

2010

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

**AVIATION CRIMES AND POLICING LEGISLATION
AMENDMENT BILL 2010**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Hon Brendan O'Connor,
Minister for Home Affairs)

AVIATION CRIMES AND POLICING LEGISLATION AMENDMENT BILL 2010

Outline

The Aviation Crimes and Policing Legislation Amendment Bill 2010 (the Bill) amends the *Crimes (Aviation) Act 1991*, the *Commonwealth Places (Application of Laws) Act 1970* (COPAL Act), and the *Australian Federal Police Act 1979* (the AFP Act).

The purpose of this Bill is to strengthen the existing legislative framework surrounding Australia's international and domestic aviation security regime by ensuring that aviation-related crimes carry appropriately severe penalties and by making sure that an appropriate range of offences are applicable.

The amendments also support the move from the current Unified Policing Model to an 'All-In' policing and security model at airports, whereby the Australian Federal Police will be responsible for policing at Australia's designated airports. The 'All-In' model was an outcome recommended by the Federal Audit of Police Capabilities which was conducted by Roger Beale AO in 2009. The Government's response to the Federal Audit, including its decision to make changes to airport policing arrangements, was announced by the Minister for Home Affairs on 18 December 2010.

The Bill also supports other Government initiatives concerning aviation security, including the package of measures announced on 9 February 2010.

Schedule 1 of the Bill relates to aviation crimes and contains proposed amendments to the Crimes (Aviation) Act.

As currently drafted, the maximum penalties in the Crimes (Aviation) Act are inconsistent and are low compared to similar offences contained in other Commonwealth, State and Territory legislation. The amendments in Schedule 1 will increase a number of penalty provisions in the Act to ensure that they are commensurate with similar offences elsewhere. The proposed penalty increases also ensure that the maximum penalties contained in the Act reflect the severity of aviation-related crimes.

The new penalties in the Crimes (Aviation) Act will now fall within four tiers. The arrangement of criminal penalties under the Act into these tiers will bring greater coherency and consistency to the Act. The severity of the penalty in each tier corresponds with the type of the offence that would fall within each tier. They are summarised as follows.

- *Tier one – maximum penalty of life imprisonment.* Offences in this tier would be those that involve hijacking an aircraft in flight (subsections 13(1) and (2)) as well as those offences that carry a very serious aggravating element of "intent to cause death or recklessness as to the safety of human life" (subsections 18 and 20).
- *Tier two – maximum penalty of 20 years imprisonment.* The offences in this tier all carry a serious aggravating element of interference with the operation or safety of an aircraft or airport. These offences typically involve the creation of significant danger

to whole groups of people. Examples of offences that fall within this tier include taking or exercising control of an aircraft by force, trick or false pretences (section 16(3)), the intentional prejudicing of the safe operation of an aircraft (section 19), and the assault of, threat to or intimidation of a crew member onboard interfering with or impeding their ability to perform function or duties (section 21).

- *Tier three – maximum penalty of 14 years imprisonment.* Offences contained within this tier deal with actions involving or actions against aircraft and aviation environments. Many offences have the aggravating element of danger or harm to an individual but unlike the more serious tier one and two offences, none require proof of recklessness as to the safety of human life or proof of danger to whole groups of people. Examples of offences in this tier include taking or exercising control of an aircraft while people are on board (section 16(2)); destruction of an aircraft (section 17); and endangering the safety of a Commonwealth aerodrome or air navigation facility or those within its limits (section 27(1)).
- *Tier four – maximum penalty of ten years imprisonment.* This tier includes general “catch-all” offences which do not have the more serious, aggravating elements of the higher penalty offences. Examples of offences in this tier are taking control of an aircraft (section 16(1)); making a threat to damage an aircraft and harm those onboard (section 24(1)); and making a threat to damage a Commonwealth aerodrome or air navigation facility or harming persons within (section 28(1)).

