

# Legal Considerations for RPA Operators

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# Introduction

1. Key Legal Issues:
  - Regulatory Requirements
    - Commonwealth
    - State
    - Local
  - Liability
  - Privacy
  
2. Contractual Provisions:
  - Contracts for RPA services
  - Key Terms

# Regulations and Restrictions of RPA Usage

## *Commonwealth Regulation of RPAs:*

- Civil Aviation Act 1988 (Cth) – Comprehensively regulates the safety of civil aviation in Australia
- Civil Aviation Safety Regulations 1998 (Cth) (Part 101) – regulates unmanned aircraft

# Regulations and Restrictions of RPA Usage

CASR 101.025:

## Meaning of *populous area*

For this Part, an area is a ***populous area*** in relation to the operation of an unmanned aircraft or rocket if the area has a sufficient density of population for some aspect of the operation, or some event that might happen during the operation (in particular, a fault in, or failure of, the aircraft or rocket) to pose an unreasonable risk to the life, safety or property of somebody who is in the area but is not connected with the operation.

CASR 101.245:

## Operation near people

(1) Subject to subregulations (2) and (3), a person must not operate an RPA within 30 metres of a person (the ***second person***) who is not directly associated with the operation of the RPA.

# Regulations and Restrictions of RPA Usage

## *State Regulation of RPAs*

- State Governments enacting laws restricting RPA operations
- Examples: *Major Events Act 2009 (NSW)*, *National Parks and Wildlife (National Parks) Regulation 2016 (SA)*
- Inconsistency with Commonwealth law?

# Regulations and Restrictions of RPA Usage

## *NT Work Health Authority v Outback Ballooning & Anor*

- Currently being decided by the High Court – hearing was in August 2018
- Question of inconsistency between NT workplace OHS laws and Cth civil aviation safety legislation
- Decision anticipated later this year or early next year

# Regulations and Restrictions of RPA Usage

## *Local Council Regulation of RPAs*

- Local Governments enacting laws restricting RPA operations
- Examples:     City of Ballarat  
                  Moonee Valley Council  
                  Sunshine Coast Regional Council  
                  City of Casey  
                  Brisbane City Council
- Again, inconsistency with Commonwealth law?

# Liability of RPA Operators for Surface Damage

- Key risk that may arise in RPA operations - Collision between RPA and person on the ground
- Statutory liability regimes at both the Commonwealth and State level concerning damage caused by aircraft:
  - Strict and unlimited liability
  - Personal injury or property damage
- Corporations: *Damage by Aircraft Act 1999* (Cth)
- Individuals: *Civil Liability Act 2002* (NSW), *Wrongs Act 1958* (Vic), *Air Navigation Act 1937* (Qld), *Damage by Aircraft Act 1964* (WA), *Civil Liability Act 1936* (SA), *Damage by Aircraft Act 1963* (Tas)



# Privacy rights and the operation of RPAs

## *Common Law:*

- No common law tort of privacy (but see surveillance devices legislation)
- Claims for nuisance?
  - *Bernstein v Skyviews*
- Claims for trespass, interference with ordinary use or enjoyment of land?
  - *Schleter v Brazakka Pty Ltd*

## *Criminal Law*

# Contract Terms and Considerations – Provision of RPA Services

- No need to reinvent the wheel:
  - Technology change from helicopters/fixed wing to RPA
  - Similar legal issues/requirements
  - Air Service Contracts: Charter agreements, air work contracts, air cargo terms and conditions
- Form of contract or terms and conditions.

# Contract Terms and Conditions – Provision of RPA Services

- Key areas to be covered in services contract:
  - Parties
  - Scope of Services
  - Regulatory compliance
  - Risk allocation/Liability/Insurance
- Will not cover general commercial issues: payment terms etc.

# Parties

Who should be party to an RPA operation contract?

- RPA operator certificate holder
- Leasing/hire of RPA – customer as operator?
  
- Quarantine operating risk:
  - Advantages of corporate structure
  - Exposure of operators and owners

# Scope of Works and Operations

Contract should detail services, responsibilities and ancillary tasks.

