



**LEGISLATIVE ASSEMBLY**  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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STANDING COMMITTEE ON ECONOMIC DEVELOPMENT AND TOURISM  
Mr Jeremy Hanson MLA (Chair), Ms Suzanne Orr MLA (Deputy Chair),  
Mr Michael Petterson MLA

## Submission Cover Sheet

**Inquiry into drone delivery systems in the ACT**

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## **ACT LEGISLATIVE ASSEMBLY INQUIRY INTO DRONE DELIVERY SYSTEMS IN THE ACT**

### **SUBMISSION**

Dear Sir / Madam,

This is my submission to the Australian Capital Territory Legislative Assembly Inquiry into drone delivery systems in the ACT.

The proposal use of drones for delivery services in the ACT raises a range of legal/privacy, safety and noise concerns. I will briefly discuss each of these concerns.

#### **1. LEGAL / PRIVACY CONCERNS**

The first concern about the proposed use of drones is the legal issues that it raises. The main issue here is privacy.

The business entity conducting the test calls itself 'Wing Australia' ([https://wing.com/intl/en\\_au/](https://wing.com/intl/en_au/)). However, as stated on the entity's website, it is in fact an arm of Google Australia Pty Ltd. The website also states 'Wing Australia' is also associated with a United States corporation, Wing Aviation LLC.

The drone is equipped with a camera and flies up to 120 metres (400 feet) off the ground. While Wing Australia has claimed that the camera is 'low resolution', this is difficult to believe, as Wing Australia has also stated that it intends the drone to become autonomous in future. In any case, it appears unlikely that this could be regularly monitored by Australian authorities.

At 120 metres in the air, it would easily be possible to film persons in their private homes or other private activities without their knowledge. A drone operator might also attach another camera of their own to the drone, enabling them to take unauthorised footage.

It is also unclear whether the drones will be recording sound, but if so that would only increase the threat to privacy. The drones would potentially be able to record people's private conversations without their knowledge.

Drones would likely constitute listening or surveillance devices under Australian legislation if they were used by Australian law enforcement authorities. When used by law enforcement agencies, such devices at least require the authority of a senior officer to use. Often they require a warrant. However, it seems that Wing / Google has been able to use these privacy-invasive devices without any such checks or balances.

The next question is who has access to the footage. Wing Australia has claimed that only its engineers could access the footage, but even if that was the case, it would still allow those persons to view footage of individuals going about their private activities. In reality, it is more likely that anyone working in Wing or Google could access the footage if they wanted to do so. Another possibility is that the information could be hacked and put online for everyone in the world to see.

Another issue is whether the information will be moved out of Australia. This seems a likely possibility, given the project is being run by Google. In that instance, Australian authorities would have no control of what happens to people's private information.

### Privacy Act 1988 and the Australian Privacy Principles

In terms of privacy law, it is arguable that collection of personal information (such as camera footage of persons) by Wing / Google would not be authorised under the *Privacy Act 1988* (Cth) and the Australian Privacy Principles (APPs) under that Act. APP 3.2 provides as follows:

If an APP entity is an organisation, the entity must not collect personal information (other than sensitive information) unless the information is reasonably necessary for one or more of the entity's functions or activities.

It appears that the drones will collect a large amount of personal information when doing deliveries. It is doubtful whether it would be reasonably necessary to retain (collect) this information.

In addition, APP 6.1 provides that an entity must not use or disclose personal information other than for the primary purpose of collection (unless an exception applies). There will potentially be a large amount of footage of individuals that is collected. It is difficult to see how this could be used legitimately. It should be remembered that the collector of the information will be Google. It is not hard to see Google trying to use the collected information for other (secondary) purposes. They might try to rely on dubious 'consent' clauses buried deep in the terms of service, but even if such terms were legitimate (which is arguable), they would only apply to direct users of the service. Such terms and conditions could not apply to persons filmed by the drones who were not users of the service.

### Human rights

The ACT government frequently asserts that it is a leader in 'human rights' legislation in Australia.

Section 12(a) of the *Human Rights Act 2004* (ACT) provides as follows:

Everyone has the right— (a) not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily.

