PiperAlderman

Article Information

Team: Piper Alderman
Service: Intellectual Property & Technology
Sector: IT & Telecommunications

---

https://www.piperalderman.com.au/publications/ip-technology-telecommunications/article/7607

On 15 December the US Federal Aviation Administration released an 'Interim Final Rule' providing for new registration and marking requirements for hobby and recreational drones

---

On 15 December the US Federal Aviation Administration released an 'Interim Final Rule' providing for new registration and marking requirements for hobby and recreational drones. The rule came into effect on 21 December 2015, providing a web-based process for US citizens to register drones heavier than half a pound and less than 55 pounds.

This development in US drone regulations is in comparison to silence from The Civil Aviation Safety Authority, suggesting it was due to develop new drone regulations to go before Parliament by the end of 2016. It appears that deadline is not achieved.

***Partner, David Cornwell** and **Law Clerk, James Lowrey** compare the new US regulation and the current Australian position.*

The US

The Federal Aviation Administration (FAA) distinguishes drones flown for 'hobby or recreational use' and those used for commercial purposes. The process began in 2012 with the *FAA Modernization and Reform Act* which provided special 'exemption' rules for hobby or recreational use drones. Under section 333 the FAA was authorised to regulate all drones operating in US airspace. The FAA has granted over 2,500 'exemptions' to non-hobby and non-recreational drone operators so far. However, the FAA Notice suggested the process of seeking exemptions is onerous, and until now the FAA exercised discretion to **only** regulate non-hobby and non-recreational use drones.

Addressing this and the explosive growth in the 'hobby and recreational use' drones, on 22 October 2015 the FAA issued a Rules and Regulation Notice. This had two purposes:

- to clarify that Aircraft Registration Requirement's **do** apply to **all** drones ('Unmanned Aircraft Systems') operating in US airspace
- to request submissions from industry on the introduction of an electronic registration system.

In this way, the FAA have sought to reassert control over hobby or recreational use drones.

As stated above, the Interim Final Rule (IFR) will now provide a web-based registration process for US citizens to register their drones. Registration is now available on the FFA website (click here) from 21 December 2015. Following registration, drone owners will receive a unique user number which must be attached to or written on any drone they own. Owners must also have an FAA registration certificate in their possession when operating a UAS. Note however, owners who purchased their UAS prior to 21 December will receive a 60 day 'holiday' from registration requirements. Not also, non-US citizens need not apply (though the FAA have flagged this as one area for further reform).

Interestingly, apart from these registration and marking requirements, the FAA have imposed few other regulations upon hobby or recreational drone users. Section 336 of the *FAA Modernization and Reform Act* provides for a limited number of safety requirements for hobby or recreational use drones including:

- a 55 pound weight limit (approximately 25kg)
- a requirement to fly according to 'a community based set of safety guidelines'
- a requirement to fly in a manner that does not interfere with manned aircraft
- specific requirements regarding use within five miles (approximately 8km) of airports.

Beyond this, the FAA has also started a Know Before You Fly campaign which 'strongly encourages' users to follow other safety guidelines including:

- operating below 400ft (approximately 122m)
- keeping the aircraft within visual line of sight
- not operating near people.

The FAA Media Release made it clear it wishes to pursue a 'culture of safety and responsibility' with regard to hobby or recreational drone use, and these 'emergency' regulations are in response to an expected significant growth in sales of drones over the Christmas period. Nevertheless, in sharp contrast to this laissez-faire approach, the FAA has reserved the right to impose harsh sanctions upon careless or reckless drone users. As all drones fall under the definition of 'aircraft', the same penalties apply to drone operators as to manned aircraft pilots. For example, if an unmarked or unregistered drone is used for hobby or recreational purposes, civil penalties may be applied up to $27,500. Alternatively, possible criminal penalties include fines of up to $250,000 and/or imprisonment for up to three years.

Australia

The Civil Aviation Safety Authority (CASA) currently regulates drones in two streams under Part 101 of the *Civil Aviation Safety Regulations 1998* (Cth). These regulations were introduced in 2002.

