

CASA Submission to Senate Rural and Regional Affairs and Transport Legislation Committee on Civil Aviation (Unmanned Aircraft Levy) Bill 2020 and Civil Aviation (Unmanned Aircraft Levy Collection and Payment) Bill 2020

Issues for consideration

The Committee has noted the following issues for consideration:

- (a) Cost of the registration fee thresholds and clarity of the registration fee structures
- (b) Consideration of the level of consultation undertaken
- (c) Use of delegated legislation

Overview

The Civil Aviation Safety Authority (CASA) is an independent statutory authority established in 1995 under the *Civil Aviation Act 1988* (Civil Aviation Act) and correspondingly, is a corporate Commonwealth entity under the *Public Governance, Performance and Accountability Act 2013* (PGPA Act).

In accordance with an Order made under subsection 22(1) of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act),¹ CASA is required to apply cost recovery principles by which approved charges for specified regulatory activities identified and collected for the provision of those services.

Further information on the application of the Australian Government policy in relation to regulatory charging is provided in the Australian Government Charging Framework (Framework).

On 31 July 2018, the Senate Rural and Regional Affairs and Transport Committee (the Committee) tabled their Report into the Regulatory requirements that impact on the safe use of unmanned aircraft and associated systems. The Committee expressed support for a mandatory scheme of registration for unmanned aircraft.

The Government Response (27 November 2018) agreed to recommendation 2 of the report to introduce mandatory registration and basic competence testing for unmanned aircraft operators. The Government recognised the importance of regulating the RPAS industry to ensure the safety of the public, RPAS pilots and other airspace users.

CASA has, in light of the decision of 27 November 2018, developed an unmanned aircraft registration scheme. In July 2019, the *Civil Aviation Safety Amendment (Remotely Piloted Aircraft and Model Aircraft—Registration and Accreditation) Regulations 2019* (the Principal Regulations), introduced a Remotely Piloted Aircraft (RPA) and model aircraft registration and operator accreditation scheme. For simplicity, this submission uses the term '*registration and operator accreditation scheme*'.

The registration and operator accreditation scheme will eventually require all RPA and model aircraft to be registered with CASA (with certain exceptions) and the operator or person supervising the operation to hold a valid accreditation or be the holder of a remote pilot licence. There are two commencement dates for the scheme:

1. Registration and accreditation for RPA, often referred to as 'commercial' or 'professional' operations, opened 30 September 2020. RPA include those operated under an RPA Operator's Certificate, Excluded RPA and Micro RPA, but does not include model aircraft (aircraft operated for sport or recreation that does not carry a human). From 28 January 2021, RPA must be registered before being flown and the operator accredited or be a holder of a remote pilot licence.

¹ *Public Governance, Performance and Accountability (Charging for Regulatory Activities) Order 2017*

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2. Registration and accreditation requirements for model aircraft (aircraft operated for sport or recreation that does not carry a human) will open on 1 March 2022 and will become compulsory from 30 May 2022.

The key purpose of the 2 Bills is to impose, and provide for the collection of, an unmanned aircraft cost recovery levy on each application to CASA for registration of an unmanned aircraft as a remotely piloted aircraft (or as a relevant model aircraft, though not until 2022).

The Bills, if enacted, will create two new Acts of Parliament, as follows:

The *Civil Aviation (Unmanned Aircraft Levy) Act 2020 (Levy Act)*:

- defines key terms “RPA” and “model aircraft” and “unmanned aircraft levy”
- formally imposes an unmanned aircraft levy (in 2022, this will also apply to model aircraft)
- provides that the amount of the unmanned aircraft levy is as prescribed by the regulations made under the Levy Act
- provides that the amount so prescribed must not be more than \$300 and may be nil
- provides that the Act does not impose any tax on the property of any kind belonging to a State within the meaning of s114 of the Constitution
- provides for other regulations to be made (the Levy Regulations which prescribe the levy amount).
- establishes the legal mechanism that will utilise the imposition of a levy for future cost recovery arrangements for regulatory services for remotely piloted aircraft (RPA) and model aircraft operators.

The *Civil Aviation Amendment (Unmanned Aircraft Levy Collection and Payment) Act*:

- inserts into the *Civil Aviation Act 1988* a new section 46A to provide that the Commonwealth must pay CASA amounts equal to the amounts of unmanned aircraft levy received by CASA on behalf of the Commonwealth
- appropriates the Consolidated Revenue Fund
- amends the *Civil Aviation Act 1998* to establish arrangements for CASA to collect the levy.

Issues for Consideration

a) Cost of the registration fee thresholds and clarity of the registration fee structures

Under the Australian Government’s overarching cost recovery policy, where appropriate, Government should partially or wholly cost recover from non-government recipients of specific government activities to recoup some or all the costs of providing specific services. Partial cost recovery, which occurs when less than the full cost of a government activity is recovered, may be appropriate in circumstances where:

- charges are being ‘phased in’ over time
- full cost recovery would be inconsistent with community service obligations endorsed by the Australian Government
- the Australian Government has made an explicit policy decision to charge for part of the costs of an activity.