Offences under the Crimes (Aviation) Act are, by their nature, all very serious offences, so that even tier three and four offences carry very significant penalties. The determination of the proposed penalty for each offence has been undertaken in line with the considerations spelt out in the *Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers*, which is available on the Attorney-General’s Department website <www.ag.gov.au>.

Section 4B of the *Crimes Act 1914* provides that pecuniary penalties may be imposed where a person is convicted of an offence against a Commonwealth law. Where no amount is specified, the Crimes Act allows for a default maximum fine. For each penalty tier of the Crimes (Aviation) Act, the default maximum fine that could be imposed on an individual is as follows:

- Tier one (life imprisonment) – \$220,000
- Tier two (20 years imprisonment) – \$132,000
- Tier three (14 years imprisonment) – \$92,400
- Tier four (10 years imprisonment) - \$66,000

These amounts reflect the current value of a penalty unit under section 4AA of the Crimes Act, which is \$110. If the offender is a body corporate, the maximum fine that may be applied is up to five times the amount specified above.

The Schedule 1 amendments also propose three new offences to be inserted into the Act. They are:

- assaulting a crew member (section 20A)
- reckless endangerment of the safety of an aircraft likely to endanger life or cause serious harm (section 22A), and
- direct or indirect possession or placing dangerous goods onboard an aircraft likely to endanger life or cause serious harm (section 23A).

The Crimes (Aviation) Act already contains a range of offences relevant to acts of violence on board aircraft, actions affecting aircraft and the safe operation of aircraft, as well as offences relating to the safety of civil aviation and acts of violence against certain airports. The general structure of these offences is to have a lower penalty offence applicable to doing the act, such as the destruction of an aircraft, followed by an aggravated offence which has a higher level or risk of harm and a higher penalty.

The new offences would align with the general schema of the Act. Sections 22A and 23A are aggravated offences and would carry maximum penalties of 14 years. The new section 20A is a lower penalty offence (the aggravated offence is at section 21) and would carry a maximum penalty of 10 years.

Schedule 2 of the Bill relates to airport policing and contains a number of proposed amendments to the COPAL Act and the AFP Act.

On 18 December 2009, the Minister for Home Affairs announced changes to policing arrangements at Australia's eleven major airports. The Minister's release included the following information:

Minister for Home Affairs, Brendan O'Connor, today announced significant administrative reforms to the Australian Federal Police (AFP) as part of the government's response to the Federal Audit of Police Capabilities.

Conducted by Mr Roger Beale AO, the audit examined the AFP's capacity to meet contemporary and future demands and government priorities.

"In line with our election promise, the Australian Government is improving policing capability to respond to current and future law enforcement challenges," Mr O'Connor said.

Major areas for reform include:

- ...improved arrangements for policing at Australia's eleven major airports.

...Under the proposals released today, the Australian Government will also move to enhance AFP policing at Australia's 11 major airports in consultation with States and Territories, airports and aviation bodies and unions.

The changes proposed include a staged move to a fully sworn AFP capability at these airports instead of the current mixed Commonwealth/State policing model.

This new model of airport security will be implemented over a 5 year period in close cooperation with State and Territory governments and their agencies, with adequate time to up-skill current staff who are not yet sworn police officers.

This new framework will provide a nationally-integrated airport policing service and a continued counter-terrorism first-response capability at those airports.

According to Minister O'Connor, while many of the recommendations of the Beale Audit relate to internal operations of the AFP, some recommendations, such as those regarding policing at major airports, will be of particular interest to the States and Territories. "The Australian Government is committed to working with the states and territories, airports and aviation bodies, and unions to ensure there is support for the implementation of the Beale recommendations," he said....

The proposed amendments in Schedule 2 support the changes to the AFP's airport policing role.

