

CHAPTER 1

Introduction

Conduct of the inquiry

1.1 The Airspace Bill 2006 and the Airspace (Consequential and Other Measures) Bill 2006 (the bills) were introduced into the House of Representatives on 29 November 2006 and were passed on 7 December 2006.

1.2 On 7 December 2006, the Senate Selection of Bills Committee referred the bills to the Senate Standing Committee on Rural, Regional Affairs and Transport (the committee) for inquiry and report by 26 February 2007.¹

1.3 The following argument was made to the Selection of Bills Committee regarding the referral of the bills:

The Bills are required to enable the transfer of the airspace regulatory functions from Airservices Australia to CASA. The Government intends that this transfer be complete by 01 July 2007, after which CASA will be expected to operate as a best practice airspace administrator and regulator in its own right. In order to meet this timetable, it is important that the passage of the Bills be completed in the next session and regulations be put in place.

Early and comprehensive discussion of the Bills in Committee will facilitate their passage through Parliament and enable the Government to meet the timeframe for the transfer of the airspace regulatory function and the establishment of the CASA Office of Airspace Regulation.²

1.4 The committee advertised the inquiry in *The Australian* on 12 December 2006. The committee also wrote to a number of interested parties and stakeholder groups inviting submissions. The committee received 10 submissions (see Appendix 1).

1.5 The committee held public hearings in Canberra on 31 January and 1 February 2007. It heard evidence from a number of witnesses, including representatives of the Australian Airports Association, the Australian and International Pilots Association and the Royal Federation of Aero Clubs of Australia. The committee also heard evidence from officers representing the Civil Aviation Safety Authority, the Australian Transport Safety Bureau, Airservices Australia and the Department of Transport and Regional Services. A full list of witnesses is provided at Appendix 2.

1 *Journals of the Senate*, No. 126, Thursday, 7 December 2006.

2 Selection of Bills Committee, Report No. 16 of 2006, 7 December 2006.

1.6 The transcripts of evidence provided to the committee and submissions are available on the Parliament's homepage at <http://www.aph.gov.au>

Acknowledgements

1.7 The committee appreciates the time and work of all those who provided written and oral submissions to the inquiry, particularly in light of the tight timeframe imposed. Their work has assisted the committee considerably in its inquiry.

Airspace Bill 2006

Purpose of the bill

1.8 The primary purpose of the Airspace Bill 2006 is to transfer the function of airspace regulation and administration from Airservices Australia (Airservices) to the Civil Aviation Safety Authority (CASA and the Authority).³ This will create a new function for CASA of civil airspace regulator and CASA will perform this function by establishing a dedicated administrative unit within the Authority – the Office of Airspace Regulation.

1.9 The Government anticipates that this transfer of function will strengthen Australia's planning and administration of airspace and address any perception of a conflict of interest between Airservices' industry and commercial focus and its airspace regulatory functions.

1.10 The bill requires that airspace change be underpinned by an Australian Airspace Policy Statement (AAPS), which will outline the Government's objectives for civil airspace administration, and provide assistance for industry in its investment decisions. The Ministerial Statement will be developed in consultation with the Defence Minister, the Department of Defence (Defence), CASA, Airservices and the Australian aviation community.

1.11 The bill will not affect powers and functions related to the management and use of airspace in the *Defence Act 1903* and the *Defence Special Undertakings Act 1952*. Defence is a key stakeholder in Australia's airspace arrangements and both Defence and CASA have undertaken to work together to ensure that any decisions made by each authority are closely coordinated. Airservices and Defence currently have a close working relationship as both organisations provide air traffic control services in Australian administered airspace, and the Government expects that Defence will work closely with CASA.

1.12 The transfer of the airspace regulatory function from Airservices to CASA forms part of a broader governance change for the Australian Government's civil aviation regulators. The Government is proposing to introduce a bill to further

3 Section based on information contained in the Explanatory Memorandum (EM), Airspace Bill 2006, p. 1 and Second Reading Speech to the Airspace Bill 2006, p. 1.

improve CASA's accountability and performance by making it subject to the *Financial Management and Accountability Act 1997* and by changing the employment arrangements, so that CASA staff are employed under the *Public Service Act 1999*. This new legislative framework acknowledges that CASA is a Government regulator rather than a commercial business.

