



Australian Government

Civil Aviation Safety Authority

I, SHANE PATRICK CARMODY, Director of Aviation Safety, on behalf of CASA, make this instrument under paragraph 28BA (1) (b) and subsection 98 (4A) of the *Civil Aviation Act 1988*.

[Signed S. Carmody]

Shane Carmody
Director of Aviation Safety

13 August 2020

Civil Aviation Orders 82.3 and 82.5 Amendment Instrument 2020 (No. 1)

1 Name of instrument

This instrument is the *Civil Aviation Orders 82.3 and 82.5 Amendment Instrument 2020 (No. 1)*.

2 Commencement

This instrument commences on 14 December 2020.

3 Amendment of Civil Aviation Orders 82.3 and 82.5

Each Civil Aviation Order mentioned in the title of a Schedule to this instrument is amended in accordance with the Schedule.

4 References to Civil Aviation Orders

In this instrument, a reference to a Civil Aviation Order identified by a specified number includes a reference to the section of the Civil Aviation Orders with that number.

Note A Civil Aviation Order amended by this instrument is generally referred to as a Civil Aviation Order followed by a number but sometimes as a specified section of the Civil Aviation Orders. For consistency, this instrument refers to each instrument as a Civil Aviation Order followed by a number. For example, a reference to Civil Aviation Order 82.3 includes a reference to section 82.3 of the Civil Aviation Orders.

Schedule 1 Civil Aviation Order 82.3

[1] Subsection 1

substitute

1 Name of instrument

1.1 This instrument is *Civil Aviation Order 82.3 Instrument 2004*.

1.2 This instrument may be cited as *Civil Aviation Order 82.3*.

1.3 A reference in an instrument to section 82.3 of the Civil Aviation Orders is a reference to this instrument.

[2] **Subsection 1A**

substitute

1A Application of conditions

- 1A.1 This Order applies to certificates authorising regular public transport operations in other than high capacity aircraft.
- 1A.2 For the purposes of paragraph 28BA (1) (b) of the Act, the conditions set out in this Order are conditions subject to which a certificate to which this Order applies has effect.
- 1A.3 The conditions and obligations set out in this Order are in addition to the conditions set out in *Civil Aviation Order 82.0*.

1B Interpretation

Note In this Order, certain terms and expressions have the same meaning as they have in the *Civil Aviation Act 1988* and the regulations. These include **Chicago Convention**, **ICAO** and **operator**.

- 1B.1 In this Order:

Annex 19 means Annex 19, *Safety Management*, to the Chicago Convention.

approved safety management system or **approved SMS** means a safety management system approved by CASA under this Order.

CAAP means Civil Aviation Advisory Publication.

CAAP SMS package means the following CAAPs:

- (a) CAAP SMS-01, *Safety Management Systems for Regular Public Transport Operations*, as it exists from time to time;

Note The latest version of this CAAP as at the time *Civil Aviation Orders 82.3 and 82.5 Amendment Instrument 2020 (No. 1)* commenced is CAAP SMS-01 v1.1, dated October 2018.

- (b) CAAP SMS-2(0), *Integration of Human Factors (HF) into Safety Management Systems (SMS)*, as it exists from time to time;

Note The latest version of this CAAP as at the time *Civil Aviation Orders 82.3 and 82.5 Amendment Instrument 2020 (No. 1)* commenced is CAAP SMS-2(0), dated January 2009.

- (c) CAAP SMS-3(1), *Non-Technical Skills Training and Assessment for Regular Public Transport Operations*, as it exists from time to time.

Note The latest version of this CAAP as at the time *Civil Aviation Orders 82.3 and 82.5 Amendment Instrument 2020 (No. 1)* commenced is CAAP SMS-3(1), dated April 2011.

corrective action means action, the purpose of which is not punitive:

- (a) that is taken to address particular safety-related shortcomings or deficiencies such as an authorisation holder who is unable or unwilling to demonstrate compliance with applicable safety or competency standards; and
- (b) that may involve restricting, limiting, conditioning or suspending the ability of an authorisation holder to exercise the privileges of a civil aviation authorisation.

Note Examples of corrective action are requiring an individual authorisation holder to undertake training, and the introduction of changed processes or procedures by an organisation that holds an authorisation.

designated person for principles of exception means the person designated in the SMS of an operator to perform the function mentioned in subparagraph 2A.2 (h) for the operator.