The COPAL Act and AFP Act amendments are designed to rectify anomalies that currently exist in both pieces of legislation which relate to the policing capabilities of the AFP. In summary, the amendments in Schedule 2 are to:

- overcome a technical anomaly in the COPAL Act that renders standard AFP arrest and search powers unavailable to the AFP when dealing with State offences that are applied as Commonwealth law in airports that are Commonwealth places, and
- remove doubt as to the legal basis for State and Territory police to swear in AFP members or special members as members or special constables of State and Territory police, and as members of police forces or other law enforcement agencies of foreign countries – an existing practice that has maximised interoperability in airports and elsewhere.

Financial impact statement

The amendments in this Bill will have no financial impact.

NOTES ON CLAUSES

Clause 1 – Short Title

1. This is a formal provision specifying the short title of the Bill.

Clause 2 – Commencement

2. Sections 1 to 3 of the Bill are to commence on the day it receives Royal Assent.
3. Schedules 1 and 2 of the Bill are to commence 28 days after it receives Royal Assent. This ensures that all of those affected by the amendments, including policing authorities, airports and airlines, have a period of time between the enactment of the amendments and their commencement. In particular, this will ensure that the Australian Federal Police can have all required procedures and protocols with State and Northern Territory police in place when the new provisions take effect.

Clause 3 – Schedules

4. This is a formal clause that enables the Schedules to amend Acts by including amendments under the title of the relevant Act.

Schedule 1 – Aviation crimes (amendments to the *Crimes (Aviation) Act 1991*)

Crimes (Aviation) Act 1991

Item 1 – Definitions

5. Item 1 removes the reference to subsection (1) within section 3, as there is only one subsection and referring to it is not necessary.

Items 2, 3 and 4 – definition of ‘Commonwealth aerodrome’, ‘Federal airport’ and ‘serious harm’

6. Currently the definition of ‘Commonwealth aerodrome’ under section 3 is: ‘an area or land or water in Australia that is owned by the Commonwealth and used, or intended for use, either wholly or partly, for, or in connection with, the arrival, departure or other movement of aircraft; or a Federal airport; and includes any building, structure, installation or equipment in that area, or on the land that forms the Federal airport, that is provided for use in connection with the operation of that area or land as an aerodrome or Federal airport, as the case may be’.
7. This definition applies to the offences in section 27 (endangering the safety of aerodromes etc) and section 28 (threats and false statements) of the Act.
8. Under section 3, ‘Federal airport’ is given the same meaning as it has within the meaning of the *Federal Airports Corporation Act 1986*. However, that Act was repealed in 2002. Accordingly, the term ‘Federal airport’ needs to be replaced.
9. Item 2 replaces the term ‘Federal airport’ in the definition of ‘Commonwealth aerodrome’. ‘Federal airport’ is replaced with ‘a core regulated airport’ within the meaning of the *Airports Act 1996*. The airports that fall within this definition are: Sydney (Kingsford-Smith) Airport, Sydney West (Badgery’s Creek) Airport; Melbourne (Tullamarine) Airport; Brisbane Airport; Perth Airport; Adelaide Airport; Gold Coast Airport; Hobart Airport; Launceston Airport; Alice Springs Airport; Canberra Airport; Darwin Airport; Townsville Airport; and an airport specified in the regulations, where the site of the airport is a Commonwealth place.
10. The Commonwealth has no general legislative power with respect to airports under the Constitution. It can only legislate with respect to airports in certain circumstances, including where its legislative power with respect to ‘Commonwealth places’ and ‘Territories’ is applicable. The definition has been framed to apply the relevant Crimes (Aviation) Act offences (in sections 27 and 28) to significant airports for which there is clear constitutional power for these offences to apply, principally because the airports are Commonwealth places or in a territory.
11. Item 3 repeals the definition of ‘Federal airport’ as it is no longer used in the Act.
12. Item 4 inserts into the Act a definition of ‘serious harm’. The definition is given the same meaning as ‘serious harm’ under the Criminal Code. That definition, found in

the Dictionary of the Criminal Code, is as follows: serious harm means harm (including the cumulative effect of any harm) that endangers, or is likely to endanger a person's life; or that is or is likely to be significant and longstanding.

