

Submission 11 – Australian Association for Uncrewed Systems (AAUS)



11 August 2023

AAUS Submission on Guidelines – Privacy Considerations for Drone Operators

The Australian Association for Uncrewed Systems (AAUS) is pleased to provide this submission to the Department of Infrastructure, Transport, Regional Development, Communications, and the Arts' (the Department) guidelines for drone operators regarding privacy.

About AAUS

The Australian Association for Uncrewed Systems is Australia's oldest and largest industry advocacy group for drones and the emerging Advanced Air Mobility (AAM) sector. AAUS is a not-for-profit organisation which represents the drone and AAM industry across three domains: land, sea, and air. AAUS' objective is to promote a professional, safe and commercially viable uncrewed systems and AAM industry. AAUS achieves this through its industry advocacy and promotion, education and outreach, and networking activities.

AAUS provides a single representative voice for the full breadth of the drone and urban AAM industry. AAUS' 3,000 members span small-to-large enterprise, manufacturers, licensed and unlicensed operators, training providers, academic institutions, Government, and other supporting technical and professional services in the Australian drone and AAM industry.

General Feedback:

Since commenting on an earlier draft of Drone Privacy Guidelines, AAUS has engaged with its membership via a survey, and generated discussion amongst AAUS membership advisory groups and other industry stakeholders. Results from our membership survey are included in the appendix.

- AAUS respects and values the rights of the community **and** industry when it comes to matters of privacy.
- The drone industry rates public perception of privacy in relation to drone operations very highly.
- Australian privacy law in general is fragmented and its applicability to drones, in most cases, is untested. Further work needs to be done to resolve this to ensure a balanced and nationally consistent approach to the protection of privacy. AAUS advocates for a technology-agnostic approach to the legislation of privacy, one that is proportionate to risks, and does not put unnecessary burden on industry.
- In parallel to longer-term legislative reform, AAUS supports the development of drone privacy guidelines and Drone Privacy Principles (DPPs). These guidelines should provide a set of recommended best practice for industry to meet community expectations in relation to privacy and be consistent with Australian Privacy Principles (APPs). Any recommendations made in such guidance needs to be pragmatic, proportionate, not add additional burden to drone operators and consistent with other regulation (i.e., applicable Civil Aviation Safety Regulations 1998).
- Complementing the DPPs - AAUS recommends that similar material be developed specifically for the general community with the intent to better educate and allay public concerns, highlight the protections in place, provide an understanding of what is an appropriate privacy concern (litmus test or case studies), and provide guidance as to how they should go about raising their concerns (what info to collect, who to contact, etc.).
- Similarly, guidelines to relevant State Government agencies should be developed to ensure a balanced, transparent and nationally-consistent approach for addressing privacy matters across the country; noting that frivolous or vexatious complaints pose a risk to industry as well.
- AAUS invites a discussion with the Department on the development of these targeted guidance and the communications plan associated with their release, and if appropriate, how the Association may support in the promotion and uptake of the guidelines.
- State and Territory Privacy Law is a dynamic space. As these begin to emerge, AAUS cautions that the guidance does not become de facto law.

Specific Feedback:

- DPP 1-5:

Both the APPs and APP guidelines apply to any organisation or agency the Privacy Act covers. The Privacy Act covers Australian agencies and organisations with an annual turnover of more than \$3 million.

As the DPPs seeks to apply to all commercial drone operators, it is not consistent with the APPs and is putting more burden on commercial drone operators than is required by the APPs.

AAUS recommends revision of DPPs 1-5 to be consistent with the APPs.

- Commercial (with <\$3M turnover) v Recreational Drone Operators:

To be consistent with the APPS, AAUS recommends that the DPPs for recreational and commercial drone operators with a turnover of < \$3M be the same.

- Commercial Drone Operators (with >\$3M turnover):

If they are totally consistent with the APPs, AAUS considers that the DPPs for Commercial Drone Operators with > \$3M turnover are suitable.

