

**COMMONWEALTH PLACES AND OTHER LEGISLATION AMENDMENT  
(SYDNEY WEST AIRPORT) REGULATIONS 2026**

**EXPLANATORY STATEMENT**

Issued by authority of the Attorney-General

in compliance with section 15J of the *Legislation Act 2003*

**Legislative Authority**

Section 22 of the *Commonwealth Places (Application of Laws) Act 1970* (CoPAL Act) provides authority for the Governor-General to make regulations, not inconsistent with the CoPAL Act. Section 3 provides that a ‘designated state airport’ means an airport, to the extent that it is a Commonwealth place, that is situated in a State or States, and that is prescribed by the regulations. The *Commonwealth Places (Application of Laws) Regulations 2024* (CoPAL Regulations) list designated state airports.

Section 52 of the *Crimes (Aviation) Act 1991* provides authority for the Governor-General to make regulations, not inconsistent with the Act, prescribing matters required or permitted by the Act to be prescribed. The definition of ‘authorised person’ in section 3 and the offences set out in section 26 refer to ‘prescribed airports’. The *Crimes (Aviation) Regulations* provides a schedule of prescribed airports.

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

**Purpose**

The purpose of the *Commonwealth Places and Other Legislation Amendment (Sydney West Airport) Regulations 2026* (the Amendment Regulations) is to ensure that criminal law arrangements at the new Sydney West Airport are consistent with arrangements at other major airports, in line with community and industry expectations. The amendments to the *Commonwealth Places (Application of Laws) Regulations 2024* (CoPAL Regulations) and the *Crimes (Aviation) Regulations* ensure that the Australian Federal Police are authorised with the necessary *Crimes Act 1914* powers to perform their duties at the Airport and that certain offences and powers under the *Crimes (Aviation) Act 1991* apply at the Airport.

To achieve this purpose, the Amendment Regulations adds Sydney West Airport to the list of ‘designated state airports’ in the CoPAL Regulations and to the list of prescribed airports in the Crimes (Aviation) Regulations.

### **Consultation**

The amendments have been developed at the request of the Department of Infrastructure, Transport, Regional Development, Communications, Sports, and the Arts, and in consultation with the Australian Federal Police and the Department of Home Affairs.

### **Privacy**

The *Privacy Act 1988* and the Australian Privacy Principles contained in Schedule 1 of the Privacy Act would apply to any personal information collected by the AFP at the Airport under the powers enlivened by the Amendment Regulations. The AFP is an ‘enforcement body’ for the purposes of the Privacy Act. Under the Privacy Act, enforcement bodies may collect sensitive information directly related to their functions and activities.

The forensic procedures enlivened by the Amendment Regulations enable the collection, use, and retention of DNA material and data for law enforcement purposes, as set out in Part ID of the Crimes Act. This includes the matching and inter-jurisdictional exchange of DNA profiles between Commonwealth, state, and territory law enforcement agencies. The collection, use, and disclosure of information under Part ID is subject to specific non-disclosure offences.

### **Details/Operation**

The Amendment Regulations are a legislative instrument for the purposes of the *Legislation Act 2003* and are subject to default sunseting requirements and disallowance. A Statement of Compatibility with Human Rights is set out at Attachment A. Details of the instrument are set out in Attachment B.

## **Statement of Compatibility with Human Rights**

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

### ***Commonwealth Places and Other Legislation Amendment (Sydney West Airport) Regulations 2026***

The *Commonwealth Places and Other Legislation Amendment (Sydney West Airport) Regulations 2026* (the Amendment Regulations) are 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 Regulations**

The Amendment Regulations amend the *Commonwealth Places (Application of Laws) Regulations 2024* (CoPAL Regulations) and the *Crimes (Aviation) Regulations*.

The amendment to the CoPAL Regulations ensures the Australian Federal Police (AFP) can investigate matters at the new Sydney West Airport, in line with other major airports.

