



Discussion Paper – Drones

The following summary provides information on the laws relevant to drone operation and taking images using drones, prepared in June 2017. The information is provided as a guide only and councils are encouraged to seek their own legal advice for specific matters.

Drones Safe Operation

The *Civil Aviation Safety Regulation 1988* (Cth) provides some clear and simple requirements for the safe operation of drones including:

- enabling an authority to ban drones from spaces
- requiring that drones operated recreationally¹ get no closer than 30m from people
- requiring that drones not be flown over 'populous' areas, with sports fields being specifically mentioned as an example²

Although created to protect safety, these Regulations might assist a council to control drone use in relation to privacy, at sports fields and other outdoor locations.

To find out more about rules for drones see www.casa.gov.au/drone.

Taking Images

Provisions in the Commonwealth *Privacy Act 1988*, give some protection to an individual's privacy, but only in situations where an *organisation* is accused of compromising an *individual's* privacy. Where the alleged impact on privacy is between two individuals, the Act does not apply. Similarly, the Tasmanian *Personal Information Protection Act 2004* creates duties for organizations only, and does not create protections for individuals.

¹ Commercial operation may require license, certain level of license can enable operation within 15-30m of a person, with their consent.

² While the sports fields are in use.

Some states have legislation protecting children, chiefly from identification. Where legislation is created it appears the intent is chiefly to protect against 'unwanted contact' and is often related to Family Court proceedings.

Although legislation is enacted in some states, it seems all schools in all states have responded with policies to minimize risks, and require express consent from parents/guardians, before images of children can be taken at school.

Using Drones to Take Images

When it comes to control over taking images with drones, generally there is little relevant legislation in Australia³. Unless a drone is piloted for an organisation and is invading an individual's privacy, it seems there may be no current restrictions on taking images in our legislation.

In Tasmania, if an individual took images of another individual adult or child using a drone (or other means), it is not clear what the legal situation would be. If notified, Police may use their discretion to investigate, looking for criminal action of any type, particularly in the case of children. However, the investigations are likely to be chiefly about the use of the images rather than the act of taking images⁴.

It may be there are some Common Law actions available to individuals who feel aggrieved when a drone has been used to take images without consent. For example, the right to enjoy privacy of property through ownership, or a rental agreement⁵. More remotely an action like defamation might be available depending on the nature of the image, the use to which it was put, the aggrieved persons reputation and so on.

Conclusion

Currently this is an emerging area, with the law yet to catch up. Until that time, it appears organizations are using policy to control risks proactively and cooperatively. Fortunately, councils appear to be able to control risks and public concern, through use of the Civil Aviation Safety Regulations' buffer distances and exclusions, and a degree of proactive policy about use of council assets like sport fields.

³ Ombudsman Tasmania noted that they were unaware of there being any legislation covering taking of images and use of drones.

⁴ Tasmania Police were phoned and emailed seeking clarification.

⁵ The access that drones give, would likely undermine the ability to preserve the privacy of private property by restricting physical access. However, the air space over property may not be private property.