FDAP means a flight data analysis program that complies with paragraph 2A.3.

human factors or **HF** means the minimisation of human error and its consequences by optimising the relationships within systems between people, activities and equipment.

ICAO Safety Management Manual means the latest edition of the document *Safety Management Manual*, ICAO Doc 9859, published by ICAO.

Note At the time *Civil Aviation Orders 82.3 and 82.5 Amendment Instrument 2020 (No. 1)* commenced, the latest edition of the ICAO Safety Management Manual is the 4th edition, 2018.

Non-technical skills means specific human competencies, including critical decision making, team communication, situational awareness and workload management, which may minimise human error in aviation.

preventive action means action, the purpose of which is not punitive:

- (a) that is taken to prevent the occurrence or recurrence of an event or a hazard that poses a risk to safety; and
- (b) that may involve restricting, limiting, conditioning or suspending the ability of an authorisation holder to exercise the privileges of a civil aviation authorisation.

Note Examples of preventive action are requiring an individual authorisation holder to undertake training, and the introduction of changed processes or procedures by an organisation that holds an authorisation.

principle of exception means paragraph 3 (a), (b) or (c) of Appendix 1A.

principle of protection means paragraph 2.2 (a) or 2.2 (b) of Appendix 1A.

remedial action means action, the purpose of which is not punitive:

- (a) that is taken to address the underlying causes of particular safety-related shortcomings or deficiencies; and
- (b) that may involve restricting, limiting, conditioning or suspending the ability of an authorisation holder to exercise the privileges of a civil aviation authorisation.

Note Examples of remedial action are requiring an individual authorisation holder to undertake training, and the introduction of changed processes or procedures by an organisation that holds an authorisation.

safety data means a defined set of facts or set of safety values collected from various aviation-related sources, which is used to maintain or improve safety.

Note Such safety data is collected from proactive or reactive safety-related activities, including but not limited to: accident or incident investigations, safety reporting, continuing airworthiness reporting, operational performance monitoring, inspections, audits, surveys, safety studies and reviews.

safety information means any safety data or information, in any form, generated within, or captured, collected or held by and within, an operator's approved safety management system, including personal information relating to individuals.

Note Some approved SMSs must include an FDAP — see subparagraph 2A.2 (e). An approved SMS may include other kinds of safety data collection and processing systems — subsection 2A.2 sets out minimum requirements for an SMS.

safety management system or **SMS** has the meaning given by paragraph 2A.1.

- 1B.2 A reference in this Order to a regulation identified by a number is a reference to the regulation in the *Civil Aviation Regulations 1988* identified by that number.

[3] Subsection 1AA

omit

[4] Subparagraph 2.1 (a), Note

substitute

Note CASA will have regard to the guidance contained in the CAAP SMS package and the ICAO Safety Management Manual when deciding whether to approve an SMS. **CAAP SMS package** and **ICAO Safety Management Manual** are defined in paragraph 1B.1.

[5] Subparagraph 2.1 (c), Note

substitute

Note CASA will have regard to the guidance contained in the CAAP SMS package and the ICAO Safety Management Manual when deciding whether to approve a program to train and assess personnel in human factors and non-technical skills.

[6] Paragraph 2.7

omit

[7] Subparagraph 2A.2 (e)

substitute

- (e) for an operator who operates an aircraft with a maximum take-off weight exceeding 27 000 kg — an FDAP;

Note **FDAP** is defined in paragraph 1B.1.

- (f) a documented process ensuring that safety information is:
- (i) not used, or made available for use, by the operator for purposes other than maintaining or improving safety; and
 - (ii) protected by the operator, in accordance with Appendix 1A;

Note An example of the use of safety information for the purpose of maintaining or improving safety is the collection, storage or analysis of safety information internally by an operator for preventive, corrective or remedial action to be taken by the operator for the maintenance or improvement of aviation safety.

- (g) the designation of an employee of the operator, or a person contracted by the operator, to perform the function of analysing operational flight data in accordance with procedures specified in the SMS;
- (h) the designation of an employee of the operator, or a person contracted by the operator, to perform the function of determining, in accordance with procedures set out in the SMS, whether or not a principle of exception mentioned in clause 3 of Appendix 1A applies, and who may have access to identity information solely for that purpose.

