidence gross negligence or wilful misconduct.

Recommendation ICAO and Contracting States should either accept the definition as described in the GA Res A37-2 and A37-3 of ‘just culture’ and communicate it broadly and clearly to avoid any misunderstanding, or arrive at alternative nomenclature that captures the intent of the creation and maintenance of a cultural environment conducive to the free flow of safety information, without fear of undue reprisal or unfounded judicial interference.

6. Need for permanence in the communication efforts

Finding Communication among the aviation industry and law enforcement, prosecutors and judicial authorities – when existing at all – has often been marked by infrequency and inconsistency.

Permanent frameworks for dialogue and information exchange are critical to ensure a continuous discussion among key contributors to safety information reporting and those who want to – or have to have – access to such information. The aim of such frameworks is to increase the understanding about the criticality of handling safety information in a way that does not discourage the reporters of such information.

Recommendation ICAO should encourage Contracting States to establish and use permanent frameworks to ensure a constructive and ongoing dialogue, among the contributors and users of safety information, about the criticality of handling safety information in a way which does not discourage the reporters of such information.

7. Need to make available expert support to judiciary

Finding A need exists to make available aviation expertise to the judiciary to ensure that their

decisions are based on sound technical understanding.

There is considerable interest from the part of the judiciary for the availability of advice and support from dedicated professionals on technical and operational matter in aviation matters.

Recommendation ICAO should encourage Contracting States to establish at a regional level courses for educating experts in interacting with the judiciary and create a pool of dedicated experts. ICAO should provide coordination and support to these activities.

8. Need for alternative communication efforts

Finding WG 3 has found that while mechanisms for safety information protection and the promotion of this issue generally exist, there is also room to promote greater awareness on the issue among the various stakeholders, such as prosecutorial and judicial authorities, accident victims' groups and the public in general. The level of implementation of safety information protection mechanisms and promotional measures can vary from State to State, due to differences between States' legal systems and stakeholder perceptions. Therefore at the global level, the authorities would have tried various means to better advocate safety information protection. There is potential to learn from one another's experiences.

Recommendation In addition to the existing methods currently in use, ICAO and its Contracting States should consider the use of innovative communication channels. WG 3 recommends that Contracting States consider additional or alternative ways to reach out to the various parties. WG 3 recommends that ICAO Contracting States continually share their experiences in implementing awareness measures and insights on dealing with stakeholders at regional and global levels. E.g. at RASG meetings, at ICAO safety conferences etc.

9. Need for studies and follow-up of effects

Finding Further evidence of the positive safety effects of voluntary and mandatory occurrence reporting is likely to strengthen the protection of safety information. Any communication about the issues involved will be strengthened if backed up by the results of research studies that clearly show the positive effects of a better balance between using safety and the appropriate administration of justice.

Recommendation ICAO and Contracting States should identify existing studies/research that support the nexus between safety information protection and the development of safety strategies and mitigation measures that enhance safety.

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Agenda Item 3: Information generated through accident and incident investigations**3.1 GENERAL**

3.1.1 Under this agenda item, the SIP TF considered proposals to recommend new provisions and/or amendments to existing SARPs, definitions and guidance material, including Attachment E to Annex 13, related to the use and protection of information generated by and through the conduct of accident and incident investigations. This type of information includes that collected and/or generated by an investigation authority as well as information contained in mandatory accident and serious incident notifications reported pursuant to, or consistent with, Annex 13. Relevant submissions related to the transfer of the provisions contained in Chapter 8 to Annex 13 to Chapter 5 of the proposed Annex 19 were also considered under agenda item 3.

3.1.2 Participants presenting papers at the meeting provided a brief introduction on their content to the meeting. The Chair noted the subtle, but important, differences between information generated through accident investigation and through safety management activities, and in circumstances where safety information is provided through mandatory or voluntary programmes. It was mentioned that a significant amount of information is collected through the operation of routine safety management activities, in addition to that which is collected through mandatory and voluntary reporting systems. It was agreed that, in considering the use and protection of such information, one needs to review the similarities and differences in the nature and sources of these kinds of safety information.

3.2 THE TERM “NON-PUNITIVE” AND RELATED CONSIDERATIONS

3.2.1 The Rapporteur of Thematic Working Group A (TWG A) explained the interrelationship of the 3 working papers (namely, SIPTF4-WP/3, SIPTF4-WP/11 and SIPTF4-WP/4) presented by TWG A and Thematic Working Group B (TWG B) group and thanked contributors for their input to these papers.

3.2.2 SIPTF4-WP/3 — *Definition of the term “non-punitive”*, presented by the SMP-WG4 Rapporteur, discusses the notion of the term “non-punitive” found in Standard 5.3.1 of the proposed Annex 19. The SMP discussed the need to define the term and proposed certain definitions included in this paper. The SMP requested the SIP TF to review the comments and proposals presented in this paper regarding the definition of the term “non-punitive” and to propose a definition or an alternative term to be considered by the SMP for the first amendment to the proposed Annex 19.

3.2.3 SIPTF4-WP/11 — *Non-Punitive environment of reporting* presented by the TGW B discussed the provisions necessary to ensure a continued availability of safety information to allow the appropriate authorities to identify potential or actual safety hazards, and adopt the necessary measures for the enhancement of aviation safety. In that context, this paper assessed the appropriateness of Standard 8.3 of Annex 13 (Standard 5.3.1 of the proposed Annex 19) and its related notes. It also analyzed whether there is a necessity to extend the non-punitive environment beyond voluntary reporting and in particular to mandatory reporting. This paper presented two elements that are required to establish the confidence of all actors in the system and to ensure their participation. Firstly, it stated that the existence of rules ensuring that the use of the information will, as a principle, be limited to the purpose of maintaining or enhancing the level of aviation safety. Secondly, this paper outlined that the system should be designed such that aviation professionals are not punished for actions, omissions or decisions taken by them that are commensurate with their experience and training, except in cases of gross negligence, wilful violations and destructive acts. It recognized, however, that neither of these principles should prevent the

authorities with responsibilities in the field of aviation safety from having access to and using such information, to the extent necessary for the achievement of their safety-related objectives, and to facilitate the adoption of measures necessary for maintaining or improving aviation safety. Finally, it included recommendations to the SIP TF for modifying Standard 8.3 of Annex 13 (Standard 5.3.1 of the proposed Annex 19) to better contribute to the maintenance and improvement of aviation safety. This paper invited the SIPTF to consider, as an action, to consider the amendment proposed in the Appendix regarding the modification of Standard 8.3 of Annex 13 (Standard 5.3.1 of the proposed Annex 19) and its related notes.

3.2.4 Considering the cultural and judicial differences of ICAO Member States, it was suggested that a broadly acceptable definition might be difficult to attain. Some considerations were also raised on different interpretations of the term “non-punitive”, which may relate to penalties in criminal, civil, administrative or disciplinary contexts, and may sometimes be seen as including consequences experienced as undesirable, but which are not intended to inflict punishment. It was also mentioned that the objective of the “non-punitive” concept is to allow for the constant flow of information. Limiting the notion of “non-punitive” through legislation and regulation to generate an environment for the appropriate use, disclosure and protection of information might produce better outcomes. It was further mentioned that a definition might not be the ideal mechanism to clarify matters. But in referring to the notion of “non-punitive”, a provision describing the nature and appropriate use and protection might better serve that purpose.

3.2.5 Strong support was expressed for the need to indicate in relevant provisions that remedial as well as disciplinary or administrative measures may follow on from the consideration of an incident report, whether submitted through voluntary or mandatory reporting systems.

3.2.6 One participant suggested that references to “non-punitive” be changed to refer to a “trust environment” that promotes an effective reporting culture. Supporting these views, another participant further suggested modifications to reflect restricting actions that may inflict blame or liability. A “trust-based environment” established by regulators and service providers was characterized as one that enables operational personnel to contribute information supporting proactive safety management activities. Strong support was expressed for the view that a definition of the term “trust environment” might not be enough to secure the effective reporting of safety occurrences. Therefore, the SIP TF considered that descriptions or features of an environment of trust may be included as principles in Chapter 5 in the proposed Annex 19 and Chapter 8 in Annex 13. The meeting discussed whether efforts to measure a “trust environment” would pose difficulties from an auditing perspective. It was further clarified that the term “non-punitive” does not preclude the use of administrative actions, and actions that some might characterize as disciplinary with the objective of maintaining or improving safety; however, it was further mentioned that transitioning from the term “non-punitive” to another term could result in conflicting assumptions and understandings about the kind of conduct contemplated. Some participants did not support defining the term “non-punitive”. Finally, the meeting also supported the notion that an environment of trust would include the reporting activities of operational personnel reporting to service providers as well as service providers’ reporting activities to the relevant authorities.

3.2.7 Summarizing the discussion on the term “non-punitive”, the Chair recalled the SMP’s request for a definition for the term, but acknowledged the SIP TF’s apparent preference to pursue an alternative course of action, whereby the parameters of acceptable and unacceptable uses of safety information might effectively identify the contours of use and protection appropriate to the circumstances. On this basis, a proposal was presented to revise Standard 5.3.1 in the proposed Annex 19. It was mentioned that the proposal would need to further describe “protection” and its related principles in guidance material or in an Appendix to delimit the principles of protection and principles of exception that are envisaged for the proposed provision.

3.2.8 SIPTF4-WP/4 — *Extension of the notion of “non-punitive” to a mandatory reporting system* presented by the SMP-WG4 Rapporteur introduced the notion of “non-punitive” beyond the context of voluntary reporting systems. During the work of the SMP for the development of the proposed Annex 19, a proposal to extend the notion of “non-punitive” to mandatory reporting systems was considered by the SMP. Support for this notion was received from IFALPA. The SMP requested the SIP TF to provide recommendations on whether provisions extending the notion of a non-punitive environment to mandatory reporting systems should be included in the first amendment of the proposed Annex 19.

