

Exposure Draft - EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Infrastructure, Transport, Regional Development
and Local Government

Airports Act 1996

Airports (Protection of Airspace) Regulations 2026

Purpose and Operation

Leased Federal Airports¹ (LFAs) are nationally significant economic and transport infrastructure assets. Airspace architecture and its protection is complex and designed coherent with the International Civil Aviation Organization's (ICAO's) Standards and Recommended Practices (SARPs) in Annex 14 to the Convention on International Civil Aviation, which are incorporated into Australian legislation through the Civil Aviation Safety Regulations 1988 where appropriate.

The *Airports (Protection of Airspace) Regulations 2026* (the Regulations) establish a system for the protection of airspace at, and around, airports in the interests of the safety, efficiency or regularity of existing or future air transport operations into or out of airports. The Regulations also provide a mechanism to assess proposals for, and manage intrusions into, prescribed airspace. The Regulations replace the *Airports (Protection of Airspace) Regulations 1996* (the 1996 Regulations) which have been in place since the privatisation of LFAs in 1996.

LFA sites are Commonwealth land situated adjacent to areas where state and territory governments are responsible for land-use planning and development. While the safety, efficiency and regularity of air transport operations into and out of the airport are the fundamental considerations, the Regulations support land-use planning and development outcomes that are compatible with airport operations.

Modernisation

The Regulations has been prepared to meet modern drafting standards while maintaining the intent and objective of the 1996 Regulations; to establish a system for the protection of airspace at, and around, airports in the interests of the safety, efficiency and regularity of air transport operations.

Since the privatisation of LFAs, there have been changes in the legislative and operating environments without significant reforms to the 1996 Regulations. The legislative and operating environments have matured and evolved, and in April 2025, ICAO introduced amendment 18 to the Annex 14 (Volume I) SARPs for establishing the Obstacle Limitation Surface (OLS) and for managing intrusions into prescribed airspace.

ICAO's amendment 18 to the Annex 14 (Volume I) SARPs will result in an overall reduction in the volume of airspace that is protected, whilst also commensurately strengthening the protections for existing and future aircraft operations into and out of airports, particularly

¹ Leased Federal Airports are: Adelaide, Alice Springs, Archerfield, Bankstown, Brisbane, Camden, Canberra, Darwin, Essendon Fields, Gold Coast, Hobart, Jandakot, Launceston, Melbourne (Tullamarine), Moorabbin, Mt Isa, Parafield, Perth, Sydney (Kingsford Smith), Tennant Creek, Townsville and Western Sydney International (Nancy-Bird Walton).

during critical stages of flight. The ICAO changes recognise that aircraft cannot easily adapt to obstacles during critical stages of flight. Therefore, the observed or expected performances of aircraft operating into, out of, and within the vicinity of aerodromes is a key consideration in ensuring the ongoing safety of air transport operations. The objects of the ICAO changes are to preserve the airspace necessary for existing and future/intended visual and instrument air transport operations at an aerodrome, and to differentiate obstacle requirements according to the effect of obstacles on the safety, efficiency or regularity of air transport operations.

As a signatory to the Chicago Convention, Australia undertakes to collaborate in securing the highest practicable degree of uniformity in regulations, standards, procedures, and organisation in relation to aircraft, personnel, airways and auxiliary services in all matters in which such uniformity will facilitate and improve air navigation. Effective airspace management, including through the Regulations, is fundamental for ensuing safety outcomes. Intrusions into prescribed airspace may introduce hazards that erode the margin for operational error and deviate from agreed international standards, as implemented in Australia, thereby creating direct or indirect impacts to aviation safety.

As such, the Regulations have been drafted to:

- ensure a fit-for-purpose regulatory regime with a continued focus on the safety, efficiency and regularity of air transport operations into and out of LFAs
- be in accordance with ICAO's Annex 14 aims and objectives for safety, efficiency and regularity of existing and future air transport operations
- provide continued safe, efficient and regular air transport operations that enhance existing and future aviation networks and support a sustainable aviation sector, and
- streamline and improve the efficiency of assessment and decision-making processes for applications to undertake an activity that would result in an intrusion into prescribed airspace.

The Regulations replace the 1996 Regulations which sunset on 1 April 2026. Sunsetting is an automatic repeal of instruments after a fixed period, under the *Legislation Act 2003*. The aim is to ensure instruments remain fit-for-purpose and are only in force for as long as required.

The Regulations include transitional provisions such as the transition of applications for controlled activities and declarations of prescribed airspace.

The main purpose of this exposure draft explanatory statement is to outline the changes that have been made as part of the remaking process. The Federal Register of Legislation (FLR) provides the legislative history of the sunseting Regulations, including past explanatory statements.

The latest versions of Australian Government Acts, Regulations and other legislative Instruments referenced in this exposure draft explanatory statement are available at the FLR (<https://www.legislation.gov.au>).

The Aeronautical Information Publication referenced in this exposure draft explanatory statement as in force or existing from time to time is at (<https://www.airservicesaustralia.com/aip/aip.asp>).

Further details of the Regulations are outlined in **Attachment A**.

Authority

The *Airports Act 1996* (the Act) establishes a regulatory framework for LFAs. Section 252 of the Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act. The Act identifies a range of matters which may be prescribed by regulations.