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CASA is required to conform to the Framework which provides that full cost recovery is the generally expected outcome unless the Government has made an explicit policy decision to charge for part of the costs of an activity.

Effectively, CASA is obligated to charge full cost recovery unless approved by Government to charge partial cost recovery, with the shortfall in funding normally obtained from ordinary appropriation or an offset within the portfolio. Any cost recovery activity to be charged at partial or no cost recovery is a decision of Government and not CASA.

In keeping with these policies, following a submission to Government by the Department of Infrastructure, Transport, Regional Development and Communications (the Department), the Government approved a \$0 RPA levy until 30 June 2021. The Government will reconsider the pricing of the levy in early 2021 for implementation post 30 June 2021, as part of a broader review and consideration of CASA's future funding model.

As said, the *Civil Aviation (Unmanned Aircraft Levy) Act 2020* provides that the amount of the unmanned aircraft levy is as prescribed by the Levy Regulations made under the Levy Act and the amount so prescribed must not be more than \$300 and may be nil. This \$300 maximum allows for flexibility in determining an appropriate levy amount for the various future RPA size and weight classes.

The \$300 in the *Civil Aviation (Unmanned Aircraft Levy) Act 2020* was proposed as the maximum amount that the levy may reach over some considerable undetermined time. When data becomes available on the number of actual registrations, CASA will have more accurate information to assist in determining a recommended levy amount to be applied per RPA (and in 2022, model aircraft).

The costs and number of RPAs associated with the levy will be reviewed in early 2021. Changes to the levy will be based on evidence collected from the registration scheme data, which will provide vital information regarding the size, scope and needs of the RPA industry, and inform the estimated cost required by CASA to deliver RPA safety regulatory services. The Government will ensure that the levy charged on RPA operators is fair and commensurate with the services received.

CASA is cognisant of the costs of a registration system and is aware that registration systems are less expensive in a number of other countries. However, it is difficult to fairly compare them to Australia as the number of RPAS subject to the levy remains unknown and the funding, operating models and cost recovery requirements are different for each country.

In relation to the functions included in any costing of the RPA levy, the costs associated with the following activities would reasonably include:

- CASA administration including direct employee labour, supplier charges, Information Technology and Safety Promotion of RPA activities.
- Implementation of a digital registration system and dedicated RPAS Portal (amortised over five years).
- Hosting of the accreditation (online system).

Following on from the Committee's 2018 Report and the Government's response to introduce mandatory registration and operator basic competence testing, CASA had to conceptualise a system that could be scalable to cater for potential annual registration of potentially in excess of one million RPAs and model aircraft, in addition to the triennial accreditation of a similar number of operators.

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The costs associated with this system are estimated for a five-year period, apportioned between the various activities enabled by the system and then amortised over the anticipated number of services over the same five-year period. There is therefore significant estimation required, which will necessitate regular review of the costing model to determine if the levy amounts are still appropriate.

One of the positive impacts of the investment in an online digital registration and operator accreditation system is that CASA has also digitised some processes for RPAS related regulatory service fees payable under the *Civil Aviation (Fees) Regulations 1995*. The result of these changes is that the value of a number of regulatory service fee items is expected to be reduced. These changes, along with all regulatory service fee items associated with the RPAS industry, were outlined in a cost recovery implementation statement issued for public comment in August 2020. They are reproduced at Attachment A.

Issues for Consideration

b) Consideration of the level of consultation undertaken

CASA has conducted extensive consultation with industry and the public on RPAS-related matters.

A discussion paper titled *Review of RPAS operations* was published on the Consultation Hub between 11 August and 29 September 2017. The paper sought responses on, among other things:

- registration of RPAS
- training and/or demonstration of proficiency in the safe and lawful operation of RPAS.

There were 910 respondents with 81 per cent being individuals with the remaining proportion responding on behalf of an organisation. The key themes from the responses were:

- strong support for registration
- broad support for training and demonstrated proficiency, particularly for users of large RPAS.

In response to the 2018 Government support for the introduction of mandatory registration for all RPAS and operator basic competence testing to assist in the oversight of the safe operations of RPAS, CASA developed a proposed registration and accreditation scheme.

Between 25 January and 22 February 2019, CASA consulted on the scheme and invited comment on the following policy positions:

1. CASA proposes that the registration and accreditation requirements apply (with certain exceptions) to RPA weighing more than 250 grams operated recreationally and all RPA operated commercially, including Excluded RPA operations, regardless of weight.
2. The RPA registration and accreditation requirements are not proposed to apply to RPA 250 grams or less operated recreationally, model aircraft at CASA-approved model airfields or RPA operated recreationally indoors.
3. Accreditation will be free. RPA users will be required to undertake an online course on the rules that apply to them. RPA licence holders will not have to do this course.
4. The cost of registration has yet to be determined by CASA, it will depend on whether the RPA is flown for fun or profit. It is likely to be a per person annual fee of \$20 or less for

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recreational RPAs and for some model aircraft operators. There will also be an annual registration fee likely to range from \$100 to \$160 per RPA, for each commercial RPA.

