

**INQUIRY INTO LANDOWNER PROTECTION FROM
UNAUTHORISED FILMING OR SURVEILLANCE**

Organisation: Information and Privacy Commission NSW

Date Received: 2 July 2018



information
and privacy
commission
new south wales

Enquiries: Sonia Minutillo

Our reference: IPC18/A000282

The Hon Robert Borsak MLC
Committee Chair
Select Committee on Landowner Protections
from Unauthorised Filming or Surveillance
Parliament House
Macquarie Street
Sydney NSW 2000

By email: landowner.surveillance@parliament.nsw.gov.au

Dear Mr Borsak

Submission to Inquiry into Landowner Protection from Unauthorised Filming or Surveillance

The opportunity to provide a submission to the Inquiry into Landowner Protection from Unauthorised Filming or Surveillance is appreciated.

Privacy regime in NSW

As NSW Privacy Commissioner I have responsibility to champion and promote the privacy rights of the people of NSW with respect to both their personal and health information. The *Privacy and Personal Information Act 1998* (PPIA Act) establishes the Information Protection Principles which govern the collection, use and disclosure of personal information by NSW public sector agencies so that individuals can be assured that their personal information is managed appropriately in all circumstances.

The PPIA Act does not regulate the actions of private sector entities or individuals and, therefore, cannot currently be applied to a potential breach of privacy that may arise from filming or surveillance activities undertaken by private individuals or businesses.

Legislative environment

I understand there are some current legislative provisions that may be of application to this situation. In particular, I note the following offence provisions under Part 2 of the *Surveillance Devices Act 2002*:

- sections 7 -10 which prohibit the installation, use and maintenance of listening devices, optical surveillance devices without consent, tracking devices and data surveillance devices respectively
- section 11 which prohibits the communication or publication of private conversations or the recording of activities
- section 12 which prohibits the possession of a record of a private conversation or activity
- section 13 which prohibits the manufacture, supply or possess surveillance devices for unlawful use, and
- section 14 which prohibits the communication or of information obtained by an unlawful use of a data surveillance device.

Level 17, 201 Elizabeth Street, Sydney NSW 2000 | GPO Box 7011, Sydney NSW 2001

www.ipc.nsw.gov.au

I note that penalties imposed for these offences can include up to five years imprisonment.

Also of note in the circumstances under consideration by this Inquiry are the offence provisions under the *Inclosed Lands Protection Act 1901* concerning unlawful entry or re-entry on inclosed lands (sections 4 and 4AA). The aggravated unlawful entry provisions under section 4B may also be of application.

I am unable to comment on the adequacy of any of the legislative provisions currently available.

Privacy and technology

Developments in technology such as miniaturisation of cameras, GPS tracking and drone technology have facilitated an increase in the physical surveillance of individuals in private and public locations. Laws to date have not kept pace with these developments, particularly in respect of the potential for real-time streaming of recordings via social media platforms.

The potential for these emerging technologies to facilitate breaches of privacy are most clearly illustrated by the example of the growing use of unmanned aircraft (more commonly referred to as drones). This is an issue that has been raised with the Information and Privacy Commission NSW by both public sector agencies and individuals. Currently, there is no comprehensive regulation of drone technologies in NSW or any other Australian jurisdiction.

The safety aspects of the operation of drones are currently regulated by Part 101 of the *Civil Aviation Safety Regulations 1998* administered by the Civil Aviation Safety Authority (CASA). There are three categories of drone use regulated by CASA:

- Commercial – drones over 2kg, flown over 150 metres for a commercial purpose
- Sub 2kg Commercial - drones under 2kg, flown for a commercial purpose
- Recreational – drones used for sporting or recreational purposes

The rules for recreational drone use include:

- Not flying a drone higher than 120 metres (400 ft) above the ground.
- Not flying a drone over or near an area affecting public safety or where emergency operations are underway without prior approval.
- Not fly a drone within 30 metres of people, unless the other person is part of controlling or navigating the drone.
- Only flying one drone at a time.
- If the drone weighs more than 100 grams:
 - it must be kept at least 5.5km away from controlled aerodromes (usually those with a control tower)
 - a drone may fly within 5.5km of a non-controlled aerodrome or helicopter landing site (HLS) only if manned aircraft are not operating to or from the aerodrome. This includes:
 - not operating a drone within the airfield boundary without approval
 - not operating a drone in the approach and departure paths of the aerodrome without approval
- Only flying during the day and keeping the drone within visual line-of sight.
- Not flying over or above people. This could include festivals, sporting ovals, populated beaches, parks, busy roads and footpaths.
- Not operating a drone in a way that creates a hazard to another aircraft, person, or property

- Not operating a drone in prohibited or restricted areas.

This regime does not address the privacy aspects that arise from the use of these devices.

Where a drone is used for the purposes of surveillance it may fall under the jurisdiction of the *Workplace Surveillance Act 2005* or the *Surveillance Devices Act 2007*. This legislation, however, does not address the use of drones for recreational or most commercial purposes (for example, real estate agents have used drones to capture footage of listed properties and the surrounding area for use in marketing campaigns).

As the prevalence of these devices increases, governments will need to give careful consideration to potential regulation of their use, both in respect to privacy and safety.

Enquires to the Information and Privacy Commission NSW

Most enquiries to Information and Privacy Commission NSW concerning private sector use of surveillance devices relate to:

- workplace surveillance
- neighbourhood disputes about security camera/video footage, or
- use of drones by private sector companies or businesses.

These enquiries are outside of my legislative jurisdiction and individuals are referred to relevant authorities.

The Information and Privacy Commission NSW also receives occasional enquiries from public sector agencies concerning the use of drones for regulatory and surveillance purposes. Examples include the use of drones for:

- search and rescue operations
- aerial surveys and regulatory purposes
- taking footage of events.

The Information and Privacy Commission NSW advises public sector agencies that the collection of personal or health information by drone is covered by NSW privacy legislation in the same manner as other forms of data collection.

I trust the above information is useful to the Select Committee in its deliberation on this issue. Please do not hesitate to contact me if you require any further information. Alternatively your officers may contact Sonia Minutillo, Director, Investigations and Reporting on

Yours sincerely

Samantha Gavel
NSW Privacy Commissioner

2/7/18