The original sunseting date for the 1996 Regulations was 1 April 2019. This sunseting date was extended on three occasions, on the first instance by the *Legislation (Airport Instruments) Sunset-altering Declaration 2018* to 1 April 2024, then to 1 April 2025 by the *Legislation (Deferral of Sunseting – Airport Instruments) Certificate 2022*, then to 1 April 2026 by the *Legislation (Deferral of Sunseting – Airport Instruments) Amendment Certificate 2024*. The final deferral was sought to align the sunseting of the 1996 Regulations with the issuing of ICAO’s amendment 18 to Annex 14 of the Convention of International Civil Aviation.

The Regulations are a disallowable legislative instrument under the *Legislation Act 2003*. The *Airports (Protection of Airspace) Regulations 2026* commence on 1 April 2026.

Consultation

[To be completed post public consultation of the exposure draft Regulations].

Statement of Compatibility with Human Rights

A Statement of Compatibility with Human Rights is set out at **Attachment B**.

NOTES ON SECTIONS

Part 1—Preliminary

Section 1 Name

1. Section 1 specifies that the name of the Regulations is the *Airports (Protection of Airspace) Regulations 2026*.

Section 2 Commencement

2. Section 2 specifies that the Regulations will commence on 1 April 2026.

Section 3 Authority

3. Section 3 specifies the *Airports Act 1996* (the Act) provides authority for the Regulations to be made.

Section 4 Object

4. Section 4 outlines the object of the Regulations.

Section 5 Definitions

5. Section 5 sets out the definitions for terms used throughout the Regulations.
6. Some defined terms used in the Regulations are defined in the Act. These terms have generally not been further defined in the Regulations.
7. New terms include (not limited to):

a. *Aeronautical Information Publication (AIP)*

This term has been introduced as it contains details of Instrument Flight Procedures that are integral to the establishment of certain Terminal Instrument Flight Procedures Obstacle Protection (TIFPOP) surfaces and TIFPOP areas. For the purposes of the Regulations, prescribed airspace is established in accordance with ICAO standards and recommended practices as implemented in Australia through the *Civil Aviation Safety Regulations 1998* as administered by the Civil Aviation Safety Authority (CASA).

b. *primary airspace and primary surfaces*

Aircraft operating in primary airspace or above a primary surface are configured for and engaged in critical stages of flight and cannot readily or safely manoeuvre to avoid obstacles. As such, primary airspace and primary surfaces are intended to be maintained as obstacle free surfaces to the extent possible. These terms have been introduced to support the consideration of applications to carry out a controlled activity under the Regulations.

c. *secondary surface*

Aircraft operating in secondary airspace are configured for and engaged in operations that provides a degree of flexibility to adapt to the obstacle environment. However, obstacles intruding into this airspace may present a safety risk and as such, an assessment is required to identify if the proposed intrusion would be hazardous and/or if any potential risks to aviation safety can be managed or mitigated. This term has been introduced to support the consideration of applications to carry out a controlled activity under the Regulations.

d. *TIFPOP surfaces and TIFPOP areas*

The terms TIFPOP surfaces and TIFPOP areas replace what was previously specified as Procedures for Air Navigation Systems Operations (PANS-OPS) surfaces in the Regulations. The terms are intended to be applied broadly, so as to protect airspace in relation to any terminal instrument flight procedure for the airport. For the purposes of the Regulations, prescribed airspace is established in accordance with ICAO Annex 14 SARPs as implemented in Australia through the *Civil Aviation Safety Regulations 1998* as administered by the CASA. Please note that the policy relating to the TIFPOP has been established, however the drafting of the provision relating to the definition is not yet settled.

Section 6 Sensitive Controlled Activities

8. Section 6 sets out that a controlled activity is considered to be a sensitive controlled activity if it would intrude into airspace above a primary surface and is not proposed to be carried out on an airport site. An applicant seeking to undertake a sensitive controlled activity must seek permission to bring forward an application under section 13.
9. A controlled activity will not be considered sensitive if that activity is conducted on an LFA site. For example, some activities on an LFA site, if carried out, will unavoidably result in an intrusion into primary surface(s) due inherently to its the proximity to critical aviation infrastructure. As such, if an applicant is seeking to carry out a controlled activity that is likely to intrude into primary surface(s) on an LFA site, the applicant does *not* need to seek permission to bring forward an application under section 13. However, the applicant will still be required to bring forward an application to carry out the controlled activity for consideration and determination under the Regulations. To avoid doubt, the fact an applicant is not required to obtain permission to bring forward an application, does not preempt or affect the ultimate determination of that application by the Secretary or delegate—the Secretary (or delegate) still has the discretion to ultimately refuse that application.

Section 7 Controlled activities on terrain that intrudes into secondary airspace

10. There are some areas around LFAs where the terrain itself intrudes into secondary surfaces. Under the Regulations, controlled activities in these areas, including, the erection of structures, buildings or things (such as a shed, or fence, etc.) are subject to the same regulatory application and assessment process as more complex controlled activity applications even though they are inherently less complex.

