

The Senate

Rural and Regional Affairs and
Transport Legislation Committee

Civil Aviation (Unmanned Aircraft Levy)
Bill 2020 and Civil Aviation Amendment
(Unmanned Aircraft Levy Collection and
Payment) Bill 2020 [Provisions]

November 2020

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Chapter 1

Introduction

Referral of the inquiry

- 1.1 On 3 September 2020, the Senate referred the provisions of the Civil Aviation (Unmanned Aircraft Levy) Bill 2020 and the Civil Aviation Amendment (Unmanned Aircraft Levy Collection and Payment) Bill 2020 (the bills) to the Rural and Regional Affairs and Transport Legislation Committee (the committee) for inquiry and report by 4 November 2020.¹
- 1.2 The proposal to refer the bills to the committee suggested a number of issues for consideration as part of the inquiry, including:
 - the lack of clarity on the level of fees to be set under the new arrangements;
 - the high registration fees proposed for commercial operators, relative to equivalent fees in Canada, the United Kingdom and the United States of America;
 - the possibility that high fees may act as a barrier for small operators to register their remotely piloted aircraft (RPA); and
 - that research and development currently conducted in Australia may be sent offshore.²

Conduct of the inquiry

- 1.3 The committee advertised the inquiry on its webpage, calling for submissions by 30 September 2020. The committee also wrote to a range of key stakeholder groups and organisations, drawing their attention to the inquiry and inviting them to make written submission.
- 1.4 The committee received 32 submissions, which are listed at Appendix 1. Submissions were published on the committee's inquiry webpage.
- 1.5 The committee completed its inquiry on the basis of these submissions, and on other publicly available information regarding the bills and their provisions, including the bills' Explanatory Memorandum (EM).

Acknowledgement

- 1.6 The committee thanks those individuals and organisations who provided written submissions to the inquiry. This work informed the committee's deliberations.

Structure of the report

¹ *Journals of the Senate*, No 66, 3 September 2020 (Proof), p. 2302.

² Senate Selection of Bills Committee, *Report No. 8 of 2020*, 3 September 2020, Appendix 2.

- 1.7 The report consists of two chapters. Chapter 1 provides information about the inquiry and the purpose of the bills. Chapter 2 presents the key issues raised by submitters, and the committee's views and recommendation.
- 1.8 The term remotely piloted aircraft (RPA) in this report is used to denote drones, unmanned aerial vehicles (UAVs), unmanned aircraft systems (UAS) and similar technologies.

Purpose of the bills

Civil Aviation (Unmanned Aircraft Levy) Bill 2020

- 1.9 The Civil Aviation (Unmanned Aircraft Levy) Bill 2020 (the levy bill) seeks to establish the legal mechanism that will be used to impose a levy for future cost recovery arrangements for regulatory services for remotely piloted aircraft (RPA) operators.
- 1.10 The levy bill would permit the amount of the levy to be prescribed by regulations. There is a cap of \$300 on the amount of levy and the amount can be set at nil.³
- 1.11 The definition of *unmanned aircraft levy* includes both the levy payable on applying for registration of an RPA or model aircraft and the levy payable when applying for permission to operate an RPA or model aircraft registered in a foreign country.

Civil Aviation Amendment (Unmanned Aircraft Levy Collection and Payment) Bill 2020

- 1.12 The Civil Aviation Amendment (Unmanned Aircraft Levy Collection and Payment) Bill 2020 (the collection bill) seeks to amend the *Civil Aviation Act 1988* to establish arrangements for the Civil Aviation Safety Authority (CASA) to collect an unmanned aircraft levy.
- 1.13 The collection bill would provide for the payment of the amounts of collected levy to CASA and appropriate the Consolidated Revenue Fund accordingly. Refunded levy amounts must be paid by CASA to the Commonwealth, but the minister may set off refunds against levy funds paid to CASA.
- 1.14 The circumstances in which the proposed unmanned aircraft levy is payable, and the collection of levy payments, are to be prescribed by regulations.
- 1.15 The collection bill would also allow the relevant minister to delegate powers to certain department officials, who must comply with written directions of the minister.

Background

³ Civil Aviation (Unmanned Aircraft Levy) Bill 2020, proposed paragraphs 6(2)(a) and 6(2)(b).