[8] Paragraph 2A.3

omit

For subparagraph 2A.2 (e), a FDAP

insert

An FDAP

[9] Subparagraph 2A.3 (d)

substitute

- (d) ensure that, other than in accordance with Appendix 1A:
 - (i) no disciplinary, punitive or related action is taken by the operator against a person who reports, or is the source or subject of, the operational flight data; and
 - (ii) the identity of a person who reports, or is the source or subject of, the operational flight data, or in relation to whom such data is reported, is protected from disclosure to anyone other than the designated person for principles of exception; and
- (e) enable the operator to use operational flight data recorded due to the operation of the FDAP for the maintenance or improvement of safety, in accordance with Appendix 1A.

Note 1 Subsection 2A does not restrict CASA's ability under civil aviation legislation to be provided with access or use safety information held by an operator. CASA has powers under CAR and CASR to issue notices to operators requesting specified documents or information, including safety information — see *Note 1* under subclause 2.2 of Appendix 1A.

Note 2 For the restrictions on the use by CASA of an operator's safety information — see CASA Directive 02-0053, *Limitations on the Use of Safety Information*, as it exists from time to time. At the time *Civil Aviation Orders 82.3 and 82.5 Amendment Instrument 2020 (No. 1)* commenced, the latest edition of the Directive had the effective date of July 2019.

[10] After subsection 2A

insert

2AA Obligations in relation to protection of safety information

An operator must protect all safety information of the operator in accordance with Appendix 1A.

Note See also subparagraph 2A.2 (f) for SMS requirements relating to the protection of safety information.

[11] After Appendix 1

insert

Appendix 1A

Subsections 2A.2, 2A.3 and 2AA

Protection of safety information

Note The requirements in this Appendix, and related provisions of the Order, implement Australia's obligations as a Contracting State under section 5.3 of Annex 19 to the Chicago Convention. These obligations relate to the protection of safety data and safety information, as defined in Annex 19. Section 5.3 of Annex 19 sets out standards and recommended practices for Contracting States.

1 Objective

The objective of this Appendix is to ensure the continued availability of safety information by restricting its use for purposes other than maintaining or improving aviation safety.

Note 1 **Safety information** is defined in paragraph 1B.1. In this Order, safety information includes **safety data** as defined in Chapter 2 of Annex 19.

Note 2 Operators may refer to Chapter 7 of the ICAO Safety Management Manual for guidance regarding the application of this Appendix. Chapter 7 sets out guidance for operators (“service providers”), aviation regulatory authorities and others regarding the implementation of the principles for the protection of safety data and information that are in Appendix 3 to Annex 19. This Appendix is based upon Appendix 3 to Annex 19.

2 Principles of protection

- 2.1 Subject to clause 3, an operator must comply with the principles of protection mentioned in subclause 2.2.
- 2.2 The principles of protection are:
- (a) the operator must not use safety information, or make safety information available for use, against an employee or operational personnel working under an arrangement with the operator, for disciplinary or punitive purposes; and
 - (b) the operator must not disclose or release, publicly or to any person outside the operator’s organisation, safety information from which the identity of the person who reported the information, or any person whose acts or omissions are reflected in the reported information, can be ascertained, unless:
 - (i) the safety information is voluntarily provided to CASA; or
 - (ii) the disclosure or release of the safety information is required by law; or
 - (iii) the person who reported the information and any other person named or identified in the safety information involved has given permission for the disclosure or release of the information.

Note 1 For subparagraph 2.2 (b) (ii), examples of circumstances where the disclosure or release is required by law are if CASA gives an operator a notice:

- (a) under regulation 301 of CAR — to surrender to CASA a specified document containing safety information; or
- (b) under regulation 11.075 of CASR — to give CASA specified safety information or a specified document containing safety information.

Note 2 Information regarding how CASA uses safety information that it obtains under the regulations, including for the purposes of enforcement of civil aviation legislation, is provided in CASA Directive 02-0053, *Limitations on the Use of Safety Information*, as it exists from time to time. CASA also has obligations under the *Privacy Act 1988* relating to personal information included in any safety information that it obtains.

Note 3 An operator may also have obligations under the *Privacy Act 1988* regarding the collection, use and disclosure of personal information included in safety information.

- 2.3 This clause does not prevent an operator from using safety information for the purposes of taking preventive, corrective or remedial action that is necessary to maintain or improve safety.

Note An example of the use of safety information for these purposes is its use by an operator for internal training purposes.