3.2.9 A participant described the context in which reporting systems should be “non-punitive” under the scope of the proposed Annex 19, including mandatory and voluntary reporting systems. She mentioned that the provision in the proposed Annex 19 currently is addressed to States only; however, it was also noted that the notion of “non-punitive” voluntary reporting schemes should be applied to service providers’ activities as well. Questions were raised on the feasibility of implementing and enforcing a “non-punitive” environment within service providers’ organizations, as this might not be seen as properly within the ambit of aviation regulatory authorities. It was also noted that certain actions, characterized as “punitive” or “disciplinary”, may actually be taken to maintain or enhance safety, and it was important to distinguish those kinds of actions from their subjective characterization.

3.2.10 It was observed that, in certain jurisdictions, mandatory and voluntary incident reporting systems are subject to different levels of protection, and that this distinction may have utility. For example, in the U.S., greater protection is accorded to voluntarily provided information in the context of freedom of information laws, whereas mandatory reporting over items like failure, malfunction, or defects are routinely made available to the public and press. In support of this concept, several participants cautioned the SIP TF about extending the protection given to information obtained from voluntary reporting systems to information obtained from mandatory systems. The latter does not presently receive such protection. In this connection, it was recognized that such extensions might properly be subject to appropriate qualifications and limitations. It was noted that there is no existing definition of mandatory reporting in any of the ICAO Annexes. Some participants also raised the need to either create a definition for mandatory reports or establish criteria of what constitutes a mandatory report in order to be included in relevant Annexes and/or guidance material. The meeting also noted that certain States offer the same level of protection to mandatory and voluntary reporting schemes while in other jurisdictions voluntary reporting systems are granted stronger protections (e.g. EU Directive 2003/42).

3.2.11 Summarizing the discussion, the Chair noted that, as a default position, both mandatory and voluntary reporting systems might be afforded a general level of protection, with options and examples of the nature and extent of protection that might be provided in Notes or guidance material. In addition, he mentioned that States may specify levels of protection consistent with their legal requirements. He further acknowledged the general view of that a balance has to be struck between the continuous need to obtain accurate and complete reports and the need to rely, in some cases, on reported information to ensure that remedial action for the maintenance and improvement of safety can be taken.

3.2.12 The meeting agreed to further refine the proposal presented under this agenda item of extending the notion of “non-punitive” to mandatory reporting systems.

3.2.13 Due to the interrelation of the discussions held in this portion of the meeting. It was agreed that the final proposal on a recommendation for Standard 5.3.1 in the proposed Annex 19 would be included under Agenda Item 4.

3.3 DEFINITION OF THE TERM “SAFETY-RELATED PURPOSES”

3.3.1 SIPTF4-WP/5 — *Definition of “safety-related purposes” in differing contexts* was presented by the SMP-WG4 Rapporteur. The wording “safety-related purposes” is contained in Recommendation 5.3.2 and in Attachment B to the proposed Annex 19 as well as in Standard 5.12 to Annex 13. It is essential that safety data and safety information gathered and any subsequent analysis be used for the intended purpose. Provisions in Annex 13 specify that the collection and analysis of safety data is used to promote accident prevention while provisions in the proposed Annex 19 provide for the collection and analysis of safety data to support safety management activities. The scope of safety information protection should be addressed in the proposed Annex 19, and defining the term “safety-related purposes” will serve to clarify related provisions. Therefore, the SMP requested the SIP TF to provide a recommended definition of the term “safety-related purposes” in the context of: a) accident and incident investigations; b) safety management activities conducted by States (regulators); and c) safety management activities conducted by service providers.

3.3.2 Consideration was given to the ways in which the notion of “safety-related purposes” might usefully be clarified. It was mentioned that the term was vague and should be revised. The SIP TF agreed, however, that, whatever term(s) might ultimately be adopted, consideration should also be given to consistent use of the selected term in Attachment E to Annex 13 and in Attachment B to the proposed Annex 19. A participant suggested the use of the expression “maintaining and improving safety” as an alternative to “safety-related purposes”. An additional proposal was made to use “risk identification and mitigation actions”. In response to a participant’s query as to whether licensing or certificate actions taken by regulators would be included in such concept, the Chairman suggested that to the same extent such action was contemplated by the expression “maintaining and improving safety” and that mitigation measures would similarly include such actions.

3.3.3 SIPTF4-WP/7 — *Disclosure and Use of Accident Investigation Information* presented by TWG A addressed the circumstances in which accident investigation information could be disclosed and used for purposes other than accident investigation. The paper states that not all information obtained or generated in the course of an accident investigation should be given the same level of protection. This paper acknowledged that the variety and changing nature of the factors may need to be taken into account each time there is a proposal to disclose or use the information for purposes other than the accident investigation. This paper recommended that a balancing test similar to that in Standard 5.12 of Annex 13 be retained and that better support for the administration of the test be provided. It also outlined some proposed changes to Annex 13 to better ensure the support for the administration of the balancing test. This paper outlines different recommendations to improve Annex 13 and changes that will require further consideration and work by the SIP TF. The proposed amendments should be considered in conjunction with the alternate set proposed in SIPTF/4-WP/8. This paper invited the SIP TF to consider the proposed changes as well as to review and agree to the amendments proposed to Annex 13 or to revise them as considered necessary as included in Attachment A.

3.3.4 In particular, SIPTF/4-WP/7 indicates that there is a need to allow States more flexibility to determine the authority that will make the decision on disclosing information for use in judicial, administrative and disciplinary proceedings, as well as for use within the safety system and by the public more generally. Rather than using the term “appropriate authority for the administration of justice” to designate the decision for the current balancing test in Standard 5.12, the SIP TF suggested that the term “competent authority” be used instead. This resolution would ensure consistency with the language adopted in Standard 5.3.2 of the proposed Annex 19, where a similar balancing test is to be applied with respect to disclosure of information. A suggestion was also made for States to enact legislation that introduces the balancing test and its related processes. Concrete legislative initiatives were mentioned, including the RASG-PA model law and the EU Directive 996/2010.

3.3.5 It was mentioned that certain reporting programmes may provide the sole source of certain kinds of safety information. In order to maintain confidence in these reporting mechanisms, safeguards would need to be put in place to prevent the use of this information as evidence in court proceedings. A comment was raised about the need to protect individuals that are referenced in reports as well as the holders or repositories of safety information, which may differ from the original sources.

3.3.6 Summarizing the discussion, the Chair suggested that the term “maintaining and improving safety” might be further developed, while elaborating on particular details for each activity through relevant Notes and guidance material (e.g. risk identification and mitigation measures for the proposed Annex 19 and accident prevention for Annex 13). It was also reiterated that “maintaining and improving safety” would not prevent regulatory authorities from taking remedial, corrective and protective actions to this end provided that they were on the demonstrable interests of safety. The SIP TF recommended that considerations agreed during this agenda item be incorporated into the final recommendation on Standard 5.12.

3.4 CONSIDERATION OF THE SECTION “NON-DISCLOSURE OF RECORDS”

3.4.1 The SIP TF considered proposed amendments to Standard 5.12 in Annex 13 as presented in SIPTF/4-WP/7. The proposal was modified to include the agreements already reached by the Task Force, as referred in Section 3.2 above. It was suggested that the Secretariat identify and propose consequential amendments that may be needed in other ICAO Annexes, including Appendices and Attachments, to reflect the change from the term “appropriate authority for the administration of justice” to “competent authority”. Due to the modifications suggested in the proposal, it was agreed that the proposed provision 5.12.1, as presented in SIPTF/4-WP/7 would not be necessary. Concerns were raised regarding proposals to extend the scope of protection afforded to accident investigation material, and that the potential for differences would need to be discussed within the scope of these potential amendments as well to those that may be proposed to the proposed Annex 19.

3.4.2 A participant shared that the differences notified against Standard 5.12 related to the release of transcripts obtained from recordings. He further suggested removing the protection for those transcripts. It was clarified that under the proposed changes to Standard 5.12, the accident investigation authority could be considered a “competent authority” and be able to make the decision to disclose transcripts after conducting a balancing test in accordance with national legislation.

3.4.3 Consideration was also given to the proposed provision 5.12.2, as presented in SIPTF/4-WP/7, in order to request that States consider whether other accident and incident investigation records should be subject to the limitations on disclosure, as specified in Standard 5.12. It was mentioned that States may decide to further regulate the protection of records within their mandate without the need to create such a provision in Chapter 5 of Annex 13. However, as proposed in SIPTF/4-WP/7, guidance material could be used to identify other records that may require protections because of their sensitive nature in the context of different circumstances in which they might be disclosed and used.

3.4.4 Revisions were also proposed to Note 1 and an additional Note 2 for the purposes of aligning the objectives of the investigation, for the prevention of future accidents and the enhancement of safety. Two more Notes were proposed in SIPTF/4-WP/8 and included for the consideration of the SIP TF.

3.4.5 Consideration was also given to proposed 5.12.5, as presented in SIPTF/4-WP/7, having initial support from the SIP TF.

3.4.6 The Chair suggested, and the SIP TF agreed, that a small drafting group be constituted from among interested members of the SIP TF to further develop specific proposals based on the considerations raised during the meeting. Due consideration for the placement of provisions in relevant Annexes was raised given that the proposed Annex 19 was developed to include overarching provisions while the other Annexes should contain sector-specific provisions.