Previous inquiries into unmanned aircraft

- 1.16 The Senate Rural and Regional Affairs and Transport References Committee (the references committee) reported in July 2018 on *Current and future regulatory requirements that impact on the safe commercial and recreational use of Remotely Piloted Aircraft Systems (RPAS), Unmanned Aerial Systems (UAS) and associated systems*.
- 1.17 The references committee included the recommendation that ‘the Australian Government introduce a mandatory registration regime for all remotely piloted aircraft systems (RPAS) weighing more than 250 grams’.⁴ The Government agreed to this recommendation in its response tabled in the Senate on 27 November 2018.⁵

RPA Regulations

- 1.18 The Civil Aviation Safety Amendment (Remotely Piloted Aircraft and Model Aircraft–Registration and Accreditation) Regulations 2019 (the RPA regulations) were made on 25 July 2019. The RPA regulations amended Parts 11, 47 and 101 of the Civil Aviation Safety Regulations 1998 to provide for the registration of certain RPA and model aircraft and the accreditation of operators.
- 1.19 Under the RPA regulations, CASA ‘does not have the ability to impose a levy to recover the costs of the registration system and related safety oversight activities’.⁶ The registration scheme for RPA commenced on 30 September 2020.⁷ The registration scheme for model aircraft will commence on 1 March 2022.⁸

Provisions of the Civil Aviation Amendment (Unmanned Aircraft Levy Collection and Payment) Bill 2020

- 1.20 The collection bill contains one schedule of amendments to be made to the *Civil Aviation Act 1988*.

⁴ Senate Rural and Regional Affairs and Transport References Committee, *Current and future regulatory requirements that impact on the safe commercial and recreational use of Remotely Piloted Aircraft Systems (RPAS), Unmanned Aerial Systems (UAS) and associated systems*, 2018, recommendation 2, p. xiii.

⁵ *Journals of the Senate*, No. 131, 27 November 2018, p. 4273.

⁶ Civil Aviation (Unmanned Aircraft Levy) Bill 2020 and Civil Aviation Amendment (Unmanned Aircraft Levy Collection and Payment) Bill 2020 *Explanatory Memorandum*, p. 1.

⁷ Civil Aviation Safety Amendment (Remotely Piloted Aircraft and Model Aircraft — Registration and Accreditation) Regulations 2019 Commencement Determination 2020 <https://www.legislation.gov.au/Details/F2020N00038> (accessed 14 September 2020).

⁸ Civil Aviation (Unmanned Aircraft Levy) Bill 2020 and Civil Aviation Amendment (Unmanned Aircraft Levy Collection and Payment) Bill 2020 *Explanatory Memorandum*, p. 1; Civil Aviation Safety Authority, *Submission 31*, p. 2.

- 1.21 Item 1 inserts the definition of ‘unmanned aircraft levy’ from the proposed Civil Aviation (Unmanned Aircraft Levy) Act into section 3 (Interpretation) of the Civil Aviation Act.

Legislative scrutiny

- 1.22 The bills were considered by the Senate Standing Committee on the Scrutiny of Bills in September 2020 (scrutiny committee).⁹

- 1.23 In its consideration of the Civil Aviation Amendment (Unmanned Aircraft Levy Collection and Payment) Bill 2020, the scrutiny committee expressed concern that proposed paragraph 98(3)(w) of the Civil Aviation Act contained only ‘broad principles’ and relied ‘heavily on delegated legislation to determine the scope and operation of the scheme’, thus limiting parliamentary oversight. The scrutiny committee noted that ‘the explanatory memorandum fails to justify why it is necessary and appropriate to leave virtually all of the details of the operation of the proposed unmanned aircraft levy scheme to delegated legislation’.¹⁰ The scrutiny committee requested the minister’s advice on:

...why it is necessary and appropriate to leave the circumstances in which the proposed unmanned aircraft levy is payable, and the collection of the levy payments, to delegated legislation; and

whether the bill can be amended to prescribe at least broad guidance in relation to these matters on the face of the primary legislation.¹¹

