

USE OF DRONES

ENQUIRY TO HF LAWYERS:

A friend's son (Matthew) is a member of a band. They recently had a promotional video shot. A friend of his shot it using, inter alia, a drone that took photos from above.

They have heard that there is some current and future legislation that will govern the use of drones and photography taken from drones. They were a bit vague about it.

I suspect that this is about civil aviation rules about drones flying in populated areas and height restrictions and those sorts of things.

I don't think it relates to a drone taking photographs although there may be some privacy issues.

Matthew mentioned that he understood there was some new legislation coming in in September or October. Could you do some initial research to see what if any regulations govern drones. In particular we want to know whether there is anything that would cause the band a problem if they have engaged a drone to take photos/video before today.

If you find that the law is changing, can you summarise what the substance of those changes are (if relevant to this issue only).

Please keep the advice simple. It's a high-level enquiry.

DISCOVERY:

I spoke with Matthew this morning and obtained some further information from him. He advised that a small drone (<2kgs) was used in the filming.

N.B - UAV *means* Unmanned Aircraft, other than a balloon or kite.

A drone is a UAV and the words are used interchangeably; although the proper term according to the legislation is UAV.

Bear with me, as this turned out to be more complex than what we initially thought.

Initial research

The filming occurred in or around February 2016. I have researched the rules in force for this time period.

The relevant legislation is the *Civil Aviation Safety Regulations* 1998 (**the Regulations**)

At the time of filming, Compilation 66 of the Regulations was in force. This version was registered on 21 December 2015. End date was 4 March 2016.

(FYI - There have been a number of rules added since that time. 5 further compilations have been made, the current compilation is No. 71 which came in force 4 July 2016).

Potential Implications

From the information provided on the operation of the drone, I do not believe that there is any rules within the Regulations that would cause a problem for the band. There is nothing in the Regulations that indicates a penalty or any adverse implication for **engaging** someone to use a drone.

However, Matthew asked about the implications regarding his friend who used the drone to film the video.

The filming was done by his friend Angus who was paid for operating the UAV. This is a problem because a person may operate a UAV for hire or reward only if the person holds a UAV operator's certificate that authorises the person to operate the UAV. Angus does not have this certificate. The penalty is 50 units ($\$180 \times 50 = \$9,000$).

Please note that even without the payment Angus received, Angus's operation of the drone is considered a commercial gain.

This is because 'commercial gain' can include flights for advertising purposes or uploading videos to YouTube – there does not have to be direct payment involved.

In other words, it is illegal to fly a drone/UAV for money or economic gain unless you have an Unmanned Operator's Certificate issued by the Civil Aviation Safety Authority (CASA). In addition to having the Certificate to operate the drone, there are safety regulations which I will briefly summarise (you will see why in a moment):

1. Do not fly closer than 30 metres to people;
2. Do not fly over any 'populated areas';
3. Do not operate within 5.5 km of aerodrome or helicopter landing site, without approval;
4. Only operate UAV during daylight, good weather and in visual-line-of-sight;
5. Do not fly above 120 metres.

I considered all this, including any relevant definitions, and applied it to the information Matthew gave me. The manner of use of the UAV drone doesn't present a problem, save for the fact that it was used at night time.

Generally, the UAV use at night is not permitted, unless it has the approval of CASA or another relevant authority. (See: 101.095 - Weather and day limitations). Breach of this rule is 25 penalty units ($\$180 \times 25 = \$4,500$).

In my view, the issues are:

1. That the drone was operated by Angus for commercial gain, without the required Certification; and
2. That the drone was operated at night time.

Assuming that Angus is not a band member, then there is no direct implication on the band for having engaged Angus's services. In relation to Angus, his actions contravene the rules (are illegal) and the possible penalty unit implications faced by him are described above.

New Legislation

Matthew is right, there will be *'new laws'* in force from 25 September 2016. These laws come in the form of amendments and additions to the existing Regulations.

The relevance of the amendment to our scenario? The CASA will amend regulations to exempt commercial operators of UAV's weighing less than 2kg from the Certificate requirement.

Basically what Angus did will not be illegal from 25 September 2016.

Other Notes

UAV's are primarily regulated from a safety perspective. There are no specific regulation which protect the privacy of individuals in connection with the use of UAV's other than those in the Privacy Act.

The Privacy Act only applies to organisations with an annual turnover of \$3 million. Assuming Angus, doesn't have a business with a \$3 million turnover, the Privacy Act will not apply.

There are recommendations to enact legislation which will provide individuals with an action against serious invasions of privacy, which could potentially apply to private UAV pilots if they recorded an individual. However, there are no laws currently in force surrounding this. I do not consider privacy issues to be relevant to Angus's use of the drone.

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