IN THE HIGH COURT OF AUSTRALIA
BRISBANE REGISTRY

No. B61 of 2015

ON APPEAL FROM THE COURT OF APPEAL OF THE SUPREME COURT OF QUEENSLAND

BETWEEN: ROBINSON HELICOPTER COMPANY INCORPORATED
Appellant

and

GRAHAM JAMES McDERMOTT
First Respondent

and

JUANITA CAROL McDERMOTT
Second Respondent

and

NTB PASTORAL HOLDINGS PTY LTD (ACN 078 593 469)
Third Respondent

APPELLANT'S SUBMISSIONS

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Part I: Certification re Publication

1. These submissions are in a form suitable for publication on the Internet.

Part II: Issues

2. Whether the Court of Appeal erred by overturning findings of fact, made by the trial judge, which were not demonstrated to be glaringly improbable or contrary to compelling inferences.

3. Whether the appellant - a manufacturer of helicopters - is to be held liable under ss 75AD or AE of the *Trade Practices Act 1974* (Cth) or in negligence, because the maintenance manual it published for the R22 helicopter called for maintenance engineers to "verify security" of certain parts during inspections, without specifying that could be done by the application of a particular method (the use of a wrench or torque wrench) - in circumstances where the maintenance engineers to whom the manual was directed were aware of what that phrase meant.

4. Whether it was right for the Court of Appeal to hold the appellant liable without consideration of whether its negligence or the existence of the defect in the goods for the purposes of ss 75 AD or AE of the *Trade Practices Act 1974* (Cth), was causative of any loss.

Part III: *Judiciary Act 1903*, s 78B

5. The appellant considers that notice is not required pursuant to s 78B of the *Judiciary Act 1903* (Cth).

Part IV: Citations

6. The decision of the Supreme Court of Queensland is unreported. Its medium-neutral citation is: *McDermott & Ors v Robinson Helicopter Company* [2014] QSC 34.

7. The decision of the Court of Appeal is unreported. Its medium-neutral citation is: *McDermott & Ors v Robinson Helicopter Company Incorporated* [2014] QCA 357.

Part V: Facts

8. On 30 May 2004, the first respondent was a passenger in a Robinson R22 helicopter. He was inspecting fences on a vast cattle station in the Northern Territory, where he lived with his wife, the second respondent. The third respondent - of which the first respondent was the director and shareholder - owned the cattle station and the helicopter.

9. The helicopter crashed. Its pilot was killed, and the first respondent was seriously injured[1].The appellant was the manufacturer of the helicopter.

10. A failure of the helicopter's forward flexplate was the cause of the crash.[2]

11. The flexplate is part of the helicopter's drive system. It transfers torque from the engine to the main rotor gear box, which, in turn, drives the main rotor drive shaft, causing the rotor blades to rotate[3].

12. That failure occurred because, during maintenance, someone – not the appellant[4] – negligently installed one of the bolts (**Bolt 4**) connecting the flexplate to the main rotor gearbox yoke.[5] Specifically, and contrary to the appellant's maintenance instructions[6], Bolt 4 had not been assembled with its correct constituent parts, nor had it been torqued to 240 inch-pounds as required. The result was that Bolt 4 had no clamping force[7] (**the Defect**).

13. Instructions for the installation of Bolt 4 were contained in the R22 Maintenance Manual (**the Manual**). The appellant publishes the Manual. It is uncontroversial that those instructions were not followed in the installation of Bolt 4.

14. The identity of the person by whom the Defect was introduced was never proven. Jerry Lay, an expert called by the respondents opined that it was most likely introduced on 17 February 2004, during compliance with work required to be undertaken in satisfaction of an airworthiness directive. Mr Lay's thesis was that Bolt 4 had been inadvertently removed and it was never properly reassembled and re-torqued[8]. The experts of both parties generally agreed with that view.