- 1.24 The minister responded that RPA management systems needed to be adaptable to a ‘relatively new and rapidly developing sector of aviation’ and that RPAs were ‘highly varied and changing rapidly, with different weight and size classes’ The minister further advised that the RPA registration scheme, which had commenced on 30 September 2020, would ‘inform the development of the cost recovery scheme’ and that the amount of the levy ‘is likely to be quickly superseded by expansion in the numbers of commercial unmanned aircraft, and changes in the regulations and services the levy is being collected to fund’. The use of regulations would then allow ‘administrative and technical details of the schemes to be adjusted relatively quickly’ while able to be disallowed by the Parliament.¹²
- 1.25 The scrutiny committee responded that ‘it does not consider administrative flexibility or convenience to be sufficient justification for leaving significant elements of a regulatory scheme ... to delegated legislation’ and drew the

⁹ Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 11 of 2020*, 2 September 2020, pp. 1–4.

¹⁰ Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 11 of 2020*, 2 September 2020, p. 2.

¹¹ Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 11 of 2020*, 2 September 2020, p. 2.

¹² Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 13 of 2020*, 7 October 2020, pp. 17, 18.

matter to the attention of the Senate and the Senate Standing Committee for the Scrutiny of Delegated Legislation.¹³

- 1.26 The scrutiny committee also considered clauses 5 and 6 of the Civil Aviation (Unmanned Aircraft Levy) Bill 2020 which impose an unmanned aircraft levy but leave the amount of the levy to be prescribed by regulation. The Scrutiny of Bills Committee observed that ‘it is for the Parliament, rather than makers of delegated legislation, to set a rate of tax’ and that ‘it is more appropriate for the rate of levies and charges to be prescribed in primary legislation’.
- 1.27 In terms of the human rights implications of these bills, the EM states that the levy bill:
 - limits Article 6 of the International Covenant on Economic, Social and Cultural Rights (right to work and rights to work) by providing an impost on commercial and professional use of RPA;
 - promotes Article 7 of the International Covenant on Economic, Social and Cultural Rights (right to enjoyment of just and favourable conditions of work, including safe and healthy working conditions) by contributing to the safe use of RPA; and
 - promotes Article 6 of the International Covenant on Civil and Personal Rights (right to life) by contributing to the safe use of RPA.
- 1.28 The EM concludes that the bills are ‘compatible with human rights and, to the extent that the Levy Bill may also limit human rights, any potential limitations are reasonable, necessary and proportionate to ensure the safety of aviation operations and to promote the integrity of the aviation safety system’.¹⁴
- 1.29 The Parliamentary Joint Committee on Human Rights made no comment on the bills prior to this report’s finalisation.¹⁵

¹³ Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 13 of 2020*, 7 October 2020, p. 19.

¹⁴ Civil Aviation (Unmanned Aircraft Levy) Bill 2020 and Civil Aviation Amendment (Unmanned Aircraft Levy Collection and Payment) Bill 2020 *Explanatory Memorandum*, p. 6.

¹⁵ Parliamentary Joint Committee on Human Rights, *Human rights scrutiny report, Report 11 of 2020*, 24 September 2020, p. 81.

Chapter 2

Key issues

Overview

- 2.1 The committee received 32 submissions to the inquiry from recreational and commercial operators of remotely piloted aircraft (RPA), industry advocate groups, the Department of Infrastructure, Transport and Regional Development (the department), the Civil Aviation Safety Authority (CASA), and other stakeholders.
- 2.2 Some submissions opposed the application of the unmanned aircraft levy entirely; others supported the fees in principle but raised issues relating to the level of the fees, consequences of the fees or the application of the fees to specific operator groups. Many submitters raised broader issues relating to the RPA registration scheme, privacy and safety. The broader issues are discussed below only insofar as they relate to the unmanned aircraft levy.

Submitter comments

Level and applicability of fees

- 2.3 The amount of the unmanned aircraft levy and its applicability to different classes of RPA were major issues of contention among submitters. The Explanatory Memorandum (EM) explains:

In line with the Australian Government Charging Framework, registration of RPA (and, from 2022, relevant model aircraft) is a cost recoverable activity. The purpose of the package of legislation is to ensure that commercial and professional users of RPA contribute to the cost of program administration and regulation in order to maintain the integrity and fiscal sustainability of the program over the long term.¹

- 2.4 According to the department, 'while the Levy Bill states that the amount of the levy must not be more than \$300 and may be a nil amount, the actual levy has not yet been set' and will be 'reconsidered in 2021 and implemented through disallowable regulations'.² CASA explained that it was obliged to charge full cost recovery unless authorised for partial cost recovery by the government and that '[w]hen data becomes available on the number of actual registrations, CASA will have more accurate information to assist in determining a

¹ Civil Aviation (Unmanned Aircraft Levy) Bill 2020 and Civil Aviation Amendment (Unmanned Aircraft Levy Collection and Payment) Bill 2020 *Explanatory Memorandum*, p. 1.

