

Legal Challenges Hovering over Operators

AAUS - RPAS IN AUSTRALIAN SKIES 2019

PRESENTED BY
Jayne Heatley and Kristina Cavanna

NORTON WHITE



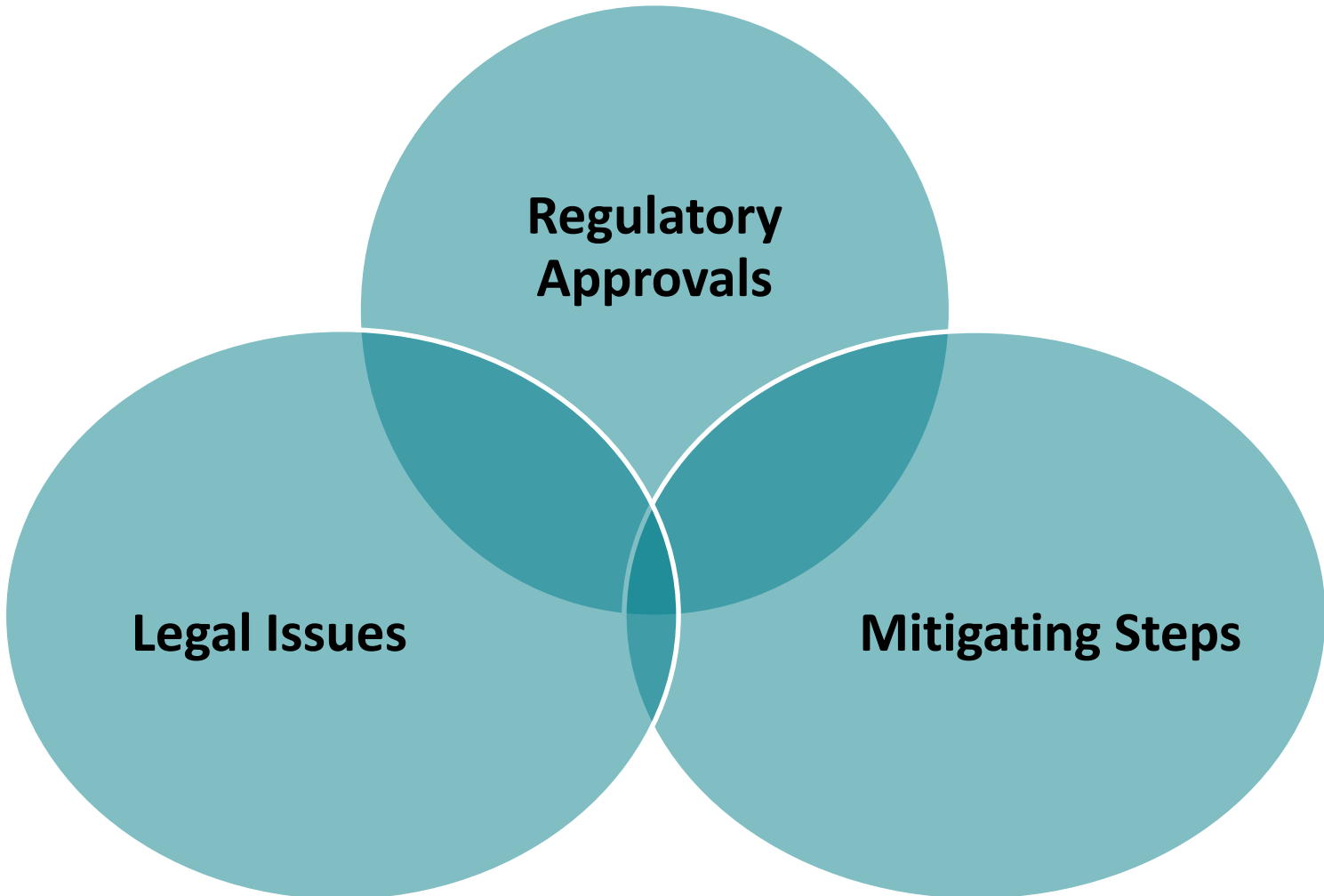
A large number of white drones are flying in a cloudy sky. The drones are of various sizes and are scattered across the frame, some in the foreground and some in the background. The sky is filled with soft, white clouds, and the overall scene suggests a busy, active drone environment.