3.4.7 The drafting group presented for discussion proposed wording for the Section “*non-disclosure of records*” in Annex 13, including amended and new SARPs 5.12, 5.12.1, 5.12.2, 5.12.3, 5.12.4 and related Notes. Item 1 of the Appendix to the report in this agenda item depicts the work of the drafting group. A matter that was unresolved was the decision to split the records protected under Standard 5.12 into two subgroups. The intent of the split was to provide encompassing protection for cockpit voice and airborne imaging recordings no matter whose custody they were in. For other types of records it was suggested that the protections should only apply when they are in the custody of the accident investigator. The view was that the current Standard 5.12 goes too far in trying to protect information like medical and private information no matter whose custody it is in. The meeting also noted that this type of information should be subject to the protection under other national laws. The meeting raised concerns about the protection of safety information and the corresponding analysis made by the accident investigator, and discussed the possibility that this information might lose protection when it is transferred to another person or organization, such as an employer. Concerns were also raised about existing provisions in Annex 13, the protective ambit of which might be diminished by specific qualifiers, citing as an example limiting protections in paragraph b) of Standard 5.12 relating to “all communications between persons having involved in the operation of the aircraft”, to circumstances only where such communications are in the custody or control of the accident investigation authority. At the same time, it was recognized that many States would object to absolute and unqualified levels of protection. These considerations would need to be addressed deftly, if the likelihood that a great many differences to amended provisions would be notified.

3.4.8 Other changes to Standard 5.12 were then proposed. It was mentioned that affording absolute protection to all statements taken from persons by investigation authorities was almost impossible to achieve, as it falls outside the scope of Annex 13. A balancing test in Standard 5.12, similar to the text identified in Recommended Practice 5.3.2 in the proposed Annex 19, was also proposed. However, it was mentioned that, for a balancing test for be effective, it would require supporting guidance material to be developed in conjunction with the amendment of the Standard.

3.4.9 A participant noted the need for States to be able to ensure that requests for information in the custody of the accident investigation authority are directed to the original source of the information, at least in the first instance.

3.4.10 Concerns were expressed about the need to develop provisions by which States would be able to show effective implementation when monitoring activities under of the Universal Safety Oversight Audit Programme (USOAP) are conducted. The meeting noted that the Secretariat is moving towards developing implementation guidance material and audit protocol questions in tandem with the development of new requirements and agreed that appropriate guidance material would need to be developed for the new or enhanced provisions. The Chair confirmed that these concerns need to be preserved and duly considered by appropriate ICAO bodies analyzing the recommendations of the SIP TF.

3.4.11 The SIP TF agreed to recommend an enhanced Standard 5.12 and additional provisions for the “*non-disclosure of records*” as presented in Item 1 of the Appendix. However, the meeting agreed that Item 1 of the Appendix should be further considered in conjunction with the Accident Investigation (AIG) Section and not taken as finalized proposals at this time. In response to the suggestion that

amendments proposed by the SIP TF to Annex 13 should be considered by the AIG Divisional Meeting, which is tentatively scheduled to be held only in 2018, the SIP TF agreed that another appropriate study group, including selected SIP TF participants, under the ICAO AIG Section, and informed by the work of the TF, should be tasked to consider these recommendations.

3.4.12 Recommendation

3.4.12.1 In light of the foregoing discussion, the meeting developed the following recommendation:

RSPP | Recommendation 3/1 — SECTION “NON-DISCLOSURE OF RECORDS”

That the draft Section “*non-disclosure of records*”, including revised Standard 5.12 and additional provisions for Annex 13 as contained in Item 1 of the Appendix to this part of this Report be presented to the appropriate ICAO bodies, as recommended in paragraphs 3.4.10 and 3.4.11 above for its consideration.

3.5 NON-DISCLOSURE OF COCKPIT VOICE RECORDINGS (CVRs) AND COCKPIT AIRBORNE IMAGE RECORDINGS (AIRs)

3.5.1 The meeting discussed the public disclosure of CVRs and AIRs. The European example regarding the protection of these recordings subject to the balancing test and applicable legislation was mentioned. It was suggested that, if a provision were to be recommended in this connection, cross-references in the proposed Annex 19 and in Annex 6 may be required.

3.5.2 It was noted that accident investigations may benefit from having surviving crew members review recordings and that families of victims have, at times, requested access to the recordings.

3.5.3 The issue of ownership and control was discussed in relation to recorded data. Participants noted that ownership and control of the data is treated differently among States, as an example, the meeting was informed that the actual recordings are owned by the air operator but access controlled by the accident investigation authority during an investigation.

3.5.4 Participants supported the prohibition of use or dissemination of videos or recordings through the media in deference to privacy-related considerations. The meeting recognized that these considerations relate to CVRs and AIRs, only. The meeting acknowledged that while members of the ATC community may tend to regard ATC recordings as entitled to protection, the circumstances under which they are made, and the fact that they are broadcast over “public” radio frequencies in the first instance, militate against their characterization as “private”.

3.5.5 The meeting agreed to recommend a Standard that would prohibit the public dissemination of video or audio content of CVRs and AIRs. However, it was further clarified that publication of transcripts would be subject to national laws consistent with States’ practices.

3.5.6 It was noted that SIPTF4-WP/6 — *Protecting flight recorder recordings in day-to-day operations* invited the SIP TF to draft provisions to protect the recorders and light-weight flight recorders in day-to-day operations. Duly considering the differences between the objectives served by different kinds of recording arrangements, the SIP TF suggested that an effort should be made to achieve the highest

practicable level of consistency among provisions in the proposed Annex 19 and in Annex 13 governing these issues.

3.5.7 The SIP TF recommended a Standard to restrict disclosure of recordings and that the availability of their analysis to the public should be governed by an overarching provision and proposed a Standard for this purpose as presented in Item 2 of the Appendix to this part of this Report. Given the importance that this provision would have in the context of accident investigation activities and day-to-day operations, the meeting recommended introducing this provision in Annexes 6 and 13 as well as the proposed Annex 19 and requested the Secretariat to consider whether inclusion in other Annexes or the development of appropriate cross-references would be necessary.

3.5.8 The meeting noted that certain recording systems may be subject to the same level of protection as cockpit audio recording systems and recommended that relevant ICAO bodies might consider identifying relevant systems that may be afforded protection. In addition, it was also recalled that there may be extraordinary circumstances, including acts of sabotage, in which it may be appropriate or inappropriate to allow such recordings to be publicly disclosed.

3.5.9 Recommendation

3.5.9.1 In light of the foregoing discussion, the meeting developed the following recommendation:

RSPP | Recommendation 3/2 — NON-DISCLOSURE OF CVRs AND AIRs

That the draft Standard as contained in Item 2 of the Appendix to this part of this Report be presented to the relevant ICAO bodies for their consideration for its inclusion in the relevant Annex(es).

3.6 COOPERATION WITH JUDICIAL AUTHORITIES

3.6.1 SIPTF4-WP/9 — *Cooperation with judicial authorities* presented by TWG A asserted that Annex 13 investigations cannot be used for purposes other than accident and incident prevention, which otherwise could have detrimental consequences on the progress of safety in air transportation. This paper discussed the need to formalize the relationships between the accident investigation authorities and the judicial authorities by upgrading the relevant provision in Annex 13, in order to limit the adverse effect that the dissemination of sensitive information related to the accident investigation could have on the future availability of safety information. This paper invited the SIP TF to consider, as an action, the amendment proposed in Attachment A regarding the strengthening of paragraph 5.4.3 of Annex 13 by upgrading its Note to a Recommendation in order to foster cooperation between the authorities conducting the investigations under the provisions of Annex 13 and the judicial authorities. This paper also invited the SIP TF to consider, as an action, adding the proposed Notes to support the formalization of this cooperation.

3.6.2 The proposal, which included the elevation of a Note into a revised Recommendation, was tabled along with the suggestion of including the notion of the establishment of “advanced arrangements” between aviation and judicial authorities in a Note. The meeting supported this proposal and recommended the further development of guidance material that would serve to assure the cooperation desired.

3.6.3 Although the proposal was presented for inclusion under Chapter 5 of Annex 13, the meeting further suggested that the Secretariat should decide whether it would be better located in Chapter 3 of Annex 13.

3.6.4 Recommendation

3.6.4.1 In light of the foregoing discussion, the meeting developed the following recommendation:

RSPP	Recommendation 3/3 — COOPERATION WITH JUDICIAL AUTHORITIES
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That the draft Recommendation as contained in Item 3 of the Appendix to this part of this Report be presented to the relevant ICAO bodies for their consideration for its inclusion in the relevant Annex(es).
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3.7 CONSIDERATION OF RECOMMENDATION 8.8

3.7.1 SIPTF4-WP/12 — *Views and recommendations of the United States representatives on SIPTF* presented by the SIP TF member nominated by the United States included multiple recommendations. Relevant to this agenda item, it was proposed to elevate current Recommendation 8.8 in Annex 13 to a Standard. The meeting supported this proposal.

3.7.2 Recommendation

3.7.2.1 In light of the foregoing discussion, the meeting developed the following recommendation:

RSPP	Recommendation 3/4 — CONSIDERATION OF RECOMMENDATION 8.8
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That the draft Standard as contained in Item 4 of the Appendix to this part of this Report be presented to the relevant ICAO bodies for their consideration for its inclusion in Annex 13.
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3.8 CONSIDERATION OF ATTACHMENT E

3.8.1 Recognizing the extensive discussions and thorough analysis conducted on Attachment B to the proposed Annex 19, the meeting suggested that more work needs to be done to analyze in depth Attachment E to Annex 13. It was mentioned that the relevant ICAO bodies to be tasked to conduct this analysis should consider the discussions and considerations raised by the SIP TF.