² Department of Infrastructure, Transport, Regional Development and Communications, *Submission 18*, p. 2.

recommended levy amount to be applied per RPA (and in 2022, model aircraft)³.

- 2.5 The department advised that while consultation was still ongoing through a Cost Recovery Implementation Statement,⁴ the levy charged on RPA operators would be appropriate to 'a variety of RPA size and weight classes' and be 'fair and commensurate with the services received'. The department further advised that:

Due to the challenges facing the aviation and drone industry as a result of COVID-19, and the relative infancy of the RPA sector, the levy will be set at \$0.00 on the commencement of the scheme, and remain at \$0.00 until 30 June 2021.⁵

- 2.6 The reliance on delegated legislation to determine the scope and operation of the scheme and the fees liable was viewed unfavourably by a number of submitters, with one concluding that 'CASA is asking industry to sign-up to an unknown'.⁶
- 2.7 The Australian Miniature Aerosports Society (AMAS) challenged the insistence in the EM that the levy is 'a reasonable, necessary and proportionate requirement in the context of aviation safety',⁷ arguing '[it] is impossible to consider a levy reasonable, necessary and proportionate, or otherwise, if the amount has yet to be set'.⁸
- 2.8 CASA advised that it did not set a fixed amount through an Act of parliament because the pool of RPA would grow over time, potentially resulting in a 'lower levy payable for each RPA'.⁹
- 2.9 Wing, a drone operator, manufacturer and UAS traffic management services provider, supported the recovery of administrative costs but argued that a 'safe, fair and open regulatory system is best served by fees that reflect the actual cost of services'.¹⁰ Wing pointed to the government's cost recovery guidelines that activities should be 'undertaken at minimum cost' and 'closely

³ Civil Aviation Safety Authority, *Submission 31*, p. 3.

⁴ Civil Aviation Safety Authority, [*Remotely Piloted Aircraft Systems: Cost Recovery Implementation Statement*](#), Draft for Consultation (accessed 2 October 2020).

⁵ Department of Infrastructure, Transport, Regional Development and Communications, *Submission 18*, p. 2.

⁶ Swoop Aero, *Submission 28*, p. 2.

⁷ Civil Aviation (Unmanned Aircraft Levy) Bill 2020 and Civil Aviation Amendment (Unmanned Aircraft Levy Collection and Payment) Bill 2020 *Explanatory Memorandum*, p. 5.

⁸ Australian Miniature Aerosports Society, *Submission 9*, p. 2.

⁹ Civil Aviation Safety Authority, *Submission 31*, p. 5.

¹⁰ Wing, *Submission 21*, p. 2. This was also supported by DJI, *Submission 23*, p. 3.

linked to the specified activity'.¹¹ In its submission, CASA outlined administrative activities that would be included in the full cost recovery calculations included staffing, safety promotion of RPA activities, and costs associated with the implementation of digital registration and accreditation systems.¹²

2.10 AMAS sought further information on the criteria on which fees would be applied, such as whether the fees would be based 'on a sliding scale depending on the mass, value, wingspan motor orientation, construction type or the owners' ability to pay'.¹³

2.11 A number of submitters argued that the maximum amount prescribed by the legislation compares unfavourably to other overseas jurisdictions.¹⁴ Ausfilm, an association that markets Australia to international filmmakers, noted that:

In the United Kingdom, the annual fee is £9; in the USA, USD\$5.00 is charge per aircraft and is valid for three years; in Ireland, registration costs 5€, and in France, the registration is free and valid for five years.¹⁵

2.12 Ausfilm was specifically concerned at the impact this would have on research and development:

If the fee is set at an unattractive level, there is a possibility that it will discourage investment in R&D currently being conducted in Australia. Investment in R&D is likely to be sent offshore, as comparable jurisdictions require a minimal fee for drone registration.^{16 17}

2.13 Wing added that a 'costly fee for mandatory regulatory services such as RPA registration may limit participation among Australian operators and diminish the attractiveness of Australia as a market for RPAS investment and innovation'.¹⁸

2.14 CASA advised the committee that it is 'aware that registration systems are less expensive in a number of other countries' but that 'it is difficult to fairly compare them to Australia as the number of RPAS subject to the levy remains

¹¹ Wing, *Submission 21*, p. 2. Wing also suggested a number of measures that could lower administrative costs.