Innovative Application for RPAS

Exponential growth and potential of the industry.

- Areas of development - delivery of goods, search and rescue, surveillance, photography, agriculture, oil and gas, humanitarian, firefighting, accident investigation, Defence
- Recent projects – e.g. Project Wing
- Global commercial market in unmanned aerial systems is forecast to grow exponentially
- New and innovative uses still in pipeline – e.g. aerial ridesharing

Considerations for the Planning Stages



Part A - Regulatory Approvals

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CASA Approvals

RPAS regulated under Part 101 Civil Aviation Safety Regulations



CASA approval required for operations outside standard operating or ReOC conditions, including operations higher than 120m above ground level, within 30m of people, over a populous area and operating at night



Operators must demonstrate an acceptable level of safety, which varies according to the specifics of operations



Make sure you allow enough time - Additional safety measures and risk assessments may be imposed by CASA

Other approvals

CASA responsible for
aviation *safety*

CASA approval does not
provide:

- rights in respect of property
- protection from land owners or occupiers
- immunity from claims regarding noise, damage etc

Other approvals may also
be required, including:

- Landowner/occupier
- Work health and safety
- Local government requirements
- Planning approvals
- Environmental
- Noise
- Heritage

Noise

Noise approvals from DITCRD may now be required



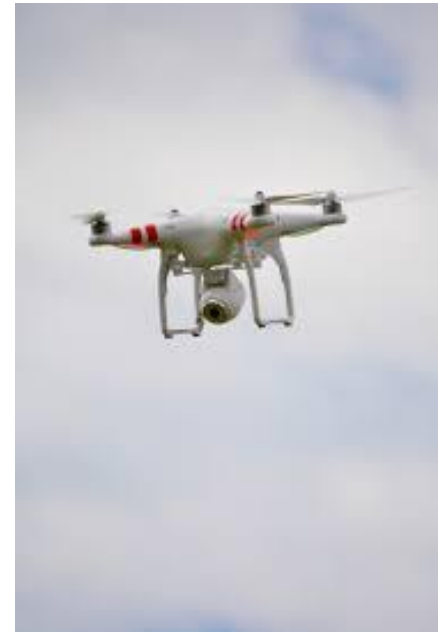
Until recently, issue not within the sole purview of any authority and Air Navigation (Aircraft Noise) Regulations 2018 (Cth) taken not to apply to RPAS



Department now considers that **some** commercial and recreational RPAS operations require approvals



Departmental review pending
Department will focus on commercial operations in residential areas



Part B - Legal issues

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Landowner Rights

“Do I need the consent of the person over whose land I am flying?”



Where RPA flown over land, but neither pilot nor RPA touch the land



Raises a number of legal issues:

- Privacy
- Nuisance / trespass
- Landowner / occupier's rights

Nuisance / trespass



Nuisance: Provides occupier with rights where there has been a **substantial and unreasonable interference with their use and enjoyment of the land**