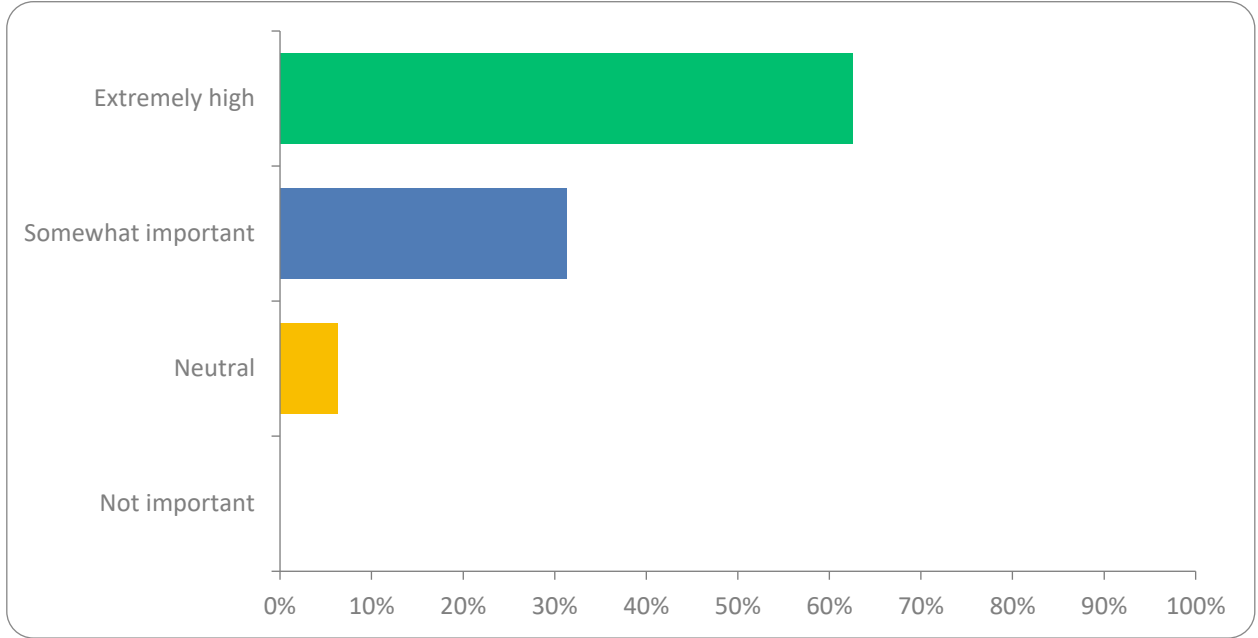
Contact

AAUS would be pleased to provide additional information to the Department on the matters contained in this submission. [REDACTED]

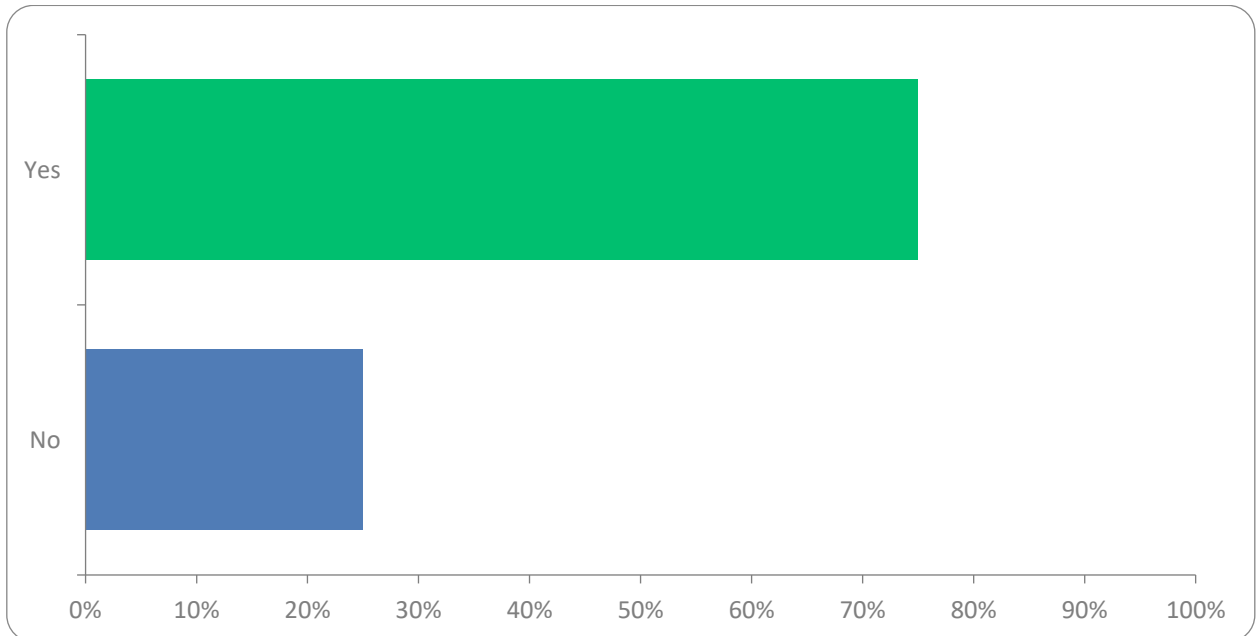
Appendix: Responses from AAUS Survey on Drone Privacy Guidelines

Total responses: 16

How would you rate the importance of community perception of privacy in relation to drone operations?