¹² Civil Aviation Safety Authority, *Submission 31*, pp. 3–4.

¹³ Australian Miniature Aerosports Society, *Submission 9*, p. 2.

¹⁴ See, for example, Ausfilm, *Submission 20*; Ms Carla Edwards, *Submission 25* and Association of Australian Certified UAV Operators, *Submission 24*, p. 7.

¹⁵ Ausfilm, *Submission 20*, p. 2.

¹⁶ Ausfilm, *Submission 20*, p. 2.

¹⁷ The negative impact on R&D entities was also raised by ACUO in submission 24.

¹⁸ Wing, *Submission 21*, p. 2.

unknown and the funding, operating models and cost recovery requirements are different for each country'.¹⁹

- 2.15 Submitters also commented on fees for specific types of RPAs and their operators. A summary of these views is below.

Recreational model aircraft

- 2.16 AMAS pointed out that under the levy bill there are 'no apparent protections to stop individual recreational model aircraft being charged \$300 for registration'.²⁰ Submitters argued that the registration fees for recreational model aircraft should be kept as low as possible and 'preferably nil'.²¹ As it was not uncommon for hobbyists to own '10, 20, 30 or even more models', one submitter maintained that high fees 'could easily run into thousands of dollars and put many out of the hobby'.²²
- 2.17 Numerous submitters suggested that small recreational RPA or model aircraft be exempted by the scheme or that recreational registration fees be subsidised by the levy for commercial operators. RPA advocacy group the Australian Association for Unmanned Systems (AAUS) argued that:

CASA's registration levy model needs to incentivize maximum registration uptake from RPAS users including relevant recreational users. It therefore follows that costs need to be held as low as possible²³

Commercial RPAs

- 2.18 Businesses can apply for a remotely piloted aircraft operator's certificate (ReOC) to allow them to operate as a drone service provider, employ remote pilots and fly outside the standard operating conditions.²⁴
- 2.19 Submitters from companies that held ReOCs pointed out that they were already licenced and had their drones registered with CASA.²⁵ Commercial RPA operators argued that they have spent 'considerable time and money to become licenced', understand their responsibilities and it is 'generally not the licenced commercial operators who are out there doing the wrong thing'.

¹⁹ Civil Aviation Safety Authority, *Submission 31*, p. 3.

²⁰ Australian Miniature Aerospots Society, *Submission 9*, p. 2. This point was also made by Mr Danny Nowlan, *Submission 3*.

²¹ Name withheld, *Submission 1*.

²² Name withheld, *Submission 2*.

²³ Australian Association for Unmanned Systems, *Submission 11*, p. 4.

²⁴ Civil Aviation Safety Authority, *Remotely piloted aircraft operator's certificate*, <https://www.casa.gov.au/drones/reoc> (accessed 30 September 2020).

²⁵ See, for example, Mr Darrell Burkey, *Submission 12*; Association of Australian Certified UAV Operators, *Submission 24*, p. 2; Victorian UAS, *Submission 27*, p. 1; Name withheld, *Submission 29*, p. 1; and Ms Fiona Lake, *Submission 30*, p. 2.

