

# Chapter 1

## **Excise Tariff Amendment (Aviation Fuel) Bill 2010 and Customs Tariff Amendment (Aviation Fuel) Bill 2010**

1.1 On 16 June 2010, the Senate jointly referred the Excise Tariff Amendment (Aviation Fuel) Bill 2010 and the Customs Tariff Amendment (Aviation Fuel) Bill 2010 to the Rural and Regional Affairs and Transport Legislation Committee for inquiry and report by 22 June 2010.

1.2 The two bills were introduced into the House of Representatives on 3 June 2010 by the Hon Anthony Albanese, Minister for Infrastructure, Transport, Regional Development and Local Government.

### **Conduct of the inquiry**

1.3 Given the short reporting deadline of 22 June 2010, the committee made a decision not to advertise the inquiry in the media. The committee did, however, provide a general notification of its inquiry through a Media Release distributed on Wednesday, 16 June 2010 and published information relating to the inquiry on its website. The committee also approached a number of interested parties to invite them to provide evidence at a Public Hearing. The committee received no written submissions.

1.4 The committee held a Public Hearing in Canberra on 17 June 2010. It heard evidence from several key stakeholders, including the Regional Aviation Association of Australia and the Aerial Agricultural Association of Australia. The committee also heard evidence from officers of the Department of Infrastructure, Transport, Regional Development and Local Government, the Civil Aviation Safety Authority (CASA) and the Department of Treasury (see Appendix 1). All the evidence presented to the committee is available on the parliament's homepage at <http://www.aph.gov.au>

### **Acknowledgements**

1.5 The committee appreciates the time and work of all those who provided evidence to the committee – particularly given the short time-frame for the inquiry. Their work has assisted the committee considerably in its inquiry.

## Purpose of the bills

1.6 The bills amend the *Excise Tariff Act 1921* and the *Customs Tariff Act 1995* to alter the excise and customs duty applying to aviation fuel from \$0.02854 per litre to \$0.03556 per litre from 1 July 2010.<sup>1</sup>

1.7 The bills reflect an announcement made by the Government in the May 2010 Budget regarding an increase in aviation safety funding. The Government announced its intention to increase the aviation fuel excise to fund critically important safety activities to be implemented by CASA and to address a long-term shortfall in the funding of CASA. These activities include:

- continued random drug testing for alcohol and other drugs in the aviation industry;
- developing and maintaining safety standards;
- regulating expanding areas of aviation activity; and
- implementing a state safety program.<sup>2</sup>

1.8 The Government also announced that the increased funding would enable CASA to strengthen its technical capability and regulatory oversight ability and expand technical training for its technical staff.<sup>3</sup>

1.9 In his second reading speech, the Minister for Infrastructure, Transport, Regional Development and Local Government, the Hon Anthony Albanese MP, advised that all of the funds raised through the levy will go directly to CASA.

1.10 The Minister stated that the impact of the legislation would be to provide an additional \$89.9 million over four years to fund 'critically important safety activities'. The Minister said:

The funds will be used to recruit almost 100 additional frontline safety staff including safety specialists, safety analysts and airworthiness inspectors. This will allow CASA to expand its surveillance activities and fulfil its increasingly complex regulatory responsibilities.

This long-term funding will also ensure that CASA can continue random testing for alcohol and other drugs within the aviation industry; invest in the

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1 Explanatory Memorandum, *Excise Tariff Amendment (Aviation Fuel) Bill 2010 and the Customs Tariff Amendment (Aviation Fuel) Bill 2010*, p. 1

2 Explanatory Memorandum, *Excise Tariff Amendment (Aviation Fuel) Bill 2010 and the Customs Tariff Amendment (Aviation Fuel) Bill 2010*, p. 1

3 Explanatory Memorandum, *Excise Tariff Amendment (Aviation Fuel) Bill 2010 and the Customs Tariff Amendment (Aviation Fuel) Bill 2010*, p. 1

development and maintenance of safety standards; and provide expanded and ongoing training for its staff.<sup>4</sup>

1.11 The committee notes that the levy is only imposed on domestic air travel. Under the Chicago Convention no excise is imposed on international jet fuel.<sup>5</sup>

