



Australian Government

**Australian Government Response to the
Standing Committee on Social Policy and
Legal Affairs Report:**

***Eyes in the Sky: Inquiry into drones and the
regulation of air safety and privacy***

December 2016

Executive Summary

The use of remotely piloted aircraft systems (RPAS¹) is a growing industry in Australia.

A range of potential uses for RPAS have been identified in many industry sectors including agriculture, mining, aerial surveying, cinematography and scientific research.

RPAS can also reduce risks in activities such as power-line inspections, policing, firefighting and emergency services.

However, the increasing use of RPAS brings with it the potential for inadvertent or deliberate misuse, posing a threat to safety and privacy.

On 14 July 2014, the Chair of the Standing Committee on Social Policy and Legal Affairs tabled the Committee's report of its inquiry into the use of RPAS.

The Committee's report, entitled "Eyes in the sky", has made six recommendations in relation to safety and privacy aspects of RPAS operations in Australia.

The Government agrees with Recommendations 1 and 2 of the report and has identified measures by which the recommendations can be put into action.

The Government does not support Recommendation 3 and specifically the establishment of a separate tort on privacy.

The Government notes Recommendations 4, 5 and 6 of the Committee's report and will continue to monitor developments on the use of RPAS as they relate to the Commonwealth's surveillance device legislative regime.

The Civil Aviation Safety Authority (CASA) is responsible for implementing Recommendation 1 and the safety related aspects of Recommendation 6, as well as working with the Attorney-General's Department to implement Recommendation 2.

The Attorney-General's Department is responsible for Recommendations 3, 4 and 5, the privacy related aspects of Recommendation 6, and for working with CASA in the implementation of Recommendation 2.

¹ RPAS are also commonly known as drones, which, along with model aircraft belong to the family of unmanned aerial vehicles (UAV).

Introduction

In the 2012-2013 Annual Report from the Office of the Australian Information Commissioner, the Commissioner noted that RPAS, which can photograph and film while being piloted through the air, have captured the community's attention for their capacity to collect personal information.

In response, on 12 December 2013 the House of Representatives Standing Committee on Social Policy and Legal Affairs resolved to conduct an inquiry into: *Matters arising from the 2012-2013 Annual Report of the Office of the Australian Privacy Commissioner, namely the regulation of Unmanned Aerial Vehicles.*

There have also been incidents involving RPAS use in Australia which have raised issues regarding their safe use and accordingly the Committee broadened its inquiry to include safety-related matters.

RPAS use is growing in Australia and, as they become more affordable and more capable, that growth will continue.

The types of RPAS available are broad, ranging from small recreational devices weighing less than two kilograms, to large fixed wing aircraft weighing hundreds of kilograms and capable of staying airborne for more than 24 hours. Some RPAS are capable of operating at altitudes of more than 50,000 feet.

Aside from growing recreational use, RPAS fulfil an ever increasing role in the commercial sector and can decrease operating costs and risks while increasing productivity.

CASA has advised that, in 2012, there were approximately 15 approved operators of RPAS used for commercial purposes in Australia. By 2016, this number had increased exponentially and as at 29 July 2016 there were more than 700 unmanned operator certificate (UOC) holders regulated by CASA.

RPAS are currently used in a variety of industries including:

- Agriculture, for purposes such as monitoring crops, fence lines, weeds and animal health;
- Mining, for example to undertake land surveys;
- Infrastructure assessment, for example pipeline and power line inspections;
- Search and rescue, fire and policing operations;
- Aerial photography and filming; and
- Scientific research, such as marine life monitoring.

This widespread use brings with it the potential for misuse, either deliberately or inadvertently, and increases challenges for law makers and regulators in relation to effective oversight.

The challenge for relevant Government agencies is to examine and, where appropriate, regulate the use of RPAS in a manner that ensures the safety and privacy of all Australians while supporting the continued growth and productivity gains for Australian industry and the broader economy.

The Committee tabled its "Eyes in the sky" report on 14 July 2014.

The report contains six recommendations in relation to air safety and privacy issues surrounding the use of RPAS for the Government's consideration.

1. Air Safety

CASA is the government agency responsible for the regulation of unmanned aircraft use from an aviation safety perspective. Currently, all RPAS use is governed by the same regulations i.e. Part 101 of the *Civil Aviation Safety Regulations 1998* (CASR). RPAS used exclusively for recreational purposes (model aircraft) may operate without special approvals or exemptions only if they are used under specified conditions ('standard operating conditions'), namely:

- In daylight and within line of sight;
- More than 30 metres away from vehicles, boats, buildings or people;
- Away from populous areas such as beaches, sporting ovals, backyards;
- No higher than 120 metres from the ground;
- Not in the approach or departure path of a runway of an aerodrome or a helicopter landing area within 5.5 kilometres of an airfield; and
- Must not create a hazard to another aircraft, person or property.