11. Under the Regulations, if the proposed controlled activity meets the requirements of section 7, then the Airport Operator Company (AOC) may consider the application under a truncated process that would not require additional specialist advice from aviation agencies to inform a determination. This allows for an expedited application process for the regulated community.
12. Note, 'terrain' refers specifically to land features and their physical characteristics. Components of terrain include elevation, slope and landforms of the landscape.

Part 2—Prescribed airspace

Section 8 Prescribed airspace

13. For the purposes of section 181 of the Act, the Regulations set out that prescribed airspace is the airspace as:
 - a. above any part of an OLS or a TIFPOP surface for an airport;
 - b. within any part of a TIFPOP area for an airport; and
 - c. airspace connected with an airport specified in a declaration made under subsection 9(1).
14. Consistent with the 1996 Regulations, the Regulations maintain the requirement for the responsible entity to make available for inspection or purchase a chart of prescribed airspace connected with the airport, and to bring the chart up to date if there are changes to prescribed airspace connected with the airport.
15. The Regulations extend the time the responsible entity has to bring the chart up to date following a change to prescribed airspace, from 14 days in the 1996 Regulations to 40 working days. This is to support the consultation and verification processes between the responsible entity, CASA and Airservices Australia (Airservices) in relation to updating prescribed airspace charts.
16. Subsection 8(5) has been modernised to require the responsible entity to publish a notice of the fact that a new chart or updated chart is available in a manner that results in the notice being accessible to the public and reasonably prominent.
17. As a matter of practice, AOCs make prescribed airspace charts freely and readily available to the public, electronically on the AOC's website. However, if a person requests a physical copy of the prescribed airspace charts and the AOC incurs costs relating to the printing or posting of those charts, as a private company providing a service, AOCs may charge for that service.

Section 9 Declaration of prescribed airspace

18. Consistent with the 1996 Regulations, the Regulations continue to enable the Secretary to declare airspace connected with a particular airport to be prescribed airspace. This provision has been updated to enable the Secretary to declare airspace in the interests of the safety, efficiency or regularity of *existing* or future air transport operations into or out of the airport for the airspace to be prescribed airspace.

19. An AOC must ensure the airspace that is prescribed is adequate to ensure the safety, efficiency and regularity of existing and intended air transport operations for the airport. For example:
 - a. The airspace above the OLS and TIFPOP surfaces and TIFPOP areas may not include airspace that is necessary for the proper functioning of navigational devices, radar, and instrument landing systems. As such, an AOC must identify and request the Secretary declare any additional airspace above and around the airport requiring protection for existing and intended operations of the airport in the interest of safety, efficiency and regularity of air transport operations, in addition to the OLS, TIFPOP surfaces and TIFPOP areas.
 - b. If an airport is seeking to construct a new runway, an AOC may seek for the Secretary to declare the airspace in relation to that new runway in the interest of safety, efficiency and regularity of air transport operations to ensure the future operational viability of the new runway.
 - c. An AOC may seek for the Secretary to declare additional airspace associated with changes to the airspace architecture or flight path design for existing or intended operations of the airport in the interest of safety, efficiency and regularity of air transport operations.
20. Consistent with the 1996 Regulations, the Regulations retains the requirement that the Secretary, in making the declaration, must have regard to any changes to the OLS, TIFPOP surfaces or TIFPOP areas for the airport proposed in the final master plan.
21. The Secretary's functions and powers in relation to section 9, are generally exercised by an Australian Public Service (APS) employee who holds, or is acting in, an Executive Level 2 (EL2), or equivalent, position in the department. Most assessments and decisions relating to the declaration of prescribed airspace are uncontroversial, highly technical, and informed by the technical requirements, assessments and advice of CASA, Airservices and other industry specialists. It is appropriate that the power is able to be exercised by technical experts occupying roles at the EL2, noting that in the rare instances, if a declaration may raise wider issues, that decision can be referred to an SES officer or the Secretary to exercise the power.
22. Prescribed airspace charts may be updated multiple times within the master plan cycle. It is important that prescribed airspace charts that have been superseded are not used by regulated entities to inform land-use planning and development decisions or undertake assessments relating to carrying out a controlled activity into prescribed airspace. As such, entities seeking information relating to prescribed airspace should contact the relevant responsible entity as required under subsection 8(2) to make available for inspection or purchase a chart of prescribed airspace connected with the airport.
23. Subsection 9(5) specifies the declaration may declare that a surface below airspace specified in the declaration is a primary or secondary surface for the airport. This provision contributes to the management proposed obstacles into prescribed airspace and the associated management of controlled activity applications.

Part 3—Matters affecting whether an activity is a controlled activity

Section 10 Level of air turbulence

24. The 1996 Regulations specified the level of air turbulence for turbulence caused by an emission from a stack or vent is upward vertical velocity of 4.3 metres per second at the point of emission. CASA advised that it is in the process of amending the standard and that the upward vertical velocity must be increased to 6.1 metres per second at the point of emission. As such, the Regulations specify the level of air turbulence for turbulence caused by an emission from a stack or vent is upward vertical velocity of 6.1 metres per second at the point of emission.