15. The foregoing discussion about the introduction of the Defect is provided only by way of background. This appeal does not concern the introduction of the Defect itself; it concerns what occurred or, more relevantly, what did not occur - namely the identification of the Defect by those responsible for subsequently inspecting the helicopter - - after the Defect was introduced.

16. Pursuant to reg 42ZC of the *Civil Aviation Regulations 1988* (Cth), only Licensed Aircraft Maintenance Engineers – referred to in the aviation industry (and throughout the evidence and reasons of the court's below) as LAMEs – may carry out certain maintenance upon aircraft. The maintenance relevant to this case was of that kind. LAMEs are highly trained tradespeople who, in

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1 *McDermott & Ors v Robinson Helicopter Company* [2014] QSC 34 at [1] and [5].
2 *McDermott & Ors v Robinson Helicopter Company* [2014] QSC 34 at [10].
3 *McDermott & Ors v Robinson Helicopter Company* [2014] QSC 34 at [11].
4 *McDermott & Ors v Robinson Helicopter Company Incorporated* [2014] QCA 357 at [46].
5 *McDermott & Ors v Robinson Helicopter Company* [2014] QSC 34 at [14].
6 *McDermott & Ors v Robinson Helicopter Company* [2014] QSC 34 at [44].
7 *McDermott & Ors v Robinson Helicopter Company* [2014] QSC 34 at [24].
8 Report of Jerry Lay 4 November 2011, page 16

2004, were required to be licensed pursuant to reg 31 of the *Civil Aviation Regulations 1988*[9].

17. Under reg 42V of the *Civil Aviation Regulations 1988*, each LAME who performed maintenance on the helicopter was obliged to do so consistently with the Manual. The Manual provided that maintenance on the helicopter may only be carried out by LAMEs who had successfully completed the appellant's factory training course or were under the direct supervision of a LAME who had done so[10].

18. Consequently, those who performed maintenance upon the helicopter were not only required to be highly-trained specialists, but were, indeed, required to be members of a further specially trained subset of them. It was to that subset of LAMEs that the Manual was directed and, by its members, intended to be understood[11].

19. The Manual instructed that, after Bolt 4 had been installed and the specified amount of torque applied to it, a strip of paint – a "torque stripe" – should be applied from the extremity of Bolt 4, across each of its component parts and onto the adjacent gear box yoke[12]. The torque stripe's purpose is to serve as an indication of loss or torque in the bolt. Loss of torque leads to rotation of the bolt, which causes the torque stripe to break, thereby visually indicating the loss of torque.

20. The reliability of torque stripes as such an indicator, and the proper response to them, was a matter of controversy below.

21. Shortly after the Defect was introduced, Bolt 4 began to rotate in its bolt hole, because of its lack of clamping force[13]. Increased stress around the bolt hole caused: flexing in the tip of one of starfish-shaped flexplate's arms. That led to two cracks emanating from the bolt hole[14]. Eventually, one of those cracks reached the flexplate's edge and a piece of it broke away, causing loss of drive to the helicopter's main rotor. The helicopter lost control[15] and it crashed.

22. The respondents' complaint arises in the context of the Manual's requirement that the R22 helicopter must be inspected after every 100 hours of flight time. The Manual contained instructions for manner in which those inspections were to be conducted[16].

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9 Now reg 66.025 of the *Civil Aviation Safety Regulations 1988 (Cth)*.
10 Maintenance Manual, paragraph 1.003, Court of Appeal Record Book, Vol 3, page 1337.
11 Trial exhibit 1, Vol 3, Tab 7, page 812, paragraph 2.18.2.
12 *McDermott* & Ors *v Robinson Helicopter Company* [2014] QSC 34 at [17, [45].
13 *McDermott* & Ors *v Robinson Helicopter Company* [2014] QSC 34 at [156] to [157].
14 *McDermott* & Ors *v Robinson Helicopter Company* [2014] QSC 34 at [24].
15 *McDermott* & Ors *v Robinson Helicopter Company* [2014] QSC 34 at [25].
16 *McDermott* & Ors *v Robinson Helicopter Company* [2014] QSC 34 at [47].