Provisions of the bill

Part 1 – Preliminary

1.13 Part 1 provides background information regarding the bill, including the short title of the bill and the date of its commencement.

1.14 Clause 3 details the object of the bill as follows:

The object of this Bill is to ensure that Australian-administered airspace is administered and used safely, taking into account the following matters:

- (a) protection of the environment;
- (b) efficient use of that airspace;
- (c) equitable access to that airspace for all users of that airspace; and
- (d) national security.⁴

1.15 Clause 4 provides definitions of a number of terms including, Airservices, Australian-administered airspace, AAPS, CASA and Chicago Convention.

1.16 Clause 5 notes that the bill binds the Crown in all its capacities (i.e., the Commonwealth, the states and territories).

1.17 Clause 6 extends the bill to every external territory.

1.18 Clause 7 notes that the bill extends to acts, omissions, matters and things outside Australia. To illustrate this, the definition of Australian-administered airspace extends to airspace allocated to Australia by the International Civil Aviation Organization that extends beyond Australia's sovereign boundaries.

Part 2 – Australian Airspace Policy Statement

1.19 Clause 8, subclause 8 (1) establishes the requirement that the Minister must make an Australian Airspace Policy Statement.

1.20 Subclause 8 (2) states that the contents of the statement must:

- (a) specify and describe the classifications to be used to administer Australian-administered airspace; and

4 Explanatory Memorandum, *Airspace Bill 2006*, p. 3.

- (b) specify and describe the designations to be used for the purposes of restricting access to, or warning about access to, particular volumes of Australian-administered airspace; and
- (c) describe the processes to be followed for changing the classifications or designations of particular volumes of Australian-administered airspace; and
- (d) outline the Commonwealth Government's policy objectives for the administration and use of Australian-administered airspace; and
- (e) include a strategy for the administration and use of Australian-administered airspace in the future.⁵

1.21 Clause 8 also provides that:

- the Minister may include any other matters the Minister thinks appropriate;
- the AAPS must be consistent with the Chicago Convention; and
- the AAPS will be a legislative instrument, but neither section 42 nor Part 6 of the *Legislative Instruments Act 2003* applies to the statement.⁶

1.22 Clause 9 requires the Minister to consult CASA, Airservices, Defence, and any other person or body the Minister thinks appropriate, when developing the statement.

1.23 Clause 10 requires that the AAPS be reviewed at least once every three years.

Part 3 – Airspace regulation

1.24 Clause 11 provides for regulations to be made under the Airspace Bill 2006 that provide CASA with both the powers and functions necessary to administer and regulate Australian-administered airspace. The Explanatory Memorandum (EM) to the Airspace bill states on page 6 that the majority of these regulations will be similar to the regulations currently contained in Air Services Regulations Part 2.

1.25 At the time that the Airspace Regulations are made, Part 2 of the Air Services Regulations will be repealed, and all instruments made under those regulations will be grandfathered in order to maintain continuity of the airspace architecture in Australian-administered airspace. Transitional provisions enabling regulations to be made to put this arrangement into effect are included in Schedule 3 of the related consequential amendments bill.

1.26 Clause 12 provides direction to CASA on how it is expected to perform the functions and powers outlined in the Airspace Regulations and requires that:

5 Airspace Bill 2006, p. 4.

6 EM, *Airspace (Consequential and Other Measures) Bill 2006*, p. 5.

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- CASA actively encourages the efficient use of Australian-administered airspace and equitable access to it and ensures that national security concerns are accounted for; and
 - CASA take account of the capacity of Australian-administered airspace to accommodate changes in its use.⁷

1.27 Clause 13 specifies that CASA is expected to conduct regular reviews of:

- the existing classifications of volumes of Australian-administered airspace to determine whether those classifications are appropriate;
- the existing services and facilities provided by the providers of air navigation services in relation to particular volumes of Australian-administered airspace in order to determine whether those services and facilities are appropriate; and
- Australian-administered airspace in general – in order to identify risk factors and to determine whether there is safe and efficient use of that airspace and equitable access to that airspace for all users of that airspace.⁸

Part 4 – CASA advice on AAPS or airspace regulation

1.28 Clause 14 provides for the Minister to request advice from CASA, by writing to CASA, on a matter related to the AAPS or related to CASA's functions or powers under the regulations made under the Airspace bill.