If a person wishes to use an RPAS for a commercial purpose outside of the standard operating conditions, then they must apply to CASA for the appropriate authorisations.

Monetary penalties may apply for breaches of the regulations. While there are challenges for CASA in monitoring and enforcing regulatory compliance, particularly with the operation of model aircraft, CASA conducts investigations and issues infringement notices where appropriate and sufficient evidence exists.

Changes to the RPAS regulations, which the Committee agreed struck the right balance between minimising safety risks and facilitating the development of Australia's RPA industry, commenced on 29 September 2016. These changes simplify the regulatory requirements for certain commercial RPAS operations deemed to be lower risk and permit private land owners to carry out certain activities on their own land without the need for approval from CASA.

2. Privacy

The *Privacy Act 1988* (Privacy Act) is the principal Commonwealth law protecting the handling of personal information about individuals. The Privacy Act and the Australian Privacy Principles (APPs), in Part III of the Act, only apply to government agencies and certain private sector organisations (those that have an annual turnover of more than three million dollars). The APPs deal with all stages of the processing of personal information, setting out standards for the collection, use, disclosure, quality and security of personal information.

There may be circumstances where the Privacy Act applies to regulate some of the activities of an RPA (for example, where an RPA is being operated by an entity covered by the Privacy Act and in doing so collects personal information).

In particular, an entity is not to collect personal information unless the information is reasonably necessary for, or directly related to, an entity's functions or activities (APP 3). Entities must take reasonable steps to notify an individual of the collection of personal information (APP 5), and to protect that information from misuse, interference and loss, unauthorised access, modification or disclosure (APP 11). The APPs also impose obligations on agencies and organisations subject to the Privacy Act concerning access to, and correction of, an individual's own personal information (APP 13).

Current legislative framework

Privacy Act 1988 (Cth)

The Attorney-General's Department is responsible for the administration of the Privacy Act. The Act does not cover individuals acting in a personal capacity, such as neighbours taking photographs or using surveillance cameras or remote controlled surveillance equipment such as drones. This is because the Privacy Act deals with the protection of personal data and the security of personal information held by government agencies and certain private sector organisations rather than with privacy more generally.

Surveillance device laws

In addition to common law causes of action (such as trespass to the person or nuisance) that protect people against physical intrusions and unauthorised surveillance, some States and Territories regulate the public use of surveillance devices. The scope and degree of these laws vary significantly between jurisdictions.

The *Surveillance Devices Act 2004* (Cth) (SD Act) has a narrower application. It regulates the use of surveillance devices by Commonwealth, state and territory law enforcement agencies investigating Commonwealth offences, or state offences with a federal aspect, punishable by at least 3 years imprisonment.

The scope of the SD Act reflects the limits of the Commonwealth's jurisdiction in this area of the law. The SD Act generally prohibits the use or communication of information about warrants or information collected through the use of surveillance devices by law enforcement agencies, except in relation to the investigation and prosecution of related offences.

Under the SD Act, the Commonwealth Ombudsman inspects agency records, identifying and reporting on the use of surveillance devices. These reports are tabled annually in Parliament.

Response to Recommendations

Recommendation 1

The Committee recommends that the Australian Government, through the Civil Aviation Safety Authority (CASA), broaden future consultation processes it undertakes in relation to remotely piloted aircraft regulations so as to include industry and recreational users from a non-aviation background.

Future consultation processes should identify and seek comment from peak bodies in industries where remotely piloted aircraft use is likely to expand such as real estate, photography, media, and agriculture, amongst others.

Response

The Government agrees with this recommendation.

CASA will be consulting with industry and the community on a future modernisation review of the RPAS regulations commencing early next year.

This review will take into account work on RPAS by the International Civil Aviation Organization (ICAO), which is responsible for the development of international aviation safety standards and recommended practices, as well as the views of industry and community stakeholders.

Recommendation 2

The Committee recommends that the Australian Government, through the Civil Aviation Safety Authority (CASA), include information on Australia's privacy laws with the safety pamphlet CASA currently distributes to vendors of remotely piloted aircraft.

The pamphlet should highlight remotely piloted aircraft users' responsibility not to monitor, record or disclose individuals' private activities without their consent and provide links to further information on Australia's privacy laws.

Response

The Government agrees with this recommendation.

CASA and the Office of the Australian Information Commissioner have collaborated to produce a plain English privacy statement which will be included on all future print runs of the *Flying with control?* brochure and the *Don't go there* brochure which raises awareness of RPAS use near emergency situations.