Rather the problem lies with people 'who are not licenced and have no intention of following the rules'.²⁶ These people will lie outside the unmanned aircraft registration system and will not pay fees, yet the fees will burden licenced operators. The Ripper Group agreed:

We believe a fairer price model needs to be proposed for commercial operators as these operators are the ones that have gone through the required training, have the required licenses and company registrations, have insurance, usually are fully compliant with the rules and regulations, yet seem to receive the most criticism and also seem to be looking at the highest registration costs. We believe it is not fair to penalise those who do the right thing with high costs.²⁷

- 2.20 Many commercial operators advised that due to rapidly evolving RPA technology, the need to use specific RPA for a specific task, or simply as backup to provide a reliable service, many businesses frequently updated or maintained a fleet of models.²⁸ Commercial operators were concerned that owners would be unfairly penalised for owning a diverse range of aircraft, even if some were used infrequently.²⁹ Furthermore unmanned aircraft levies would create a disincentive for operators to update models, with wider economic and safety implications.
- 2.21 Wing argued that applying fees on each RPA could constrain operations such as delivery services that used many aircraft simultaneously and could inhibit the growth of scalable RPA operations.³⁰ Domino's Pizza Enterprises considered the proposed registration fee of up to \$300 as 'proportionate for commercial usage' although supported waiving registration fees for non-commercial users.³¹
- 2.22 Many commercial RPA operators were concerned that high fees were 'going to send some small operators to the wall'.³² AAUS argued that a 'flat fee cost recovery model has the potential to be unfair to operators that operate many small drones for modest revenue compared to an operator that operates a low quantity large drones for high revenue'.³³ Drone manufacturer DJI agreed that many drone operations are at an 'early phase of proof of concept or small scale

²⁶ Name withheld, *Submission 4*.

²⁷ The Ripper Group, *Submission 17*, p. 1.

²⁸ Name withheld, *Submission 7*; Ms Fiona Make, *Submission 30*, p. 2.

²⁹ Name withheld, *Submission 6*, p. 2.

³⁰ Wing, *Submission 21*, p. 3.

³¹ Domino's, *Submission 22*, pp. 1–2.

³² Name withheld, *Submission 4*. See also Australian Association for Unmanned Systems, *Submission 11*, p. 4; DJI, *Submission 23*, p. 3; Wing, *Submission 21*, p. 2 and Ms Carla Edwards, *Submission 25*.

³³ Australian Association for Unmanned Systems, *Submission 11*, p. 4. This point was also made by DJI, *Submission 23*, p. 4.

commercial rollout' and that during the COVID crisis a number of operators had ceased to trade'.³⁴

- 2.23 Some commercial operators suggested that the fees should be the same for commercial operators and recreational purposes as the administrative cost to the regulator in processing the registration would be the same³⁵ or less for commercial operators 'who have already paid thousands of dollars to CASA'.³⁶

Exemptions

- 2.24 Some submitters requested levy exemptions for RPAs used in specific circumstances.

- 2.25 The Ripper Group argued in favour of fee exemptions for emergency services and reductions for search and rescue:

We believe that these UAV's that are on call for the saving of life should not be required to pay exorbitant costs for registration. These UAV's should be seen as emergency services - yes should pay some registration but this should be a substantially discounted cost.³⁷

- 2.26 The Ripper Group, the Association of Australian Certified UAV Operators (ACUO), Victorian UAS and DJI also supported commercial fee reductions for RPA training schools.

- 2.27 Air Affairs Australia owns and operates unmanned aerial targets (UATs) on behalf of the Australian Defence Force which are shot down and destroyed in military restricted airspace as part of weapons trials, evaluations and training exercises. Air Affairs Australia requested that UATs be exempted from the levy or that a single registration fee be applied to the target drones operated by Air Affairs Australia.

Registration and levy system

- 2.28 Several industry participants made suggestions for changes in the registration and levy system. Some submitters queried the application of unmanned aircraft levies to individual drones, arguing instead for a system of charging drone operators or entities.³⁸ A further suggested that the fee should confer RPA operators with a benefit such as third party insurance coverage.³⁹

³⁴ DJI, *Submission 23*, p. 3.

³⁵ Name withheld, *Submission 4*; Ms Fiona Lake, *Submission 30*, p. 3.

³⁶ Association of Australian Certified UAV Operators, *Submission 24*, p. 7.

³⁷ The Ripper Group, *Submission 17*, p. 1.

³⁸ Australian Certified UAV Operators, *Submission 24*, p. 6; Name withheld, *Submission 6*; Victorian UAS, *Submission 27*, p. 1; Name withheld, *Submission 29*, p. 2.

³⁹ Name withheld, *Submission 14*.

