

# CASA may lack power over UAVs

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THE Civil Aviation Safety Authority's ability to regulate drones has been called into question by a leading aviation legal expert who says his findings raise privacy and security issues.

UAS International chairman Ron Bartsch is publishing a thesis arguing that the ability to place electronic limits on drones could make some CASA rules restricting their use invalid under the constitution.

CASA rules prohibit drones that do not have the proper approval from flying above 400ft (122m) over populated areas, within 30m of a building or car or within 5.5km of an aerodrome or landing site. Other rules include that they operate during the day and in visual line of sight.

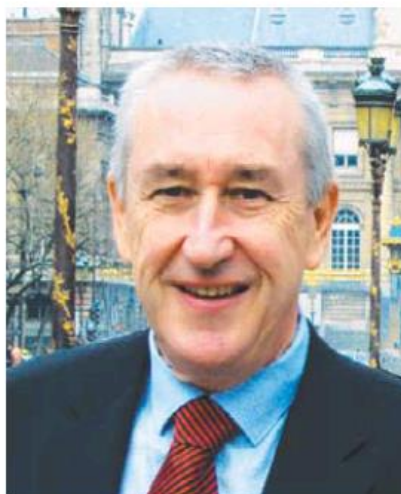
But Mr Bartsch contends that constitutional limitations on the federal government's ability to regulate aviation mean unmanned aerial vehicles (UAVs) equipped with "electronic fences or g-gates" that prevent them flying beyond a predefined height, or impose geographic restrictions, may be beyond CASA's regulations.

"It's really going to cause a bit of a headache," he said.

"And it's not something that anybody's really considered at this stage. It's going to be extremely contentious."

The problem for CASA is that a UAV incapable of flying into navigable airspace — usually above 400ft — does not "commingle" with other interstate and international aircraft.

Mr Bartsch said aviation was



**Ron Bartsch**

national laws. Commingling was first introduced in the US in the 1920s. It was first considered in Australia in 1936 in the prosecution of Henry Goya Henry after his flight under Sydney Harbour Bridge.

It became an accepted legal position endorsed by the High Court in the 1965 Airlines of NSW case, which found intrastate aviation could be federally regulated if it affected interstate or international aviation. This meant federal authorities controlled all aspects of aviation in navigable airspace, Mr Bartsch said.

But there are still limitations on issues not covered by the International Civil Aviation Organisation, such as insurance, which require the states to pass mirror legislation to cover purely intrastate flights.

Without this, Mr Bartsch said, CASA would be unable to regulate a drone incapable of ascending into navigable airspace but still capable of flying below it.

"This is going to open a real Pandora's box, particularly for human rights groups and for priv-

not mentioned in the constitution and the government relied on heads of power covering international or interstate trade, as well as those covering international obligations such as aviation's Chicago Convention, to make

acy and security issues," he said.

"It means that people can buy a UAV and if it's a type that's not capable of flying (in navigable airspace)... then CASA or the federal government will not have the ability to control it."