13. The phrase 'serious harm' is used as an element in the proposed offences in sections 22A and 23A of the Crimes (Aviation) Act, to confine those offences to more serious cases that merit the maximum penalty of 14 years imprisonment proposed for those offences.

Item 5 – Taking control of aircraft (revised maximum penalty)

14. Item 5 amends the maximum penalty for the offence of taking or exercising control of a Division 3 aircraft under subsection 16(1). The maximum penalty will be increased from 7 years to 10 years imprisonment. This offence is a form of theft and will align the applicable penalty with penalties for similar offences in the Commonwealth Criminal Code, such as theft of Commonwealth property (section 131.1) and in State and Territory legislation, such as theft (section 308 of the *Criminal Code* (ACT), section 134 of the *Criminal Law Consolidation Act* (SA), and section 74 of the *Crimes Act 1958* (Vic)), all of which carry a maximum penalty of 10 years imprisonment.
15. A Division 3 aircraft is defined in section 3 as:
 - (a) an Australian aircraft (other than a Commonwealth or defence aircraft) that is mainly used for any of the following flights, or is engaged, or intended or likely to be engaged in such a flight: (i) a prescribed flight (as defined); (ii) a flight between a part of Australia and a place outside Australia; (iii) a flight wholly outside Australia; or
 - (b) a Commonwealth aircraft; or
 - (c) a defence aircraft; or
 - (d) a foreign aircraft that is in Australia; or
 - (e) a foreign aircraft that is outside Australia while engaged in a flight that started in Australia or that was, when the flight was started, intended to end in Australia.

Item 6 – Prejudicing safe operation of aircraft (revised maximum penalty)

16. Item 6 amends the maximum penalty for the offence of intentionally prejudicing the safe operation of an aircraft under subsection 19(1). The maximum penalty will be increased from 14 years to 20 years imprisonment. While 20 years is a severe penalty, the increase takes into account the seriousness of the offence, as well as the potentially severe consequence of the offence on the safety of groups of people.

Item 7 – Assaulting crew - general (new offence)

17. Item 7 inserts a new section 20A into the Act. The section creates a new general offence of assaulting an aircraft crew member. The maximum penalty for this offence would be 10 years imprisonment.
18. The Act provides for an offence relating to assaulting, threatening or intimidating a crew member of an aircraft but this offence also requires proof that the defendant's conduct impeded a crew member's ability to perform their function or duties. The assault of a crew member is a serious matter and liability for such an assault should not depend on the impact the assault has on the crew member's ability to perform his or her duties, particularly as this additional requirement has been difficult to prove in some cases. The inclusion of a new general offence akin to a 'common assault' with a 10 year maximum penalty is appropriate. An aggravated assault which also interferes with a crew member's ability to perform his or her functions or duties will be captured by the existing offence in section 21 which will now carry a maximum penalty of 20 years imprisonment.
19. The element of the offence, that 'the aircraft is a Division 3 aircraft', is a jurisdictional element and it is a standard practice in Commonwealth law to apply strict or absolute liability to such elements. It would not be reasonable or appropriate if a person could only be convicted of an offence if they knew they were on a Division 3 aircraft – their culpability comes from the substantive elements of the offence eg threat of violence, assault or intimidation. This is consistent with the Commonwealth criminal law policy, which is discussed on pages 24-25 of the *Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers*.
20. The application of absolute liability to the jurisdictional element (Division 3 aircraft) is also consistent with the existing section 21 of the Act.
21. The provision has been drafted to fit in with the general structure of the Act, which has a lower penalty offence relating to the act followed by an aggravated, higher penalty offence, which for this offence is section 21.