### Summary of the proposed legislative changes

1.12 The Excise Amendment (Aviation Fuel) Bill 2010 changes the Schedule to the *Excise Tariff Act 1921* to increase the rate in items 10.6 and 10.17 from \$0.02854 per litre to \$0.03556 per litre for aviation gasoline and aviation kerosene respectively. The Customs Tariff Amendment (Aviation Fuel) Bill 2010 amends Schedule 3 to the *Customs Tariff Act 1995* so that the rates in the Schedule accord with changes to the Schedule to the *Excise Tariff Act 1921*.<sup>6</sup>

### Comparison of Key Features of New Law and Current Law<sup>7</sup>

<i>New Law</i>	<i>Current Law</i>
<b>Excise duty rate</b>	
Item 10.6 of the Schedule to the <i>Excise Tariff Act 1921</i> has a rate of \$0.03556 per litre.	Item 10.6 of the Schedule to the <i>Excise Tariff Act 1921</i> has a rate of \$0.02854 per litre.
Item 10.7 of the Schedule to the <i>Excise Tariff Act 1921</i> has a rate of \$0.03556 per litre.	Item 10.17 of the Schedule to the <i>Excise Tariff Act 1921</i> has a rate of \$0.02854 per litre.
<b>Excise-equivalent customs duty rate</b>	
Subheadings 2710.11.61, 2710.91.61 and 2710.99.61 in Schedule 3 to the <i>Customs Tariff Act 1995</i> have rates of \$0.03556 per litre.	Subheadings 2710.11.61, 2710.91.61 and 2710.99.61 in Schedule 3 to the <i>Customs Tariff Act 1995</i> have rates of \$0.02854 per litre.
Subheadings 2710.19.40, 2710.91.40 and	Subheadings 2710.19.40, 2710.91.40 and

4 The Hon. Anthony Albanese, MP, Minister for Infrastructure, Transport, Regional Development and Local Government, *Excise Tariff Amendment (Aviation Fuel) Bill 2010*, *Second Reading Speech*, p. 1-2

5 Mr John McCormick, Director of Aviation Safety, Civil Aviation Safety Authority, *Committee Hansard*, 17 June 2010, p.6

6 Explanatory Memorandum, *Excise Tariff Amendment (Aviation Fuel) Bill 2010 and the Customs Tariff Amendment (Aviation Fuel) Bill 2010*, p. 2

7 Explanatory Memorandum, *Excise Tariff Amendment (Aviation Fuel) Bill 2010 and the Customs Tariff Amendment (Aviation Fuel) Bill 2010*, p. 2

2710.99.40 in Schedule 3 to the <i>Customs Tariff Act 1995</i> have rates of \$0.03556 per litre.	2710.99.40 in Schedule 3 to the <i>Customs Tariff Act 1995</i> have rates of \$0.02854 per litre.
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## Policy background to the decision to increase aviation fuel excise

1.13 The government recently concluded a comprehensive review of national aviation policy. The process began with the release of an Issues Paper in April 2008. The Issues Paper was followed by the release of a National Aviation Policy Green Paper (the Green Paper) describing the initiatives and policy settings under consideration. The process concluded with the release of the National Aviation Policy White Paper (the White Paper) on 16 December 2009.

1.14 Throughout this process a number of issues received prominence: the need to strengthen CASA's capabilities in technical standards development; the need to ensure CASA's regulatory reform program is completed by the end of 2010; and the need for an expanded surveillance program.<sup>8</sup>

1.15 The government first flagged its intention to review the funding arrangements for CASA's surveillance and regulatory activities (including those of the Office of Airspace Regulation) in the Green Paper. The government made a commitment in that paper to ensure that CASA has the appropriate funding levels and certainty it needs to carry out its functions.<sup>9</sup> The government noted that CASA's funding base comprises a mix of budget appropriation, revenue from aviation fuel excise and cost recovery of regulatory service fees. The government announced that it would consider options for limiting CASA's regulatory service fees to ensure the costs of CASA's safety regulation do not place an excessive burden on the regional and general aviation industries.<sup>10</sup>