1.29 Subclause 14 (3) provides for the Minister to, in writing, delegate the power to request information from CASA, to the Secretary of the Department of Transport and Regional Services (DOTARS or the Department).

Part 5 – Other matters

1.30 Clause 15 makes provision for the Governor-General to make regulations prescribing matters required or permitted by this bill to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to this bill.

7 EM, *Airspace Bill 2006*, p. 8.

8 EM, *Airspace Bill 2006*, p. 9.

Airspace (Consequential and Other Measures) Bill 2006

Purpose of the bill

1.31 The purpose of the Airspace (Consequential and Other Measures) Bill 2006 is to make a number of consequential amendments to the *Civil Aviation Act 1988*.⁹ These amendments are necessary to allow the effective introduction of the Airspace Bill 2006. Amendments to the *Civil Aviation Act 1988* ensure that airspace regulation is a clear and separate function for CASA and that the Authority acts consistently with the AAPS. The bill also grandfathers decisions made by Airservices under regulations to be transferred to CASA.

1.32 The bill also makes a number of technical amendments to the *Air Services Act 1995* and the *Civil Aviation Act 1988* to accommodate amendments made to the functions of Airservices by the *Civil Aviation Legislation Amendment Bill 2003*.

Provisions of the bill

Part 1 – Preliminary

1.33 Part 1 provides background information regarding the bill, including the short title of the bill the date of its commencement.

Schedule 1 – Consequential amendments

1.34 Item 1 inserts a new function into the list of CASA's functions in section 9 of the *Civil Aviation Act 1988* to make it clear that any functions conferred under the Airspace Bill 2006 are functions for the purposes of the *Civil Aviation Act 1988*.

1.35 Item 2 inserts a new section 11A into the *Civil Aviation Act 1988*, which will require CASA to:

- exercise its powers and functions consistently with the AAPS made under clause 8 of the Airspace Bill 2006 (unless doing so puts CASA in conflict with its obligation under clause 9A(1) of the *Civil Aviation Act 1988* to regard the safety of air navigation as the most important consideration); and
- notify the Minister if it proposes to use its powers and functions under the Airspace Bill 2006 in a way that is inconsistent with the AAPS because of a conflict with CASA's obligation under section 9A(1) of the *Civil Aviation Act 1988*.

9 Section based on information contained in the EM, *Airspace (Consequential and Other Measures) Bill 2006*, p. 1 and Second Reading Speech to the Airspace (Consequential and Other Measures) Bill 2006, p. 1.

Schedule 2 – Technical amendments

1.36 Item 1 deletes reference to a number of subparagraphs at subsection 19(2) of the *Airservices Act 1995* to make this subsection consistent with amendments to section 8 of the *Air Services Act 1995* by the *Civil Aviation Legislation Amendment Act 2003*.

1.37 Items 2, 3, 4 and 5 also omit references in the *Air Services Act 1995* and the *Civil Aviation Act 1988* to certain provisions in the *Air Services Act 1995* which are now incorrect following the enactment of the *Civil Aviation Legislation Amendment Act 2003* and substitute references to the correct provisions.

Schedule 3 – Transitional provision

1.38 Item 1 relates to the transfer of airspace management functions from Airservices to CASA. It provides for regulations to be made to address matters of a transitional nature arising out of the repeal of those Air Services Regulations, including regulations which 'grandfather' instruments under the repealed Air Services Regulations made before that repeal.