Item 8 – Assaulting crew-affecting performance of duty (revised maximum penalty)

22. Item 8 amends the maximum penalty for the offence of assaulting, threatening or intimidating a crew member onboard an aircraft interfering with his/her ability to perform function or duties under subsection 21(1). The maximum penalty has been increased from 14 years to 20 years imprisonment. The increase to the maximum penalty ensures consistency between the Crimes (Aviation) Act and similar offences under the Criminal Code such as the offence of intentionally causing harm to an Australian citizen (section 115.3) which carry a maximum penalty of 20 years.

Item 9 – Alternative verdicts (section 21)

23. Item 9 provides for alternative verdicts for offences against section 21(1). That is, if a person is on trial for an offence against subsection (1), but is found not guilty, he/she may still be found guilty of the more general offence of assaulting crew at section 20A (1) if certain circumstances are satisfied.

Item 10 – Endangering the safety of an aircraft (revised maximum penalty)

24. Item 10 amends the maximum penalty for the offence of recklessly endangering the safety of an aircraft under subsection 22(1). The maximum penalty will be increased from 7 years to 10 years imprisonment. This offence is a more general offence and would fall within the fourth tier of penalties in this Act. Increasing the maximum penalty for this offence to 10 years makes the penalty level consistent with the penalty level that applies for other offences within this tier, and reflects the seriousness of any act endangering the safety of an aircraft even if not in flight.

Item 11 – Endangering safety of aircraft: acts also likely to endanger life or cause serious harm (new offence)

25. Item 11 inserts a new section 22A into the Act. The section creates a new offence of recklessly endangering the safety of an aircraft likely to endanger life or cause harm to an individual. The maximum penalty for this offence would be 14 years imprisonment.
26. The offence detailed in section 22A is an aggravated offence provision following on from the lower penalty offence of endangering the safety of an aircraft (section 22). It deals with more serious actions where the act in question carries the potential or risk of causing serious harm or endangering life. The higher penalty level takes this into account.
27. This item also provides for alternative verdicts for offences against this subsection. A person may be found not guilty under subsection 22A(1) but may still be found guilty under section 22 in certain circumstances.

Item 12 - Dangerous goods (revised maximum penalty)

28. Item 12 repeals and replaces section 23(1)(a), amending the maximum penalty for the offence of carrying or placing dangerous goods onboard an aircraft. The maximum penalty for this offence will be increased from 7 years, or a \$100,000 fine for a body corporate, to 10 years imprisonment. The default maximum fine that would apply to this offence under the Crimes Act would be 600 penalty units (\$66,000).
29. The increase to the maximum penalty will make the applicable penalty for this offence consistent with similar offences under the Criminal Code, such as causing an explosive or dangerous or harmful substance to be carried by post (section 471.13) or causing a dangerous article giving rise to the danger of death or serious harm to be

carried by post or similar service (section 471.15), which carry maximum penalties of 10 years imprisonment.

Item 13 – Dangerous good: acts likely to endanger life or cause serious harm (new offence)

30. Item 13 inserts a new section 23A into the Act. The section creates a new offence of direct or indirect possession or placing of dangerous goods onboard an aircraft giving rise to death or serious harm to an individual. The maximum penalty that would apply for this offence is 14 years imprisonment.
31. The offence in section 23A is an aggravated offence provision following on from the lower penalty offence of carrying or placing of dangerous goods onboard an aircraft (section 23). The actions specified are more serious and where the consequences or risk of causing serious harm or endangering life is high. The higher penalty level takes this into account.
32. This item also provides for alternative verdicts for offences against this subsection. A person may be found not guilty under subsection 23A(1) but may still be found guilty under section 23(1) in certain circumstances.

Items 14 and 15 – Threats and false statements (revised maximum penalties)

33. Items 14 and 15 amend the maximum penalties for hoax and threat offences under subsections 24(1) and (2). The maximum penalties for these offences will be increased from 2 years to 10 years imprisonment. The default maximum fine that would apply to this offence under the Crimes Act would be 600 penalty units (\$66,000).
34. Currently, the maximum penalty of 2 years is significantly lower than the penalty for similar hoax offences contained in other Commonwealth legislation. For example, in the Criminal Code hoaxes about explosives or dangerous substances that are made by phone or email (section 471.10) or false statements made about the contamination of goods (section 380.4) carry maximum penalties of 10 years. Similarly, under the *Crimes Act 1900* (ACT), the offence of making false statements about goods (section 138) or false statements made with the intent of causing public alarm (section 139) both carry 10 year maximum penalties.
35. These amendments will bring about greater consistency as well as be more appropriate given the serious nature of the offences.

