

EXPLANATORY STATEMENT

Issued by Authority of the Deputy Prime Minister and Minister for Infrastructure,
Transport and Regional Development

Aviation Fuel Revenues (Special Appropriation) Act 1988

Aviation Fuel Revenues (Special Appropriation) Determination 2022

Purpose

The purpose of the *Aviation Fuel Revenues (Special Appropriation) Determination 2022* (the 2022 Instrument) is to repeal and replace the *Aviation Fuel Revenues (Special Appropriation) Act 1988 - Determination under Section 3A(2) Setting the Statutory Rate, Determination under Section 4(1A) Setting the Respective Share of the Civil Aviation Safety Authority's (CASA's) Payment* (the 2010 Instrument).

Background

Subsection 4(4) of the *Aviation Fuel Revenues (Special Appropriation) Act 1988* (the Act) appropriates funds received from certain taxes imposed on aviation fuel. The appropriated funds are payable out of the Consolidated Revenue Fund, and they may go to Airservices Australia (AA) and the Civil Aviation Safety Authority (CASA).

The Act allows the Minister to make two categories of determination:

- determinations fixing rates of appropriation in relation to ‘eligible aviation fuel’ (subsections 3A(1) and 3A(2)); and
- determinations on the allocation of appropriated funds between AA and CASA (subsection 4(1A)).

While the Act does not require either category of determination to be contained in a legislative instrument, both the 2010 Instrument and the 2022 Instrument have been prepared to promote accountability and transparency, and to enhance Parliamentary oversight of the operations of government.

The 2010 Instrument will sunset on 1 October 2022, through the operation of sections 50 and 51 of the *Legislation Act 2003*, together with the *Legislation (Deferral of Sunsetting—Aviation Fuel Revenues (Special Appropriation) Determination) Certificate 2020* (the Deferral Instrument).

The Deferral Instrument postponed the 2010 Instrument’s original sunset date of 1 October 2020. The Deferral Instrument was made by the Attorney-General on 21 March 2020 to allow time to complete a review of CASA’s charges. This review was to involve costing each of the regulatory services CASA provides. Given the implementation of the review’s recommendations could have impacted on CASA’s revenue base, it was decided to extend the duration of the 2010 Instrument to allow time for the review to be completed.

Review of the 2010 Instrument

In light of the approaching sunset date, the Department of Infrastructure, Transport, Regional Development and Communications has reviewed the 2010 Instrument. Following this review, it is clear that a successor instrument is required to confirm the authorisation of payment of appropriated funds to CASA.

The 2022 Instrument contains a determination under subsection 4(1A) of the Act, but does not contain any determination under subsections 3A(1) or 3A(2), for the reasons discussed below.

Subsection 4(1) of the Act provides that the money appropriated and payable to AA and CASA will be the product of the ‘statutory rate’ multiplied by the number of litres of ‘eligible aviation fuel’.

The term ‘statutory rate’ is defined in section 3, and is the lowest of:

- any determination made under subsection 3A(1);
- the rate of duty imposed on eligible aviation fuel under the *Excise Tariff Act 1921* (either as customs or excise duty); or
- any determination made under subsection 3A(2).

The 2010 Instrument fixes the statutory rate of eligible aviation fuel (both gasoline and kerosene) to be 3.556 cents per litre, under subsection 3A(2). There is no determination under subsection 3A(1).

Subitems 10.6 and 10.17 in Item 10 in the Schedule to the *Excise Tariff Act 1921* fix the rate of excise at 3.556 cents per litre for both aviation gasoline and aviation kerosene. This is the same rate as provided in the 2010 Instrument.

The definition of ‘statutory rate’ in section 3 of the Act means that if no determination is made under subsections 3A(1) or 3A(2), the statutory rate will be the rate imposed under the *Excise Tariff Act 1921*. It is therefore unnecessary to make a determination under either subsection 3A(1) or subsection 3A(2).

Having no determination under subsections 3A(1) or 3A(2) means that the amount appropriated will precisely equal the amount relevantly raised under the *Excise Tariff Act 1921*. The current Administrative Arrangements Order confers authority over the *Excise Tariff Act 1921* to the Minister administering the Department of the Treasury.

A determination under subsection 4(1A) is still required, to specify the allocation of funds between AA and CASA. It has been decided that all funds appropriated under the Act will continue to go to CASA.

The 2022 Instrument which has been prepared following this review is narrower in scope than the 2010 Instrument, as it contains one determination rather than two.

Authority

Subsection 4(1A) of the Act provides authority for the 2022 Instrument.

Consultation

The Office of Best Practice Regulation in the Department of the Prime Minister and Cabinet was consulted, and they agreed that the 2022 Instrument has no regulatory impact and that accordingly, no Regulatory Impact Statement is required (reference number OBPR22-01723).

The Attorney-General's Department, the Departments of Finance and the Treasury, CASA and AA were also consulted in relation to the 2022 Instrument.

A broader public consultation process was not undertaken as both the 2010 and 2022 Instruments focus solely on the transfer of funds between government agencies.

The 2022 Instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.

The 2022 Instrument commences on the day after registration on the Federal Register of Legislation.

A Statement of Compatibility with Human Rights is at Attachment A.

Details of the *Aviation Fuel Revenues (Special Appropriation) Determination 2022*

Section 1 - Name

This section provides that the name of the instrument is the *Aviation Fuel Revenues (Special Appropriation) Determination 2022*.

Section 2 - Commencement

This section provides the instrument commences on the day after it is registered.

Section 3 - Authority

This section provides the instrument is made under subsection 4(1A) of the Act. 'The Act' is defined in the following section to be the *Aviation Fuel Revenues (Special Appropriation) Act 1988*.

Section 4 - Definitions

This section provides definitions for both *Act* and *CASA*.

Section 5 – Schedule

This section provides that the instrument specified in the Schedule is repealed.

Section 6 – Proportion of payments to CASA

This section provides that CASA is entitled to the whole of the payments appropriated under subsection 4(4) of the Act.

Schedule – Repeal

This schedule lists the entirety of the instrument known as the *Aviation Fuel Revenues (Special Appropriation) Act 1988 - Determination under Section 3A(2) Setting the Statutory Rate, Determination under Section 4(1A) Setting the Respective Share of the Civil Aviation Safety Authority's (CASA's) Payment*.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Aviation Fuel Revenues (Special Appropriation) Determination 2022

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The purpose of the *Aviation Fuel Revenues (Special Appropriation) Determination 2022* is to repeal and replace the *Aviation Fuel Revenues (Special Appropriation) Act 1988 - Determination under Section 3A(2) Setting the Statutory Rate, Determination under Section 4(1A) Setting the Respective Share of the Civil Aviation Safety Authority's (CASA's) Payment*, which is due to sunset on 1 October 2022.

The *Aviation Fuel Revenues (Special Appropriation) Determination 2022* provides that all money appropriated under the *Aviation Fuel Revenues (Special Appropriation) Act 1988* will continue to be payable to the Civil Aviation Safety Authority (CASA).

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

The Honourable Barnaby Joyce

**Deputy Prime Minister and Minister for Infrastructure,
Transport and Regional Development**