



Précis Paper

Developing Drone Law

Abstract – As estimates of recreational use of drones reaches up towards 1 million operators in Australia, the development of drone law is examined by two industry experts, Tom Pils, President of Australian Certified UAV Operators and Senior Solicitor at LawBase, and Fiona Church, a commercial pilot and Co-founder of Trendspek.

Discussion Includes

- Terminology (2.47)
- Legislation (4.26)
- Interplay of State and Federal Legislation (5.59)
- Recreational v Commercial Drones (10.40)
- Excluded Category (11.37)
- Freedoms of Remote Pilot Licence and Certificate Holders (15.46)
- Pending Registration and Accreditation Scheme (17.58)
- Privacy (23.37)
- Policy Issues Paper (32.45)
- Apps (41.24)

Précis Paper

Developing Drone Law

1. In this edition of BenchTV, President of Australian Certified UAV Operators Tom Pils (Senior Solicitor, LawBase) and commercial pilot Fiona Church (Co-founder, Trendspek) examine the history and future framework of the developing area of drone law in Australia, which was the first country in the world to introduce drone-related legislation.

Terminology

2. Australia was the first in the world to have drone-related legislation in 2002.
3. A drone is any remotely piloted conveyance whether by land, air or sea but typically, it refers to air borne drones. The legislative term is remotely piloted aircraft, RPA, the drone itself, or otherwise, remotely piloted aircraft systems, or RPAS – this encompasses three parts, the drone, the remote control system and the command and control link connecting it all together. Australia also has the definition of model aircraft, which typically now encompasses drones flown recreationally.
4. Terms also include UAV unmanned aerial vehicle and UAS unmanned aerial system. But the general term is drone.

Legislation

5. Drones are typically regulated under the *Civil Aviation Act 1988* and the *Civil Aviation Safety Regulations 1998*.
6. Under that, there is a web of regulation. In the last two years, CASA has developed the Part 101 Manual of Standards and Advisory Circulars, a best practice guide in operating drones.
7. The Civil Aviation Safety Regulation (CASR) is the overarching legislation and it determines for drone operators how they operate, what licensing is required and how to access air space. The Manual of Standards is a supporting document which spells out in plain English the practical application of those CASRs.

Interplay of State and Federal Legislation

8. Typically, aviation is covered under Commonwealth legislation but there was a case which went to the High Court in 2019 on outback ballooning which considered whether NT law on work health and safety or federal aviation law should cover that aspect.
9. The High Court ruled that the NT law was not inconsistent with the Commonwealth law and they could coexist.

10. Commonwealth law doesn't operate to the exclusion of State and Territory law. State and Territory laws may also exist which essentially subjects drone operators to a wealth of Commonwealth and State and Territory law.
11. In practical experience, regulation of drones is run by CASA and the primary focus is how they interact safely with other aircraft and people and property. The key regulation is CASR Part 101.

Recreational v Commercial Drones

12. The biggest differentiator is the purpose for which you are flying the unmanned aircraft. If you're flying a drone of more than 2 kg for commercial operations, two licenses are required - Remote Operator's Certificate (ReOC) and Remote Pilot Licence (RePL).

Excluded category

13. In 2016, CASA created a new category, the excluded category, which means you can now fly commercially if your drone weighs less than 2 kg and there's a set of standard operating conditions that apply to the excluded category - they are not required to have a ReOC or RePL. So for CASA the weight of the drone and the purpose of the operation are the essentials.
14. You are limited in the scope of your operations. You're not allowed to fly more than 400 feet above ground level. You're not allowed to fly at night. Your drone must remain within your visual line of sight. You can't fly within 3 nautical miles, or 5.5 kilometres of a controlled aerodrome, anything that has a tower controlling aircraft, or over emergency safety operations, like a bushfire, or a car crash. You're not allowed to fly within 30 metres of anyone not involved in the operation.
15. You're not allowed to fly over a populous area. What is populous at one time of the day may not be populous at another.
16. These measures are Standard RPA Operating Conditions for recreational drones or the excluded category - a commercial drone less than 2 kg without a remote pilot licence or certificate.

Freedoms of Remote Pilot Licence and Certificate Holders

17. You can apply to CASA to fly outside of the standard operating conditions, such as you can fly at night, if the certificate is endorsed.
18. You can get exemptions to fly within 3 nautical miles of aerodromes.
19. You can apply to fly beyond visual line of sight.
20. You can apply to fly above 400 feet.

Pending Registration and Accreditation Scheme

21. At mid-June 2020, there were over 16,300 remote pilot licence holders in Australia and over 1,900 remote operator certificate holders. However, the excluded category and recreational flyers typically are not monitored. They're not recorded by the government.
22. Government estimates of these range from 50,000 to over 1 million.
23. From 30 September 2020, all commercially operated drones must be registered. There's a grace period till next year to sign up.
24. This will apply to recreational and other drones by about March 2022.
25. Fees for registration will be no more than \$300 but it might be nil.

Privacy

26. In Australia there's no statutory right to sue for breach of privacy but there's trespass and nuisance.
27. There are some State Acts, like the *Surveillance Devices Act 2007* (NSW).
28. The *Privacy Act 1988* typically governs the collection of data.
29. CASA doesn't deal with privacy breaches. Through the Office of the Australian Information Commissioner you can make privacy breach complaints.

Policy Issues Paper

30. Privacy is addressed in the policy paper.
31. It's a whole of government approach considering State and Territory and Commonwealth law.
32. It identifies what needs to happen next in terms of air space integration. It also looks at security, environment, central collection of information, and electrical vertical take-off and landing vehicles.
33. The next step is consultation.
34. Ultimately, they will develop a policy document, a springboard from which further regulation will be developed.
35. There is currently no regulation on noise for drones.

Apps

36. About three years ago, CASA released an app called Can I fly there? which it retired about a year ago. CASA has developed a digital platform where third party app providers can submit their app to CASA and if CASA endorses it, it is placed on CASA's website – there's AirMap, Air Mobility Platform, ok2fly and OpenSky.

BIOGRAPHY

Tom Pils

Senior Solicitor, LawBase, Sydney

Tom is a Senior Solicitor at boutique commercial law firm LawBase where he specialises in drone law and the broader regulatory environment in which all drone pilots must operate. Tom is dedicated to advocating for the industry and educating drone service providers on legal and commercial issues. He does this by way of speaking at conferences and on podcasts and being an avid writer of drone-related articles. Tom is President of the Association of Australian Certified UAV Operators Inc.

Fiona Church

Co-founder, Trendspek, Sydney

Fiona is an expert in drones for asset management. She is a commercial pilot and member of the Association of Australian Certified UAV Operators Inc. She helps her clients better understand how drone technologies are driving the future of asset management.

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Australian Constitution s 109

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Part 101 (Unmanned Aircraft and Rockets) Manual of Standards 2019

Privacy Act 1988 (Cth)

Surveillance Devices Act 2007 (NSW)

The Work Health and Safety (National Uniform Legislation) Act 2011 (NT)