Items 16 and 17 – Endangering the safety of an aircraft in flight or of an air navigation facility by an Australian Citizen (revised maximum penalty)

36. Item 16 amends the maximum penalty for the offence of endangering an aircraft in flight in Australian territory or by an Australian citizen under subsection 25(1). The maximum penalty has been increased from 14 years to 20 years imprisonment.

37. Item 17 amends the maximum penalty for the offence of endangering the safety of an aircraft in flight, or endangering an air navigation facility so as to affect the safety of an aircraft in flight under section 25(2). The maximum penalty has been increased from 7 years to 20 years imprisonment.
38. In both cases, the consequence of the offence on the safety of large groups of people is severe, and the potential risk of death or serious harm is high. The proposed increase in the penalty is designed to take this into account.

Item 18 – Acts of violence at certain airports (revised maximum penalties)

39. Item 18 amends the maximum penalty for the offence of using a substance or thing to commit an act of violence at a prescribed airport, where the act causes or is likely to cause injury or death and endanger the safe operation of the airport under subsection 26(1). The maximum penalty has been increased from 15 years to 20 years imprisonment.
40. This offence is a serious one, carrying a high potential for danger or harm to large groups of people. It would therefore fall within the second tier of penalties in this Act. Increasing the maximum penalty for this offence to 20 years makes the penalty level consistent with the penalty level that applies for other offences within this tier.

Items 19 – Acts of violence against certain airports (revised maximum penalty)

41. Item 19 amends the maximum penalty for the offence of destroying or disrupting facilities or services of a prescribed airport, or destroying or seriously damaging any aircraft at a prescribed airport so as to endanger life or the safe operation of the airport under subsection 26(2). The maximum penalty has been increased from 10 years to 14 years imprisonment.
42. This offence falls within the third tier of the penalties in this Act as it is an offence that involves actions involving or against aircraft and aviation environments. The types of actions covered by this offence are serious and carry the risk of causing danger or harm to individuals. Increasing the applicable penalty to 14 years makes it consistent with the penalty level that applies for other offences within this tier.

Item 20 – Offences relating to Commonwealth aerodromes and air navigation facilities (revised maximum penalty)

43. Item 20 amends the maximum penalty for the offence of endangering the safety of a Commonwealth aerodrome or air navigation facility or those within its limits under subsection 27(1). The maximum penalty has been increased from 7 years to 14 years imprisonment.
44. The increase to the maximum penalty ensures consistency between this offence and other comparatively serious offences within this Act, such as the offence of

intentionally prejudicing the safe operation of aircraft (section 19), which carry the more severe penalty of 14 years.

Items 21 and 22 – Threats and false statements (revised maximum penalties)

45. Item 21 amends the maximum penalty for the offence of threatening to damage a Commonwealth aerodrome or air navigation facility or harm those within under subsection 28(1). Item 22 amends the maximum penalty for the offence of making a false statement about taking control or endangering the safety of a Commonwealth aerodrome or air navigation facility or harming persons within under subsection 28(2). The maximum penalties for both offences have been increased from 2 years to 10 years imprisonment.
46. Currently, the maximum penalty of 2 years is significantly lower than the penalty for similar offences contained in other Commonwealth legislation. For example, in the Criminal Code hoaxes about explosives or dangerous substances (section 471.10) or using a carriage service to make a threat to kill (section 474.15) carry maximum penalties of 10 years. Similarly, under the Crimes Act 1900 (ACT) the offence of threatening to act with the intent to cause public harm (section 140B) carries a 10 year maximum penalty.
47. These amendments will bring about greater consistency as well as be more appropriate given the serious nature of the offences.

