

# NEW DRONE REGULATIONS BEING REVIEWED

## NOVEMBER 2016

On 29 September 2016, new regulations came into force across Australia to govern the use and operation of what are now called 'Remotely Piloted Aircraft' (**RPA**) (commonly referred to as drones). The changes were registered on 24 March 2016 by the Civil Aviation Safety Authority (**CASA**) as amendments to Part 101 of the *Civil Aviation Safety Regulations 1998* (Cth) (**Part 101**) and represented the first significant update to laws in this area since 2002.

The new regulations are intended to address the increase in the number and uses of RPA across the country by reducing the red tape and associated costs for certain machines used in lower risk situations. On 10 October 2016, mainly in response to aviation industry concern over the new regulations, Minister for Infrastructure and Transport, Darren Chester announced that the Federal Government would conduct a safety review of them to be led by CASA. Although the future of the new regulations is unclear, they continue in effect and must be complied with until amended.

### FRAMEWORK CHANGES

The new regulations introduced the following specific changes to Part 101:

- **Terminology Changes - terms have been changed to align with those employed by the International Civil Aviation Organization:**
  - 'Unmanned Aerial Vehicle' has been replaced with 'Remotely Piloted Aircraft';
  - 'Unmanned Aircraft Systems' has been replaced with 'Remotely Piloted Aircraft System';
  - 'Operator's Certificate' has been replaced with 'RPA Operator's Certificate (**ROC**)'; and
  - 'Controller's Certificate' has been replaced with 'Remote Pilot Licence' (**RPL**).
- **New Weight Classifications** - RPA have been categorised into new weight classes:

CATEGORY	WEIGHT
Micro	100g and less
Very Small	100g - 2kg
Small	2kg - 25kg
Medium	25kg - 150kg
Large	150kg and above

- **Concept of 'Excluded RPA'** - RPA operations considered to be low risk have been given reduced regulatory requirements (discussed in greater detail below).
- **Standard RPA Operating Conditions** - a new set of Standard Operating Conditions have been created to apply to Excluded RPAs, which require operators to:
  - fly during the day and keep their RPA within visual line-of sight;

- not fly their RPA higher than 120 metres (400ft);
- keep their RPA at least 30 metres away from other people;
- keep their RPA at least 5.5km away from controlled aerodromes;
- not fly their RPA over any populous areas (e.g. beaches, parks and sporting ovals);
- keep their RPA away from certain prohibited and restricted areas; and
- not without prior approval fly their RPA over or near an area affecting public safety or where emergency operations are underway (e.g. police operations, firefighting, search and rescue) only fly one RPA at a time.

## EXCLUDED RPAS

The key impact of the new regulations is to reduce the circumstances in which RPA operators are required to obtain formal qualifications, and to establish rules for flights that such operators take. CASA has achieved this by introducing the concept of Excluded RPAs and Standard RPA Operating Conditions, which are designed to help RPA operators who pilot smaller machines and conduct activities that CASA has deemed lower risk.

Activities that may qualify an RPA as an Excluded RPA, provided certain conditions are met, include the use of:

- Very Small RPAs for commercial activities; and
- Small and Medium RPAs by private landholders for commercial activities like aerial photography and agricultural operations.

Significantly, Excluded RPA operators are generally not required to obtain an ROC and RPL. The high cost of these qualifications previously provided a barrier to the widespread use of RPAs for commercial activities. The reduction of this barrier can reasonably be expected to result in an increase of RPA operators offering their services to companies and of RPA flights undertaken across the country.

The main details of the Excluded RPA categories can be summarised as follows:

WEIGHT CATEGORY	ELIGIBILITY AS EXCLUDED RPA	NOTES
Micro	Automatically Excluded RPA	-
Very Small	Very Small RPA operated either: <ul style="list-style-type: none"> <li>▪ for sport and recreation; or</li> <li>▪ within the Standard RPA Operating Conditions.</li> </ul>	Where a Very Small RPA is operated for hire or profit, CASA requires notification at least 5 business days before its first commercial flight in addition to the Standard RPA Operating Conditions being complied with.
Small	Small RPA operated either: <ul style="list-style-type: none"> <li>▪ for sport and recreation; or</li> <li>▪ within the Standard RPA Operating Conditions for certain qualification reasons;</li> </ul>	To rely on the private landholder exception, operators of Small RPAs also need to advise CASA at least 5 business days before their first commercial flight (Advisory Circular 101-10).

WEIGHT CATEGORY	ELIGIBILITY AS EXCLUDED RPA	NOTES
	<p>or</p> <ul style="list-style-type: none"> <li>▪ where the flight is conducted:               <ul style="list-style-type: none"> <li>◦ by or on behalf of the RPA owner;</li> <li>◦ over land owned or occupied by that owner;</li> <li>◦ within the Standard RPA Operating Conditions;</li> <li>◦ for the purposes of aerial spotting, aerial photography, agricultural operations, aerial communications retransmission, carriage of cargo or similar activities; and</li> <li>◦ no remuneration is received by the RPA owner or operator, land owner or occupier or on whoever's behalf the flight is undertaken.</li> </ul> </li> </ul>	
Medium	<p>Medium RPA operated either:</p> <ul style="list-style-type: none"> <li>▪ for sport and recreation; or</li> <li>▪ within the Standard RPA Operating Conditions for certain qualification reasons; or</li> <li>▪ where the flight is conducted:               <ul style="list-style-type: none"> <li>◦ by or on behalf of the RPA owner;</li> <li>◦ by a person who holds an appropriate RPL for that RPA;</li> <li>◦ over land owned or occupied by that owner;</li> <li>◦ within the Standard RPA Operating Conditions;</li> <li>◦ for the purposes of aerial spotting, aerial photography, agricultural operations, aerial communications retransmission, carriage of cargo or similar activities; and</li> <li>◦ no remuneration is received by the RPA owner or operator, land owner or occupier or on whoever's behalf the flight is undertaken.</li> </ul> </li> </ul>	

RPAs operated for sport and recreation may still need to comply with rules related to model aircraft. Importantly, it also remains a strict liability offence currently punishable by \$9,000.00 to operate an unmanned aircraft in a way that creates a hazard to another aircraft, another person or property. A range of more serious aviation offences outside Part 101 also continue to apply to RPAs.

## WHY ARE THE NEW REGULATIONS IMPORTANT?

The new regulations are important because they:

- confirm that RPAs are being given a role in Australia's future formal economic activity;
- reduce the cost and increase the attractiveness of using RPAs commercially; and
- pose a potential safety risk for existing actors in the aviation industry as they may increase the overall number of RPAs in the air flow while reducing the overall training level of operators.

It is still too early to tell what impact the new regulations have had on the use of RPAs and the aviation industry more generally. The Federal Government's decision to conduct a safety review of the new regulations demonstrates a willingness to balance economic and safety issues and get the laws in this area right. We await the results of the review and will provide further updates on this topic in the future.

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