Part 4—Approval of controlled activities

Section 11 Purpose of this Part

25. Section 11 specifies that Part is made for the purposes of section 184 of the Act.

Section 12 Application for approval to carry out controlled activity

26. An unapproved controlled activity may present an unacceptable risk to aviation safety. A person may commit an offence against section 183 of the Act, and remedial orders may be made under section 187 of the Act, if a controlled activity is carried out other than in accordance with an approval.
27. A person seeking to undertake a controlled activity must obtain approval under the Regulations prior to undertaking that activity. Section 12 of the Regulations outlines the process and requirements for an application to carry out a controlled activity. Specifically, the applicant must apply to the responsible entity for the relevant airport. Subsection 12(2) sets out the requirements for what an application to carry out a controlled activity must contain. As a practical matter, applicants are encouraged to consult the relevant AOC when preparing an application to ensure it is complete and so avoid unnecessary assessment delays.
28. Under subsection 12(3)(a), the application must be accompanied by an assessment from Airservices, in relation to the activity, obtained by the responsible entity for the airport. In general terms, Airservices' assessment will identify which airspace and instrument procedures may be affected by a proposed controlled activity. Airservices provides these assessments to airports free of charge (meaning there is no cost for an applicant arising from this process). An application is not considered to be complete, and the 40 working day decision making timeframe does not commence, until subsections 12(2) and (3) have been met.
29. Under the 1996 Regulations, the assessment of Airservices was sought at the same time that submissions were sought from CASA, Department of Defence (if that airport is a joint-user airport) and other relevant stakeholders. However, the assessment by Airservices is integral to stakeholders being able to determine the application pathway, as well as informing the advice of CASA, the AOC, and the decision of the Secretary. As such, under the Regulations, an application must be accompanied by an assessment by Airservices, in relation to the activity, obtained by the responsible entity for the airport

30. Under subsection 12(3)(b), if the controlled activity is a sensitive controlled activity, the application must be accompanied by a copy of the notice given to the applicant under section 13, permitting the applicant to apply to carry out the activity. To avoid doubt, the fact that permission to bring forward an application has been given, does not preempt or affect the ultimate determination of that application by the Secretary or delegate—the Secretary (or delegate) still has the discretion to ultimately refuse that application.
31. Subsection 12(4) specifies that an applicant may withdraw their application at any stage before a decision is made. If the applicant withdraws the application, it will be taken as never having been made.
32. Subsection 12(6) sets out that the responsible entity for the airport must provide notice to an applicant within 10 working days of receiving the application, the timeframe within which the application will be deemed refused if a decision is not made. Subsection 12(6) informs the applicant of the decision-making timeframes and factors that could influence that timeframe.

Section 13 Permission to apply to carry out sensitive controlled activities

33. Aircraft operating in primary airspace are configured for, and engaged in, critical stages of flight and cannot readily or safely manoeuvre to avoid obstacles. Intrusions into primary airspace therefore generally present an unacceptable impact on the safety, efficiency or regularity of air transport, hence the need to maintain primary surfaces as obstacle free surfaces to the extent possible. As such, the Regulations prohibit applications to carry out any intrusion into primary airspace that is not temporary.
34. The protection of primary surfaces is crucial for ensuring aircraft have a safe path for take-offs and landings, for both visual and instrument approaches. This section formalises controls for activities, that if carried out, would intrude into primary airspace and supports ongoing alignment with international standards for maintaining critical surfaces as obstacle free.
35. Section 13 sets out that a person must not apply under section 12 for approval to carry out a sensitive controlled activity unless the person has first been given permission. A person applying for permission to bring forward an application to undertake a sensitive controlled activity must in accordance with subsection 13(4)(e) specify one of the following:
 - a. the emergency recovery works, emergency restoration works, or public infrastructure works that the activity is required for
 - b. how the activity could be carried out without any significant interference to airport operations
 - c. the exceptional circumstances that the applicant believes justify the making of an application under section 12 for approval to carry out the activity.

36. The Secretary, or the person performing the Secretary's functions under a delegation, may, by written notice to the applicant, give the permission requested under subsection (2) if the Secretary (or delegate) is satisfied that the proposed activity would be a temporary controlled activity and:
- a. the activity is required to carry out emergency recovery works, emergency restoration works, or public infrastructure works; or
 - b. it is reasonably likely that the activity could be carried out without any significant interference to airport operations; or
 - c. exceptional circumstances exist that justify permitting an application to be made under section 12 for approval to carry out the activity.
37. The Secretary, or the person performing the Secretary's functions under a delegation, has discretion to give or refuse to give permission. A decision to give or refuse to give permission must be provided to the applicant, in writing. To avoid doubt, the fact that permission to bring forward an application has been given, does not preempt or affect the ultimate determination of that application by the Secretary or delegate—the Secretary (or delegate) still has the discretion to ultimately refuse that application.
38. Under subsection 13(8), if the Secretary (or delegate) refuses to give permission to make the application, the applicant may request, in writing, the Secretary (or delegate) to give a statement of reasons for the decision. The Secretary (or delegate) must comply with this request.
39. Section 24 provides for internal merits review of decisions made under subsection 13(8). If an officer or employee of an AOC, performing the functions of the Secretary under a delegation, refuses to give a person permission to make an application, the person may request that the Secretary, or the SES or APS EL2 performing the functions of the Secretary under a delegation, undertake an internal merits review of that decision.