The amendment allows the AFP to use the following *Crimes Act 1914* powers at the Airport:

- Part IAA (dealing with search, information gathering, arrest and related powers)
- Section 9 (which provides for the seizure and condemnation of forfeitable goods)
- Section 13 (allowing the institution of proceedings in respect of offences)
- Section 15 (dealing with remand of defendants), and
- Part ID (dealing with forensic procedures).

The amendment to the *Crimes (Aviation) Regulations* applies two offences under the *Crimes (Aviation) Act 1991* at the Airport in relation to acts of violence at airports. It also provides for authorised officers to facilitate the handling of a person suspected of committing an offence on board an aircraft and to take offenders into custody. These offences and powers apply in this way at other Australian airports which operate international flights.

The Regulations apply existing powers and offences at the new Airport. They do not create new policing powers or expand the scope of the existing powers and the existing thresholds and safeguards will apply.

#### **Human rights implications**

The amendment to the CoPAL Regulations engages each of the following human rights, while the amendment to the *Crimes (Aviation) Regulations* engages those listed at (c) and (d):

- a) the right to protection against arbitrary or unlawful interference with privacy (article 17 of the *International Covenant on Civil and Political Rights* [1980] ATS 23 (ICCPR))
- b) the right to life and prohibition on torture and cruel, inhuman or degrading treatment or punishment (articles 6 and 7 of the ICCPR)
- c) the right to liberty and security of person and freedom from arbitrary detention (article 9 of the ICCPR), and
- d) the right to freedom of movement (article 12 of the ICCPR).

#### ***Right to protection against arbitrary or unlawful interference with privacy***

Article 17 of the ICCPR provides that no one shall be subjected to arbitrary or unlawful interference with their privacy, family, home or correspondence, nor to unlawful attacks on his or her honour or reputation.

The term ‘unlawful’ means no interference can take place except in cases authorised by law. In order for an interference with the right to privacy not to be arbitrary, the interference must be for a reason consistent with the provisions, aims and objectives of the ICCPR and be reasonable in the particular circumstances. The United Nations Human Rights Committee has interpreted ‘reasonableness’ in this context to imply that any interference with privacy must be proportionate to the end sought and be necessary in the circumstances of any given case.

A limitation on the right to privacy will be permissible under international human rights law where it addresses a legitimate objective, is rationally connected to that objective and is a reasonable and proportionate means of achieving that objective.

The Amendment Regulations interact with the right to privacy by enabling law enforcement officers to use search and information gathering powers, available in Part IAA of the Crimes Act, at the Airport. The purpose of these powers is to enhance safety and security in airports in a context where aviation remains a high-profile, high-impact target for terrorists and transnational serious organised crime groups. These powers serve the legitimate purpose of preserving national security, public order and the rights and freedoms of others.

There are a range of safeguards intended to ensure that a police officer conducting any search has regard to a person’s right to privacy and maintenance of dignity throughout a search. For example, a strip search must be conducted in a private area (paragraph 3ZI(1)(a)) and by an officer of the same sex (paragraph 3ZI(1)(b)). Additional requirements must be met in relation to children – for example, a strip search must not be conducted on a person who is under 10 (paragraph 3ZI(1)(e)) and if a person is at least 10 but under 18, a strip search must be conducted in the presence of a parent or guardian (subparagraph 3ZI(1)(f)(ii)).

The conduct of forensic procedures, set out in Part ID of the Crimes Act also interact with the right to privacy. Part ID allows for the collection and use of DNA material for law enforcement purposes, and these powers are also critical to preserving national security, public order and the rights and freedom of others. However, a forensic procedure must be conducted in accordance with certain safeguards – in particular, a procedure must be carried out in circumstances affording reasonable privacy to the suspect (section 23XI). Part ID also establishes a scheme for the matching and inter-jurisdictional exchange of DNA profiles between Commonwealth, state and territory law enforcement agencies. Information collected under Part ID is included in the National Criminal Investigation DNA Database (NCIDD) as a DNA profile. Section 23YO of the Crimes Act criminalises the unauthorised disclosure of any information stored in the NCIDD or any other information revealed by a forensic procedure carried out under Part ID.