23. Between the time the Defect was introduced and the date the helicopter crashed, it was subject to 100-hourly inspections carried out by Mr Bray and Mr Fisher – both of whom were LAMEs.

24. In respect of the flexplate, the Manual directed LAMEs to "inspect conditions, particularly edges, **Verify security**"[17] [sic, emphasis added], among other things.

25. The respondents alleged that the Manual was defective because it failed to provide adequate instructions for the identification and rectification of the Defect after it had been introduced, in particular by failing to specify the manner in which LAMEs were to "verify security"[18]. The respondents do not seek to impugn that part of the Manual's instructions which concern the installation of Bolt 4.

26. The trial judge found that while it may not be obvious to a lay person that the instruction to "verify security" is directed to the condition of the bolts (including, in this case, Bolt 4), it adequately did so for a LAME[21].

27. The trial judge found that the Manual made adequate provision for a method of identifying bolt rotation – namely, the application of torque stripes[22]. His Honour found that, in this case, the torque stripe had not been applied[23] and that the absence of the torque stripe (or a stripe which was deteriorated or broken) indicated a risk of bolt rotation, which called for further action[24].

28. By majority the Court of Appeal overturned the trial judge's decision[25] - Holmes JA - as the Chief Justice then was – dissented.

29. The majority found:

    (a) that indispensable to the trial judge's reasoning was the premise that reliance upon torque stripes as an indicator of the 'security' of each bolt is sufficient[26], which finding must stand or fall upon the reliability of torque stripes as indicators of a need to do nothing, or something, by way of checking each bolt manually rather than visually[27];

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17 *McDermott v Robinson Helicopter Company* [2014] QSC 34 at [47].
18 See *Seventh Amended Statement of Claim*, paragraphs 30(bbbb), 31(d), 40 and 42.
21 *McDermott* & Ors *v Robinson Helicopter Company* [2014] QSC 34 at [143].
22 *McDermott* & Ors *v Robinson Helicopter Company* [2014] QSC 34 at [154].
23 *McDermott* & Ors *v Robinson Helicopter Company* [2014] QSC 34 at [150].
24 *McDermott* & Ors *v Robinson Helicopter Company* [2014] QSC 34 at [146], [157], [159].
25 *Mc Dermott* & Ors *v Robinson Helicopter Company Incorporated* [2014] QCA 357.
26 *McDermott & Ors v Robinson Helicopter Company Incorporated* [2014] QCA 357 at [69].
27 *McDermott & Ors v Robinson Helicopter Company Incorporated* [2014] QCA 357 at [70].

(b) the evidence of the LAMEs and pilots left only one possible finding open: that the condition of the torque stripe on Bolt 4 was not such as to alert any of them to the need to investigate further[28];

(c) that applying a torque wrench would have revealed that the failed bolt was loose[29];

(d) the Manual did not instruct LAMEs that a deteriorated or incomplete torque stripe should be investigated by checking that the bolt was properly torqued and the torque stripe reapplied[30];

(e) the manual for at least one other manufacturer's helicopter (albeit one which had no flexplate) specifically required that the actual torque on critical fasteners be checked, with a torque wrench, at periodic services[31]; and

(f) the instructions in the Manual were inadequate[32].