Section 14 Consultation on applications to carry out controlled activities

40. Section 14 sets out requirements for the responsible entity to give written notice of the application to, and invite submissions from, certain authorities within 10 working days of receiving an application under section 12. Subsection 17(5) specifies that the Secretary (or delegate), in considering the effect that the controlled activity, if carried out, will have on the safety, efficiency or regularity of existing or future air transport operations into or out of the airport concerned, must have regard to the advice from those authorities.
41. Under section 14, the responsible entity must seek submissions from CASA and/or the Department of Defence (if that airport is a joint-user airport) for all applications except for those to which section 7 applies. For applications to which section 7 applies – that is, controlled activities which do not exceed a maximum height of 30 metres Above Ground Level (AGL) and the activity is situated on terrain that intrudes into a secondary surface only, the responsible entity has discretion and needs only to seek submissions from CASA and Airservices and/or the Department of Defence (if that airport is a joint-user airport) on a case by case basis if required.

42. Subsection 14(3) provides a mechanism through which authorities may request a copy of an application. If requested, this may allow authorities to formulate their submissions regarding the full scope of the application, assess any interdependencies or cumulative impacts and ensure their advice is based on all available evidence.
43. The 1996 Regulations specified that the AOC must also seek submissions from the building authority concerned. This requirement has not been retained in the Regulations in order to clarify the responsibility of the building authority and eliminate any potential for conflict with the operation of section 23. Notwithstanding the above, this section does not preclude the AOC from seeking submissions from the building authority concerned or other relevant stakeholders such as users of the airport, on a case-by-case basis, if required.

Section 15 Giving applications to the Secretary

44. Section 15 imposes an obligation on the AOC to refer the application to the Secretary for determination if no officer or employee of the AOC has been granted delegation to make a determination on the application. Subsections 15(2) and (3) specifies the AOC must give the application to the Secretary for decision within 30 working days of receiving an application, provide a copy of any submissions received in relation to that application, and must advise the Secretary of the date the application was received and whether the AOC supports the application.
45. To avoid doubt, even if an officer or employee of an AOC does in fact hold a delegation to make a decision on an application, the AOC may still decide at any stage to refer the application to the Secretary to make a decision—for example if the AOC considers the decision to be highly sensitive or to require escalation. Consistent with the usual legal principles applicable to delegation, the Secretary (as delegator) remains able at all times to exercise a power that has been delegated (see paragraph 34AB(1)(d) of the *Acts Interpretation Act 1901*, which applies to the Regulations because of paragraph 13(1)(1) of the *Legislation Act 2003*).

Section 16 Requests for further information or documents

46. Section 16 provides a mechanism for the Secretary (or delegate) to request further information or documents from the applicant, if required, for the purposes of making a determination on a controlled activity application made under section 12.
47. If the Secretary (or delegate) requires further information or documents, the Secretary (or delegate) will issue a written notice to the applicant. The applicant must give the requested information or documents to the Secretary (or delegate) within 60 working days otherwise the application is taken to have been withdrawn.
48. While the Secretary (or delegate) is waiting for this further information, the decision-making period is paused as per subsection 18(5) and the Secretary (or delegate) is not obliged to make a decision in the absence of the further information that was requested.

Section 17 Decision on application

49. Section 17 specifies that the Secretary (or delegate) must approve or refuse an application and sets out the matters the Secretary must take into account in considering an application.
50. Subsection 17(3) specifies that the Secretary (or delegate) must not approve an application if CASA advises that carrying out the controlled activity would have an unacceptable effect on the safety of air transport operations, or if the AOC does not support the application.
51. LFAs are significant national transport and economic infrastructure assets, and it is necessary to preserve the accessibility of an airport's existing and intended operations. Existing and intended air transport operations into and out of airports must continue to be conducted safely. As such, the safety advice of CASA must be adhered to. In considering whether to support the application, the AOC must have regard to ICAO's Annex 14 aims and objectives as implemented in Australia, including to prevent the growth of obstacles into prescribed airspace that may affect the safety, efficiency or regularity of air transport operations.
52. Examples of circumstances where an AOC may opt not to support a controlled activity application include (not limited to), if:
 - a. an airline indicates that carrying out the controlled activity may impact on its engine-out procedures;
 - b. users of the airport, such as a flying school, advise that carrying out the controlled activity may restrict access to a particular runway which in turn may limit the standard operating capacity of that flying school;
 - c. users of the airport advise that carrying out the controlled activity may disrupt established operating corridors or standard routes of operation; or
 - d. carrying out the controlled activity may have a cumulative impact on the growth of obstacles in prescribed airspace.

Section 18 Period for making decision on application

53. Subsection 18(1) specifies that the Secretary (or delegate) has 40 working days to make a decision on an application received under section 12. Subsection 18(2) specifies the Secretary (or delegate) may extend this timeframe, by notice in writing, by a period of no more than 10 working days.
54. If the Secretary (or delegate) does not make a decision within this period, the Secretary (or delegate) is taken to have refused the application. A deemed refusal is subject to merits review under the *Administrative Review Tribunal Act 2024*.

Section 19 Notice of Decision

55. Section 19 requires the Secretary (or delegate) to notify the applicant and relevant entities, of the decision in writing as soon as practicable.

56. If the Secretary (or delegate) is taken to have refused an application under subsection 18(6), a person affected can seek review of the deemed refusal in the Administrative Review Tribunal.

