

Drones and the Law in Local Government

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As time flies by, technological progress speeds up.

Today, we have greater access to drones and other types of remotely piloted aircrafts (**RPAs**) than ever before; enhancing surveillance, capturing unique images and data and allowing us to view the world in transformative ways.

Local governments are increasingly asking themselves:

- 1) What are the potential benefits of using drone technology?
- 2) What are the risks and legal implications for local governments in operating drones?

This article will cover some of the key considerations for local governments that are using or planning to use drones within their ongoing operations.

Potential Uses or Benefits of Drones

Some local governments in Western Australia, as well as other Australian states and territories, have already successfully trialled and established drone activities within their operations.

Drones have practical application in areas such as:

- disaster management
- road surveying
- three dimensional mapping
- infrastructure maintenance and management
- pest and plant management
- compliance management
- law enforcement

As a result, drones have become an excellent tool for local governments that want to:

- increase efficiencies within their operations
- increase accuracy and consistency in data capture
- increase accessibility to assets and infrastructure
- increase the quality, quantity and speed in which information is available to decision makers

Key Points & Considerations

- Local governments in WA and other States and Territories have successfully trialled and established the use of drones
- There is an extensive list of potential uses and benefits of drone technology in the local government sphere
- Drone use by local governments is governed by State and Federal legislation

State and Federal Legislation

Local governments that use drones for their operations are faced with a minefield of legal queries. These include:

1. What is the legislative and regulatory framework that applies to the use of drones?
2. Who is responsible for administering and enforcing these laws?
3. What are the risks for local governments if their use of drones is not appropriately managed?

Local governments should take steps to ensure that their drone operations are conducted in accordance with the state and federal laws that govern the use of this innovative technology. Also, that they keep up-to-date with developments in this complex and quickly evolving area of law.

The legislative framework regulating the use of drones in WA includes the following:

The Civil Aviation Act 1988 (Cth) & the Civil Aviation Safety Regulations 1998 (Cth) ("CASR")

Drone use in Australian airspace is regulated by Part 101 of the CASR.

Part 101 distinguishes between drones that are referred to as "excluded RPAs" (covering lower risk drone operations) and non-excluded RPAs.

Different operating requirements apply depending on whether the drone is classified as an excluded RPA or a non-excluded RPA. There are seven categories of excluded RPAs listed in CASR 101.237. Such operations have reduced regulatory requirements and do not require an RPA operator's certificate (**ReOC**) or a remote pilot licence (**RePL**).

If an RPA does not fall within any one of the seven categories of excluded RPAs then it is classified as a non-excluded RPA and the following requirements apply:

- The operator (in this case the local government) must hold an ReOC
- The remote pilot must hold an RePL
- The drone must be operated in accordance with the 'standard operating conditions' that apply to the holder of an ReOC or an RePL

The responsibility for the administration and enforcement of the regulatory requirements rests with the national Civil Aviation Safety Authority (**CASA**) established under the *Civil Aviation Act 1988* (Cth).

Drone operators (including local governments) are subject to oversight, surveillance and enforcement by CASA. Non-compliance with the regulations may be investigated and local governments found to be in breach may be subject to safety and/or enforcement action.

Local governments should, therefore, take steps to mitigate the risks by ensuring that the use of drones is appropriately managed by their operating personnel.

Transport Safety Investigation Act 2003 (Cth) & Transport Safety Investigation Regulations 2003 (Cth)

Local governments should also bear in mind the reporting requirements of the national *Transport Safety Investigation Act* and the *Transport Safety Investigation Regulations*.

The regulations require that drone operators report certain types of accidents or incidents arising out of or in connection with the use of "any machine or craft used in air navigation, however propelled or moved" to the Australian Transport Safety Bureau.

Therefore, local governments should implement policies and procedures to ensure that their operating personnel comply with these reporting obligations.

Some measures that may be implemented are as follows:

- appointing a designated person as the reporting officer in relation to drone-related incidents
- developing policies or procedures to be followed should drone-related incidents occur
- maintaining contemporaneous records of all reportable incidents

Safety Considerations in Emergency Situations

CASA has published guidelines that identify some of the major safety risks associated with flying drones over areas affected by emergency situations (e.g. bushfire-affected areas) and recommend strategies for mitigating such risks.

The potential risks include mid-air collisions between drones and low-flying emergency aircraft and the forced grounding of emergency aircraft to avoid those types of collisions.

The guidelines appear to be targeted at recreational or private drone operators.



However, if local governments implement effective safety strategies and follow the CASA guidelines, they can reduce the potential safety risks.

The use of drones in emergency situations and the policies and procedures that apply must also be compliant with other state and territory laws applicable to emergency operations.

Liability for Damage

Local governments that adhere to the requirements of CASR, and the operating conditions that apply, may still be liable for any damage or harm caused

to individuals or property as a result of their drone operations.

CASR does not require drone operators to be covered by conventional insurance.

However, CASA recommends that drone operators have suitable insurance cover for any potential damage or harm caused to third parties as a result of their drone activities.

Other Legal Issues

The potential exposure of local governments to liability for trespass, nuisance or breaches of privacy as a result of their drone activities has yet to be thoroughly tested and settled through the Courts.

Drone operators do not have any rights against the owner or occupier of any land over which their operations are conducted.

Therefore, local governments entering into the airspace over private land (e.g. for inspection, maintenance and enforcement activities) should ensure that they comply with any relevant powers of entry laws as if they were entering the land itself.

“Be aware of the potential risks of using drones, as well as the potential benefits....”

Conclusion

To ensure that local governments operate drones safely and in accordance with the law, it is important they are aware of and ensure compliance with the legislative and regulatory regime that governs the use of drones in Australia.

Late last year, due to the growing popularity and use of drone technology, Western Australian authorities began to seriously discuss the regulation of drone use both within and outside of the local government sector. The growing recreational and commercial use of drones can catch local governments off guard, which demonstrates the urgency of an established common position in the sector.

The benefits of using drones and similar innovative technologies are not yet fully understood or realised. It is still early days, but it seems that drone technology has the potential to save lives, prevent and manage disasters, assist with asset and compliance management processes and improve efficiencies in local government activities

However, as with all new technologies, careful consideration should be given to the concerns that have been raised about the potential risks of drone use and misuse. Local governments should be aware of the potential risks of using drones, as well as the potential benefits, so that they can implement strategies to mitigate the risks. Going forward, the continuous development of, compliance with and enforcement of the current regulatory regime will become progressively more important.

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