1.16 In its White Paper, the government again noted CASA's current sources of funding and flagged that it intended to review this resource base and develop a long-term funding strategy for the Authority. The paper noted that CASA currently has five principal sources of income:

- direct government appropriation through the annual budget process;
- revenue from an excise levied on all aviation fuel consumed for domestic operations;
- cost recovery arrangements for regulatory services provided to industry; and

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8 Australian Government, *National Aviation Policy Green Paper*, December 2008, p. 24, pp. 47 – 48

9 Australian Government, *National Aviation Policy Green Paper*, December 2008, p. 52

10 Australian Government, *National Aviation Policy Green Paper*, December 2008, p. 56

- fee-for-service revenue for the issue and renewal of Aviation Security Identify Cards and Aviation Identification Cards.<sup>11</sup>

1.17 In the White Paper the government recognised the importance of CASA's regulatory oversight role and announced that it would provide an additional \$3.8 million to allow for the recruitment of specialised technical staff to enhance oversight of helicopter activity, foreign operators flying within Australian airspace, and aircraft maintenance undertaken outside of Australia.

1.18 The government also gave a clear commitment that it would be reviewing the Authority's resource base and developing a long-term funding strategy for CASA underpinned by the following principles:

- maintenance of ongoing Budget funding for CASA to perform its public safety enforcement and regulatory functions;
- maintenance of the existing arrangements which ensures all revenue raised through the aviation fuel excise is returned to the industry through funding for CASA's regulatory role; and
- capping the sum of CASA's regulatory fees at the current \$15 million per year, subject to adjustment for CPI increases for at least five years as a means of addressing the burden of regulatory charges - particularly on regional and general aviation.<sup>12</sup>

1.19 In the 2010-2011 Budget, the government announced a funding strategy to secure CASA's financial sustainability for the 2010-11 to 2013-14. Consistent with the funding principles outlined in the White Paper, the Budget provided funding for:

- surveillance and technical resources to strengthen CASA's capacity to maintain and enhance aviation safety in response to expanding areas of aviation activity;
- strengthening CASA's technical capability and regulatory oversight ability including the expansion of technical training capacity for its technical staff as well as the development and maintenance of safety standards;
- a number of vital ongoing safety measures (such as industry alcohol and drug programs) that would otherwise have expired in 2009-10;
- continuation of its five member Board; and

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11 Australian Government, *National Aviation Policy White Paper*, December 2008, p. 103

12 Australian Government, *National Aviation Policy White Paper, Flight Path to the Future*, December 2009, p. 103

- the Office of Airspace Regulation. This funding replaces the existing cost recovery arrangement with Airservices Australia, due to expire under the existing agreement on 30 June 2010.<sup>13</sup>

1.20 The government also announced that it intended to increase aviation safety funding through an increase in aviation fuel excise with effect from 1 July 2010.<sup>14</sup>

## Industry Consultation

1.21 During this enquiry the committee heard concerns that the industry had not been adequately consulted prior to the introduction of the proposed increase in fuel excise.<sup>15</sup>

1.22 Mr Andrew Wilson, Deputy Secretary, Department of Infrastructure, Transport, Regional Development and Local Government, told the committee:

I do not believe that there was direct consultation about the precise nature of the funding source in the lead-up to the decision. However, there was long consultation in terms of the overall direction required to provide additional funding to CASA.<sup>16</sup>

1.23 As noted above, the committee heard that the enhancements to CASA's regulatory and technical capacity were discussed in the Aviation Green Paper, released in December 2008 and in the National Aviation Policy White Paper, released in December 2009.<sup>17</sup>

1.24 The committee notes that the industry is very keen to see a strong CASA as a strong and efficient CASA is of great assistance to the industry.<sup>18</sup> The committee also notes that industry sectors agree that there is currently a serious lack of technical personnel within CASA.<sup>19</sup>

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13 Department of Infrastructure, Transport, Regional Development and Local Government, *Portfolio Budget Statements 2010-11*, p. 168

14 Department of Infrastructure, Transport, Regional Development and Local Government, *Portfolio Budget Statements 2010-11*, p. 169