Section 20 Approval may be subject to conditions

57. A building, structure, or thing that intrudes into prescribed airspace may create direct or indirect risks or implications for the safety, efficiency or regularity of air transport operations into or out of an airport.
58. Consistent with the 1996 Regulations, section 20 of the Regulations provides that the Secretary (or delegate) may approve an application under subsection 17(1) subject to conditions, if the Secretary (or delegate) reasonably believes that carrying out the controlled activity other than in accordance with the conditions would not be in the interests of the safety, efficiency or regularity of existing or future air transport operations into or out of the airport. A non-exhaustive list of examples of what a condition may require are included in note 1 under subsection 20(2) of the Regulations.
59. A person who carries out a controlled activity other than in accordance with a condition of an approval commits an offence against section 185 of the Act. Section 185 of the Act provides for a penalty of 250 penalty units for each such offence.

Section 21 Revocation and variation of approvals etc.

60. There may be certain circumstances that necessitate the Secretary (or delegate) to revoke an application, impose a condition on, or vary a condition of, an application that was approved under subsection 17(1) in the interests of the safety, efficiency or regularity of existing or future air transport operations into or out of an airport. For example, a delegate may revoke the approval, or vary the conditions of the approval of an application under subsection 17(1) if a safety risk emerges, that was not known at the time of approval, due to (not limited to) changes in prescribed airspace, or aviation operating environment. As such, section 21 enables the Secretary (or delegate) to revoke or vary an approval if the Secretary (or delegate) is satisfied that it is necessary to do so in the interests of the safety, efficiency or regularity of existing or future air transport operations into or out of an airport.

Part 5—Exempt controlled activities

Section 22 Exemption for controlled activities in relation to Sydney West Airport

61. The 1996 Regulations exempt certain controlled activities in relation to the prescribed airspace for Western Sydney International (Nancy-Bird Walton) Airport (referred to as Sydney West Airport in the Act).
62. The exemption at Section 22 covers controlled activities that are, or comprise part of, developments covered by Part 3 of the airport plan for Sydney West Airport; and are not carried out after 30 June 2026.
63. An airport plan for Sydney West Airport under section 96B(1) of the Act was determined on 5 December 2016. The exemption at Section 22 recognises the detailed assessment of the interaction between activities covered by Part 3 of the airport plan and airspace restrictions that was completed as part of the airport plan development

process. The purpose of limiting this exemption to relevant controlled activities carried out before 1 July 2026 is to provide an appropriate period of time between the end date of the exemption and the anticipated commencement of air transport operations to and from Sydney West Airport to enable affected stakeholders to develop sufficient awareness of, and familiarity with, the regulatory regime and approval requirements before Sydney West Airport operations commence.

Part 6—Notification of proposals to carry out controlled activities

Section 23 Building authority to give notice of proposals to carry out controlled activities

64. Building authorities perform an integral role in minimising the risk of a person carrying out a controlled activity without the necessary approvals under the Act and the Regulations. Unauthorised controlled activities present an unacceptable risk to aviation safety. A person may commit an offence against section 183 of the Act, and remedial orders may be made under section 187 of the Act, if a controlled activity is carried out other than in accordance with an approval.
65. Therefore, a building authority that receives a proposal for a building activity must notify the AOC of the relevant LFA of the proposal if the activity, if undertaken, would constitute a controlled activity in relation to prescribed airspace connected with the airport. The building authority must give such a notice as soon as reasonably practicable and before a final decision on the proposal is made. An unauthorised controlled activity may present an unacceptable risk to aviation safety and, as such, a building authority which fails to comply with section 23 commits an offence against section 186 of the Act.

Part 7—Miscellaneous

66. Administrative decisions under the Regulations will, or are likely to, affect the interests of a person and are therefore subject to merits review as set out under sections 24 and 25 of the Regulations.

Section 24 Internal review of certain decisions

67. Section 24 sets out that a person may request that the Secretary (or delegate) review the decision of an AOC employee performing the functions of the Secretary under a delegation under subsection 26(2) to refuse to give permission under subsection 13(8) to make an application.
68. The person must make such a request within 10 working days of the decision to refuse permission to make an application. The Secretary (or delegate) on receiving the person's request must affirm, vary or set aside the decision of the AOC employee performing the functions of the Secretary under a delegation under subsection 26(2) within 30 working days.
69. No other decisions under the Regulations allows for an internal department review. For the course of previous application, the department has not received any requests for, or determinations requiring, internal merits review. For complex applications, delegates within the department would have been involved in the assessment process or

decision making for that application and therefore would not be well placed to undertake or support an internal review mechanism. For these large and complex applications, it is more appropriate for the Administrative Review Tribunal to review and if required, remake the decision. As such, the Regulations maintain that all other disputed decisions are subject to review by the Administrative Review Tribunal under the *Administrative Review Tribunal Act 2024*.

Section 25 Administrative Review Tribunal

70. Under the Regulations, a decision of the Secretary (or delegate) made under the following sections may be taken to the Administrative Review Tribunal for merits review:
- a. Section 9 to make a declaration;
 - b. Subsection 13(8) to refuse to give permission to make an application;
 - c. Subsection 17(1) or 18(6) to refuse an application;
 - d. Section 24 to affirm, vary or set aside a decision.

