

Submission
No 28

**INQUIRY INTO REMEDIES FOR THE SERIOUS INVASION
OF PRIVACY IN NEW SOUTH WALES**

Organisation: Civil Aviation Safety Authority

Date received: 24/09/2015



Australian Government
Civil Aviation Safety Authority

OFFICE OF THE CHIEF EXECUTIVE OFFICER

CASA Ref: G115/974

23 September 2015

The Director
Standing Committee on Law and Justice
Parliament House
Macquarie Street
SYDNEY NSW 2000

Email: law@parliament.nsw.gov.au

Dear Sir/Madam

Inquiry into remedies for the serious invasion of privacy in New South Wales

I refer to the letter dated 9 September 2015 from the Hon Natasha Maclaren-Jones MLC addressed to Peter Gibson at the Civil Aviation Safety Authority (CASA) inviting CASA to provide a submission to the above Inquiry.

While privacy issues as such are outside of CASA's remit, we are aware of community concerns regarding the part played by unmanned aerial vehicles in possible invasions of privacy. We are also aware that there is some confusion over CASA's role in this area.

To assist the Committee in its deliberations, I attach a short submission prepared for previous inquiries in this area which outlines CASA's role in respect of aviation safety and the constraints which limit CASA's role in privacy matters.

I trust this information is of assistance.

Yours sincerely

Mark Skidmore AM
Chief Executive Officer and
Director of Aviation Safety

Civil Aviation Safety Authority Submission

Background: the Civil Aviation Safety Authority and its role in the regulation of Australian aviation safety.

1. The Civil Aviation Safety Authority (CASA) was established as a statutory authority under the *Civil Aviation Act 1988* (the Act) on 6 July 1995.¹
2. The main object of the Act is to '*establish a regulatory framework for maintaining, enhancing and promoting the safety of civil aviation, with particular emphasis on preventing aviation accidents and incidents*'.²
3. As specified in subsection 9(1) of the Act, CASA's core function is to conduct the safety regulation of civil air operations in Australian territory and the operation of Australian aircraft outside Australian territory by, amongst other things:
 - developing and promulgating appropriate, clear and concise aviation safety standards;
 - developing effective enforcement strategies to secure compliance with aviation safety standards;
 - issuing certificates, licences, registrations and permits;
 - conducting comprehensive aviation industry surveillance, including assessment of safety-related decisions taken by industry management at all levels for their impact on aviation safety;
 - conducting regular reviews of the systems of civil aviation safety in order to monitor the safety performance of the aviation industry, to identify safety-related trends and risk factors and to promote the development and improvement of the system; and
 - conducting regular and timely assessments of international safety developments.
4. CASA also has the following safety-related functions:
 - encouraging a greater acceptance by the aviation industry of its obligation to maintain high standards of aviation safety; and
 - promoting full and effective consultation and communication with all interested parties on aviation safety issues.³
5. In exercising its powers and performing its functions under the Act, CASA must regard the safety of air navigation as the most important consideration.⁴
6. Subject to its obligations under the Act to ensure that primacy is given to the safety of air navigation, CASA also has a range of functions and powers under the *Airspace Act 2007* related to the administration and regulation of Australian administered airspace.
7. CASA implements its obligations under the Act by and through:
 - the *Civil Aviation Regulations 1988* (CARs);
 - the *Civil Aviation Safety Regulations 1998* (CASRs);
 - the *Civil Aviation Orders* (CAOs); and
 - *Manuals of Standards*.⁵

¹ Section 8.

² Section 3A

³ Civil Aviation Act, subs. 9(2).

⁴ Civil Aviation Act, subs. 9A(1).

8. In paragraphs 181-183, the Australian Law Reform Commission's Issues Paper, *Serious Invasions of Privacy in the Digital Era*, states:

Regulating aerial surveillance

181. Existing laws with regard to incursions into airspace tend to have been drafted at a time when surveillance technologies were less developed. Compliance with air navigation rules drafted for the purpose of ensuring safety and for protecting commercial and private flights from liability for mere passage through private airspace may not properly address privacy concerns about deliberate aerial surveillance or data recording by the media and others.

182. Further, in Australia, there has recently been an increase in the use by civilians of remotely piloted aircraft (RPAs), commonly known as drones. While some use of RPAs appears to be merely recreational, there have been increasing reports of the use of RPAs to carry out targeted surveillance of the activities of other individuals, businesses or organisations. This may raise privacy concerns that existing air navigation laws and regulations do not address.

