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**Senate Foreign Affairs, Defence and
Trade References Committee**

**Inquiry into the potential use by the
ADF of unmanned air, maritime and
land platforms**

**Submission by the
Australian Federal Police**

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Introduction

The Australian Federal Police (AFP) welcomes the opportunity to make a submission to the Senate Foreign Affairs, Defence and Trade References Committee inquiry into the potential use by the Australian Defence Force (ADF) of unmanned air, maritime and land platforms. This submission addresses two of the Committee's Terms of Reference (ToR), in particular;

(a) Role of ADF unmanned platforms in intelligence, reconnaissance and surveillance operations, including in support of border security, civil emergencies and regional cooperation; and

(e) Domestic and international legal, ethical and policy considerations.

There is significant benefit in the use of unmanned platforms in support of policing operations. The AFP has considered and assessed the use of Unmanned Aerial Vehicles (UAV) system with the purchase of a UAV in 2011 by AFP Forensics and a three phase UAV trial in June 2013 by the AFP's Specialist Response Group (SRG) Air Support Team (AST).

The AFP remains of the view that unmanned platforms have the potential to support targeted public safety related operations including search and rescue operations in remote locations, or missing persons in urban locations, and tactical operations. AFP Forensics purchased its UAV in support of AFP operations and crime scene management. The Forensics UAV has the capability to provide a stable aerial platform with various camera selections available to take high-resolution still photos, high definition video, low light video or infrared video of various outdoor scenes, giving an alternate perspective not seen by law enforcement agencies previously.

The AFP appreciates the important advantage the use of UAVs might have on surveillance operations and in the support of border security. The use of UAVs in areas such as the Torres Strait and Northern Australia would provide significant opportunities to mitigate the AFP's current vulnerabilities in its covert surveillance operations. Currently, the AFP relies on highly visible Customs, Border Protection and Command (BPC) and Queensland Police (QPol) assets to undertake operational investigations in those remote areas.

The use of unmanned platforms by the Australian Defence Force (ADF) may provide a further opportunity to collaborate and share imagery information between various government agencies in the appropriate circumstances. The AFP is not aware of any existing legislation framework for the exchange of this type of information which the AFP believes would need to be established for the effective exchange of imagery. Methodology and technical information exchange would also be beneficial in gaining experience with this emerging capability.

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The AFP response to the Terms of Reference

(a) Role of ADF unmanned platforms in intelligence, reconnaissance and surveillance operations, including in support of border security, civil emergencies and regional cooperation

The use of unmanned platforms would greatly enhance intelligence and surveillance operations because they are less visible than traditional border security assets. For example, the movement of illicit goods (drugs, people, firearms and fish) across the Australian, Papua New Guinea and Indonesian borders has been difficult to intercept because of the overt nature of AFP, BPC, QPol and the Department of Fisheries surveillance assets in northern Australia. The criminal networks are well aware of law enforcement capabilities and take deliberate steps to conduct counter-surveillance in support of the illicit smuggling operations they are conducting.

AFP Operation Alate was an investigation into the smuggling of amphetamine-type stimulants and precursors from Papua New Guinea into Australia across the Torres Strait. The AFP seized a sizeable quantity of precursors and firearms however, evidence gathered during the investigation revealed that this network had been in place for years, conducting regular smuggling operations across the Strait. The evidence also showed that the group monitored the location and movements of AFP, QPol, BPC and other government personnel, vessels and aircraft during its smuggling operations and took deliberate steps to misdirect overt surveillance assets.

The AFP's success in dealing with this network is largely attributable to limiting surveillance by traditional law enforcement and border protection assets and the presence of investigators in remote and regional communities. The AFP was required to take calculated risks in allowing the network to move illicit commodities without surveillance. It is anticipated that criminal networks will learn and adjust their methods in response to this investigation, increasing the level of risk associated with tracking the movement of illicit commodities without surveillance. The use of unmanned platforms during this operation would have significantly mitigated the risks and in future operations would present a viable alternative to the deployment of traditional law enforcement or border protection assets into remote areas.