Section 26 Delegation

71. Consistent with the 1996 Regulations, subsection 26(1) of the Regulations empowers the Secretary to delegate one or more of the Secretary's functions or powers to an SES employee, or acting SES employee, or an APS employee who holds, or is acting in, an EL2, or equivalent, position in the Department. APS employees to whom the Secretary delegates one or more of the Secretary's functions or powers possess the appropriate training, knowledge, skills or experience.
72. Subsection 26(1)(b) allows for delegation of the Secretary's powers to an EL2 or acting EL2. Under the 1996 Regulations, EL2 employees with responsibility for aviation or airport regulatory matters, who exercised the Secretary's delegated functions or powers, did so for a high volume of decisions. Permitting delegation to this level balances administrative expediency with proportionate controls on decision making.
73. It is expected that the Secretary's powers will be exercised as frequently under the Regulations. Confining the delegation to SES employees, or acting SES employees only, would likely lead to delayed decision making given the volume of such decisions. This in turn could have adverse impacts on the regulated entities including, applicants, building and construction industry, state, territory and local governments land-use and planning authorities, and LFAs.
74. Consistent with the 1996 Regulations, subsection 26(2) of the Regulations empowers the Secretary to delegate one or more of the Secretary's functions or powers to an employee of an AOC of an LFA. An employee of an AOC to whom the Secretary delegates one or more of the Secretary's functions or powers, occupy positions which reflect seniority commensurate with the determinations being made, possesses the appropriate training, knowledge, skills or experience to administer their delegation; and demonstrate competency in having regard to the matters the Secretary is required to have regard to under the Regulations.

75. Thousands of controlled activity applications are submitted each year across all LFAs. The majority of these applications are short-term (the intrusion into prescribed airspace does not exceed a period of 3 months) and are therefore determined by the AOC employees to whom the Secretary has delegated limited functions and powers. Under the 1996 Regulations, AOC employees who exercised the Secretary's delegated functions or powers, did so for a very high volume of decisions. It is expected that the Secretary's powers will be exercised by AOC delegates as frequently under the Regulations.
76. Considerably narrowing the power by confining the delegation of the Secretary's powers to APS employees only would cause substantial delays for the regulated community, potential negative financial implications and disbenefits for the public. It would increase the risk of applicants proceeding to carry out a controlled activity without the necessary approvals under the Act and the Regulations should the regulatory assessment process lack responsiveness. Unauthorised controlled activities present an unacceptable risk to aviation safety.
77. The determinations of all delegates exercising the Secretary's functions or powers are informed by the technical assessments of Airservices and Defence (if the LFA is a joint-user airport), and the safety advice of CASA. Subsection 17(3) requires Delegates exercising the Secretary's functions or powers to refuse an application if CASA advises that carrying out the proposed controlled activity would have an unacceptable effect on the safety of existing or future air transport operations into or out of the airport or if the AOC for the LFA does not support the application. Sections 24 and 25 provides details of an applicant's right to judicial or merits review for decisions that are made by persons who are, or are not, government officials.

Part 8—Transitional provisions

Division 1—Provisions relating to this instrument as originally made

78. Part 8 outlines provisions which enable the transition from the Airports (Protection of Airspace) Regulations 1996 to the Airports (Protection of Airspace) Regulations 2026.
79. Applications to carry out a controlled activity or for the declaration of airspace that are brought forward on or after 1 April 2026 must be submitted, and a determination relevant to that application be made, under the Airports (Protection of Airspace) Regulations 2026.

Section 27 Transitional provision—applications for controlled activities

80. Section 27 provides that if an application to carry out a controlled activity is submitted under the 1996 Regulations prior to the commencement of the Regulations on 1 April 2026, a determination on that application may be issued under the 1996 Regulations, including after the Regulations has commenced. For decisions to be made under the 1996 Regulations after 1 April 2026, the Secretary's Instruments delegating powers to an employee of the Department or an employee of an AOC of a LFA under section 18 of the 1996 Regulations remain in-force, unless otherwise revoked.

Section 28 Transitional provision—declarations of prescribed airspace

81. Section 28 provides that any declaration of prescribed airspace that was in force under section 5 prior to the commencement of the Regulations, remains in-force as if it has been made under section 9 of the Regulations. As such, section 28 allows for the continued protection of prescribed airspace in the interests of safety, efficiency and regularity of air transport operations now and into the future.

Statement of Compatibility with Human Rights

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

Airports (Protection of Airspace) Regulations 2026

This Disallowable 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 Disallowable Legislative Instrument

Leased Federal Airports² (LFAs) are nationally significant economic and transport infrastructure assets. Airspace architecture and its protection is complex and designed coherent with the International Civil Aviation Organization's (ICAO's) Standards and Recommended Practices (SARPs) in Annex 14 to the Convention on International Civil Aviation, which are incorporated into Australian legislation through the *Civil Aviation Safety Regulations 1988* where appropriate.

The *Airports (Protection of Airspace) Regulations 2026* (the Regulations) establish a system for the protection of airspace at, and around, airports in the interests of the safety, efficiency or regularity of existing or future air transport operations into or out of airports. The Regulations also provide a mechanism to assess proposals for, and manage intrusions into, prescribed airspace. The Regulations replace the *Airports (Protection of Airspace) Regulations 1996* (the 1996 Regulations) which have been in place since the privatisation of LFAs in 1996.