The wording will say "**Respect personal privacy.** *Don't record or photograph people without their consent – this may breach state laws*".

Copies of relevant RPAS brochures are available on the CASA website.

Recommendation 3

The Committee recommends that the Australian Government consider introducing legislation by July 2015 which provides protection against privacy-invasive technologies (including remotely piloted aircraft), with particular emphasis on protecting against intrusions on a person's seclusion or private affairs.

The Committee recommends that in considering the type and extent of protection to be afforded, the Government consider giving effect to the Australian Law Reform Commission's proposal for the creation of a tort of serious invasion of privacy, or include alternate measures to achieve similar outcomes, with respect to invasive technologies including remotely piloted aircraft.

Response

The Government does not support a separate tort of privacy. Introducing a new cause of action would only add to the regulatory burden on business, which is contrary to the government's commitment to reducing red tape. The common law already provides avenues for individuals to seek redress for the torts of trespass, nuisance, defamation and breach of confidence. The states and territories also have their own legislation.

In circumstances where the Privacy Act applies to regulate some of the activities of an RPA (for example, where an RPA is being operated by an entity covered by the Privacy Act and in doing so collects personal information), an individual who considers their privacy has been breached may complain to the Office of the Australian Information Commissioner.

Recommendations 4 & 5

Recommendation 4

The Committee recommends that, at the late-2014 meeting of COAG's Law, Crime and Community Safety Council, the Australian Government initiate action to simplify Australia's privacy regime by introducing harmonised Australia-wide surveillance laws that cover the use of:

- listening devices
- optical surveillance devices
- data surveillance devices, and
- tracking devices

The unified regime should contain technology neutral definitions of the kinds of surveillance devices, and should not provide fewer protections in any state or territory than presently exist.

Recommendation 5

The Committee recommends that the Australian Government consider the measures operating to regulate the use or potential use of RPAs by Commonwealth law enforcement agencies for surveillance purposes in circumstances where that use may give rise to issues regarding a person's seclusion or private affairs. This consideration should involve both assessment of the adequacy of presently existing internal practices and procedures of relevant Commonwealth law enforcement agencies, as well as the adequacy of relevant provisions of the *Surveillance Devices Act 2004* (Cth) relating but not limited to warrant provisions.

Further, the Committee recommends that the Australian Government initiate action at COAG's Law, Crime and Community Safety Council to harmonise what may be determined to be an appropriate and approved use of RPAs by law enforcement agencies across jurisdictions.

Response

The Government notes the Committee's recommendations.

Traditionally, the Commonwealth has had a limited role in the enforcement of state and territory criminal law. The Government considers it appropriate that states and territories continue to modify their own surveillance device laws, if necessary.

At a federal level the Government considers that the Commonwealth *Surveillance Devices Act 2004* (Cth) strikes an appropriate balance between the protection of privacy and the ability to investigate serious offences. The Act adequately regulates the use of drone borne optical and listening devices by law enforcement. The Act is technologically neutral with the result that surveillance through an RPAS is only lawful if conducted within the same legal parameters as traditional optical surveillance devices.

The Government will continue to monitor developments in RPAS usage by the general public and law enforcement agencies to ensure that the Act continues to provide appropriate protections at the Commonwealth level.

Recommendation 6

The Committee recommends that the Australian Government coordinate with the Civil Aviation Safety Authority and the Australian Privacy Commissioner to review the adequacy of the privacy and air safety regimes in relation to remotely piloted aircraft, highlighting any regulatory issues and future areas of action.

This review should be publicly released by June 2016.

Response

The Government notes the Committee's recommendation.

Issues of air safety and privacy are however regulated by separate means, through separate legislation and by separate Government agencies.

It is appropriate then that reviews of the adequacy of the air safety and the privacy regimes are conducted by the agency with expertise and responsibility for each area: CASA for air safety and the Attorney-General's Department, in consultation with the Office of the Australian Information Commissioner, for privacy matters.

Each agency will, however, have appropriate regard for the findings of the other's review in any matters where issues are identified that may affect both air safety and privacy.

As indicated in response to Recommendation 1, CASA will be consulting with industry and the community on a future modernisation review of the RPAS regulations commencing early next year.

This review will take into account work on RPAS by the International Civil Aviation Organization (ICAO), which is responsible for the development of international aviation safety standards and recommended practices, as well as the views of industry and community stakeholders.

CASA will also issue a suite of advisory circulars to provide more guidance to the industry in areas such as RPAS training, licensing, safety management and maintenance over the remainder of the current financial year.

The Attorney-General's Department will continue to liaise with CASA as required, in consultation with the Office of the Australian Information Commissioner, on issues regarding privacy and air safety in relation to RPAS, with a view to addressing particular regulatory issues and any emerging areas of action.