



**Australian
Privacy
Foundation**

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Committee Secretary
Senate Standing Committees on Rural and Regional Affairs and Transport
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RE: Civil Aviation (Unmanned Aircraft Levy) Bills

This submission by the Australian Privacy Foundation responds to the Committee's invitation to comment on the *Civil Aviation (Unmanned Aircraft Levy) Bill 2020 (Cth)* and the *Civil Aviation Amendment (Unmanned Aircraft Levy Collection and Payment) Bill 2020 (Cth)*.

The Foundation is Australia's civil society organisation concerned with privacy. (Background information about the Foundation is below).

As this week's report from the Office of the Australian Information Commissioner demonstrates, Australians continue to be deeply and very legitimately concerned with privacy.¹ What are variously characterised as unmanned aircraft, unmanned aerial vehicles and drones have been identified by the Foundation, by the Australian Law Reform Commission, by other law reform commissions and a range of parliamentary inquiries as posing unaddressed challenges regarding privacy.²

The scope for serious invasions of privacy by devices operated on a commercial basis and by hobbyists is a major concern for people in the bush and in urban locations. Those concerns include the use of 'eyes in the skies' for voyeurism, stalking and other activity that ignores privacy as a freedom from inappropriate interference. It is a freedom that is a right of all Australians.

¹ Office of the Australian Information Commissioner, *Australian Community Attitudes to Privacy Survey 2020* (2020).

² Examples include the Senate Standing Committee on Rural and Regional Affairs and Transport (2018) report *Regulatory requirements that impact on the safe use of Remotely Piloted Aircraft Systems, Unmanned Aerial Systems and associated systems*, the report of the NSW Select Committee On Landowner Protection From Unauthorised Filming Or Surveillance (2018), and the Australian Law Reform Commission *Serious Invasions of Privacy in the Digital Era* (2014) report and *For Your Information: Privacy Law & Practice* report (2008).

Australian law provides inadequate protection against disregard of privacy, including the misuse of airborne surveillance devices that enable inappropriate observation of farms, forests, mining sites, other industrial locations, sports activities, private celebrations and domestic activity.

The inadequacy of Australian law at the national, state and territory levels is highlighted in the recent national Department of Infrastructure, Transport, Regional Development & Communications paper on *Emerging Aviation Technologies*, the basis of industry/community consultation towards a coherent national strategy. That paper states that:

The Australian Government will lead the development of a nationally consistent approach for managing privacy concerns that balances the impacts on privacy with the needs of drone and eVTOL operations.

In identifying the strategy, the paper refers to action 6:

Privacy – The Australian Government will lead the development of a nationally consistent approach for managing privacy concerns that balances the impacts on privacy with the needs of drone and eVTOL operations.

The two Bills under consideration by the Committee regrettably put the revenue cart in front of the policy horse. They disregard the need for effective and nuanced protection of agriculturalists, other businesspeople, and mums and dads. They instead treat drones as a flying cash cow.

Community consultation about the large-scale registration scheme underlying that revenue generation has been inadequate. The Foundation does not oppose licensing fees *per se*. It is not opposed to drones for commercial or recreational purposes. It does however express concern about ill-considered programs.

There is no clear indication that the registration scheme has been assessed using an independent comprehensive privacy impact assessment. That assessment is a prerequisite for the legitimacy of a scheme that will eventually cover personal information about several hundred thousand non-commercial users of drones alongside corporations operating larger unmanned vehicles.

There is no indication that the registration scheme incorporates effective privacy-by-design principles. Such architecture is essential in preventing the large-scale data breaches evident this year with Service NSW and in past years with for example Medicare and refugee data.

Neither the Department's site nor the Civil Aviation Safety Authority provide substantive information about the register, a database that will be shared across government under the incoming Data Availability & Transparency regime and may be shared with other governments given state/territory interest in tracking improper uses of commercial/noncommercial drones.

More broadly, the Bills do not address the need for a coherent national privacy framework that protects individuals irrespective of occupation, location or other attributes. That framework would offset regulatory incapacity on the part of proliferating but under-resourced agencies (which at the national level include the Office of the Australian Information Commissioner, the Office of the National Data Commissioner, the Australian Competition & Consumer Commission, and the National Health Practitioner Ombudsman & Privacy Commissioner). It would implement recommendations made by parliamentary committees and law reform inquiries such as those noted above. It would deepen citizen perceptions that politicians care about them rather than the Canberra Bubble.

If you have any questions please do not hesitate to contact Kat Lane.

Yours sincerely

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About the Australian Privacy Foundation

The Australian Privacy Foundation (the Foundation) is the primary national association dedicated to protecting the privacy rights of Australians. The Foundation aims to focus public attention on emerging issues that pose a threat to the freedom and privacy of Australians. The Foundation has led the fight to defend the right of individuals to control their personal information and to be free of excessive intrusions. The Foundation's primary activity is analysis of the privacy impact of systems and proposals for new systems.

The Foundation makes frequent submissions to parliamentary committees and government agencies. It publishes information on privacy laws and privacy issues. It provides continual background briefings to the media on privacy-related matters. Where possible, the Foundation cooperates with and supports privacy oversight agencies, but it is entirely independent of the agencies that administer privacy legislation, and regrettably often finds it necessary to be critical of their performance. When necessary, the Foundation conducts campaigns for or against specific proposals. It works with civil liberties councils, consumer organisations, professional associations and other community groups as appropriate to the circumstances. The Foundation is also an active participant in Privacy International, the world-wide privacy protection network.