CASA received over 4,200 submissions as part of this consultation. The main findings from the consultation were:

- Only a small number of the respondents agreed with charging a registration fee. Most did not see any benefits or return on investment to paying a fee.
- Support for making registration annual was not high with some respondents also disagreeing with having to register or having to pay a fee at all.
- A number mentioned the practical difficulty in CASA monitoring an RPA's registration status.

The results of this consultation were reviewed by the RPAS Registration and Accreditation Technical Working Group (TWG) which reported its feedback through CASA's independent industry advisory group, the Aviation Safety Advisory Panel (ASAP).

The ASAP generally supported the proposed drone registration scheme however it strongly encouraged CASA to consider reducing the cost to encourage compliance and achieve the associated safety outcomes. The ASAP noted the significant challenges CASA faced in implementing this scheme due to the large number of RPA operators.

CASA's most recent consultation on the registration fee threshold and cost recovery charging structure was through the Cost Recovery Implementation Statement (CRIS) which ran between 25 August and 13 September 2020. The results of this consultation are yet to be finalised however early analysis of the 262 responses received show:

- Responses ranged from individual drone hobbyists to drone operators for commercial purposes
- Considerable agreement for the initial fee-free period for drone registration
- General agreement on the simplified fee structure providing greater certainty of business costs in the short-term
- Some agreement that the simplified fee structure will reduce the administrative burden on business when applying for CASA services.

Issues for Consideration

c) Use of delegated legislation

There has been significant growth in the RPAS sector in recent years. With this expected to continue, there is the need for an appropriate regulatory mechanism to set and manage the cost recovery of RPAS activities. Setting a fixed amount through a legislated Federal Act was not considered a proportionate approach as CASA expected the need to apply frequent amendment due to the forecasted growth in RPAS larger pool of RPA to share the costs of CASA's oversight and administration of the sector. A Cost Recovery Levy, of up to \$300 but could be nil, was considered to be more proportionate and would result in more opportunity for a lower levy payable for each RPA.

The use of regulations avoids these logistical problems, and as all regulations are disallowable by a single House acting alone, does not deprive the Parliament of its essential control over what level the cost recovery levy should be set at. Once the cost recovery levy is set in the Levy Regulations, it may be disallowed if a House of the Parliament thinks fit. If,

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through amending regulations, the cost recovery levy is raised, those amending regulations may be disallowed and the previous cost recovery levy automatically restored by virtue of relevant provisions in the *Legislation Act 2003*.

It was intended that the Levy Regulations and the Collection regulations would be made and registered to commence on 30 September 2020 to align with the requirements for registration and accreditation. It is also intended that the levy regulations will set the RPA levy at \$0.00 until at least 1 July 2021. It is expected that the Government's budget, to be handed down in May 2021, will specify what the cost recovery levy is to be from 1 July 2021 (to be implemented by a disallowable levy regulations amendment).

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Attachment A

Proposed RPAS Related Regulatory Fee changes

Description	Charge Type	Existing Rate	*Average Historical Charge	Proposed Charge Type	Proposed Charge / Rate
Approval of an area for the purposes of operation of unmanned aircraft or rockets — processing and consideration of application	Hourly	\$160	\$773	Fixed	\$875
Reissue of, Approval of an area for the purposes of operation of unmanned aircraft or rockets — processing and consideration of application	Hourly	\$160	\$329	Fixed	\$312
Approval to operate unmanned aircraft near a non-controlled aerodrome —processing and consideration of application	Hourly	\$160	\$773	Fixed	\$875
Reissue of, Approval to operate unmanned aircraft near a non-controlled aerodrome — processing and consideration of application	Hourly	\$160	\$329	Fixed	\$312
Approval of operation of a large RPA—processing and consideration of application	Hourly	\$190		Hourly	\$190
Grant of, initial issue or variation of, a remote pilot licence (RePL) — processing and consideration of application	Hourly	\$160	\$40	Fixed	\$17
Certification of a person as an RPA operator (ReOC) — processing and consideration of application	Hourly	\$160	\$1,229	Fixed	\$1,175
Variation of, Certification of a person as an RPA operator – processing and consideration of application	Hourly	\$160	\$471	Fixed	\$409
Renewal of, Certification of a person as an RPA operator – processing and consideration of application	Hourly	\$160	\$480	Fixed	\$114
Certification, or variation of certification of a person as an RPA operator to conduct an RPL training course – processing and consideration of application	Hourly	\$160		Hourly	\$160
Permission to operate Beyond Visual Line of Sight (BVLOS) – processing and consideration of application.	Hourly	\$190		Hourly	\$190
Reissue of, Permission to operate Beyond Visual Line of Sight (BVLOS) – processing and consideration of application.	Hourly	\$160		Hourly	\$190
Approval of Risk Assessment workshops – processing and consideration of the risk assessment component for complex operations	Hourly	\$160		Hourly	\$190

** Average historical charge based on two financial years of actual transactions*

The value of hourly rates included in the *Civil Aviation (Fees) Regulations 1995* have not increased since 2007.