3 Principles of exception

An operator does not have to comply with a principle of protection if the designated person for principles of exception determines, in accordance with procedures set out in the SMS of the operator, that at least 1 of the following principles of exception applies in relation to the principle of protection:

- (a) there are facts and circumstances that reasonably indicate that the occurrence or event concerning which the safety information has been generated, captured, collected or held is likely to have been caused by an

act or omission constituting gross negligence, recklessness, or wilful and deliberate misconduct;

- (b) there are facts and circumstances that reasonably indicate that the occurrence or event reflected in safety information is part of a pattern of repetitive conduct, concerning acts or omissions involving the same or substantially similar conduct by the same person over a relevant period of time.

4 Action taken to maintain or improve aviation safety not disciplinary or punitive

For the purposes of clause 2, the use of safety information in support of action taken by an operator in accordance with this Appendix and the related provisions of this Order, for the purpose of maintaining or improving aviation safety, is not to be regarded or characterised as being for disciplinary or punitive purposes.

Schedule 2 Civil Aviation Order 82.5

[1] Subsection 1A

substitute

1 Name of instrument

- 1.1 This instrument is *Civil Aviation Order 82.5 Instrument 2004*.
- 1.2 This instrument may be cited as *Civil Aviation Order 82.5*.
- 1.3 A reference in an instrument to section 82.5 of the Civil Aviation Orders is a reference to this instrument.

[2] Subsection 1

substitute

1A Application of conditions

- 1A.1 This Order applies to certificates authorising regular public transport operations in high capacity aircraft.
- 1A.2 For the purposes of paragraph 28BA (1) (b) of the Act, each certificate authorising regular public transport operations in high capacity aircraft is subject to the condition that the obligations set out in this Order must be complied with.
- 1A.3 The conditions and obligations set out in this Order are in addition to the conditions set out in *Civil Aviation Order 82.0*.

1B Interpretation

Note In this Order, certain terms and expressions have the same meaning as they have in the *Civil Aviation Act 1988* and the regulations. These include **Chicago Convention**, **ICAO** and **operator**.

- 1B.1 In this Order:

Annex 19 means Annex 19, *Safety Management*, to the Chicago Convention.

approved safety management system or **approved SMS** means a safety management system approved by CASA under this Order.

CAAP means Civil Aviation Advisory Publication.

CAAP SMS package means the following CAAPs:

- (a) CAAP SMS-01, *Safety Management Systems for Regular Public Transport Operations*, as it exists from time to time;

Note The latest version of this CAAP as at the time *Civil Aviation Orders 82.3 and 82.5 Amendment Instrument 2020 (No. 1)* commenced is CAAP SMS-01 v1.1, dated October 2018.

- (b) CAAP SMS-2(0), *Integration of Human Factors (HF) into Safety Management Systems (SMS)*, as it exists from time to time;

Note The latest version of this CAAP as at the time *Civil Aviation Orders 82.3 and 82.5 Amendment Instrument 2020 (No. 1)* commenced is CAAP SMS-2(0), dated January 2009.

- (c) CAAP SMS-3(1), *Non-Technical Skills Training for Regular Public Transport Operations*, as it exists from time to time.

Note The latest version of this CAAP as at the time *Civil Aviation Orders 82.3 and 82.5 Amendment Instrument 2020 (No. 1)* commenced is CAAP SMS-3(1), dated April 2011.

corrective action means action, the purpose of which is not punitive:

- (a) that is taken to address particular safety-related shortcomings or deficiencies such as an authorisation holder who is unable or unwilling to demonstrate compliance with applicable safety or competency standards; and
- (b) that may involve restricting, limiting, conditioning or suspending the ability of an authorisation holder to exercise the privileges of a civil aviation authorisation.

Note Examples of corrective action are requiring an individual authorisation holder to undertake training, and the introduction of changed processes or procedures by an organisation that holds an authorisation.

designated person for principles of exception means the person designated in the SMS of an operator to perform the function mentioned in subparagraph 2A.2 (h) for the operator.

FDAP means a flight data analysis program that complies with paragraph 2A.3.

human factors or **HF** means the minimisation of human error and its consequences by optimising the relationships within systems between people, activities and equipment.

ICAO Safety Management Manual means the latest edition of the document *Safety Management Manual*, ICAO Doc 9859, published by ICAO.