To the extent the amendments engage the right to privacy this is necessary to achieve legitimate law enforcement objectives, including maintaining airport security and upholding community safety. Further, there are a number of safeguards which ensure the powers enlivened by the Amendment Regulations are a reasonable and proportionate means of achieving these objectives.

### ***Right to life and protection on torture and cruel, inhumane or degrading treatment or punishment***

Article 6(1) of the ICCPR places a positive obligation on states to protect individuals from unwarranted actions by private persons. The obligation to protect life requires the state to take preventative operational measures to protect individuals whose safety may be compromised. Article 7 of the ICCPR provides that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. These powers are intended to ensure the safety of passengers and staff at airports, and therefore positively impact the right to life.

The Amendment Regulations further engage these rights by applying legislation regulating the circumstances in which a police officer may use force in effecting an arrest which, if excessive or disproportionate, could result in death or grievous bodily harm, or physical or mental suffering amounting to torture, or cruel, inhumane or degrading treatment. Searches and arrests of persons inherently involve close physical proximity, uncertainty and heightened risk. In executing an arrest, police officers may be required to resolve situations involving unwilling or resistive subjects. The use

of necessary and proportionate force allows police officers to mitigate risks to the community, including to the subject themselves, during the execution of an arrest.

The use of force when conducting arrests is limited to force that is ‘necessary and reasonable’ in the circumstances (subsection 3ZC(1)). Furthermore, in the course of arresting a person for an offence, the officer must not do anything that is likely to cause death, or grievous bodily harm, unless the officer believes on reasonable grounds that doing that thing is necessary to protect life or to prevent serious injury to another person (subsection 3ZC(2)). By embedding these safeguards, any physical intervention will be proportionate, necessary and focused on legitimate law enforcement objectives, thereby preventing conduct that could constitute torture or cruel, inhuman or degrading treatment.

Outside of legislative safeguards, law enforcement officers responsible for executing arrest operate within established operational policies and professional standards governing the use of force. These frameworks are supported by mandatory training requirements which include training on the lawful and proportionate use of force. Law enforcement officers’ conduct is subject to internal oversight and professional standards processes, as well as external independent review including by the Commonwealth Ombudsman. In totality, these safeguards ensure that the use of force during searches and arrests is appropriately regulated and compatible with Article 7 of the ICCPR.

Accordingly, although these powers engage the rights in Articles 6 and 7 of the ICCPR, this is reasonable, necessary and proportionate to legitimate law enforcement objectives.

#### ***Right to security of the person and freedom from arbitrary detention***

Article 9(1) of the ICCPR provides that everyone has the right to liberty and security of person. This right requires that persons not be subject to arrest and detention except as provided for by law, and provided that the law itself and the manner of its execution are not arbitrary. The test for whether detention is arbitrary under Article 9(1) of the ICCPR is whether, in all the circumstances, it is reasonable, necessary and proportionate to the end that is sought.

The Amendment Regulations engage this right through:

- amendment to the CoPAL Regulations making available the arrest powers in Part IAA and the remand of defendants set out in section 15 of the Crimes Act, and
- amendment to the Crimes (Aviation) Regulations providing powers to take an offender, a suspected offender, or a person delivered under paragraph 1 of Article 9 of the Convention on Offences and certain other Acts committed on board Aircraft (Tokyo Convention) into custody.

These powers are necessary to preserving national security, public order and the rights and freedom of others. Any limitation on the Article 9 right is proportionate as the powers are subject to a range of safeguards.

For example, before executing an arrest under Part IAA of the Crimes Act, an officer must have a reasonable belief that the person has committed or is committing an offence (section 3W). Similarly, under the Crimes (Aviation) Act the power of detention can only be exercised by an authorised person where there is a reasonable suspicion that a person has committed an offence. In addition, both the Crimes Act and the Crimes (Aviation) Act require a detained person be taken before a magistrate as soon as practicable after they are detained.