30. In dissent, her Honour Justice Holmes found that:

(a) it was clear that the penultimate and final LAMEs who had inspected the helicopter (Messrs Bray and Fisher) were alive to the significance of an intact stripe, and that each had said that if he saw a stripe in a deteriorated state he would take action – by checking that the bolt was not moving, including by checking its torque[33];

(b) although it was not put to either Bray or Fisher that the torque stripe on Bolt 4 had been missing or broken (a point of criticism of the appellant's approach by the majority), that was in the context where the fact that their inspections had been defective was not in issue[34] and, implicitly, such criticism was unfounded;

(c) in any event, Bray's and Fisher's evidence was that neither Bray nor Fisher had any specific recollection of working on the helicopter[35];

(d) to the extent that there was an inconsistency in the trial judge's reasons on the question of the condition of the torque stripe on Bolt 4, it was "inconsequential" because, on the evidence, the only open possibilities – that no torque stripe was applied to Bolt 4 or that there had been a

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28 *McDermott & Ors v Robinson Helicopter Company Incorporated* [2014] QCA 357 at [78].
29 *McDermott & Ors v Robinson Helicopter Company Incorporated* [2014] QCA 357 at [84].
30 *McDermott & Ors v Robinson Helicopter Company Incorporated* [2014] QCA 357 at [88].
31 *McDermott & Ors v Robinson Helicopter Company Incorporated* [2014] QCA 357 at [91].
32 *McDermott & Ors v Robinson Helicopter Company Incorporated* [2014] QCA 357 at [101].
33 *McDermott & Ors v Robinson Helicopter Company Incorporated* [2014] QCA 357 at [36].
34 *McDermott & Ors v Robinson Helicopter Company Incorporated* [2014] QCA 357 at [37].
35 *McDermott & Ors v Robinson Helicopter Company Incorporated* [2014] QCA 357 at [38].

broken or degraded one present on it – were of a kind that was sufficient to put a LAME on alert[36];

(e) the views of other experts as to the significance of an incomplete torque stripe, upon which the majority had placed import and reliance, was irrelevant if the LAMEs who actually inspected the helicopter were alive to its importance[37];

(f) the evidence was that Bray and Fisher *had* understood that it was essential that anything less than a complete torque stripe required them to check Bolt 4's security – so, any failure of the Manual to communicate that necessity to a wider audience could not be causative of the respondents' loss[38]; and

(g) that the trial judge's findings were without error[39].

Part VI: Argument

Erroneous disturbance of findings of fact

31. The trial of this matter was lengthy – conducted over some five weeks. An array of lay and expert witnesses was called, and the trial judge received extensive written submissions from all parties.

32. Despite the obvious advantages enjoyed by the trial judge in those circumstances, after a one day hearing, the Court of Appeal interfered with the his Honour's findings of fact, and it did so in error, for the reasons set out below.

33. The majority concluded that the manual was defective. An essential step in that was (contrary to the trial judge's findings) the majority's finding that there was "only one possible finding open: that the condition of the torque stripe in Bolt 4 was *not* such as to alert [the LAMEs] of the need to investigate further"[40].

34. The trial judge had found that a torque stripe had not been applied to Bolt 4[41]. The majority rejected the trial judge's finding, and stated that there was no evidence to support it[42]. However, there was such supporting evidence:

(a) it was accepted by the parties that Bolt 4 had not been installed properly and had not been torqued;

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36 *McDermott & Ors v Robinson Helicopter Company Incorporated* [2014] QCA 357 at [39].
37 *McDermott & Ors v Robinson Helicopter Company Incorporated* [2014] QCA 357 at [40].
38 *McDermott & Ors v Robinson Helicopter Company Incorporated* [2014] QCA 357 at [40].
39 *McDermott & Ors v Robinson Helicopter Company Incorporated* [2014] QCA 357 at [41].
40 *McDermott & Ors v Robinson Helicopter Company Incorporated* [2014] QCA 357 at [78].
41 *McDermott* & Ors *v Robinson Helicopter Company* [2014] QSC 34 at [150].
42 *McDermott & Ors v Robinson Helicopter Company Incorporated* [2014] QCA 357 at [94].

(b) the evidence (in particular that of Dr Orloff) was that the usual and expected procedure to be followed was to apply the torque wrench to the bolt to achieve the required torque and then apply the torque stripe – Dr Orloff's evidence was that a LAME "would never put torque seal on an assembly that has not properly been torqued"[43].