Note At the time *Civil Aviation Orders 82.3 and 82.5 Amendment Instrument 2020 (No. 1)* commenced, the latest edition of the ICAO Safety Management Manual is the 4th edition.

non-technical skills means specific human competencies, including critical decision making, team communication, situational awareness and workload management, which may minimise human error in aviation.

preventive action means action, the purpose of which is not punitive:

- (a) that is taken to prevent the occurrence or recurrence of an event or a hazard that poses a risk to safety; and
- (b) that may involve restricting, limiting, conditioning or suspending the ability of an authorisation holder to exercise the privileges of a civil aviation authorisation.

Note Examples of preventive action are requiring an individual authorisation holder to undertake training, and the introduction of changed processes or procedures by an organisation that holds an authorisation.

principle of exception means paragraph 3 (a), (b) or (c) of Appendix 1A.

principle of protection means paragraph 2.2 (a) or 2.2 (b) of Appendix 1A.

remedial action means action, the purpose of which is not punitive:

- (a) that is taken to address the underlying causes of particular safety-related shortcomings or deficiencies; and
- (b) that may involve restricting, limiting, conditioning or suspending the ability of an authorisation holder to exercise the privileges of a civil aviation authorisation.

Note Examples of remedial action are requiring an individual authorisation holder to undertake training, and the introduction of changed processes or procedures by an organisation that holds an authorisation.

safety data has the meaning given by Chapter 1 of Annex 19.

safety information means any safety data or information, in any form, generated within, or captured, collected or held by and within, an operator's approved safety management system, including personal information relating to individuals.

Note Some approved SMSs must include an FDAP — see subparagraph 2A.2 (e). An approved SMS may include other kinds of safety data collection and processing systems — subsection 2A.2 sets out minimum requirements for an SMS.

safety management system* or *SMS has the meaning given by paragraph 2A.1.

- 1B.2 A reference in this Order to a regulation or subregulation identified by a number or a numerical code (for example, 92A or 218 (1)) is a reference to the regulation in the *Civil Aviation Regulations 1988* identified by that number or code.

[3] Subparagraph 2.1 (a), Note

substitute

Note CASA will have regard to the guidance contained in the CAAP SMS package and the ICAO Safety Management Manual when deciding whether to approve an SMS. ***CAAP SMS package*** and ***ICAO Safety Management Manual*** are defined in paragraph 1B.1.

[4] Subparagraph 2.1 (c), Note

substitute

Note CASA will have regard to the guidance contained in the CAAP SMS package and the ICAO Safety Management Manual when deciding whether to approve a program to train and assess personnel in human factors and non-technical skills.

[5] Paragraph 2.4

omit

[6] Subparagraph 2A.2 (e)

substitute

- (e) for an operator who operates an aircraft with a maximum take-off weight exceeding 27 000 kg — an FDAP;

Note ***FDAP*** is defined in paragraph 1B.1.

- (f) a documented process ensuring that safety information is:
 - (i) not used, or made available for use, by the operator for purposes other than maintaining or improving safety; and

- (ii) protected by the operator, in accordance with Appendix 1A;

Note An example of the use of safety information for the purpose of maintaining or improving safety is collecting, storing or analysing safety information internally for preventive, corrective or remedial action to be taken by the operator for the maintenance or improvement of aviation safety.

- (g) the designation of an employee of the operator, or a person contracted by the operator, to perform the function of analysing operational flight data in accordance with procedures specified in the SMS;
- (h) the designation of an employee of the operator, or a person contracted by the operator, to perform the function of determining, in accordance with procedures set out in the SMS, whether or not a principle of exception mentioned in clause 3 of Appendix 1A applies, and who may have access to identity information solely for that purpose.

[7] Paragraph 2A.3

omit

For subparagraph 2A.2 (e), a FDAP

insert

An FDAP

[8] Subparagraph 2A.3 (d)

substitute

- (d) ensure that, other than in accordance with Appendix 1A:
 - (i) no disciplinary, punitive or related action is taken by the operator against a person who reports, or is the source or subject of, the operational flight data; and
 - (ii) the identity of a person who reports, or is the source or subject of, the operational flight data, or in relation to whom such data is reported, is protected from disclosure to anyone other than the designated person for principles of exception; and
- (e) enable the operator to use operational flight data recorded due to the operation of the FDAP for the maintenance or improvement of safety, in accordance with Appendix 1A.

Note 1 Subsection 2A does not restrict CASA's ability under civil aviation legislation to be provided with, access or use safety information held by an operator. CASA has powers under CAR and CASR to issue notices to operators requesting specified documents or information, including safety information — see *Note 1* under subclause 2.2 of Appendix 1A.