183. It may be appropriate to consider how existing laws and regulations could better prevent or redress serious invasion of privacy by deliberate aerial surveillance activities, including the use of RPAs.

9. The paper appears to raise two issues for consideration in this connection:
- (a) the fact that the current aviation legislation does not address privacy concerns in relation to aerial surveillance or other activities; and
 - (b) specifically, the use of RPA's for surveillance raises privacy concerns that the aviation legislation does not address.
10. As CASA does not have any functions under the *Privacy Act* and because proposals to amend that Act do not have any aviation safety related aspects, CASA does not intend to comment on any proposal to amend that Act.

Airspace issues

11. Under Section 8 of the *Airspace Act 2007*, the Minister for Infrastructure and Regional Development is responsible for making the *Australian Airspace Policy Statement* (AAPS). The AAPS provides guidance to CASA on the administration of Australian airspace noting the functions of and exercise of powers by CASA are set out in the *Airspace Act 2007* and the *Airspace Regulations 2007*. Under the *Airspace Act 2007*, CASA is responsible for determining when and how these classifications are to be deployed in Australian-administered airspace. The airspace classification system used in Australia is specified in *attachment A*.
12. Australia has adopted the International Civil Aviation Organisation designations described in Annex 15, Chapter 2 to the *Chicago Convention* for accommodating activities that may be incompatible with routine flying operations, namely Prohibited, Restricted and Danger Areas. These areas and the circumstances in which they can be declared are described at Regulation 6 of the *Airspace Regulations 2007*. The declaration of these areas and the circumstances in which they can be declared are as follows:

⁵ As part of the regulatory reform process, the CARs are being progressively replaced by the CASRs. More detailed technical requirements under the CARs (and in some cases, under certain provisions of the Act) appear in the CAOs. Where such detailed requirements are required under the CASRs these appear in corresponding Manuals of Standards.

- (a) *Prohibited Area* – CASA must not declare an area to be a *Prohibited Area* unless, in the opinion of CASA, it is necessary for reasons of military necessity to prohibit the flight of aircraft over the area;
 - (b) *Restricted Area* – CASA must not declare an area to be a *Restricted Area* unless, in the opinion of CASA, it is necessary in the interests of public safety or the protection of the environment to restrict the flight of aircraft over the area to aircraft flown in accordance with specified conditions;
 - (c) *Danger Area* – CASA must not declare an area to be a *Danger Area* unless, in the opinion of CASA, there exists within or over the area an activity that is a potential danger to aircraft flying over the area.
13. As the airspace legislation makes no provision for the privacy of persons to be taken into account in determining classes of airspace or declaring restricted areas, CASA cannot exercise any of its statutory powers for the purpose of restricting the operation of aircraft for privacy reasons.
14. Likewise, as section 15 of the *Airspace Act 2007* relevantly provides that regulations may only be made that are necessary or convenient to be prescribed for carrying out or giving effect to the Act, regulations cannot be made under that Act to prohibit or limit the operation of an aircraft or unmanned aerial vehicle for the purpose of protecting the privacy of persons.

Low flying

15. Regulation 157 of the CAR provides that an aircraft, in the course of taking off or landing from an aerodrome, cannot fly below 500 feet above the ground in populous areas. However, aerial work operators (such as media organisations certificated by CASA to conduct aerial photography) are commonly provided with a permission to fly at low height.

Unmanned aerial vehicles (UAVs)

16. Part 101 of the CASR governs the operation of UAVs (also known as RPAs). A summary of relevant provisions pertaining to their operation follows:
- (a) A person may not operate a UAV within 30 metres of a person not directly associated with its operation – CASR 101.245 – penalty units 10 (\$1800 maximum fine for a person);
 - (b) A person may not operate a UAV within 30 metres of a person not directly associated with its operation – 50 penalty units (\$9000 maximum fine).
17. The limitation on flying a UAV within a specified distance of persons is based on safety related considerations, not privacy-related considerations.
18. Section 98 of the Act specifies the regulations that may be made by the Governor General under the Act. As this provision qualifies or conditions the power on matters relating to or connected to safety, CASA considers regulations could not be made under the Act to prohibit the operation of an aircraft or UAV for the purpose of protecting the privacy of persons.