Points to consider:

- Specification of RPA
  - make and model?
  - Payload/performance
  - CASA categories

# Scope of Works and Operations

Points to consider:

- Task to be performed - Clear specification of task to be performed and where
- Area of operation in which the task is to be performed - Consider whether the area of operation is populated - CASR 101.025 & 101.250
- Allocation of responsibilities and obligations – Ensuring compliance or obtaining approvals/exemptions:
  - CASR 101.070 – In controlled airspace
  - CASR 101.075 – Near aerodromes
  - CASR 101.095 – Operation at night or in cloud
  - CASR 101.245 – Operation within 30 metres of the public (*“person who is not directly associated with the operation of the UAV”*)

# Regulatory Compliance

Contract must also include provisions for regulatory compliance.

Objective of regulatory compliance provisions:

- Assure customer that services will comply with regulatory requirements
- Clarify that the operator
  - has control over activities in relation to issues of safety and regulatory compliance
  - has the right to suspend, cancel or vary proposed operation to ensure safety and regulatory compliance

# Regulatory Compliance

*“The Operator;*

- i. shall provide the Services in accordance with the requirements of the Civil Aviation Act, Regulations and Orders;*
- ii. shall have the final authority on all factors which in its opinion effect flight safety or regulatory compliance;*
- iii. may order the RPA grounded or vary any aspect of how the Services are to be provided, if, in its absolute discretion, the RPA is not in a condition to fly, the weather is not suitable for flying, or for other reasons of safety or regulatory compliance any flying activities as part of the Services should proceed or should be varied.*

*There shall be no liability for the delay or failure to provide any Service by the Operator by reason of compliance with or due regard to the requirements of the Civil Aviation Act, Regulations or Orders.”*



# Allocation of Risk and Liability in Contracts

Risk analysis of RPA service contract:

- Direct risks
- Indirect/consequential risks

Insurance, liability and indemnity clauses essential.



# Liability Clauses in RPA Service Contracts

- Liability clauses a matter for commercial negotiation but relevant factors:
  - Cargo and damage on the ground
  - Liability exposures far higher than return to RPA Operator
  - Liability clause should: -
    - Limit RPA Operator liability to re-supply of the services or the cost of re-supply of the services
    - Exclude consequential loss and loss of profit type damages
    - Be pegged to insurance cover if limitation to re-supply unacceptable

# Examples of Liability Clauses

- **Australian Consumer Law Clause**

*In the event the Service Provider's liability at law or otherwise for a Claim cannot be fully excluded, the Service Provider's liability is strictly limited to the re-supply of the Service or an equivalent Service or, at the Service Provider's option, payment of an amount equivalent to the cost supply of the Service or an equivalent Service.*

- **Consequential Losses clause**

*The Service Provider will not be liable to the Customer for any loss or damage suffered by the Customer which is indirect or consequential loss or damage within the meaning of the common law or which results from a supervening event or which is by way of loss of revenue, loss of profits, loss of goodwill, loss of business reputation, future reputation or publicity, loss of interest, damage to credit rating, loss or denial of opportunity or increased overhead costs or which is suffered by the Customer as a result of a claim upon it by a third party.*

# Warranty and Indemnity Clauses

Types of indemnity clauses which may be included in operating agreements:

- **Party to party indemnities** - indemnifier [Customer] indemnifies the other party [RPA operator] against any loss suffered by the beneficiary [RPA operator] in relation to any losses arising pursuant to the contract. Usually excludes RPA operator's negligence.
- **Third-party indemnities** - indemnifier [Customer] indemnifies the beneficiary [RPA operator] against any loss or damage arising from a claim by a third party.

Types of warranty clauses which may be included in operating agreements:

- **Privacy** – that the customer has procured any necessary consents for the task

# Termination

Some factors giving rise to termination:

- Customer's default
- Operator's default
- Suspension
- Suspension, revocation or cancellation of Operator's Operating Certificate

# Insurance Cover

- Appropriate insurance cover is essential for commercial operations
- Contractual arrangements should specify the insurance cover appropriate for the tasks to be performed
- Cover should include: -
  - Loss or damage to the RPA
  - Loss or damage to payload
  - Liability for third party personal injury or property damage

# Questions?

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