Trespass: the intentional and unauthorised entry upon property

Where proven, landowner/occupier may seek damages or injunction

Legislative protection for manned aircraft may **not** apply to RPAS

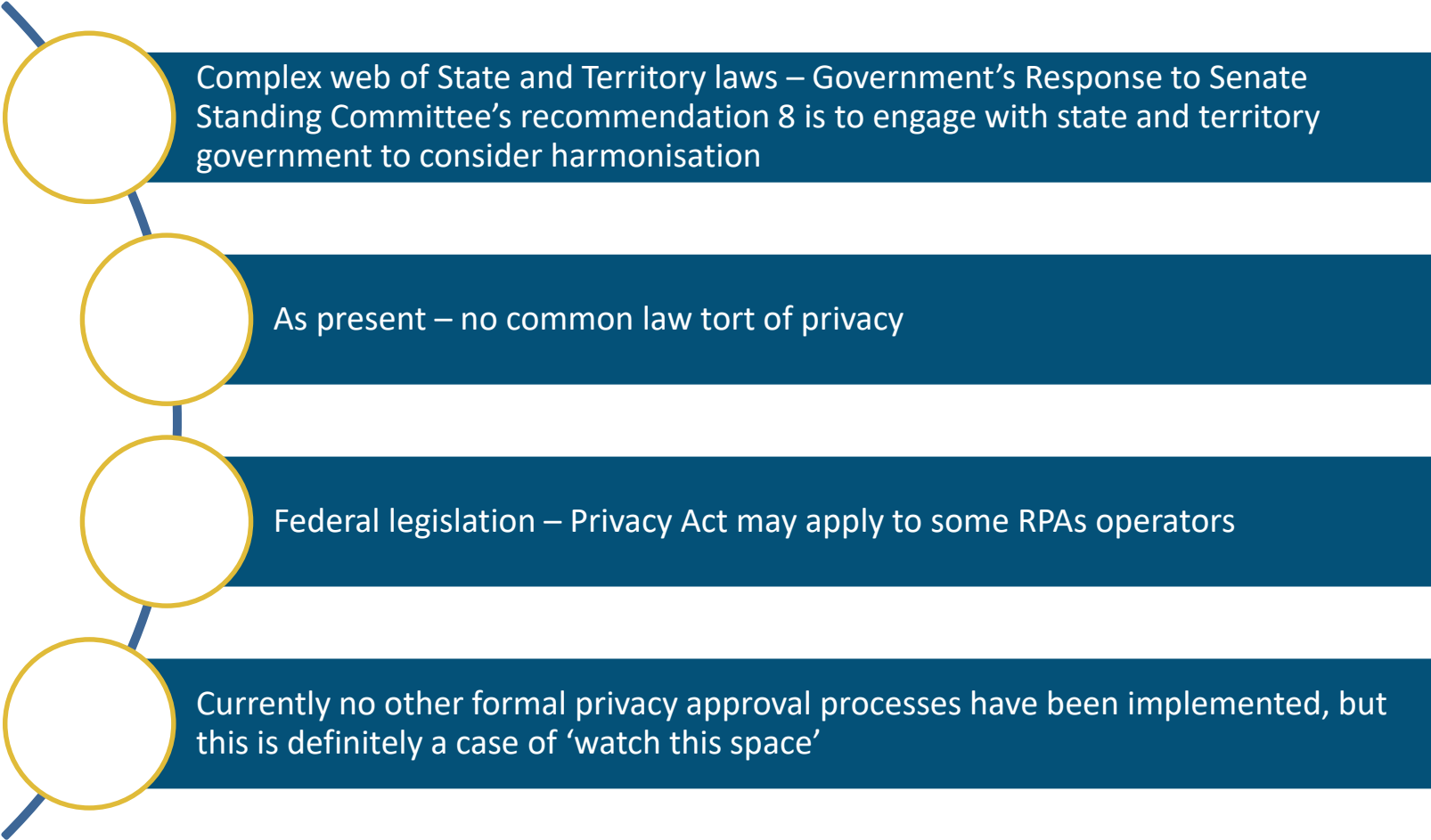
Risks for nuisance / trespass

- No clear standard
- Landowner rights limited to such height as is necessary for “ordinary use and enjoyment of the land”. May differ for different types of property
- Manned aircraft doing aerial photography at 500 feet not trespassing
- Nuisance may be more likely where:
 - Surveillance is involved
 - Repeated or series of flights
 - Flight is very low
 - Operational characteristics such as:
 - loud buzzing
 - lower speeds
 - sustained hovering



“the problem is to balance the rights of an owner to enjoy the use of his or her land against the rights of the general public to take advantage of all that science now offers in the use of airspace.” (1979)

Privacy



Complex web of State and Territory laws – Government’s Response to Senate Standing Committee’s recommendation 8 is to engage with state and territory government to consider harmonisation

As present – no common law tort of privacy

Federal legislation – Privacy Act may apply to some RPA operators

Currently no other formal privacy approval processes have been implemented, but this is definitely a case of ‘watch this space’

Part C – Mitigating Steps

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Steps to Minimise Risk

Approvals

- Discuss operations with landowners to abate risk of disputes
- Require third party operators to undertake the necessary approvals and obtain consent from the relevant parties

Contracts

Include limitation of liability clauses in customer and supplier contracts

Insurance

- Obtain insurance covering risks to:
- Equipment
- Employees
- Third parties
- Persons and property on the ground

Speakers: Jayne Heatley | Partner
jayne.heatley@nortonwhite.com

Kristina Cavanna | Senior Associate
kristina.cavanna@nortonwhite.com



Level 4, 66 Hunter Street
Sydney, New South Wales 2000
Australia

www.nortonwhite.com

NORTON WHITE

