

BETWEEN:

**WORK HEALTH AUTHORITY**

Appellant

and

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**OUTBACK BALLOONING PTY LTD**

First Respondent

and

**DAVID BAMBER**

Second Respondent

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**OUTLINE OF ORAL ARGUMENT OF THE ATTORNEY-GENERAL FOR THE  
STATE OF TASMANIA (INTERVENING)**

**PART I: CERTIFICATION**

1. This outline of oral argument is in a form suitable for publication on the Internet.

**PART II: OUTLINE OF ORAL ARGUMENT**

*The reach of the Civil Aviation Law*

2. Accepting the Commonwealth's formulation of the subject matter of the Civil Aviation Laws (CA laws) as 'the regulation of the safety of air navigation', the CA laws do not  
30 operate to impose detailed safety standards or requirements relating to balloon inflation or embarkation operations (R [52]-[53]). The details are achieved by means of the Operations Manual. An Operations Manual as required by the CAR is to be appropriate and adapted to the specific operator (CAR 215).

3. The legislative norms of conduct imposed in relation to the Operations Manual by the CAA and CAR are, relevantly:
  - a. not to operate an aircraft without an Operations Manual (CAA s 28BD & CAR 215); and
  - b. to obey it (CAR 215(9)).
4. The regulation of safety of air navigation in this way does not evince an intention to exclude State or Territory laws relating to safety as they operate in relation to aircraft.

10 ***The subject matter is too broad***

5. The Respondent's formulation of the subject matter and purpose of the law at R [92] ('safety of persons and the management of risks to that safety') is too broad and is inconsistent with the Court's approach in adopting specific and confined subject matter formulations.

*New South Wales v The Commonwealth (Hospital Benefits Case)* (1983) 151 CLR 302; *Airlines No 2* above; *Commonwealth v Australian Capital Territory (Marriage Equality case)* (2013) 250 CLR 441; T[10]-[14].

***Exclusivity in the CAA***

6. Contrary to the Respondent's submission at R [24], the CAA does not bespeak  
20 exclusivity.
  - a. Section 3A requires a framework (not a code) for maintaining, enhancing and promoting civil aviation safety.
  - b. Section 9A imposes duties on CASA to have regard to the safety of air navigation safety. It does not provide an exclusive function.
7. We adopt Victoria's submissions in relation to s 28BE(5) of the CAA (V[18]-[19]).
8. While CASA may have functions which are properly exclusive, (cf. *Airlines of New South Wales v New South Wales (Airlines No 2)* (1965) 113 CLR 54, esp 95, per Barwick CJ) the relevant functions of CASA in s 9(1)(c) and (d) to develop and  
30 promulgate safety standards and enforcement strategies do not require exclusivity.

Contrary to the Respondent (R [24]) safety of air travellers is capable of being shared with State or Territory laws that supply protections from harm or death.

***Uniformity***

9. It does not follow from the provisions of the Chicago Convention that provide for uniformity that all aspects connected with civil aviation safety in Australia are to be secured by Federal civil aviation law, (cf. RS [21]) much less the safety of human beings from harm or death from anything connected with aviation.

a. Annex 6, cl 4.2.12 relating to safety measures in flight.

10 b. Safety is treated as a relative concept, judged by what is an acceptable level, in a scheme of continuing improvement (Annex 6 cl 3.3.3).

10. The Convention provides legislative context and history for the Federal regulation of civil aviation, but it is the terms of the Federal legislation that govern the question of exclusivity of the subject matter (T [29] & [37-43]).

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