



**Australian
Privacy
Foundation**

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<http://www.privacy.org.au/About/Contacts.htm>

31 October 2020

Director,

Airspace and Emerging Technologies

Department of Infrastructure, Transport, Regional Development and Communications

By email: drones@infrastructure.gov.au

RE: Emerging Aviation Technologies National Aviation Policy Issues Paper

The Australian Privacy Foundation, the nation's premier civil society body concerned with privacy, provides the following comments regarding the Department's National Aviation Policy Issues Paper on Emerging Aviation Technologies, i.e. drones.

The comments reflect the Foundation's submission to a succession of inquiries and policy consultations, most recently the Senate Rural and Regional Affairs and Transport Legislation Committee inquiry into the Civil Aviation (Unmanned Aircraft Levy) Bill 2020. The Foundation also has a published policy on drones at <https://privacy.org.au/policies/drones/>.

The Issues Paper refers to the Australian Government leading "the development of a nationally consistent approach for managing privacy concerns that balances the impacts on privacy with the needs of drone and eVTOL operations". Civil society, individual members of the public and numerous reports by law reform bodies have highlighted concerns regarding disregard of privacy by operators of commercial and noncommercial drones. Those concerns are serious and widespread, expressed by mums, dads, farmers and others.

In leading the development, the Government needs to do more than provide a policy that for practical purposes is privacy free, in other words does no more than encourage states and territories to develop their own law.

Those governments do need to develop law and the Foundation looks forward to the Australian Government 'walking the talk' by actively encouraging all jurisdictions to without delay establish an information privacy regime. Several states have yet to do so, something that is grossly inconsistent with community expectations and with the international agreements referred to in the Issues Paper.

The Australian Government does have the constitutional authority to establish a statutory cause of action for serious invasion of privacy (in terms of collection and misuse of information). It should do so without delay, consistent with recommendations in several Commonwealth and state law reform reports. The 'it's not our problem' approach in the Issues Paper is inadequate and is at odds with the experience of benchmark overseas jurisdictions, for example under the General Data Protection Regulation.

The Foundation notes the scepticism that has been expressed by regulatory experts such as Dr Bruce Baer Arnold regarding 'non-binding codes of practice or privacy guidelines' in relation to drones. Codes that are non-binding are ineffective.

The Foundation questions the efficacy of the Australian Government working with the States/Territories "to develop, as required, a clearer process to handle privacy complaints regarding an inappropriate use of a drone that unduly impacts privacy, causes nuisance or trespasses". The Government's history of underfunding the Office of the Australian Information Commission (which results in long delays in resolving complaints) and the Issues Paper's emphasis on leaving privacy protection to the states and territories suggests that the "clearer process" is likely to be little more than guidance not to bother the Civil Aviation Safety Authority and instead complain – effectively or otherwise – to one of a range of agencies within the particular jurisdiction.

If you have any questions please do not hesitate to contact Kat Lane.

Yours sincerely

Kat Lane,
Vice-Chair

About the Australian Privacy Foundation

The Australian Privacy Foundation (APF) is the primary national association dedicated to protecting the privacy rights of Australians. The Foundation aims to focus public attention on emerging issues that pose a threat to the freedom and privacy of Australians. The Foundation has led the fight to defend the right of individuals to control their personal information and to be free of excessive intrusions. The APF's primary activity is analysis of the privacy impact of systems and proposals for new systems.

The APF makes frequent submissions to parliamentary committees and government agencies. It publishes information on privacy laws and privacy issues. It provides continual background briefings to the media on privacy-related matters. Where possible, the APF cooperates with and supports privacy oversight agencies, but it is entirely independent of the agencies that administer privacy legislation, and regrettably often finds it necessary to be critical of their performance. When necessary, the APF conducts campaigns for or against specific proposals. It works with civil liberties councils, consumer organisations, professional associations and other community groups as appropriate to the circumstances. The Privacy Foundation is also an active participant in Privacy International, the world-wide privacy protection network.