35. The trial judge reasoned (correctly, it is submitted) that, in those circumstances, it was probable that the torque stripe had not been applied[44]. Dr Orloff's evidence about the usual and expected procedure was uncontroverted, and together with the absence of torque in Bolt 4 was a sound evidential foundation for the trial judge's conclusion.

36. If that reasoning is accepted – and the trial judge was right to do so - the absence of a torque stripe would plainly have alerted the LAMEs of the need to investigate further[45].

37. The matters set out in the preceding paragraphs militate strongly against the majority's finding that there was no evidence to support the trial judge's finding, and insofar as that formed the basis for their Honours' overturning the trial judge's finding, it was an error.

38. As an alternative, the trial judge found that the torque stripe, if it had been applied, would have broken or deteriorated to such an extent as to require the LAMEs to investigate further[46]. The majority also referred to these features but said they indicated that the stripes were "effectively useless as indicators of bolt movement or slippage"[47].

39. Torque stripes can break or deteriorate, and the mere fact that a torque stripe has broken or deteriorated does not establish that the bolt is rotating. The appellant does not contend that a broken or deteriorated torque stripe serves as a certain indicator of lack of torque or of subsequent bolt rotation.

40. However, what the appellant says – and the trial judge accepted, by reference to the evidence – is that the existence of a broken or deteriorated stripe should signal to a LAME the occasion to further investigate, in order to "verify security" of the bolt, to establish or exclude that rotation is occurring. To that end, a torque stripe is not an indicator of what is, it is an indicator of what may be – namely, a potentially catastrophic underlying defect.

41. The trial judge considered a contention that the torque stripe may have been applied to Bolt 4, but that it may have been applied to a "contaminated

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43 T4-63 line 30.
44 *McDermott v Robinson Helicopter Company* [2014] QSC 34 at [150].
45 *McDermott v Robinson Helicopter Company* [2014] QSC 34 at [152], [154], [157], [159].
46 *McDermott v Robinson Helicopter Company* [2014] QSC 34 at [146], [157], [159].
47 *McDermott & Ors v Robinson Helicopter Company Incorporated* [2014] QCA 357 at [75].

surface", with the result that the torque stripe might rotate with the bolt, and that an intact torque stripe might present itself, despite the lack of torque and attendant bolt rotation.

42. That theory was postulated *only* by Mr Leon Ogier, who had been called by the respondents. Mr Ogier's theory was premised upon what he said (although not part of the respondents' pleaded case) was the Manual's lack of instructions for the method of proper application of torque stripes, and on the possibility in the abstract - not by reference to evidence about this specific helicopter - that a torque stripe might have been applied to a "contaminated surface"[48].

43. The trial judge rejected that theory[49] because:

    (a) Mr Ogier had not practiced as a LAME for 30 years, and had no experience in maintaining R22 helicopters;

    (b) Mr Ogier's analysis of the Manual's instructions for the application of torque stripes was wrong;

    (c) no other expert's evidence corroborated the point;

    (d) it was "quite unlikely" that a LAME, familiar with the role of torque stripes, would apply a torque stripe to a contaminated surface; and

    (e) it was "quite unlikely" that a torque stripe would be applied to Bolt 4 in circumstances where the anterior step, namely applying torque, had not been performed. This was supported by the expert evidence of Dr Orloff[50] and not disputed by any other witness.

44. The Court of Appeal overturned the trial judge's finding[51], without dealing with any of those reasons. Instead, it found that there was "only one possible finding open: that the condition of the torque stripe in Bolt 4 was *not* such as to alert [the LAMEs] of the need to investigate further"[52] - ostensibly in reliance on the evidence of the LAMEs and pilots who had been called to give evidence[53].