3.8.2 In particular, the meeting recommended that the relevant ICAO bodies reviewing Attachment E should consider its elevation into an Appendix, as suggested for Attachment B to the proposed Annex 19. A participant noted that in order to accurately reflect this change, Standard 5.12 of Annex 13 would have to be further analyzed so that the Standard and Appendix work consistently within each other. The participant further noted that the task force has not given this proposal sufficient attention to finalize the determination that the upgrade be made, and suggested that the relevant ICAO bodies make the final determination, informed by the work of the SIP TF.

3.8.3 In relation to additional guidance material, the meeting recommended that an official document, such as a manual or circular, on the protection of information may be developed by the SIP TF in case its continuation is deemed appropriate. This material can serve as a reference for Annex 13 and the proposed Annex 19. In this way, it was mentioned, the valuable work of the SIP TF will not be forgotten and that others can refer to the discussions and considerations raised.

3.9 ADDITIONAL CONSIDERATIONS

3.9.1 The meeting also considered extending the protection afforded to information received from other aviation authorities. This proposal was supported by participants and it was noted that practices in Europe contemplate the protection of information shared by other authorities. Further consideration of this issue should be taken by the relevant ICAO bodies working on this matter.

3.9.2 The meeting agreed that additional proposals presented in SIPTF/4-WP/7 should also be analyzed by the relevant ICAO bodies. These proposals included *inter alia* the definition of certain terms for different types of proceedings, including “judicial proceedings” and “administrative proceedings”, so that when a decision is being made in accordance with a balancing test the purpose for which information is being considered for release was clear.

3.9.3 Consistent with SIPTF/4-WP/7, the meeting agreed that a recommendation be made that ICAO or some other group maintain a database of significant decisions concerning the disclosure and use of protected records for purposes other than accident investigation. The development of this database was considered essential to the effective implementation of a balancing test. Consistency in the application of reasoning is critical, and this can best be achieved by allowing for reference to similar precedents.

APPENDIX

ITEM 1: Proposal for the Amendment of Section on “Non-disclosure of records” in Annex 13

5.12 The State conducting the investigation of an accident or incident shall not make the following records available for purposes other than accident or incident investigation, unless the appropriate competent authority for the administration of justice in that State designated by that State determines in accordance with national law that their disclosure or use outweighs the likely adverse domestic and international impact such action may will have on that or any future investigations:

- a) cockpit voice and airborne image recordings and any transcripts from such recordings;
- b) records in the custody or control of the accident investigation authority being:
 - 1) all statements taken from persons by the accident investigation authorities authority in the course of their its investigation;
 - 2) all communications between persons having been involved in the operation of the aircraft;
 - 3) medical or private information regarding persons involved in the accident or incident;
 - 4) recordings and transcriptions of recordings from air traffic control units; and
 - 5) cockpit airborne image recordings and any part or transcripts from such recordings; and
 - 5) analysis of and opinions about expressed in the analysis of information, including flight recorder information made by the accident investigation authority in relation to the occurrence of the accident or incident.

Note 1.— The State may designate that other accident and incident records may be subject to the same types of protections as those contained in 5.12. Attachment X [new Attachment to be developed] contains a list of the types of records usually obtained or generated by the accident investigation authority in the course of an investigation as well as an explanation of why a particular record may require protection.

Note 2.— Attachment [Doc XXX or Circular] contains examples of State legislation providing for the protection of accident and incident investigation information which may referred to for the purpose of 5.12.3.

5.12.1 These records in 5.12 shall be included in the final report or its appendices only when pertinent to the analysis of the accident or incident. Parts of the records not relevant to the analysis shall not be disclosed.

Note 1.— Information contained in the records listed above in 5.12, which includes information given voluntarily by persons interviewed during the investigation of involved in an accident or incident, could be utilized inappropriately for subsequent disciplinary, civil, administrative and criminal proceedings. If such information is distributed, it may, in the future, The disclosure or use of such information for purposes where the disclosure or use is not demonstrably necessary in the interests of safety may mean that, in the future, the information is no longer be openly disclosed to investigators. Lack of access to such information would impede the investigation process and seriously adversely affect flight aviation

safety.

Note 2.— The disclosure or use of accident investigation information in criminal, civil, administrative, or disciplinary proceedings or the public disclosure of the same information can have adverse consequences for persons or organizations involved in accidents and incidents leading to their reluctance or the reluctance of others, their reservation or the reservation of others to cooperate with accident investigation authorities in the future. A determination in accordance with 5.12 is designed to take account of these matters including whether the demonstrable interests of safety is a factor associated with one of these proceedings that would weigh in favour of disclosure or use.

Note 23.— Attachment E contains legal guidance for the protection of information from safety data collection and processing systems.

5.12.2 Recommendation.— *States should ensure that requests for information in the custody of the accident investigation authority are directed to the original source of the information.*

5.12.23 The names of the persons involved in the accident or incident shall not be disclosed to the public by the accident investigation authority.

5.12.4 Recommendation.— *States should cooperate to determine the disclosure or use limitations that will apply to information before it is exchanged between them for the purposes of an accident or incident investigation.*

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ITEM 2: Proposed provision for inclusion in relevant Annex(es), including Annex 6, Annex 13, and the proposed Annex 19.

X.X.X States shall prohibit the public disclosure of the video or audio content of cockpit voice recordings or cockpit airborne image recordings.

ITEM 3: Proposal to amend and upgrade the Note in Recommendation 5.4.3 in Annex 13 and additional Notes.

5.4.3 **Recommendation.**— *A State should ensure that any investigations conducted under the provisions of this Annex have unrestricted access to all evidential material without delay and are not impeded by administrative or judicial investigations or proceedings.*

~~— Note. —~~ **5.4.4 Recommendation.** ~~— The intent of this recommendation may be achieved through legislation, protocols or agreements between~~ *A State should ensure that the accident investigation authority and the judicial authorities cooperate with each other.*

Note 1.— This cooperation may be formalized through legislation, protocols, agreements or advanced arrangements between accident investigation and judicial authorities.

Note 2.— This cooperation between the accident investigation authority and judicial authorities may in particular cover the following subjects: access to the site of the accident; preservation of and access to evidence; initial and on-going debriefings of the status of each process; exchange of information; appropriate use of safety information; and resolution of conflicts.

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ITEM 4: Proposal to upgrade Recommended Practice 8.8 in Annex 13 to a Standard

8.8 ~~Recommendation.~~— In addition to safety recommendations arising from accident and incident investigations, safety recommendations may result from diverse sources, including safety studies. If safety recommendations are addressed to an organization in another State, they ~~should~~ **shall** also be transmitted to that State's accident investigation authority.

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Agenda Item 4: Information generated through safety management activities**4.1 GENERAL**

4.1.1 Under this agenda item, the SIP TF considered proposals to recommend new provisions and/or amendments to existing SARPs, definitions and guidance material, including the Attachment B to the proposed Annex 19, related to the use and protection of information generated by and through State safety management activities. This type of information includes that generated by or pursuant to the functions of an aviation regulatory authority and mandatory or voluntary occurrence reports collected by competent authorities of a State or an equivalent regional authority or agency. Relevant submissions related to the transition of Chapter 8 of Annex 13 into Chapter 5 of the proposed Annex 19 are be considered under agenda item 4.

4.1.2 The SIP TF also considered proposals to recommend new and/or amendments to existing SARPs, definitions and guidance material related to the use and protection of information generated by and through safety management activities conducted by service providers. This type of information includes that generated by or under programmes administrated by service providers, such as safety management systems (SMS) and safety data collection and processing systems (SDCPS).

4.2 PROVISIONS CONTAINED IN SECTION 5.3 OF THE PROPOSED ANNEX 19

4.2.1 The Chair opened the agenda item inviting the SMP-WG4 Rapporteur to recapitulate the WPs introduced under Agenda Item 3 that relate to this agenda item.

4.2.2 The meeting reopened the debate on the *term “non-punitive” and its related notions* and the *definition of the term “safety-related purposes”* considered under Agenda Item 3, including the recommendation made on Standard 5.3.1 in the proposed Annex 19. It was suggested, and broadly agreed, that Recommendation 5.2.2 should be elevated to a Standard with modified language to allow States to take administrative action for remedial, corrective and protective purposes where such action is necessary to maintain or improve safety. The meeting further reviewed an additional proposal presented in SIPTF/4-WP/11 on the same Standard and reiterated that the Secretariat should determine a means to develop a Note indicating that administrative enforcement action may need to be taken by regulators for remedial, corrective or protective purposes in the interest of safety under Standard 5.3.2 of the proposed Annex 19 and Standard 5.12 of Annex 13 in case the wording of proposed provisions would not suffice. Without rejecting the proposition, a participant indicated that underlining this point might impede the establishment of open reporting environments.

4.2.3 A participant raised the need to define the terms “gross negligence and wilful misconduct”. Another participant mentioned that formal definitions of these terms might not be ideal, because they may denote conduct that is defined and understood differently in each jurisdiction. It was also mentioned that an enforcement policy, such as the one established by the UK in the CAA’s *Mandatory Occurrence Reporting Scheme* (CAP 382), may communicate the remedial, corrective and protective enforcement actions civil aviation authorities may take. In this regard it was suggested that the SMP should look into the possibility of developing a similar enforcement policy requirement for inclusion in the proposed Annex 19.

4.2.4 Recognizing the importance of ensuring that safety-related action can be directed towards specific, identified and currently existing hazards, as well as potential and prospective threats to safety, the meeting agreed that the term “maintaining or improving safety” should be included in Standard 5.3.1

to capture both perspectives. Details could be elaborated through relevant Notes, the development of which could be undertaken by the Secretariat. In this connection, it was emphasized that the term “maintaining or improving safety” was calculated to help ensure aviation authorities would not be prevented from taking necessary remedial, corrective and protective measures in the interests of safety. Further, the meeting agreed that an editorial review would need to be conducted to include the term “maintaining or improving safety” instead “safety-related purposes” throughout relevant Annexes. It was also recommended that a Note be included in relevant Annexes and guidance material defining and explaining the phrase “maintaining or improving safety,” and specifically noting that it includes remedial, corrective, and protective measures by a regulator to address safety hazards and concerns, including those that may affect licensees or certificate holders.