- 2.29 Victorian UAV argued that 'if a registration fee is needed then it should be calculated on the hours the aircraft has flown in the prior 12 month period' to avoid operators being liable for large fees for aircraft that are rarely used.⁴⁰
- 2.30 While not opposing the unmanned aircraft levy per se, the Australian Privacy Foundation argued that the bills 'put the revenue cart in front of the policy horse' by instituting a fee system before a coherent national strategy on RPA privacy concerns including the use and protection of registration scheme data.⁴¹

Registration compliance

- 2.31 An important principle for the cost structure of unmanned aircraft levies identified by submitters was that fees should promote compliance with the registration system. Wing noted that a 'costly or recurring fee may result in lower compliance among small commercial operators or recreational operators', with implications for the ability to trace operators and deter 'reckless or unlawful behaviour'.⁴² Some submitters also suggested that registration and payment at point of sale would result in greater compliance than self-registration.⁴³

- 2.32 Submitters also advised the committee of issues with operators of RPAs in the sub-2kg category:

The people who operate in it do not care for the rules, they know it is very hard, almost impossible for CASA to regulate the category and people operating in it ... The people who are already breaking the laws are not going to stop and start following them now because they might have to pay a registration fee.⁴⁴

- 2.33 One submitter argued that the ability to readily reconfigure RPAs undermined the intent of the bills:

Most of the components of an RPA or model aircraft can and are interchanged far more frequently than for other forms of aviation. This includes key airframe members and structural components, along with motors and other propulsion and control components and onboard electronics.

Implementing an aircraft-based registration model would result in a 'ship of Theseus' style conundrum where the regulator would have to identify

⁴⁰ Victorian UAS, *Submission 27*, p. 1.

⁴¹ Australian Privacy Foundation, *Submission 8*, p. 2.

⁴² Wing, *Submission 21*, pp. 2, 3. See also Name withheld, *Submission 29*, p. 1.

⁴³ Ms Fiona Lake, *Submission 30*, p. 3.

⁴⁴ Name withheld, *Submission 6*.

what component constitutes the 'essential' or 'inalienable' part of the aircraft ...⁴⁵

- 2.34 Swoop Aero and DJI supported the decision to make the first year of registration free of charge to 'get as many operators into the system in the first instance to get a thorough account of drone numbers, and to initiate a culture of compliance with the ongoing registration scheme'.⁴⁶
- 2.35 The department, in its submission, reported that the Aviation Safety Advisory Panel Technical Working Group had advised CASA that 'a reasonable fee will maximise safety benefits through encouraging increased compliance rates'.⁴⁷

Safety

- 2.36 A number of submitters took exception to the implication in the EM⁴⁸ that the unmanned aircraft levy contributed to the safe use of RPA, with AMAS maintaining that there was 'no demonstrated, direct or indirect correlation between any levy and aviation safety'.⁴⁹ Many submitters pointed to the lack of confirmed collisions between RPA and manned aircraft or incidents resulting in major injuries or fatalities.⁵⁰
- 2.37 Users of recreational model aircraft stated that model aircraft are flown in safe locations such as model aircraft clubs, and that there was an insufficient body of evidence to demonstrate that the hobby is dangerous. The Model Aeronautical Association of Australia noted that '[c]onsideration of available evidence and statistics MUST be considered by CASA when considering if/how much the fee would be for Model Aircraft operators when implemented to ensure the greatest possible uptake for the registration scheme'.⁵¹
- 2.38 Drone manufacturer DJI argued that a high levy could 'potentially undermine the safety benefits that are the main reason for imposing registration'.⁵²

⁴⁵ Name withheld, *Submission 7*.

⁴⁶ DJI, *Submission 23*, pp. 2–3; Swoop Aero, *Submission 28*, p. 2.

⁴⁷ Department of Infrastructure, Transport, Regional Development and Communications, *Submission 18*, p. 3.

⁴⁸ Civil Aviation (Unmanned Aircraft Levy) Bill 2020 and Civil Aviation Amendment (Unmanned Aircraft Levy Collection and Payment) Bill 2020 *Explanatory Memorandum*, p. 5 says that the levy is 'considered to be reasonable, necessary and proportionate requirement in the context of aviation safety'.

⁴⁹ Australian Miniature Aerosports Society, *Submission 9*, p. 2.

⁵⁰ See, for example, Australian Miniature Aerosports Society, *Submission 9*, p. 2; Model Aeronautical Association of Australia, *Submission 13*, p. 2; Name withheld, *Submission 15*; and Name withheld, *Submission 16*.