15 Mr Jim Davis, Director, Regional Aviation Association of Australia and Managing Director, Regional Express Airlines, *Committee Hansard*, 17 June 2010, p. 29

16 Mr Andrew Wilson, Deputy Secretary, Department of Infrastructure, Transport, Regional Development and Local Government, *Committee Hansard*, 17 June 2010, p. 5

17 Australian Government, *National Aviation Policy Green Paper, Flight Path to the Future*, December 2008 and *National Aviation Policy White Paper, Flight Path to the Future*, December 2009, <http://www.infrastructure.gov.au/aviation/nap/> (accessed 20 June 2010)

18 Mr Phillip Hurst, Chief Executive Officer, Aerial Agricultural Association of Australia, *Committee Hansard*, 17 June 2010, p. 16

19 Mr Phillip Hurst, Chief Executive Officer, Aerial Agricultural Association of Australia, *Committee Hansard*, 17 June 2010, p. 17

1.25 However, the committee also heard concerns that some sectors of the industry feel they have been provided with insufficient information to explain how the additional funds will be expended. Industry representatives told the committee that they would have liked to have received more information on the manner in which the levy has been calculated and how the funds will be allocated to particular CASA activities.<sup>20</sup>

1.26 In addition, industry representatives also expressed the view that they would welcome avenues to establish an ongoing dialogue with CASA to identify ways to deliver safety and regulatory outcomes as efficiently as possible.<sup>21</sup>

### **Implications of not increasing the levy**

1.27 The committee notes that there are significant implications in the event that the levy is not increased and CASA is unable to fill the requisite number of specialist safety positions on an ongoing basis.

#### ***CASA's ability to fulfil its regulatory and safety obligations***

1.28 The committee heard that CASA is currently not fully staffed and that if this situation is not addressed, CASA's ability to fulfil its regulatory and safety obligations may be compromised. Mr John McCormick, Director of Aviation Safety, CASA told the committee:

If I could say at the start without being too melodramatic, if we do not get the additional funding and people that we require we will not be able to oversee Australian aviation to the standard and safety level that the Australian public requires us to do. We are not in a position at the moment to be fully staffed, and we do have a turnover percentage as well.<sup>22</sup>

1.29 Mr McCormick explained to the committee that from the 1990s CASA's staff numbers started to decrease. Mr McCormick told the committee that "we had 704 employees in some of those areas in 2004, 2005. It went down to 621 in 2006."<sup>23</sup> Mr McCormick confirmed for the committee that this decrease was due to in part to CASA's move toward greater industry self regulation over this period. Mr McCormick said:

The staff numbers started to decrease early in 2003-04. That has had a knock-on effect to the point where we started to turn around in 2007-08

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20 Mr Phillip Hurst, Chief Executive Officer, Aerial Agricultural Association of Australia, *Committee Hansard*, 17 June 2010, p. 16

21 Mr Phillip Hurst, Chief Executive Officer, Aerial Agricultural Association of Australia, *Committee Hansard*, 17 June 2010, p. 16

22 Mr John McCormick, Director of Aviation Safety, Civil Aviation Safety Authority, *Committee Hansard*, 17 June 2010, p.2

23 Mr John McCormick, Director of Aviation Safety, Civil Aviation Safety Authority, *Committee Hansard*, 17 June 2010, p.8

where we went back up towards 615. We are now heading towards 680. Generally, through the budget process I think there has been quite a bit of substantiation that we need in the order of 790 people to keep up with this industry.<sup>24</sup>

1.30 The committee notes that the funds raised by the levy will enable CASA to recruit 97 additional staff. The committee also notes that this figure includes 50 positions that were funded by the Government following the White Paper process. As mentioned earlier, the Government committed \$3.8 million to support the recruitment of specialised technical staff. The committee heard that this equates to 50 positions which are currently funded to 30 June 2010.<sup>25</sup> The additional funding will enable CASA to maintain those 50 positions going forward. The committee heard that those 50 positions are spread across the organisation as follows:

- Office of Airspace Regulation – 15
- Alcohol and other drugs Program – 9
- Safety oversight (data analysis) – 4
- Safety operations personnel - 22<sup>26</sup>

