



Remotely piloted aircraft operating guidelines

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Contents

Introduction	4
Governing RPA principles	5
Scope and application	5
Definitions	6
When will the Department use a RPA and will you be notified?	7
Departmental Use	7
Notifications	7
Relevant legislation	8
Civil Aviation Legislation	8
The Act	9
GIPA Legislation	10
Related policies, documents and websites	11
Deviations from the Guidelines and the Procedures	11
Accountabilities	11

Introduction

This document is a guide for the NSW Department of Planning and Environment (the Department) Compliance Unit and their use of remotely piloted aircraft (RPA) to assist in compliance and enforcement related functions, in accordance with the Department's Compliance Policy (<http://www.planning.nsw.gov.au/~media/files/dpe/plans-and-policies/compliance-and-enforcement-compliance-policy-2018-04.ashx>).

This guideline should be read in conjunction with the Department's Compliance Policy which outlines the aims of compliance and enforcement as well as the tools available to the Department.

This Guideline addresses:

- when the Department might use RPA;
- the legislation that applies when RPA is used – including the Department's compliance officers' powers of investigation; and
- the Department's approach to using RPA and the frameworks it has in place to regulate its use of RPA.

The Department has a responsibility to ensure:

- the RPA used for Department's purposes do not pose an unnecessary risk to public safety;
- RPA are used in a manner that is reasonable given the Department's powers and functions; and
- the Department's use of RPA appropriately balances the public interest in protecting privacy with the need to effectively carry out the Department's functions.

Unmanned aircraft are a new and dynamic area of technology; their capabilities are constantly changing as the technology develops. Based on current technology, the Department could use unmanned aircraft for aerial photos, volumetric surveys, measurements, mapping, heat sensing to detect invisible emissions, or air and water sampling.

There are risks to using unmanned aircraft. These can include risks to public safety and privacy. The Department will identify, assess, and where appropriate, manage risks for any unmanned aircraft activities.

The Department will also operate all RPA's in accordance with the relevant legislative requirements outlined within this guideline as amended from time to time.

Governing RPA principles

Whenever the Department uses RPAs it will:

1. Ensure all RPA operators are appropriately trained and qualified to operate the RPA in the environment proposed, ensuring the Department complies with the *Civil Aviation Safety Regulation 1998* requirements.
2. Comply with all relevant legislative requirements relating to unmanned aircraft use, including the Privacy and Personal Information Protection Act 1998 and the Surveillance Devices Act 2007.
3. Ensure that an investigation officer as defined under the *Environmental Planning and Assessment Act 1979* is present where the Department enters sites with an RPA without permission using relevant investigative power provisions.
4. Assess the risks of the operation, to determine whether it is appropriate to use unmanned aircraft for the activity in accordance with the relevant statutory provisions relating to RPAs.
5. Only enter residential premises with the permission of the occupier, with a warrant or through the appropriate exercise of investigative powers.

Scope and application

The guideline applies to any scenario where the Department intends to use RPA to assist it to carry out its functions. Any Department use of RPA is considered a commercial use.

All aerial operations using RPA will be conducted in accordance with the conditions and limitations permissible under CASA regulations unless otherwise authorised by the Act.

Definitions

The following definitions and abbreviations apply in this document:

CASA	Civil Aviation Safety Authority
CAS Regulations	<i>Civil Aviation Safety Regulation 1998 (Cth)</i>
Chief Remote Pilot	CASA authorised and certified Chief Remote Pilot in charge of all Departmental RPA operations.
Investigation Officer	NSW Department of Planning and Environment officer authorised under Part 9, Division 9.2 of the Act
Department	NSW Department of Planning and Environment
Act	<i>Environmental Planning and Assessment Act 1979</i>
Guidelines	Guidelines on Department of Planning and Environment use of remotely piloted aircraft
PIIP Act	<i>Privacy and Personal Information Protection Act 1998</i>
Procedures	Remotely piloted aircraft operating procedures
Proponent	The person or entity holds and is acting on an approval granted under the Act or similar.
RPA	Remotely piloted aircraft
SD Act	<i>Surveillance Devices Act 2007</i>

When will the Department use a RPA and will you be notified?

Departmental Use

Government agencies, specifically those with a regulatory function, are increasingly using RPAs, primarily because unmanned aircraft can collect a diverse range of information, often more quickly, cost effectively, safely and accurately than land-based methods.

RPA can take aerial photos and videos, complete volumetric surveys, and map areas. They can have remote-sensing capabilities and can be used to collect air and water samples.

Specifically, RPA can assist the Department to:

- investigate an alleged non-compliance or incident (for example, the extent of clearing outside of an approved limit of disturbance), by taking photos or video footage.
- gather information or intelligence about a proponent's performance (for example, compliance with dust minimisation obligations) by taking photos or collecting samples
- collect environmental monitoring data that would otherwise be unobtainable due to safety related concerns regarding accessibility (for example, air quality samples at heights or water samples in remote locations).

Notifications

The decision regarding notification of Departmental RPA use will be at the discretion of the Departmental Chief Remote Pilot.

