



ACN: 002 360 456
ABN: 73 270 889 397

78 Sidaway St Chapman ACT 2611
AUSTRALIA
Tel: +61 2 6288 6916
Email: Roger.Clarke@xamax.com.au
Web: <http://www.xamax.com.au/>

18 December 2017

Tess Bishop
Deputy Director-General
Strategy and Engagement
Department of the Premier and Cabinet
drones@premiers.qld.gov.au

Dear Ms Bishop

Re: Queensland Drones Strategy Consultation Paper

Drones are giving rise to considerable privacy concerns. These in turn represent potentially substantial constraints on the achievability of Queensland's economic objectives in relation to drones.

Clarke (2014) identified the following specific issues:

1. Extensiveness
2. Intensity
3. 'Paparazzi Aloft'
4. 'The Panoptic Aloft'
5. Errors
6. Spurious Authority
7. Reduced Natural Controls
8. Surreptitiousness
9. Discrimination
10. Paranoia

That paper also reviewed the capacity for existing laws to address these issues. It concluded that:

"A range of pre-existing generic laws could in principle provide some regulatory impact on surveillance applications of drones.

"In practice, in Australia, any such effect appears to be at best very limited, because of the tight limitations on the applicability of the causes of action that are imposed variously by the common law and by the terms of the relevant legislation.

"Significant changes ... need to be enacted in order to overcome these deficiencies".

Current privacy laws do not represent an adequate basis for these changes, because they apply only to 'information privacy', and not to various other dimensions, in particular behavioural privacy.

Since 2005, Queensland has had limited provisions relating to visual surveillance devices, in s.227A-227C of the Criminal Code:

http://www8.austlii.edu.au/cgi-bin/viewdoc/au/legis/qld/consol_act/cc189994/s227a.html

However, as explained in Clarke (2014), these provisions are completely inadequate in the new contexts created by drones. See: <http://www.rogerclarke.com/SOS/Drones-BP.html#RSD>

Clarke (2016) examined appropriate regulatory responses to the drone epidemic.

The conclusion reached in relation to visual surveillance was that Queensland needs to "revise or extend the existing regulatory framework, or establish a coherent, comprehensive and balanced regulatory framework, at least relating to surveillance using drones, but preferably encompassing surveillance generally, including using drones".

Specifically, in order to take advantage of the economic opportunities afforded by drones, Queensland needs to lead the nation and enact a privacy right of action, as carefully designed by three Law Reform Commissions. Details and references can be found in APF (2011).

Yours sincerely

A handwritten signature in black ink, appearing to read 'Roger Clarke', with a long horizontal stroke extending to the right.

Roger Clarke, Director
Visiting Professor, UNSW Law, Sydney
Visiting Professor, Research School of Computer Science, ANU, Canberra
Past Chair, Australian Privacy Foundation

References:

APF (2011) 'A Privacy Right of Action' Policy Statement, Australian Privacy Foundation, July 2011, at <https://privacy.org.au/policies/right-of-action/>

Clarke R. (2014) 'The Regulation of the Impact of Civilian Drones on Behavioural Privacy' Computer Law & Security Review 30, 3 (June 2014) 286-305, PrePrint at <http://www.rogerclarke.com/SOS/Drones-BP.html>

Clarke R. (2016) 'Appropriate Regulatory Responses to the Drone Epidemic' Computer Law & Security Review 32, 1 (Jan-Feb 2016) 152-155, PrePrint at <http://www.rogerclarke.com/SOS/Drones-PAR.html>