Do you believe that the government's paper "Don't pry when you fly: privacy considerations for drone use" provides useful and implementable guidelines for operators? Do you believe that the government's paper "Don't pry when you fly: privacy considerations for drone use" provides useful and implementable guidelines for operators?



Is there any other feedback you would like to provide?

- *CASA should 'stay in their lane' - privacy is absolutely NOT their remit! - There is already existing privacy-related legislation; if that's not up to scratch or being observed it's up to other govt entities to sort it, NOT the aviation body. Mobile phones are the greatest actual threat. Any govt dept putting out warnings re creeps on beaches filming women & little kids while pretending to use their phones? Nope - but that would definitely be happening a lot. 1) At best, this idea is utterly pointless - it will only be observed by all those who would respect privacy anyway - not those who have no intention! 2) At worst - this proposal will fuel the growing public perception (thanks to media clickbait) that drone operators are a pack of thieves or pervs or both. 3) CASA drone regulations are already ridiculously messy - need binning & rewriting - this is just another tangent that adds to the hot air. WHO is behind this idea? Who dreamt it up, who is pushing for it?*
- *Possibly providing designated areas that responsible pilots could fly may assist in the metro area.*
- *privacy concerns are always on people's minds and more people need to know that drones can't see as much and as close as they think.*
- *A press release highlighting the reality of drone video and photography capture would be a good starting point for a campaign.*
- *As drones are a new industry and trying to gain acceptance it is important to ensure that the public's privacy is important and critical to industry growth.*
- *The proposed Drone Privacy Principles (DPPs) whilst may be appropriate for recreational users, create a significant unnecessary administrative & operational cost burden to Commercial operators, that demonstrates a lack of proper diligence by the OAIC and lack of understanding of the problem. Whilst it is generally accepted that drone privacy issues exist primarily with recreational use, all obligations in the DPPs put additional effort purely on Commercial operators in the proposed principles, where the obligation to comply with the Privacy Act already exists, with little evidence to suggest that this is necessary or will add any benefit. Commercial operators have no interest in capturing images of people or their private information and are there for a specific job that already meet the requirements of the Privacy Act 1988. For organisations and/or operators > \$3M turnover, the obligations already exist to comply with the Australian Privacy Principles and provide only further ambiguity by additional DPPs covering the same scope as the APPs, open to differing interpretation. As such, since this obligation already exist via APPs, the DPPs clearly suggest this is targeted at small business operators, which are specifically excluded from APP guidelines. This raises the concern as to the legality of such an attempt by the OAIC to find loopholes to enforce obligations where no obligation exists, which contravene the intent of the Act. For small business operators, this creates a burden for a more extensive paperwork trail to be maintained to demonstrate an extended Privacy Impact Assessment per job to purely satisfy bureaucratic appetite, which does not go to address the root cause of recreational compliance. The existing Privacy compliance checks & balances that CASA has already imposed via JSA ensures sufficient per job compliance with the Privacy Act. This has proven to be a successful control already put in place to mitigate this risk. How many complaints have been reported to the OAIC by commercial operators? The past 5 years of OAIC annual reports show zero complaints recorded. Where does this sit within the published OAIC priorities agreed with Parliament and the Minister? It does not. There is no evidence to suggest that this current obligation is not meeting the current*

commercial operator compliance with the Privacy Act. As such, this does not warrant further action and the proposed DPPs obligations on commercial users should be abandoned immediately and re-aligned with the same general obligations as recreational users. For small business operators, the proposed principles are extending burdensome obligation beyond the existing legislation by imposing excessive draconian controls. What alternatives that avoid unnecessary red tape for small businesses were considered by the OAIC? Applying unnecessary burden to create additional communication strategies, public awareness campaigns & additional communication pamphlets and material including confusing information to the layman such as type of equipment, data capture & use methods, etc forces a need for Privacy specialist roles to be created in small businesses to manage this extensive red tape. Is it reasonable to burden small business to create communications strategies & public awareness campaigns on government policy and legislation? No. It now raises the burden for further specialist legal consultation, more record keeping, documentation storage obligations & cost, further job preparation time, further training & specialist privacy consultancy services for an issue that has not been proven to be associated with commercial operators. This is a matter that is beyond the scope of the OAIC authority and is a significant stretch at best of legal interpretation of powers within the Privacy Act. The Albanese Labor Government tabled in parliament a commitment to 'deliver a Better Deal for Small Business'. This included considering the specific needs of small businesses, giving confidence and certainty to grow. This proposal suggests that OAIC is contravening this Parliamentary directive by introducing unnecessary obligation. The commercial use section of this DPP proposal does not provide confidence or certainty to grow by additional burdensome obligations. This DPP proposal is a poor attempt to abuse legislative powers via loopholes to work around the explicit exclusion of small business operators to adopt APP principles, as specified in the Privacy Act 1988.