Strike Force FITR was a New South Wales Police (NSWPol) operation involving the search for the remains of Mr Donald McKay in Hay, New South Wales. The AFP Forensics Imagery and Geomatics Team provided NSWPol with UAV support in the operation which included;

1. Overall imagery of the scene (video and stills) providing accurate scene capture in digital format thus allowing virtual re-visits, analysis, investigation and if required court presentation;
2. Thermal imaging to show ground temperature differences where possible shafts of old wells could be located;

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3. Reference stills to record scene as excavation progressed. For example: the dam location captured at the start made it easily identifiable as excavation went on as the dam disappeared;
4. The stills imagery captured can be overlaid over survey data (point cloud data). Therefore, providing digital terrain mapping for inclusion into GIS and possible 3D printing of the scene at different stages; and
5. Aerial Shots of the scene for media release (local newspaper release).

Strike Force FITR was a prime example of overt usage and regional cooperation between the AFP and State Agencies, enhanced by the UAV emerging technology. The AFP Forensics UAV is not deployed for intelligence, reconnaissance, surveillance or covert operations. It was decided at the time of acquisition by Forensics management that the Forensics UAV would only be used in overt manner.

As with the State Agencies, the AFP has a close working relationship with the ADF which includes a number of Memorandums of Understanding (MoU) between both agencies. On 23 September 2014, the AFP and the ADF signed a new MoU to enhance greater collaboration between the AFP and the ADF in terms of policing intelligence, forensic support, training and education and personnel secondments.

(e) Domestic and international legal, ethical and policy considerations

The AFP has previously considered the potential use of unmanned platforms or Unmanned Aerial Vehicles (UAVs) and drones for the purposes of community policing. The use of UAVs has been explored and trialled by the AFP for the purposes of enhanced support in public safety related operations, including search and rescue operations or missing persons in urban locations and tactical operations.

For example, in 2011, AFP Forensics purchased a UAV *Dragonflyer X4-ES* multi rotor remote control as an emerging technology. The Dragonflyer has been specifically designed for public safety agencies and was purchased to provide a stable aerial platform with various camera selections available to take high quality photos and video of outdoor scenes.

Additionally, in 2013, the AFP SRG AST commenced a three phase UAV trial. Part of the trial included research in relation to possible models, aviation regulations, training and costs to the agency. The type of UAV trialled was the MD4-1000. The MD4-1000 includes a day camera and night infra-red camera, greatly enhancing the ability of the UAV operator to locate a survivor or missing person by day or by night.

The AFP acknowledges that the use of unmanned platforms is generally governed by the *Civil Aviation Safety Regulations 1998* (Cth), administered by the Civil Aviation Safety Authority (CASA). These Regulations stipulate how unmanned platforms are to be flown, as well as outlining approvals that may be required from CASA. The AFP is generally required to comply with this regulative scheme in its use of UAVs, however, this is subject to exceptions or specific CASA approvals.

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Currently, the AFP operates the Forensics UAV, which is permitted to fly following consultation and negotiation with CASA on the proviso that the AFP has obtained the necessary requirements for approval. For example, the AFP does not currently hold an Operating Certificate but fly by exemption with pre-approval from CASA for operational requirements in non-urban areas.

The area of operation concerning UAV use by the AFP (once approval is granted) is within Australia and its external territories in support of specific operations. At present, the use of UAVs and its imagery by the AFP is primarily for the use of crime scene and emergency scene image capture. The use of unmanned platforms by the ADF within both a domestic and international context would likely be of operational benefit to the AFP.

Generally, AFP usage of UAVs and its imagery will fall within the AFP's powers and functions under the *Australian Federal Police Act 1979* (Cth). However, other UAV usage (including ADF surveillance) may require compliance with additional legislation. The Civil Aviation Safety Authority also issues Advisory Circulars, the purpose of which is to provide guidance on the operation of UAVs. Advisory Circular 101-1(0) 'Unmanned Aircraft and Rockets' provides guidance and recommendations on how to comply with the *Civil Aviation Safety Regulations 1988*, however these do technically not form part of the legislation.