In most circumstances, notification to the owner, occupier or proponent of a site will be given prior to any Departmental RPA operations. However, in some situations, notification will not occur.

These situations may include, but are not limited to:

- The Department uses RPA to capture evidence of illegal activity. Alerting the owner, occupier or proponent, about this exercise might prompt the owner, occupier or proponent to hide or temporarily cease the illegal activity, or to destroy the evidence.
- The Department's use of unmanned aircraft makes it possible to avoid exposing its investigation officers to safety risks that would be present if they entered the site in person.
- Where the Department must act quickly to protect human health or the environment, but an occupier or neighbour cannot be located (for example, to capture information that helps the Department and emergency response agencies to assess an incident or contravention).
- For unannounced surveillance where the Department is exercising its functions in accordance with the Department's Compliance Policy. In these circumstances, the Department may or may not, notify the owner, occupier or proponent of the RPA surveillance activity immediately before, during or after, depending on the intent or purpose of the monitoring activity

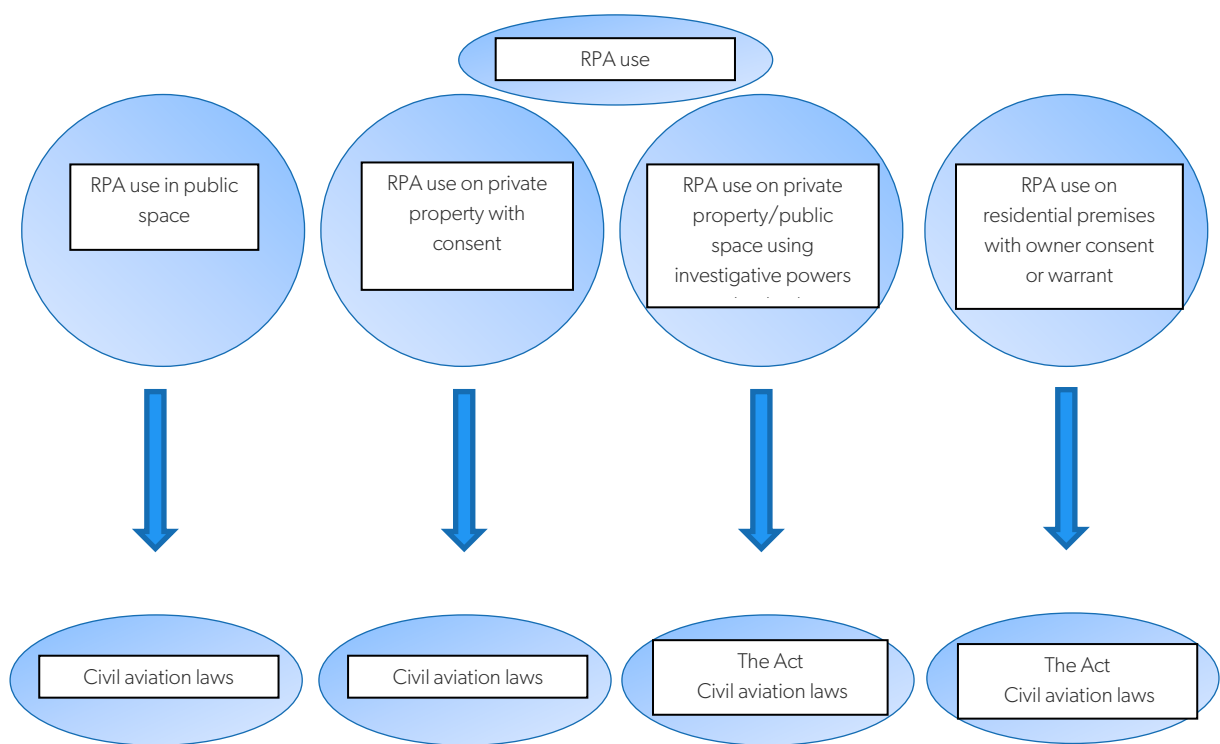
Relevant legislation

The relevant legislation regulating Department's use of RPA varies depending on the purpose of the RPA use and the relevant location. Broadly the following legislation applies to all RPA use:

1. Civil aviation legislation;
2. The Act; and
3. Relevant privacy legislation.

Figure 1 below displays broadly when the relevant legislation applies to the four types of operations the Department may conduct using RPA's. The applicability of the relevant piece of legislation may vary dependent on the specifics of the RPA operation.

Figure 1: RPA operations and the relevant legislation.



Civil Aviation Legislation

CASA regulates the use of unmanned aircraft. Part 101 of the CAS Regulation sets out the rules governing the use of all types of RPA in Australia. These rules cover where RPA can and cannot be operated, licence requirements, certification requirements for operators, and the different approaches to their use depending on different unmanned aircraft size. Where the Department operates a RPA, the Department has the same entitlements and obligations under the CAS Regulation as any other member of the public, unless the Department is utilising the RPA under the Act.