⁵¹ Model Aeronautical Association of Australia, *Submission 13*, p. 2.

⁵² DJI, *Submission 23*, p. 2.

Committee view

- 2.39 The committee affirms that the RPA registration scheme promotes transparency, safety and responsibility in the operation of RPAs for the benefit of the community.
- 2.40 The committee supports the intent of the bills to provide a legislative mechanism to enable the recovery of costs associated with the administration of an RPA registration scheme. It further notes that charging the non-government sector for regulatory activities is consistent with the Australian Government Charging Framework.
- 2.41 The committee concurs with the concerns of submitters about the reliance on delegated legislation to set the levels of the unmanned aircraft levy and the difficulty this has posed for making definitive comments on the bills. However, the committee accepts the department's explanation that setting the unmanned aircraft levy costs by regulation would provide the necessary flexibility to respond to rapidly evolving technologies and a changeable regulatory environment.
- 2.42 Regarding the fees themselves, the committee is confident that the department, in consultation with industry participants, will deliver on its assurances that the levy charge on RPA operators from 2021 will be 'fair and commensurate with the services received'. Nevertheless, the committee urges the department and CASA to consider suggestions from submitters that some RPAs be exempt or receive special consideration from the unmanned aircraft levy.

Recommendation 1

- 2.43 The committee recommends the Senate pass the bills.**

Senator Susan McDonald
Chair

Additional Comments - Australian Greens

- 1.1 The Australian Greens support a drone registration levy, to fund and support appropriate regulation of a rapidly expanding and changing sector. However the reliance of delegated legislation for this framework reflects a concerning pattern. As the main Committee report notes, the Scrutiny of Bills Committee has highlighted questions around “the appropriateness of leaving virtually all of the details of the operation of the proposed unmanned aircraft levy scheme to delegated legislation.”
- 1.2 The Senate Standing Committee for the Scrutiny of Delegated Legislation is currently undertaking an inquiry into the Exemption of delegated legislation from parliamentary oversight. In a submission to that inquiry, the Centre for Public Integrity stated that:
- Accountability measures that ensure policy decisions made via delegated legislation are in the public interest and follow proper process are limited. These decisions are not given detailed deliberation in Parliament and are not transparent to public scrutiny.
- ... the increasing use of delegated legislation puts individual power in the hands of Ministers who do not face independent accountability outside of Parliamentary scrutiny.
- We are concerned that the increasing exemption of delegated legislation from disallowance threatens democratic decision making and the constitutional role of Parliament.¹
- 1.3 We welcome the Government’s decision to use disallowable instruments for this scheme, rather than exempting them from disallowance. However the Australian Greens share the concerns of the Centre for Public Integrity at the expanding use of delegated legislation.

Senator Janet Rice
Participating Member

¹ The Centre for Public Integrity, *Submission 13*, pp. 2.

Appendix 1

Submissions

- 1 *Name Withheld*
- 2 Mr Greg Butler
- 3 Mr Danny Nowlan
- 4 *Name Withheld*
- 5 *Name Withheld*
- 6 *Name Withheld*
- 7 *Name Withheld*
- 8 Australian Privacy Foundation
- 9 Australian Miniature Aerosports Society Inc
- 10 Air Affairs Australia Pty Ltd
- 11 Australian Association for Unmanned Systems (AAUS)
- 12 Mr Darrell Burkey
- 13 Model Aeronautical Association of Australia
- 14 *Name Withheld*
- 15 *Name Withheld*
- 16 *Name Withheld*
- 17 The Ripper Group
- 18 Department of Infrastructure, Transport, Regional Development and Communications
- 19 Australasian Institute of Emergency Services
- 20 Ausfilm
- 21 WING AVIATION PTY LTD
- 22 Domino's Pizza Enterprises Ltd
- 23 DJI
- 24 Australian Certified UAV Operators Incorporated
- 25 Ms Carla Edwards
- 26 Flight Scientifics Pty Ltd
- 27 Victorian UAS Training PTY LTD
- 28 Swoop Aero
- 29 *Name Withheld*
- 30 Ms Fiona Lake
- 31 Civil Aviation Safety Authority
- 32 NT Police, Fire and Emergency Services