4.2.5 In relation to Standard 5.3.1, the meeting considered two proposals that address considerations raised concerning the *term “non-punitive” and its related notions* as well as the *definition of the term “safety-related purposes”* under Agenda Item 3. The meeting discussed at length protections to be afforded to sources, limitations on the use of information, the relevance of protections to the employee/employer relationship, as well as the exceptions to protection in the case of manifest wrongdoings, violations, gross negligence and wilful misconduct.

4.2.6 In relation to Standard 5.3.1, the meeting discussed the possibility of affording the same level of protection to the sources of mandatory and incident reports and considered the impact that this protection may have if incorporated into a single provision. It was noted that affording a certain level of protection to the sources of mandatory reports may enhance their quality and quantity. Following extensive discussions on this matter, the meeting agreed to develop a Note indicating that States may choose to protect mandatory reports without establishing a specific requirement to do so. This would give States time to further consider the protection of mandatory systems. It was noted that additional guidance may be needed to define mandatory reporting systems so as to assist States in specifically determining the levels of protection to the sources needed. The meeting also considered an overarching provision to be supported by an Appendix including the principles of protection and principles of exception. Based on the considerations raised under Agenda Item 3 regarding the *term “non-punitive” and its related notions* and the *definition of the term “safety-related purposes”* that are complemented by the discussion held under this Agenda Item, the meeting continued working on a revised Standard 5.3.1, additional provisions and Notes to address the considerations raised.

4.2.7 Mindful of the reservations associated with the unqualified use of the expression and the misunderstanding such unqualified use can engender, and taking into consideration literature developed in Europe on “just culture”, the meeting recommended that the SMP should consider the wording recommended for Note 1 of 5.3.1 *bis*, in support of the principles underpinning the concept of a “just culture” environment, which is consistent with Assembly Resolution A37-3.

4.2.8 The meeting discussed at length the development of a provision to appropriately limit the use of information reported by operational personnel or organizations. It was agreed that this limit of use would be applied to voluntary reporting systems and Flight Data Analysis (FDA) programmes through a Standard. After considering differing practices of States on limiting the use of mandatory reports and consistent with discussions reflected in paragraphs 4.2.4 and 4.2.6 above, the meeting proposed the following text for a provision to be developed but did not reach an agreement on the level that that provision should have (Standard, Recommended Practice or Note).

[5.3.1 *quinques*] Unless a) otherwise provided by national law, b) a principle of exception referred to in Appendix 3 applies or c) it is necessary to maintain or improve safety, States [shall/should/are encouraged to] not allow information collected through the

systems referred to in 5.1.1 to be used against the person or organization making a report in criminal, civil, administrative or disciplinary proceedings.

4.2.9 After reviewing the additional provisions and Notes, references in paragraphs 4.2.4 and 4.2.6 of this Report, a suggestion was made that 5.3.1 *quarter* and *quinques* may be applicable to outputs from the information collected. However, it was also mentioned that the outputs are not yet defined, suggesting that it would be difficult to protect unknown outputs. It was recommended that the SMP would examine the outputs to determine whether levels of protection should apply, consistent with the conclusions and agreements reached during this meeting and reflected in this Report.

4.2.10 The meeting considered a proposal presented in SIPTF/4-WP/11 to elevate Recommendation 5.3.2 in the proposed Annex 19 to a Standard.

4.2.11 SIPTF4-WP/13 — *Recommendation 5.3.2 of Annex 19 and its Attachment B* presented by the TGW B discussed the need to include provisions in relation to the disclosure, protection and use of the information gathered from safety data collection and processing systems and, to that end, to find the proper balance between the different public interests involved. The paper proposed the use of a balancing test between these interests similar to the balance required by 5.12 in Annex 13. The paper further proposed that, with regard to Attachment B to the proposed Annex 19, the meaning of various legal concepts and principles should be clarified. The paper acknowledged that TWGB had no objection to retaining Attachment E in Annex 13 and including Attachment B in the proposed Annex 19. Nonetheless, the paper proposed that the content of both Attachments need to be reconsidered. The SIP TF was invited to consider, as an action, the amendments proposed in the Appendices to strengthen the provision 5.3.2 of the proposed Annex 19 by upgrading it from a Recommendation to a Standard, by modifying provision 5.3.2, and by proposing a new recommendation to encourage States to make use of appropriate arrangements, between those bodies entrusted with aviation accident investigation and those entrusted with the administration of justice. The paper also invited the SIP TF to consider the reformulation of the header/title of 5.3 in Appendix 2 and amendments to Attachment B in Appendix 3 including the elevation of existing guidance to Standards.

4.2.12 The Secretary of the SMP informed the meeting of the current wording approved by the ANC to be presented to the Council for adoption. She further indicated that discussions are taking place on the concept of “maintaining or improving safety” within the SMP.

4.2.13 The meeting agreed to recommend elevating Recommendation 5.3.2 in the proposed Annex 19 to a Standard with minor changes for its enhancement. The need to draft additional Recommendations to address the agreements reached during the meeting was also discussed.

4.2.14 SIPTF4-WP/10 — *Consideration of proposed Annex 19 Recommended Practice 5.3.2* presented by the SMP-WG4 Rapporteur indicated that the SMP agreed on the need for additional provisions related to the protection of safety management information in the context of Standards under 5.1 (Safety data collection) and 5.2 (Safety data analysis) of the proposed Annex 19. It was agreed that a Recommendation would be the best approach for the first edition of Annex 19. The SMP, through the Secretariat, requested input from the SIP TF. Although individual comments were received, no formal, unified position had yet been presented by the SIP TF. The Recommendation proposed by the SMP was amended by the ANC during the review process, based upon comments received during the consultation process. The nature of States comments received indicated a need for further review of this Recommendation. The SMP, and specifically SMP-WG4, requested the SIP TF to review Recommendation 5.3.2 in the proposed Annex 19 and to provide its recommendation for the first amendment of this Annex.

4.2.15 The meeting discussed and agreed on a draft provision 5.3.2, which included revisions to address the agreements reached during this meeting. Certain issues governing transparency, already addressed under national legislation on access to information, such as the U.S. Freedom of Information Act, were raised and discussed. These issues may hinder the effective implementation of the proposed provision if it does not allow for release of information under freedom of information legislation.

4.2.16 In relation to proposed provisions 5.3.3, and recalling the SIP TF's prior agreement to elevate the general principle contained in paragraph 2.3 of Attachment B into a Standard, it was suggested that this principle may be better placed in the elevated Appendix. The suggestion was supported by the SIP TF. An apparent inconsistency was observed in relation to proposed 5.3.3 and Note 1 of 5.3.1, but this was ultimately found to be complementary rather than contradictory.

4.2.17 SIPTF4-WP/14 — *The views of the International Air Transport Association (IATA)* presented by IATA addressed the importance of protecting voluntarily supplied safety information relating to both incidents and accidents. This paper highlighted a number of aspects that concern IATA with respect to the current inadequacies of safety information protection. This paper indicated that IATA and its member airlines support initiatives to protect information gathered for safety analysis and future preventive measures from use in civil or criminal proceedings and similar contexts. This paper invited the SIP TF to recommend, as an action, a Standard or Recommended Practice that requires States to develop and implement domestic legislation that protects the use of voluntarily submitted incident reports in civil, administrative or criminal proceedings. It further stipulated that the use of voluntarily submitted incident reports should only be permitted pursuant to a judicial determination and on condition that the information in question cannot be obtained from any other source, that its use is necessary to ensure that due process in the civil, administrative or criminal proceedings in question is respected, and that its use is subject to strict judicial safeguards, including protective orders in accordance with domestic law. Given the information contained in the paper, the meeting agreed to note the information contained therein.

4.2.18 SIPTF4-WP/12 — *Views and recommendations of the United States representatives on SIPTF* presented by the NTSB affirmed that, for voluntary reporting programs to be successful and generate meaningful safety data, certain protections must be established concerning the uses to which that data will be put and the extent to which it will be publicly disclosed. The paper asserted that the existing Standard found in Standard 8.3 in Annex 13 does not explicitly require protection of the information itself. While this presumably is implied, and the guidance in Attachment E addresses protection of safety information, this paper suggested that the Standard is not so clear. This paper recommends that the SIPTF request that the SMP review and recommend revisions to Attachment B of the proposed Annex 19. In addition, this paper recommended that the words "in accordance with their national legislation" be expanded to include regulations, orders, and perhaps other policy directives that might be determinative of, or otherwise influence, whether the value of disclosure outweighs the adverse impact release may have on aviation safety. This paper also provided for the use of certain safeguards such as protective orders or sealed records for data that is used or disclosed, depending on the circumstances surrounding the disclosure or intended use. This paper also invited the SIP TF to consider, as an action, the recommendations identified as outlined in paragraph 3 of this paper and review and agree to the proposed amendments to Annex 13 and the proposed Annex 19 as presented in Attachment A of this paper or revise them as considered necessary.

4.2.19 The meeting noted the proposals presented in SIPTF4-WP/12 and agreed to recommend for consideration, by the appropriate ICAO bodies, a Recommendation to afford protection to data submitted voluntarily, risk analyses, risk control and safety assurance in addition to certain upgrades from Notes to Recommendations.

4.2.20 Based on the discussions held on the subject, the meeting proposed four new provisions, the elevation of two Recommendations into Standards, the elevation of two Notes into Recommendations, three modified provisions, three modified Notes and one new Note to be included in Chapter 5 of the proposed Annex 19, as presented in Item 1 of the Appendix to this part of the Report.