The CAS Regulation separates RPA into the following categories:

1. micro (100 grams or less);

2. very small (100 grams to less than 2 kilograms [kg]);
3. small (2 kg to less than 25 kg);
4. medium (25 to less than 150 kg); and
5. large (greater than 150 kg).

Any use of RPA, excluding those in the micro category, is subject to a range of requirements which are summarized below.

These guidelines do not attempt to set out the CASA requirements in detail, as these requirements are likely to change over time.

All RPA operators must be appropriately licenced and cannot operate more than one RPA at any one time.

Broad standard operating requirements under CAS Regulation for RPA use are that the RPA must:

1. be operated within visual line of sight
2. not be flown higher than 120 meters (400 feet) above ground level
3. be operated during daytime only, not after sunset
4. not be operated within 30 meters of a person not directly associated with the operation of the remotely piloted aircraft
5. not be operated in a prohibited area or restricted area. These are areas where an activity or obstacle makes flying unsafe, or require close monitoring of air activity; they include military areas and, currently, large sections of Sydney Harbour
6. not be operated over a populous area
7. not be operated within 5.5 kilometers (3 nautical miles) of a controlled aerodrome
8. not be operated in the area of a public safety operation without approval of a person in charge of that operation.

All Departmental staff operating a RPA will be appropriately licenced and undertake all activities under the direction of the approved CASA Chief Remote Pilot. The CASA Chief Remote Pilot is responsible for ensuring all operations occur within the legislative requirements. As such, Departmental staff may at times operate outside the above conditions with approval from either the Chief Remote Pilot endorsed by CASA or with special approval or exemption from CASA.

The Act

Under Part 9, Division 9.2 of the Act, a Departmental investigation officer can only use their powers for the following purposes:

- (a) enabling the Minister or the Planning Secretary to exercise their functions under this Act,
- (b) determining whether there has been compliance with or a contravention of this Act, including any instrument, consent, approval or any other document or requirement issued or made under this Act,
- (c) obtaining information or records for purposes connected with the administration of this Act,
- (d) generally for administering this Act.

Section 9.16 (4) of Division 9.2 of the Act means this power of entry extends to entering by means of RPA.

Section 9.16 (6) of Division 9.2 of the Act states that an investigation officer can request assistance of a person, (for example, an externally engaged RPA operator) in order to exercise their investigation officer functions. Section 9.16 limits Departmental investigation officers' power to enter residential premises to cases where they have permission of the occupier or a warrant, or the it is necessary to inspect work being carried out under this Act (for example, through an approval or consent).

Once Departmental investigation officers lawfully enter premises or sites, an investigation officer is permitted to carry out a range of actions, as set out in Part 9, Division 9.2 of the Act. This includes taking photos and audio, video and other recordings.

Surveillance legislation

The SD Act implements national legislation. The SD Act covers devices used for listening, tracking, and optical and data surveillance. The SD Act does not affect the use of investigation officers' powers under Part 9, Division 9.2 of the Act, provided these powers are exercised lawfully.

Privacy legislation

The PPIP Act protects personal information. For the purposes of the PPIP Act, personal information means information about an individual that makes their identity apparent (for example, a photo of their face) or allows them to be identified (for example, car registration plates). The main situation where the PPIP Act would govern Departmental RPA use would be when unmanned aircraft operate with an attached camera (still or video).

Exemptions under the PPIP Act allow personal information to be obtained for the purposes of law enforcement, investigations or research. However, the Department still has responsibilities in relation to appropriately retaining and securing that information.

When using unmanned aircraft, the Department will implement measures to satisfy the objects of PPIP Act requirements. For example, the Department will minimise inadvertent capture of personal information by requiring service providers to turn off unmanned aircraft video (and any audio) recording until the unmanned aircraft reaches the site.

GIPA Legislation

Information collected by RPA, is like any other Department record, and can be the subject of a *Government Information (Public Access) Act 2009* (GIPA Act) application. Accordingly, the responsible investigation or compliance officer will ensure that appropriate record of information obtained through RPA activity is documented in the Department's corporate records management system.

Under the GIPA Act, members of the public can request access to government records and information. Information collected by RPA could be the subject of a GIPA Act application. Disclosure is presumed, unless overriding public interest is against disclosure (for example, if the information collected is evidence for a criminal investigation still underway).

Related policies, documents and websites

The following resources provide further information on unmanned aircraft and their regulation.

- CASA (September 2016) Advisory Circular: AC 101-10 Remotely piloted aircraft systems – operation of excluded RPA (other than model aircraft) www.casa.gov.au/files/ac10110pdf
- CASA website www.casa.gov.au/aircraft/landing-page/flying-drones-australia
- Australian Association for Unmanned Systems aaus.org.au/

Deviations from the Guidelines and the Procedures

As described above, deviations from the general prescribed requirements of this guideline may occur for the purposes of an investigation officer exercising their investigative functions under Part 9, Division 9.2 of the Act.

Accountabilities

To obtain further information on this guideline, report concerns or raise any matter about the Department's use of RPA, contact the Department's Chief Remote Pilot via email to compliance@planning.nsw.gov.au