This reflects Article 17(a) of the International Covenant on Civil and Political Rights (ICCPR), which provides as follows:

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

For the reasons discussed above, allowing drones to be used for trivial purposes such as delivery of coffee or burritos is arguably a breach of the right to privacy.

### Torts and legal liability

Use of the drones potentially raises the issue of tort liability under Australian law. This is a complex issue that I will not explore in detail. However, it is arguable that use of drones could result in liability in a range of torts, such as:

- Nuisance (private) – as the drone could cause an interference with another person's use or enjoyment of their land.
- Nuisance (public) – as the drone usage may materially affect the reasonable comfort and convenience of a whole class of persons.
- Negligence – if a drone were to malfunction and injure a person (e.g. by falling on them or even spilling hot drink on them).
- Assault – if a drone were to be used deliberately to injure a person.

Exactly who would be liable would not always be clear. However, for at least some of the potential torts, the range of potential tortfeasors could be wide and could include:

- The business providing the drone delivery service
- Any business that partnered with the drone delivery service to deliver the business's products
- Any person who used the services of a drone delivery service.

This could potentially result in a class action being made against one or more of the above legal persons.

## **2. SAFETY**

There are a range of potential safety concerns with the use of drones. These include potentially for either unintentional or intentional harm to persons.

Drones are a new technology and can still be considered unproven. It appears that Wing / Google would like to see hundreds of these machines flying through the air in Canberra. They are large and heavy machines that could injure someone severely if they fell onto a person. In addition, there is potential for items being delivered falling or spilling onto persons and injuring them (e.g. hot coffee, heavy packages).

More broadly, it is intended that the drones will become autonomous, so they will not even be controlled by a person. It is unclear exactly how reliable such technology will be, but there have been a number of reports about self-driving cars malfunctioning and causing injury or death.

Drones also pose a safety threat to traditional aviation. In early January 2019, just a few minor drone sightings was enough to have to close Gatwick Airport in London. It takes only one drone used irresponsibly to cause a major disturbance. There is also of course the potential for drones to be used to pose a threat to the safety of passenger aircraft (whether intentionally or unintentionally). Canberra Airport is not far from where it is proposed that Wing will have its base of operations. Having hundreds of drones flying through the air, perhaps not even controlled by human operators, would potentially create a dangerous environment for passenger aircraft during their most vulnerable period of time in the air (takeoff and landing).

## **3. NOISE AND AESTHETIC CONSIDERATIONS**

There are a range of noise and aesthetic concerns with drones. Delivery drones emit an appalling, loud, high-pitched noise. It is astonishing that such an invasion of the peace and quiet of a neighbourhood is being permitted simply so that someone can get a burrito. Being neighbours with a person who regularly gets such deliveries would no doubt be a very unpleasant experience.

Drones are also ugly to look at. They are an eyesore. It is intended that there will be hundreds of these machines in the skies, which will significantly detract from the natural beauty of Canberra's environment. Instead of looking up to see blue sky, there will instead be a swarm of mechanical wasps. This would be environmental vandalism.

Drones also pose a threat to wildlife, particularly birds. Canberra has a wide range of beautiful bird species and it would be a shame if they were scared away by the noise and disruption that hundreds of drones would cause.

#### **4. ALTERNATIVES TO DRONE USE**

Given the significant privacy, safety and environmental concerns raised by drones, it is appropriate to consider whether they are necessary.

Drone use for trivial purposes such as food, drink and package delivery does not appear to be justified. Drone delivery of items such as headache tablets is equally trivial. People could just as easily buy these items themselves or have them delivered by car or bike. Car and bike delivery would take the same amount of time and would not result in the significant detriment to the community that drones clearly cause. Bike delivery would be much better for the environment.

There are of course more serious potential uses for drones, such as:

- use in emergency situations
- law enforcement
- bushfire monitoring
- search and rescue
- farming
- traffic control
- scientific research

Not one of these more serious potential uses requires hundreds of noisy, privacy-invasive drones to be used on a regular basis throughout urban areas.

#### **5. CONCLUSION**

Using drones simply for delivering food, drink or other trivial items is unjustified. The huge costs in privacy, safety risk and environmental pollution strongly outweigh any such usage of drones. Therefore use of drones for delivery of food, drink or other trivial items should be prohibited in most circumstances. Drone use should be restricted only to more serious uses.

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