4.2.21 **Recommendation.**

4.2.21.1 In light of the foregoing discussion, the meeting developed the following recommendation:

RSPP | Recommendation 4/1 — PROVISIONS IN CHAPTER 5 OF THE PROPOSED ANNEX 19

That the draft provisions in Chapter 5 of the proposed Annex 19 as contained in Item 1 of the Appendix to this part of this Report be presented to the appropriate ICAO bodies for their consideration.

4.3 **CONSIDERATION OF ATTACHMENT B**

4.3.1 The meeting discussed modifications to Attachment B of the proposed Annex 19, including the elevation of certain principles to Standards or Recommended Practices as contained in the SIPTF/4-WP/8, SIPTF/4-WP/12 and SIPTF/4-WP/13. For efficiency purposes, the Chair tasked a drafting group to present a proposal on recommendations for amendments to Attachment B for consideration by the SIP TF.

4.3.2 The drafting group presented its proposals on Attachment B, which were discussed and revised by the meeting resulting in the following recommendations:

4.3.2.1 The meeting recommended that Attachment B be elevated to an Appendix with appropriate amendments. Following the discussions on various provisions suggested for inclusion in Chapter 5 of the proposed Annex 19, the SIP TF revised the content of the proposed Appendix and recommended certain clarifying revisions to its content to avoid duplications and inconsistencies.

4.3.2.2 Certain changes throughout the document were suggested to incorporate the conceptual changes discussed and agreed in relation to the evolution of the term “safety-related purposes” to “maintaining or improving safety” and to include the protection to the sources of information. It was also recommended to transition from the concept of Safety Data Collection and Processing Systems (SDCPS) to “safety information” throughout the document.

4.3.2.3 Further, it was agreed that paragraph 1.1 of Appendix 3 be amended by the Secretariat to reflect the conclusions and resolutions following the last Assembly as well as the conclusions of the SIP TF, which addressed various issues related to the use, disclosure and protection of safety information.

4.3.2.4 Following a discussion on the expression “inappropriate use”, the meeting agreed to further consider the enhancement of this term, having regard to the recognition that proposed amendments to Chapter 5 and the proposed Appendix (currently Attachment B) to the proposed Annex 19 might make it unnecessary to define the term. It was agreed to add new text to the term as presented in the Appendix, Item 2 of this part of the Report.

4.3.2.5 In relation to the general principles, it was suggested to upgrade paragraph 2.3 to a Standard. After discussions on the elevation of the Attachment B into Appendix 3, it was agreed to maintain all relevant principles within the Appendix. It was also mentioned that amendments to Standards in Chapter 5 of the proposed Annex 19 intend to specify different levels of protection to mandatorily and voluntarily reports as well as collected data and information.

4.3.2.6 With regard to the principles of protection, the meeting discussed the possibility of elevating paragraph 3.2 to a Recommendation; and elevating paragraph 3.5 to a Standard with modifications and supported by a new Note. The meeting extensively discussed the need to include the notion of limiting the use of information to ensure the fairness of proceedings under the principle of protection contained in paragraph 3.5. It was also suggested that this use should be limited to ensure a determination of the issue in proceedings and to fulfil the obligation to maintain or improve safety. It was agreed to include in a Note the notion that authoritative safeguards may include limitations on the uses of safety information. The meeting recommended that WG3 should include examples of appropriate tools (limitations/restrictions, including what is meant with protective orders, seal dockets, etc.) in its work. The SIP TF members were invited to inform WG3 of any other suitable safeguards in place domestically. In relation to the new Note proposed, it was mentioned that this proposal may be more appropriately placed in Attachment E to Annex 13. It was also clarified that other safeguards may be proposed by States and that the sources of reports should be protected. It was noted that protection of sources of information is only afforded in connection with voluntary reports as prescribed in Standards 5.3.1 and 5.3.1 *bis* of the proposed Annex 19. A participant suggested that organizations collecting or analysing data may be protected as well and raised the need to revise the principles of protection and principles of exception. It was recalled that protection afforded to the use of voluntarily reports and information collected through FDA programmes by organizations is included in Standard 5.3.1 *quarter*.

4.3.2.7 In relation to the principles of exception, it was discussed whether paragraph 4 of Appendix 3 to the proposed Annex 19 should be revised to ensure consistency with proposed revisions to Standard 5.3.2. Similar considerations would need to be reflected in Attachment E to Annex 13. Revisions to this paragraph were discussed by the meeting taking into consideration the new provisions proposed in Chapter 5 as reflected in the Appendix to this Report.

4.3.2.8 With respect to public disclosure, the meeting discussed the need to elevate paragraphs 5.1 and 5.2 to Recommendations. It was also suggested that these Recommendations be proposed for incorporation into Annex 13. After discussions on the elevation of the Attachment B into Appendix 3 to the proposed Annex 19, it was agreed to maintain these provisions within the Appendix (see paragraph 4.3.2.5 above).

4.3.2.9 In relation to the Section 6, it was agreed to refer the proposed change of “SDCPS” to “safety information” to the SMP for its consideration.

4.3.2.10 In relation to the Section 7, the meeting considered whether this section is relevant to accident investigations only and should therefore be removed from the proposed Annex 19. It was recalled that this information may serve safety management activities as well as accident investigation purposes. Therefore, it was agreed that this Section should be retained in Annex 13 and in the proposed Annex 19, and that the SMP should be asked to consider whether the content of this Section is relevant for the proposed Annex 19.

4.3.2.11 The suggestion for a new Appendix 3 to the proposed Annex 19, as agreed by the SIP TF, is presented in the Appendix to this Report under Item 3.

4.3.2.12 In relation to Attachment E, the meeting noted the differences in scope of the activities considered by each Annex, i.e. Annex 13 and the proposed Annex 19. It was suggested that the Secretariat conduct a review of the proposed modifications to the current Attachment B of the proposed Annex 19 and recommended corresponding revisions to Attachment E of Annex 13 to avoid inconsistencies. In addition, the meeting suggested that the content of Attachment E to Annex 13 may be revised by the appropriate ICAO bodies, having regard to specialized nature of aircraft accident investigation. It was suggested that a Note may be developed by the Secretariat to indicate whether Appendix 3 to the proposed Annex 19 or Attachment E to Annex 13 prevails in case of conflict.

4.3.3 **Recommendation.**

4.3.3.1 In light of the foregoing discussion, the meeting developed the following recommendation:

RSPP | Recommendation 4/2 — APPENDIX 3 TO ANNEX 19

That the upgraded draft Appendix 3 to the proposed Annex 19 as contained in Item 2 of the Appendix to this part of this Report be presented to the appropriate ICAO bodies for their consideration.

4.4 FLIGHT RECORDER RECORDINGS

4.4.1 SIPTF4-WP/6 — *Protecting flight recorder recordings in day-to-day operations* presented by the Secretariat on behalf of the Flight Recorder Panel (FLIRECP) addressed the current situation with regard to protection of recordings of flight recorders and light weight flight recorders in day-to-day operations. This paper recommended the introduction of provisions on the use of recordings obtained from: flight data recorder and aircraft data recording systems (FDA/ADRS); cockpit voice recorder and cockpit audio recording system (CVR/CARS); as well as airborne image recorder and airborne image recording system (AIR/AIRS). This paper also invited the SIP TF to consider, as an action, the arguments and proposals contained therein and draft provisions to protect the recorders and lightweight flight recorders in day-to-day operations.

4.4.2 The meeting discussed the level of protection to be afforded to FDA programmes. After noting the protection currently afforded to this programme in Annex 6, that seems to be in alignment with the protection afforded to voluntary reporting systems, the meeting agreed to revise the language of the proposed Standard 5.3.1 *quarter* to afford protection to the FDAs.

4.4.3 The meeting noted that the agreements reached on the non-disclosure of CVRs and AIRs to the general public as reflected in Agenda Item 3 of this Report were consistent with the arguments presented in SIPTF/4-WP/6. Due to specificities of the protection to be afforded to recordings used in day-to-day operations, the meeting agreed that a proposal as presented in the Appendix, Item 3 of this part of this Report, should be also referred to the appropriate ICAO bodies for consideration. Furthermore, the SIP TF agreed that a cross-reference to the principles of protection and principles of exception proposed to be included in Appendix 3 to the proposed Annex 19 should be considered as well by the relevant ICAO bodies.

4.4.4 In recognition of the interrelation of this subject with different Panels and other groups of experts, it is suggested to develop a coordination mechanism for the development of these Standards to enhance harmonization of provisions being developed.

4.4.5 **Recommendation.**

4.4.5.1 In light of the foregoing discussion, the meeting developed the following recommendation:

RSPP | **Recommendation 4/3 — FLIGHT RECORDER RECORDINGS**

That the draft provisions to Annex 6 as contained in Item 3 of the Appendix to this part of this Report be presented to the relevant ICAO bodies for their consideration.

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APPENDIX

ITEM 1: Provisions in Chapter 5 of the proposed Annex 19

CHAPTER 5. SAFETY DATA COLLECTION, ANALYSIS AND EXCHANGE

Note.— The objective of these specifications is to support safety management activities by collection and analysis of safety data and by a prompt and secure exchange of safety information, as part of the SSP.

5.1 Safety data collection

Reporting systems

5.1.1 Each State shall establish a mandatory incident reporting system to facilitate collection of information on actual or potential safety deficiencies.

5.1.2 Each State shall establish a voluntary incident reporting system to facilitate collection of information on actual or potential safety deficiencies that may not be captured by the mandatory incident reporting system.