Accordingly, although these powers engage the rights in Article 9 of the ICCPR, this is reasonable, necessary and proportionate to legitimate law enforcement objectives.

#### ***Right to freedom of movement***

Article 12 of the ICCPR provides that everyone has the right to freedom of movement, including the right to move freely within a country for those who are lawfully within the country, the right to leave any country and the right to enter a country of which a person is a citizen. The right may be restricted, either by way of derogation under Article 4 of the ICCPR, or to protect national security, public order, public health or morals or the rights and freedoms of others, as allowed by Article 12(3).

The Amendment Regulations engage this right through the amendment to the CoPAL Regulations, which makes available the arrest powers in Part IAA and powers in relation to remand of a defendant in section 15 of the Crimes Act. The amendment to the Crimes (Aviation) Regulations provides an ability to take an offender, a suspected offender, or a person delivered under paragraph 1 of Article 9 of the Tokyo Convention into custody. However, as discussed above in relation to the rights to security of the person and freedom from arbitrary detention, these powers have specific parameters and safeguards that authorised officers must abide by, which operate to protect the right to freedom of movement.

Although the right is engaged to some extent, any limitations are reasonable and proportionate, and are necessary for the protection of national security, maintenance of airport security and to ensure community safety.

### **Conclusion**

This Disallowable Legislative Instrument is compatible with human rights because to the extent it may limit human rights, those limitations are reasonable, necessary and proportionate.

**Details of the proposed Commonwealth Places and Other Legislation Amendment (Sydney West Airport) Regulations 2026**

**Section 1 - Name of Regulations**

This section provides that the title of the Regulations is the *Commonwealth Places and Other Legislation Amendment (Sydney West Airport) Regulations 2026*.

**Section 2 - Commencement**

This section provides for the Regulations to commence the day after they are registered.

**Section 3 - Authority**

This section provides that the Regulations are made under the authority of the *Commonwealth Places (Application of Laws) Act 1970* and the *Crimes (Aviation) Act 1991*.

**Section 4 - Schedule(s)**

This section provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

**Schedule 1 – Amendments**

Schedule 1 makes one amendment to each of the *Commonwealth Places (Application of Laws) Regulations 2024* (CoPAL Regulations) and the *Crimes (Aviation) Regulations*.

**Item [1] – At the end of section 6**

Item 1 adds Sydney West Airport to the list of designated state airports in section 6 of the CoPAL Regulations. The Australian Federal Police (AFP) can exercise a range of powers, defined by the term ‘relevant Crimes Act provisions’ in section 3 of the *Commonwealth Places (Application of Laws) Act 1979*, at designated state airports.

The relevant *Crimes Act 1914* provisions are as follows:

- Part IAA (which deals with search, information gathering, arrest and related powers)
- section 9 (which provides for the seizure and condemnation of forfeitable goods)
- section 13 (which allows the institution of proceedings in respect of offences)
- section 15 (which deals with the remand and discharge of defendants), and
- Part ID (which deals with forensic procedures).

By adding Sydney West Airport to the list of designated state airports in the CoPAL Regulations, the AFP can investigate matters within the airport and exercise the powers listed

above. This ensures the AFP's powers at Sydney West Airport align with other major Australian airports.

### **Item [2] – Schedule**

Item 2 adds Sydney West Airport to the list of prescribed airports in the Crimes (Aviation) Regulations.

By adding Sydney West Airport to the Schedule of Airports in the Crimes (Aviation) Regulations, offences in subsections 26(1) and (2) (Acts of violence at certain airports) of the Crimes (Aviation) Act apply.

It ensures that the airport manager, as an authorised person, can exercise powers under the Crimes (Aviation) Act to facilitate the handling of a person who is suspected of committing an offence on board an aircraft (section 30) and for taking offenders into custody (section 33), in line with international civil aviation treaties.

The offences and powers described apply in this way at other major airports in Australia.