1.31 The committee notes that during its 2008 inquiry into the administration of CASA, concerns were raised regarding the extent to which CASA had access to sufficient adequately trained technical staff to meet its regulatory responsibilities. In its report of that inquiry, the committee expressed concern that, notwithstanding the progress CASA had made to address technical training needs within the organisation, a combination of high staff turnover and an apparently slow response to the development of training initiatives may have left the organisation vulnerable in this area.<sup>27</sup> In particular, the committee noted CASA's poor performance in the area of technical personnel qualification and training in an International Civil Aviation Organisation (ICAO) audit.<sup>28</sup> During the current inquiry Mr McCormick told the committee that as a result of a previous CASA decision to reduce its training activities, the agency had fallen foul of the International Civil Aviation Organisation. Mr McCormick said that the ICAO audit:

pointed out that we have not had enough training of our staff. We are still above the world average in that category on their scoring sheet but by no means are we where we should be at our standard. We are aware of that. In

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24 Committee Hansard, 17 June 2010, p. 8

25 Mr John McCormick, Director of Aviation Safety, Civil Aviation Safety Authority, *Committee Hansard*, 17 June 2010, p.5

26 Mr John McCormick, Director of Aviation Safety, Civil Aviation Safety Authority, *Committee Hansard*, 17 June 2010, pp. 2-3

27 Senate Rural and Regional Affairs and Transport Committee, *Administration of the Civil Aviation Safety Authority (CASA) and related matters*, September 2008, p. 18

28 Senate Rural and Regional Affairs and Transport Committee, *Administration of the Civil Aviation Safety Authority (CASA) and related matters*, September 2008, p. 17

previous days perhaps we did not do enough training. We actually disestablished our training academy. We are in the process of re-establishing that training and putting our inspectorate staff through that. They are costs which we cannot recover from anybody.<sup>29</sup>

### ***CASA's ability to maintain its FAA category 1 rating***

1.32 The committee was provided with evidence regarding the consequences to Australia's aviation industry should Australia lose its category 1 rating with the Federal Aviation Administration (FAA). Mr McCormick told the committee:

In recent times Federal Aviation Administration of the United States officials came here. Their comments were that, to them, we were understaffed and certainly did not have enough formal technical training. There are many reasons why we have not done that at the level that they thought we should. Both of those two things are a serious risk to Australia's international reputation and our standing and it has commercial ramifications were the FAA to downgrade us. Luckily, they did not—although it is not just a matter of luck as we have put a lot of work into what we have done. But these are the issues that we cannot in any way recover out of the industry.<sup>30</sup>

1.33 Mr McCormick went on to advise the committee that:

The FAA regard countries as category 1 or category 2. We have retained our category 1 status. It is not given as provisional, though we have given undertakings that we will do a lot of training of inspectors et cetera. The FAA will be returning to Australia in November to see that we have delivered on those commitments. We will deliver on those commitments, we are ahead of that line, so I have no difficulty with that.<sup>31</sup>

1.34 Mr McCormick illustrated the significance for Australia of such a downgrading with the following example:

I will give you an example of what would happen were we to lose our category 1 status. Qantas might have a passenger who wishes to fly from Chicago to Sydney. The current system is that Qantas would have a codeshare agreement, where the flight numbers and codes are on the same ticket with, for example, American Airlines—and I use that hypothetically. The passenger arrives at Chicago airport and checks their bags in. They get one or two boarding passes that show Chicago to Los Angeles with American Airlines and then Los Angeles to Sydney with Qantas. The passenger then proceeds onto the aeroplane, arrives in Los Angeles and transits through Los Angeles. They do not have to get their bags again and they do not have to check in again. They can seamlessly go on the Qantas flight to Sydney. If we lost our category 1 status that would not be

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29 *Committee Hansard*, 17 June 2010, p. 3

30 *Committee Hansard*, 17 June 2010, p 3

31 *Committee Hansard*, 17 June 2010, p 11

available. In that same scenario the passenger would have to check in at Chicago and check their bags only as far as Los Angeles. When they get off the plane at Los Angeles they would have to get their bags from the carousel. They would then have to check in at Qantas, get a boarding pass, check their bag in and then get on the flight—a huge inconvenience to everybody, including the airline personnel.<sup>32</sup>