5.1.3 **Recommendation.**— *Subject to Standard 5.3.1, State authorities responsible for the implementation of the SSP should have access to appropriate information available in the incident reporting systems referenced in 5.1.1 and 5.1.2 to support their safety responsibilities.*

Note—1.— State authorities responsible for the implementation of the SSP include accident investigation authorities.

5.1.4 **Recommendation.**— *Each State ~~is encouraged to~~ should establish other safety data collection and processing systems to collect safety information that may not be captured by the incident reporting systems mentioned in 5.1.1 and 5.1.2 above.*

5.2 Safety data analysis

5.2.1 Each State shall establish and maintain a safety database to facilitate the effective analysis of information on actual or potential safety deficiencies obtained, including that from its incident reporting systems, and to determine any actions required for the enhancement of safety.

Note.— The term “safety database” may refer to a single or multiple database(s) and may include the accident and incident database. Provisions on an accident and incident database are included in Annex 13 – Aircraft Accident and Incident Investigation. Additional guidance on a safety database is also included in the Safety Management Manual (SMM) (Doc 9859).

5.2.2 **Recommendation.**— *Each State ~~should~~ shall, following the identification of preventive, corrective or remedial actions required to address actual or potential safety deficiencies, implement these actions and establish a process to monitor implementation and effectiveness of the responses.*

Note.— Additional information on which to base preventive actions may be contained in the Final Reports on investigated accidents and incidents.

5.2.3 **Recommendation.**— *The database systems should use standardized formats to facilitate data exchange.*

Note.— *Each State is encouraged to use an ADREP-compatible system.*

5.3 Safety data protection

Note.— ~~Attachment B~~ Appendix 3 contains legal ~~guidance~~ principles for the protection of safety information ~~from safety data collection and processing systems.~~

5.3.1 ~~A voluntary incident reporting system shall be non-punitive and afford protection to the sources of the information.~~ Each State shall take all necessary measures to encourage the reporting of incidents through the systems referred to in 5.1.1 and 5.1.2.

~~Note 21.~~— [Renumbering is required] **Recommendation.**— ~~States~~ Each State ~~are encouraged to~~ should facilitate and promote the ~~voluntary~~ reporting of events that could affect aviation safety by adjusting their applicable laws, regulations and policies, as necessary.

5.3.1 bis A voluntary incident reporting system shall afford protection to the sources of information in accordance with the principles of protection and exception enclosed in Appendix 3.

Note 1.— A ~~non-punitive environment,~~ reporting environment where employees may trust that their actions or omissions that are commensurate with their training and experience will not be punished is fundamental to voluntary reporting.

Note 2.— The protection referred to in 5.3.1 bis may be extended to mandatory incident reporting systems.

Note 3.— Guidance related to both mandatory and voluntary incident reporting systems is contained in the Safety Management Manual (SMM) (Doc 9859).

5.3.1 quater Unless ~~otherwise provided by national law,~~ a principle of exception referred to in Appendix 3 applies or it is necessary to maintain or improve safety, each State shall not allow information collected through the systems referred to in ~~5.1.1, 5.1.2~~ or a flight data analysis program in Annex 6, to be used against the person or organization making a report, or subjects of the flight data analysis, in criminal, civil, administrative or disciplinary proceedings.

5.3.2 **Recommendation.**— ~~States~~ Each State ~~should~~ shall not make available or use safety data referenced in 5.1 or 5.2 for other safety-related purposes than maintaining or improving safety, unless ~~exceptionally,~~ an competent appropriate authority determines in accordance with their national legislation laws, the value of its disclosure or use ~~in any particular instance,~~ outweighs the likely adverse impact such action ~~may~~ will have on aviation safety.

5.3.4 **Recommendation.**— *Each State should afford appropriate protections in accordance with their national laws to voluntarily submitted data, risk analyses, risk control and safety assurance data produced under an safety management system accepted by the State.”*

5.3.5 **Recommendation.**— *In any case and in support of the determination referred to in 5.3.2, each State should make use of appropriate advance arrangements that could be concluded between the authorities and State bodies entrusted with aviation safety and those entrusted with the administration of justice. Such arrangements shall take into account the principles laid down in Appendix 3.*

5.4 Safety information exchange

5.4.1 **Recommendation.**— If a State, in the analysis of the information contained in its database, identifies safety matters considered to be of interest to other States, that State ~~should~~ shall forward such safety information to them as soon as possible.

5.4.2 **Recommendation.**— Unless national laws provide otherwise, each State ~~should~~ shall promote the establishment of safety information sharing networks among users of the aviation system and should facilitate the free exchange of information on actual and potential safety deficiencies.

Note.— *Standardized definitions, classifications and formats are needed to facilitate data exchange. Guidance material on the specifications for such information-sharing networks are available from ICAO.*

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ITEM 2: Proposal for Appendix 3 to Annex 19**~~ATTACHMENT B~~ APPENDIX 3. ~~LEGAL GUIDANCE FOR THE PRINCIPLES FOR THE PROTECTION OF SAFETY INFORMATION FROM SAFETY DATA COLLECTION AND PROCESSING SYSTEMS~~***(See Chapter 5, 5.3)***1. Introduction**

1.1 The protection of safety information from inappropriate use is essential to ensure its continued availability, since the use of safety information for other than safety-related purposes may inhibit the future availability of such information, with an adverse effect on safety. This fact was recognized by the 35th Assembly of ICAO, which noted that existing national laws and regulations in many States may not adequately address the manner in which safety information is protected from inappropriate use.

[Text to be amended by the Secretariat to make reference to A37-X and the work of the SIP TF]

1.2 The ~~guidance principles~~ contained in this ~~Attachment Appendix~~ is ~~are~~ therefore aimed at assisting States to enact national laws, ~~and~~ regulations and policies to protect safety information ~~gathered from safety data collection and processing systems (SDCPS)~~ and related sources, while allowing for the proper administration of justice and necessary actions for maintaining and improving safety. The objective is to prevent the inappropriate use of information collected solely for the purpose of ~~maintaining and improving aviation safety~~.

1.3 Because of the different legal systems in States, the ~~legal guidance principles~~ must allow States the flexibility to draft their laws and regulations in accordance with their national policies and practices.

1.4 ~~The guidance contained in this Attachment Appendix, therefore, takes the form of a series of principles that have been distilled from examples of national laws and regulations provided by States. The concepts described in these principles could be adapted or modified to meet the particular needs of the States enacting laws, and regulations and policies to protect safety information and related its sources.~~

1.5 Throughout this ~~Attachment~~ Appendix:

- a) *safety information* refers to the information qualified as such by a standard ~~contained in SDCPS established for the sole purpose of maintaining and improving aviation safety, and qualified for protection under specified conditions in accordance with 3.1 below;~~
- b) *inappropriate use* refers to the use of safety information for purposes different from the purposes for which it was collected, namely, use of the information for disciplinary, civil, administrative and criminal proceedings against operational personnel, and/or disclosure of the information to the public. The use of such information for demonstrably safety-related purposes by the safety regulator in administrative actions and related proceedings, the use of information in accident and incident investigations, or in safety studies, are not considered inappropriate use;

~~e) SDCPS refers to processing and reporting systems, databases, schemes for exchange of information, and recorded information and may include:~~

- ~~1) records pertaining to accident and incident investigations, as described in Annex 13, Chapter 5;~~
- ~~2) mandatory incident reporting systems, as described in Chapter 5, Section 5.1;~~
- ~~3) voluntary incident reporting systems, as described in Chapter 5, Section 5.1; and~~
- ~~4) self disclosure reporting systems, including automatic data capture systems, as described in Annex 6, Part I, Chapter 3, as well as manual data capture systems.~~

2. General principles

~~2.1 The sole purpose of protecting safety information from inappropriate use is shall be to ensure its continued availability so that proper and timely preventive, corrective or remedial actions can be implemented taken and aviation safety improved.~~

2.1 It is not the purpose of protecting safety information to ~~shall not be to~~ interfere with the proper administration of justice in States.

2.2 National laws and regulations protecting safety information ~~should~~ shall ensure that a balance is struck between the need for the protection of safety information in order to maintain or improve aviation safety and for the purpose of administration of justice.

~~2.4 National laws and regulations protecting safety information should shall prevent its inappropriate use.~~

~~2.5 Providing protection to qualified safety information under specified conditions is shall be part of a State's safety responsibilities.~~

3. Principles of protection

~~23.1 The sole purpose of protecting safety information from inappropriate use is shall be to ensure its continued availability so that proper and timely preventive, corrective or remedial actions can be implemented taken and aviation safety improved or maintained.~~

~~3.1 Safety information should shall qualify for protection from inappropriate use according to specified conditions that should include, but not necessarily be limited to whether the collection of information was for explicit safety purposes and if the disclosure of the information would inhibit its continued availability.~~

3.2 The protection ~~should~~ shall be specific for each SDCPS, based upon the nature of the safety information it contains.

3.3 A formal procedure ~~should~~ shall be established to provide protection to ~~qualified~~ safety information, in accordance with specified conditions.

3.4 Safety information ~~should~~ shall not be used in a way different from the purposes for which it was collected.

3.5 The use of safety information in disciplinary, civil, administrative and criminal proceedings ~~should~~ shall be carried out only under ~~suitable~~ suitably authoritative safeguards ~~to protect sources and limit uses of information provided by national law. Such use shall be limited to that which is necessary and relevant to ensure a determination of the issue of the proceeding fulfil the obligation to maintain or improve safety.~~

Note.— Authoritative safeguards referred in 3.5 include ~~appropriate~~ legal limitations or restrictions such as protective orders, closed proceedings, in-camera review, and de-identification of data for the use or disclosure of safety information in judicial or administrative hearings.