LFA sites are Commonwealth land situated adjacent to areas where state, territory and local governments are responsible for land-use planning and development. While the safety, efficiency and regularity of air transport operations into and out of the airport are the fundamental considerations, the Regulations support land-use planning and development outcomes that are compatible with airport operations.

² Leased Federal Airports are: Adelaide, Alice Springs, Archerfield, Bankstown, Brisbane, Camden, Canberra, Darwin, Essendon Fields, Gold Coast, Hobart, Jandakot, Launceston, Melbourne (Tullamarine), Moorabbin, Mt Isa, Parafield, Perth, Sydney (Kingsford Smith), Tennant Creek, Townsville and Western Sydney International (Nancy-Bird Walton).

The Regulations have been drafted to:

- ensure a fit-for-purpose regulatory regime with a continued focus on the safety, efficiency and regularity of air transport operations into and out of LFAs
- be in accordance with ICAO's Annex 14 aims and objectives for safety, efficiency and regularity of existing and future air transport operations
- provide continued safe, efficient and regular air transport operations that enhance existing and future aviation networks and support a sustainable aviation sector, and
- streamline and improve the efficiency of assessment and decision-making processes for applications to undertake an activity that would result in an intrusion into prescribed airspace.

Human rights implications

Human rights implications

This Disallowable Legislative Instrument engages the following rights:

- the Instrument positively and negatively engage article 14 of the *International Covenant on Civil and Political Rights*
- the Instrument negatively engage article 17 of the *International Covenant on Civil and Political Rights*
- the Instrument positively engage article 7 of the *International Covenant on Economic, Social and Cultural Rights*
- the Instrument positively and negatively engage article 11 of the *International Covenant on Economic, Social and Cultural Rights*, and
- the Instrument negatively engage article 15(1)(a) of the *International Covenant on Economic, Social and Cultural Rights*.

International Covenant on Civil and Political Rights

Article 14 - The right to justice (including presumption of innocence)

The right to justice is negatively engaged, by imposing strict liability for infringements under Part 12 of the *Airports Act 1996*, as implemented under this Disallowable Legislative Instrument. However, these strict liability offences are in line with expectations set out in the *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers*, published by the Attorney-General's Department.

Strict liability is reasonable in the interest of ensuring public safety and ensuring the operational integrity of aviation through the enforcement of infringements under Part 12 of the *Airports Act 1996*. Unauthorised intrusions into prescribed airspace could endanger human lives and cause disruptions to the aviation sector and national economy. Imposing strict liability ensures strong compliance incentives and reduces the risk of harm caused by inadvertent or deliberate violations.

Article 17 – The right to privacy and quiet enjoyment of property

The right to privacy is negatively engaged by the Instrument, as they set out processes that may require the collection of personal information from individuals and corporate entities who make applications and seek permissions under the Instrument. The Secretary (or delegate) may also require further information related to a controlled activity application to determine an application. Application information may be shared with agencies such as an Airport Operator Company of an LFA, the Civil Aviation Safety Authority, Airservices Australia or the Department of Defence. However, the collection of personal information is proportionate to achieve the policy objectives of this Instrument and is compliant with the *Privacy Act 1988*.

The right to quiet enjoyment of property is also negatively engaged, as compliance with the Instrument may impact property use, requiring individuals or corporate entities to seek approval, as well as comply with any conditions of an approval, for controlled activities into airspace, prior to undertaking those activities. These measures are proportionate, applying only to areas within prescribed airspace and requiring approvals, rather than outright prohibitions.

International Covenant on Economic, Social and Cultural Rights

Article 7 – The right to safe and healthy working conditions

The right to safe and healthy working conditions is positively engaged through the policy intent of the Instrument by providing for the protection of airspace in the interests of aviation and public safety. By regulating activities that, if carried out, would intrude into prescribed airspace such as crane operations or construction, the Instrument reduces risks associated with potential collisions or interference with air transport operations. These measures help prevent accidents and injuries to humans, including through safeguarding activities intruding into airspace as well as air transport operations, thereby promoting a safer working environment.

Article 12 – The right of everyone to the enjoyment of the highest attainable standard of physical and mental health

The right to health is negatively engaged whereby restrictions may be placed on building heights or certain facilities where hospitals or health centres may be located, potentially reducing health accessibility. However, this restriction is reasonable and proportionate as the Instrument also positively engages this right by preventing interferences with aviation safety, which could have an adverse impact on the enjoyment of the highest attainable standard of physical and mental health.

Article 15(1)(a) – The right to take part in cultural life

The right to take part in cultural life is negatively engaged by regulating the conduct of commercial activity on the traditional lands of Indigenous Australians. However, these restrictions are reasonable as they only apply where commercial activity on traditional lands would conflict with the safety, efficiency and regularity of existing or future air transport operations into and out of an airport.

Conclusion

This Disallowable Legislative Instrument is compatible with human rights because it positively promotes and engages some rights. To the extent that the engagement is negative and limits human rights, those limitations are reasonable, necessary and proportionate to achieving the objective of safe, efficient and regular aircraft operations at LFAs.