Note 2 For the restrictions on the use by CASA of an operator's safety information — see CASA Directive 02-0053, *Limitations on the Use of Safety Information*, as it exists from time to time. At the time *Civil Aviation Orders 82.3 and 82.5 Amendment Instrument 2020 (No. 1)* commenced, the latest edition of the Directive had the effective date of July 2019.

[9] After subsection 2A

insert

2AA Obligations in relation to protection of safety information

An operator must protect all safety information of the operator in accordance with Appendix 1A.

Note See also subparagraph 2A.2 (f) for SMS requirements relating to the protection of safety information.

[10] After Appendix 1

insert

Appendix 1A

Subsections 2A.2, 2A.3 and 2AA

Protection of safety information

Note The requirements in this Appendix, and related provisions of the Order, implement Australia's obligations as a Contracting State under section 5.3 of Annex 19 to the Chicago Convention. These obligations relate to the protection of safety data and safety information, as defined in Annex 19. Section 5.3 of Annex 19 sets out standards and recommended practices for Contracting States.

1 Objective

The objective of this Appendix is to ensure the continued availability of safety information by restricting its use for purposes other than maintaining or improving aviation safety.

Note 1 **Safety information** is defined in paragraph 1B.1. In this Order, safety information includes **safety data** as defined in Chapter 2 of Annex 19.

Note 2 Operators may refer to Chapter 7 of the ICAO Safety Management Manual for guidance regarding the application of this Appendix. Chapter 7 sets out guidance for operators ("service providers"), aviation regulatory authorities and others regarding the implementation of the principles for the protection of safety data and information that are in Appendix 3 to Annex 19. This Appendix is based upon Appendix 3 to Annex 19.

2 Principles of protection

2.1 Subject to clause 3, an operator must comply with the principles of protection mentioned in subclause 2.2.

2.2 The principles of protection are:

- (a) the operator must not use safety information, or make safety information available for use, against an employee or operational personnel working under an arrangement with the operator, for disciplinary or punitive purposes; and
- (b) the operator must not disclose or release, publicly or to any person outside the operator's organisation, safety information from which the identity of the person who reported the information, or any person whose acts or omissions are reflected in the reported information, can be ascertained, unless:
 - (i) the safety information is voluntarily provided to CASA; or
 - (ii) the disclosure or release of the safety information is required by law; or
 - (iii) the person who reported the information and any other person named or identified in the safety information involved has given permission for the disclosure or release of the information.

Note 1 For subparagraph 2.2 (b) (ii), examples of circumstances where the disclosure or release is required by law are if CASA gives an operator a notice:

- (a) under regulation 301 of CAR — to surrender to CASA a specified document containing safety information; or

- (b) under regulation 11.075 of CASR — to give CASA specified safety information or a specified document containing safety information.

Note 2 Information regarding how CASA uses safety information that it obtains under the regulations, including for the purposes of enforcement of civil aviation legislation, is provided in CASA Directive 02-0053, *Limitations on the Use of Safety Information*, as it exists from time to time. CASA also has obligations under the *Privacy Act 1988* relating to personal information included in any safety information that it obtains.

Note 3 An operator may also have obligations under any privacy legislation that applies to the operator regarding the collection, use and disclosure of personal information included in safety information.

- 2.3 This clause does not prevent an operator from using safety information for the purposes of taking preventive, corrective or remedial action that is necessary to maintain or improve safety.

Note An example of the use of safety information for these purposes is its use by an operator for internal training purposes.

3 Principles of exception

An operator does not have to comply with a principle of protection if the designated person for principles of exception determines, in accordance with procedures set out in the SMS of the operator, that at least 1 of the following principles of exception applies in relation to the principle of protection:

- (a) there are facts and circumstances that reasonably indicate that the occurrence or event concerning which the safety information has been generated, captured, collected or held is likely to have been caused by an act or omission constituting gross negligence, recklessness, or wilful and deliberate misconduct;
- (b) there are facts and circumstances that reasonably indicate that the occurrence or event reflected in safety information is part of a pattern of repetitive conduct, reflected in acts or omissions involving the same or substantially similar conduct by the same person over a relevant period of time.

4 Action taken to maintain or improve aviation safety not disciplinary or punitive

For the purposes of clause 2, the use of safety information in support of action taken by an operator in accordance with this Appendix and the related provisions of this Order, for the purpose of maintaining or improving aviation safety, is not to be regarded or characterised as being for disciplinary or punitive purposes.