Under this scheme, prohibitions apply to all drone use:

- creating a hazard to aircraft, persons or property (penalty: $9000)
- in prohibited or restricted areas (penalty: $4500) or controlled airspace (penalty: $9000)
- above 400 ft (approximately 122 m) without approval (penalty: $9000)
- over a populous area at a height less than the height from which the drone would be able to clear the area if it fell from the sky (penalty: $9000)
- in other than clear skies (penalty: $4500)
- less than 30 m from any person or building not directly associated with the drone (penalty: $1800).

In addition to these prohibitions, a specific regulatory regime applies to drones used for commercial purposes ('hire or reward'). This requires commercial drone users to attain an Operator Certificate indicating the user has completed both theoretical and practical training. A breach of this licensing requirement is a strict liability offence with an attached penalty of $9000. On top of this, further regulations pertaining to commercial drone use apply according to the size (mass) and type of the drone, with increasingly stringent regulations applying to larger drones.

Nevertheless, for commercial users these regulations make 'authorized' use impractical. It is understood there are currently over 350 applications for UAV Operator approval before CASA, causing a backlog of up to six months. Moreover, as each certificate is particular to the commercial operation, any business expansion or variation of practices requires commencing a process of amendment with CASA. For these reasons, Australian commercial applicants expressed frustration at CASA's inaction during a July 2014 Inquiry into drones held by the House of Representatives Standing Committee on Social Policy and Legal Affairs.

Movement towards the Centre

Both Australia and the US are looking towards deregulating small drone use for commercial purposes.

In May 2014 CASA issued a 'Notice of Proposed Rule Making' seeking submissions on proposed changes allowing commercial operators of drones weighing less than two kilograms to fly up to 400ft (approximately 122m) without a license. The proposed parameters included the drone flying:

- outside restricted areas, such as controlled airspace
- at least 5 kilometres from the boundary of an airport
- over non-populous areas
- no less than 30m away from anyone else operating a drone
- within direct line of site of the operator
- during daylight hours.

These amendments were due to be formalized by the end of 2015, to be implemented in 2016. However, such recommendations met opposition from the Australian Airports Association, and so far no Bill has come before parliament.

Concurrently, in February this year the FAA issued a 'Notice of Proposed Rulemaking' seeking submissions on proposed changes allowing commercial operators of drones less than 55 pounds (approximately 25kg) to fly up to 500ft (approximately 152m) under a particularised regulatory scheme. The proposed parameters included the drone:

- not passing over the top of any un-associated persons
- staying below 100 mph (approximately 160 km/hr)
- being operated by no less than one operator per drone
- not flying in bad weather causing low visibility
- remaining in direct line of site of the operator
- flying only during daylight hours.

Drone operators under this scheme would be over 17, have passed certain aeronautical knowledge tests, and received certification. The Notice suggests these processes will come into effect by 31 March 2016.

Conclusion

It appears the proposals made by Australian and US authorities are broadly similar, in providing greater scope for business to utilise drones in their operations. Both the FAA February 2015 Notice, 'Operation and Certification of Small Unmanned Aircraft Systems', and the July 2014 House of Representatives Standing Committee on Social Policy and Legal Affairs Report, *Eyes in the sky Inquiry into drones and the regulation of air safety and privacy*, have recognised the many benefits these changes will create, including drone use for:

- crop monitoring/inspection
- research and development
- educational/academic uses
- power-line/pipeline inspection in hilly or mountainous terrain
- antenna inspections
- aiding certain rescue operations such as locating snow avalanche victims
- bridge inspections
- aerial photography
- wildlife nesting area evaluations.

These examples illustrate the enormous disruptive potential of drones. As we have noted previously, the challenge for regulatory authorities is to not impose uncommercial restraints which inhibit growth in what is one of the fastest growing technologies around the world (see our previous article here). Piper Alderman has a speciality drone legal practice and Partner, and will continue to monitor developments both in Australia and around the world. For more information contact Partner, James Lawrence.