### ***Completion of CASA's Regulatory Reform Program***

1.1 During its current inquiry, the committee was told that the additional 47 positions would also include staff to assist with the completion of CASA's Regulatory Reform Program (RRP). Mr McCormick told the committee:

... regulatory development has been a body of work which we have had to undertake, in conjunction with the department and with the Office of Legal Drafting and Publishing. We are making significant progress towards the milestones which are in the white paper. As far as the 47 new roles go, if we can refer back to that number, 18 of those people will be involved in regulatory development and implementation. I stress the implementation is the part where we need in-depth consultation with the industry as we roll out things such as the maintenance regulation, which are referred to on the same page you referenced. So we require a great deal of education. Education costs are in there. We have education safety system analysis people also in that 47. In particular, 18 are for regulatory development and implementation. Perhaps in some respects the easiest thing is to write the regs; the hardest part is to get them in and get them in safely.<sup>33</sup>

1.35 The committee notes that CASA's progress with its RRP drew significant criticism from industry during the committee's 2008 inquiry and during the Green Paper process. The program originated in 1996, and had been criticised widely for failing to deliver within a reasonable time frame. During the 2008 inquiry, the committee noted that the aviation industry was beginning to lose patience with the slow rate of progress. Concerns were expressed that resources had been devoted to the regulatory review at the expense of the effectiveness of CASA's other responsibilities.<sup>34</sup> During this current inquiry the committee noted that unfortunately this situation has not altered. Mr McCormick told the committee:

our problem is that we have people multitasking. When they should be doing surveillance they are doing what we call reg. services work as well. We have been stretched very, very thin even to do what we are doing now.<sup>35</sup>

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32 *Committee Hansard*, 17 June 2010, p 11

33 Mr John McCormick, Director Aviation Safety, Civil Aviation Safety Authority, *Committee Hansard*, 17 June 2010, p.7

34 Senate Rural and Regional Affairs and Transport Committee, *Administration of the Civil Aviation Safety Authority (CASA) and related matters*, September 2008, p. 25

35 *Committee Hansard*, 17 June 2010, p 9.

1.36 During the 2008 inquiry, the committee noted that the limited progress on the RRP in recent years had been largely due to delays in the legal drafting process due to the limited availability of drafters within the Office of Legislative Drafting and Publishing.<sup>36</sup> The committee recommended, in accordance with the findings of the Aviation Regulation Review Taskforce, that CASA's RRP be brought to a conclusion as quickly as possible to provide certainty to industry and to ensure CASA and industry are ready to address future safety challenges.<sup>37</sup> The committee also recommended that the Australian Government strengthen CASA's governance framework and administrative capability by undertaking a review of CASA's funding arrangements to ensure CASA is equipped to deal with new regulatory challenges.<sup>38</sup>

### **Committee view**

1.37 The committee notes that the resourcing of CASA has been a source of industry concern over a long period. In particular, the committee has heard on previous occasions of concerns that the lack of appropriately qualified technical staff and the inability of CASA to finalise its RRP may be having an impact on CASA's ability to meet its regulatory and safety obligations. The committee has also noted the implications for Australia's obligations as a member of ICAO and for its standing within the global aviation industry.

1.38 The committee therefore welcomes this legislation as a positive response to these concerns and to the recommendations made by this committee in its 2008 inquiry into the Administration of CASA.

### **Recommendation 1**

**1.39 The committee recommends that the bills be passed.**

**Senator Glenn Sterle**

**Chair**

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36 Senate Rural and Regional Affairs and Transport Committee, *Administration of the Civil Aviation Safety Authority (CASA) and related matters*, September 2008, p. 26

37 Senate Rural and Regional Affairs and Transport Committee, *Administration of the Civil Aviation Safety Authority (CASA) and related matters*, September 2008, p. 44

38 Senate Rural and Regional Affairs and Transport Committee, *Administration of the Civil Aviation Safety Authority (CASA) and related matters*, September 2008, p. 44