3.6 ~~Unless it is necessary to use the information to maintain or improve aviation safety, States shall not allow safety information coming from reporting systems referred to in 5.1.2 (and to be used against an individual or organization reporting that safety information.~~

4. Principles of exception

Exceptions to the protection of safety information ~~should~~ shall only be granted ~~by~~ under national laws and regulations when:

- a) a competent authority determines that the facts and circumstances reasonably indicate that the incident may have been caused by ~~there is evidence that the occurrence was caused by~~ an act considered, in accordance with the national laws, to be conduct ~~constituting with intent to cause damage, or conduct with knowledge that damage would probably result, equivalent to reckless conduct, gross negligence or wilful misconduct;~~
 - ~~b) an appropriate authority considers that circumstances reasonably indicate that the occurrence may have been caused by conduct with intent to cause damage, or conduct with knowledge that damage would probably result, equivalent to reckless conduct, gross negligence or wilful misconduct; or~~
 - ~~b)~~ e) a review by an ~~appropriate~~ competent authority determines that the release of the safety information is necessary for the proper administration of justice, and that its release outweighs the adverse domestic and international impact such release ~~may~~ is likely to have on the future availability of safety information;
- or;
- c) a review by a competent authority determines that that the release of the safety information is necessary for improving or maintaining safety, and that its release outweighs the adverse domestic and international impact such release may is likely to have on the future availability of safety information.

d) ~~the information reflects evidence of gross negligence or willful misconduct.~~

5. Public disclosure

5.1 Subject to the principles of protection and exception outlined above, any person seeking disclosure of safety information ~~should~~ **shall** justify its release.

5.2 Formal criteria for disclosure of safety information ~~should~~ **shall** be established and ~~should~~ **shall** include, but not necessarily be limited to, the following:

- a) disclosure of the safety information is necessary to correct conditions that compromise safety and/or to change policies and regulations;
- b) disclosure of the safety information does not inhibit its future availability in order to improve safety;
- c) disclosure of relevant personal information included in the safety information complies with applicable privacy laws; and
- d) disclosure of the safety information is made in a de-identified, summarized or aggregate form.

6. Responsibility of the custodian of safety information

Each safety database ~~should~~ **shall** have a designated custodian. It is the responsibility of the custodian of safety information to apply all possible protection regarding the disclosure of the information, unless:

- a) the custodian of the safety information has the consent of the originator of the information for disclosure; or
- b) the custodian of the safety information is satisfied that the release of the safety information is in accordance with the principles of exception.

Note.— Information on a safety database is included in the Safety Management Manual (SMM) (Doc 9859).

7. Protection of recorded information

Considering that ambient workplace recordings required by **national laws** ~~legislation~~, such as cockpit voice recorders (CVRs), may be perceived as constituting an invasion of privacy for operational personnel that other professions are not exposed to:

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- a) subject to the principles of protection and exception above, national laws and regulations ~~should~~ **shall** consider ambient workplace recordings required by ~~legislation~~ **national laws** as privileged protected information, i.e. information deserving enhanced protection; and
- b) national laws and regulations ~~should~~ **shall** provide specific measures of protection to such recordings as to their confidentiality and access by the public. ~~Such specific measures of protection of workplace recordings required by national laws~~ **legislation may include the issuance of orders of non public disclosure.**
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ITEM 3: Flight recorder recordings

1. Introduce the following Standard in ICAO Annex 6, Parts I, II and III:

X.X.X States shall prohibit the use of recordings of CVR, CARS, Class A AIR and Class A AIRS for other purposes than the investigation of an accident or incident by a State, except when all crew members involved consent.

Note.— Appendix 3 to Annex 19 contains legal principles for the protection of safety information.

2. Introduce the following Standard in Annex 6, Part I and Part III Section II (commercial air transport with aeroplanes and commercial operations with helicopters):

X.X.X States shall prohibit the use of recordings of FDR, ADRS, Class C AIR and Class C AIRS for other purposes than the investigation of accidents or incidents by a State, except in any of the following cases:

- a) the recordings are used by the operator for airworthiness or maintenance purposes;
- b) the recordings are de-identified;
- c) the recordings are disclosed under secure procedures; or
- d) all flight crew members involved consent.

Note.— Appendix 3 to Annex 19 contains legal principles for the protection of safety information.

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Agenda Item 5: Information generated by international and/or regional organizations**5.1 GENERAL**

5.1.1 Under this agenda item, the SIP TF considered proposals to recommend new provisions and/or amendments to existing SARPs, definitions and guidance material related to the use and protection of information generated by and through audit and related activities conducted by international and/or regional organizations. Where pertinent, consideration may be given to the use and protection of information generated by and through the audit and related activities conducted by non-government organizations.

5.1.2 SIPTF4-WP/15 — *Information generated by international and/or regional organizations* presented by Thematic Working Group D (TWG D) addressed proposals on the use and protection of information generated by and through the audit and related activities conducted by non-government organizations. This paper proposed that it would be premature to propose SARPs on the use and protection of information generated by and through audit and related activities conducted by international and/or regional organizations at this time. Further study of these issues may be appropriate. In addition, this paper proposed that ICAO should consider promoting exchange and sharing of information on the policies and best practices governing the use and protection of safety information among the organizations. This paper invited the SIP TF to consider and identify, as an action, which of the proposed recommendations of the other TWGs could be relevant and adjusted and developed into policies or guidance material for ICAO's internal use, and which ICAO may consider for exchanging and sharing with the organizations to strengthen international and regional policies and practices governing the use and protection of safety information. This paper also invited the SIP TF to consider, as a further action, the requests to be made to the ICAO Secretariat for the follow up action accordingly. Finally, this paper suggested that the SIP TF consider, as an action, development of the Recommendation as presented therein.

5.1.3 A participant stated that information in the hands of, or generated by, organizations should be afforded the same protection as that offered to the States under the principle of delegated authority. Another participant noted that the ICAO SARPs are directed to States and not to regional or international organizations; therefore, the development of an ICAO requirement for this type of information might not be feasible.

5.1.4 Following the discussion held under this agenda item, the meeting proposed the following provision for consideration of the appropriate ICAO bodies, noting it might be premature to develop a requirement on this regard at this time.

Recommendation.— *A State that authorizes another [public] body to undertake safety oversight activities on its behalf should ensure that the same level of protection that it would have provided is afforded by that body to safety information collected or generated by that body when carrying out such activities.*

Agenda Item 6: Review and approval of meeting report**6.1 GENERAL**

6.1.1 The SIP TF received a daily portion of the draft Report prepared by the Secretariat. Comments and suggestions to each daily portion were submitted in track-changes to the Secretariat, Chair and Vice Chair.

6.1.2 The meeting agreed that the Secretariat, in coordination with the Chair and Vice Chair, would prepare the next iteration of the Report to be submitted to SIP TF participants for comments to generate the final report of the meeting.

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Agenda Item 7: Any other business**7.1 GENERAL**

7.1.1 The Chair observed that all attendees at the meeting had the opportunity to raise important and pressing issues. Participants were encouraged to be vigilant in their review of the draft report. The Chair confirmed that WG3 would continue in existence, in the most appropriate form, and requested that WG3 members remain available for contact and communication.

7.1.2 The Chair thanked the SIP TF for engaging in the consideration of complex and controversial issues, in challenging circumstances, having particular regard to the sometimes significant differences in State practices in relation to the protection of safety information. The Chair confirmed that the SIP TF has pointed the direction to be taken on this subject, and expressed his confidence in other groups that may now turn their attention to these issues would seriously consider the input and recommendations of the SIP TF.

7.1.3 The Vice-Chair thanked the Chair for his work in leading a large group of individuals holding diverse views and working around the clock to prepare for the meetings. He further thanked the Secretariat and expressed appreciation for their work. The Vice-Chair confirmed that we have moved forward in protecting safety information and the next steps would be to consider training modules and breathing new life into these arrangements while awaiting final decisions by the Secretariat and other ICAO bodies.

7.1.4 The SIP TF Secretary expressed his thanks to the SIP TF participants for their substantial and continuous efforts and in particular to the Chair and Vice-Chair for leading the meetings as well as in organizing and defining the work of the SIP TF.

7.1.5 With no additional items for consideration, the meeting *adjourned* at 1000 hours.

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Reporting under the TSI Regulations

1. The *Transport Safety Investigation Act 2003* and TSI Regulations provide for a framework for reporting Immediately Reportable Matters (IRMs) and Routine Reportable Matters (RRMs). IRMs are the accidents and serious incidents the ATSB is most likely to investigate.
2. RRM are incidents that affect or have the potential to affect safety. The ATSB is unlikely to investigate them unless there are broader underlying safety factors. However, with the information gathered from RRM, the ATSB conducts research and analysis to identify trends and alert the industry about emerging safety issues.

Changes Proposed

3. The changes consulted on with industry would affect the terms on which IRMs and RRM are prescribed in the Regulations to provide for greater consistency with Annex 13 (Aircraft Accident Investigation) and Annex 19 (Safety Management Systems) to Convention on International Civil Aviation. The Annexes define:
 - Accidents as involving death, serious injury or serious damage;
 - Serious incidents as involving occurrences with circumstances indicating a high probability of an accident;
 - Incidents as involving occurrences which affect or could affect the safety of operation of an aircraft.
4. IRMs and RRM already align with these classifications. However, the Regulations do not consistently use language that reference safety consequence in the sorts of terms used in the ICAO documents. This can lead to difficulty in interpreting whether some occurrences should be reportable.
5. The proposal put to consultation in 2012 was to use terms to prescribe IRMs and RRM that more closely reflect the definitions of accidents, serious incidents and incidents provided for by ICAO. During the consultation some industry stakeholders were concerned to better understand how they would identify specific incidents that met the ICAO definitions.