The manner of intended use of a UAV may give rise to various legal impediments. The primary legal issues relating to the actual use of UAVs involve the potential risk of committing trespass or surveillance devices offences. Trespass offences are theoretically possible through the use UAVs, as trespass may occur in the airspace over property. The use of UAVs in State and Territory jurisdictions would need to be consistent with respective law relating to trespass. For example, the *Inclosed Lands Protection Act 1901* (NSW) provides an offence for unlawful entry on inclosed lands (s. 4). Other States and Territories may have similar offences.

The AFP is aware of the privacy implications involved in the use of UAVs and understands its privacy obligations arising from the use of UAVs are covered by the *AFP Privacy Policy* and compliance with relevant laws (e.g. *Privacy Act 1988* (Cth)). Additionally, the use of such technology has captured the attention of the community and privacy regulators globally. Privacy regulators, including the Office of the Australian Information Commissioner, continue to foster greater international cooperation in the light of technological developments. Through forums such as the Global Privacy Enforcement Network run under the auspices of the Organisation for Economic Co-operation and Development, the Asia-Pacific Economic Cooperation Cross Border Privacy Enforcement Arrangement and regional groupings of Privacy Regulators such as the Asia Pacific Privacy Authorities Forum, concerted efforts have been undertaken to build a coordinated approach to regulating the protection of personal information as it moves around the globe.

Legal authorisations required for the use of UAVs (whether ADF assets or otherwise) in particular situations will depend on the manner in which UAVs are intended to be utilised. AFP use of UAVs in circumstances where offences may be

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being committed may subsequently require the AFP to seek legal authorisations. Depending on the intended operational use of UAVs, the most likely situation creating a need for legal authorisation will involve the entry onto premises for the purpose of optical surveillance. Section 18 of the *Surveillance Devices Act 2004* (Cth) can authorise the use of a surveillance device on specified premises. Per s. 16 of that Act, an eligible judge or nominated Administrative Appeals Tribunal member will be required to consider the extent to which a person's privacy will be affected prior to granting such an authorisation. We note the *Surveillance Devices Act 2004* and the mechanism for authorisation at s. 18 do not necessarily contemplate the entry onto premises, and use of optical surveillance devices, on UAVs.

With reference to information security, the AFP is aware of possible vulnerabilities in the use of UAVs. In the event that the control of a UAV is lost or commandeered by an external controller, the information or imagery captured by the device could be accessed by the person capturing the craft. Although it is expected that the imagery would be unclassified information, it is possible that other, potentially classified information would be contained on the device. Although, it should be noted that generally, imagery obtained via a UAV is not classified material until such time as it becomes intelligence and is analysed. However, should the AFP move to a more regular use of UAVs it may be appropriate to stream data directly from the UAV to AFP networks. In this case, the AFP would implement controls to reduce the risk of compromise to Commonwealth information should the UAV's security be compromised.

Generally, the AFP collects, holds, uses and discloses personal information for purposes directly related to AFP functions or activities as set out in the *Australian Federal Police Act 1979* (Cth) and Ministerial Direction, only when necessary or directly related to such purposes. All records are handled and stored in accordance with the requirements of the *Archives Act 1983* (Cth), AFP Records Authority issued by the National Archives, and the Australian Government Protective Security Policy Framework. The Australian Federal Police is subject to the Australian Privacy Principles (APPs) as set out at Schedule 1 to the *Privacy Act 1988* (Cth). AFP compliance with the *Privacy Act 1988* (Cth) is set out in the AFP Privacy Policy.

The AFP and ADF have a long history of working together to address regional and global challenges, the use of unmanned platforms by the ADF may provide a unique opportunity to further collaborate by sharing imagery information between agencies in the appropriate circumstances. Methodology and technical information exchange would also be beneficial in gaining experience with this emerging capability. The AFP will continue to work with the ADF in the national interest and supporting the AFP's commitment to a whole-of-government approach to National Security and law enforcement.

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