Item 23 – Application

48. Item 23 determines the way that the amendments made by items 7, 9, 11 and 13 apply. The provision provides that these particular amendments will apply to relevant acts or omissions that happen either at the commencement or after the commencement of this item.

Schedule 2 – Policing at airports (amendments to the *Australian Federal Police Act 1979* and the *Commonwealth Places (Application of Laws) Act 1970*)

Australian Federal Police Act 1970

Item 1 – Appointment of members to other Police Forces

49. This item inserts a new section into the Act which explicitly allows AFP members and special members to be appointed as members or special constables to State, Territory and police forces and other law enforcement agencies of foreign countries. While this is an existing practice for the AFP especially for the purpose of joint operations, there were no provisions in the Act that provided any formal legal basis for doing so. The addition of this section clarifies the legal basis for this to occur.
50. The amendments will not compel State and Territory police forces to appoint AFP members and special members as members or special constables. It will remain within the discretion of the States and Territories as to whether they make these appointments.

Commonwealth Places (Application of Laws) Act 1970

Items 2, 3, 4, 5 and 6 – definition of ‘airports’, ‘designated State airport’, ‘member of the Australian Federal Police’, ‘relevant *Crimes Act* provision’, and ‘special member’

51. Item 2 inserts a definition of ‘airport’. Airport is defined as having the same meaning as in the *Aviation Transport Security Act 2004*, which is ‘an area of land or water (including any buildings, installations or equipment situated in the area) intended for use either wholly or partly in connection with the arrival, departure or movement of aircraft. It also includes any area controlled by the airport operator that is contiguous with such an area of land or water’.
52. Item 3 inserts a definition of ‘designated State airport’. A designated State airport is a Commonwealth place airport that is situated in a State or States and has been prescribed by regulations for the purposes of this definition. In the COPAL Act, a designated airport will be any one of the following airports: Adelaide Airport, Brisbane Airport, Coolangatta (Gold Coast) Airport, Hobart Airport, Melbourne (Tullamarine) Airport, Perth Airport and Sydney (Kingsford-Smith) Airport.
53. Item 4 inserts a definition of ‘member of the Australian Federal Police’. The definition is given the same meaning as in the AFP Act.
54. Item 5 inserts a definition for ‘relevant Crimes Act provision’ into the Act. This item specifies particular provisions of the Crimes Act which relate to the powers available to the AFP when conducting the investigation of offences. The current operation of the COPAL Act renders these powers unavailable to the AFP when they deal with offences in airports that are Commonwealth places. The provisions of the Crimes Act that may now apply are

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 the discharge of defendants) and Part ID (dealing with forensic procedures).

55. Item 6 inserts a definition of ‘special member’. The definition of ‘special member’ is given the same meaning as in the AFP Act.

Item 7 – Application of certain provisions of Commonwealth Acts to applied provisions

56. Item 7 amends section 5 of the COPAL Act to add a new subsection 3A.
57. Currently, the operation of section 5(3) means that, if there is an arrangement in place under section 6(2) of the COPAL Act, those provisions set out in the Schedule of the Act will not apply to matters that arise under the applied provisions of section 4 in or in relation to a Commonwealth Place in a State. In terms of airport policing, this has the effect of the AFP lacking the appropriate range of powers to conduct investigations for applied State offences committed at Commonwealth place airports.
58. The addition of subsection 3A will overcome this anomaly and provides that the Crimes Act provisions specified in the definitions (see Item 5 above) can be applied by the AFP or a special member of the AFP in designated State airports that are Commonwealth places.

Item 8 – Application

59. Item 8 is an application provision and determinates the way that Item 5 (above) applies. The provision allows the AFP to be able to commence investigations for offences committed or suspected of having been committed before, on or after the commencement date of the provision, rather than only for offences that occur after the commencement date.