45. As to that evidence, six points arise:

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48 *McDermott v Robinson Helicopter Company* [2014] QSC 34 at [148] to [150].
49 *McDermott v Robinson Helicopter Company* [2014] QSC 34 at [148] to [150].
50 T4-63, line 21 to 24; and T4-63, line 30 to 31.
51 *McDermott & Ors v Robinson Helicopter Company Incorporated* [2014] QCA 357 at [20] and [82]
52 *McDermott & Ors v Robinson Helicopter Company Incorporated* [2014] QCA 357 at [78].
53 *McDermott & Ors v Robinson Helicopter Company Incorporated* [2014] QCA 357 at [79].

(a) the trial judge had comprehensively considered that evidence[54];

(b) the evidence of the pilots can be cast aside, because none of them carried out an inspection that would have identified the presence or condition of the torque stripes – the nature of the pilots' inspection and the improbability that they would have been able to have seen the relevant torque stripes is a finding made by the trial judge[55] but not adverted to by the majority;

(c) both LAMEs were called, and it was accepted on the pleadings that they did not detect the Defect;

(d) Mr Bray was not qualified to carry out maintenance on the helicopter, because he had not completed the appellant's factory training course (as the Manual required)[56];

(e) Mr Fisher had been under pressure at the time of his inspection and, by his own admission, may have missed something[57]; and

(f) neither Mr Bray nor Mr Fisher had any specific recollection of the inspections they conducted on the helicopter[58].

46. Against that background, the Court of Appeal's reliance on the fact that the LAMEs and pilots had not identified the Defect is a poor foundation for concluding that the torque stripe was present but that its condition was such as to not alert them (acting reasonably) of the need for them to investigate Bolt 4 further.

47. Yet that foundation is what the majority of the Court of Appeal embraced and relied upon in overturning the trial judge's findings on this question.

48. Contrary to what A Wilson J held[59], the evidence permitted of more than "one possible finding". Another "possible finding" (indeed, the more probable finding on the evidence, and as the trial judge found[60]) is that the condition of the torque stripe on Bolt 4 – either that it was never applied, or that it had broken – was such as to have alerted the LAMEs to investigate the Defect, but that they simply overlooked it.

49. This Court has previously said that, to overturn the trial judge's findings, the Court of Appeal had to be satisfied that this is one of of those "quite rare

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54 *McDermott v Robinson Helicopter Company* [2014] QSC 34 at [22], [23], [61] to [63], [86], [94], [106], [144], [162], [199] to [202].
55 *McDermott v Robinson Helicopter Company* [2014] QSC 34 at [201], [232], [234].
56 T4-8, line 15.
57 T4-13, lines 1 to 15; T4-15, lines 25 to 35.
58 *McDermott & Ors v Robinson Helicopter Company Incorporated* [2014] QCA 357 at [38].
59 *McDermott & Ors v Robinson Helicopter Company Incorporated* [2014] QCA 357 at [78].
60 *McDermott v Robinson Helicopter Company* [2014] QSC 34 at [202].

cases" in which, although the facts may fall short of being "incontrovertible", the trial judge's decision was "glaringly improbable" or "contrary to compelling inferences": *Fox v Percy* (2003) 214 CLR 118 at 128, [29], per Gleeson CJ, Gummow and Kirby JJ. That approach has been more recently endorsed by this Court in *Miller & Associates Insurance Broking v BMW Australia Finance* (2010) 241 CLR 357 at [76] and in *ASIC v Hellicar* (2012) 247 CLR 345 at [130].

50. The members of the majority make no mention in their reasons of the test or of why the trial judge's findings were "glaringly improbable" or "contrary to compelling inferences".

51. Despite that, the President observed[62], in reasons in which her Honour generally agreed with Alan Wilson J:

> "...As the reasons of Holmes JA and the primary judge demonstrate, the resolution of this case was difficult and finely balanced."

52. That observation suggests that her Honour did not have the correct test in mind. If the matter was "difficult and finely balance", it cannot be said that the the trial judge's findings were "glaringly improbable or "contrary to compelling inferences".

53. For the reasons set out above, the findings overturned were neither "glaringly improbable" or "contrary to compelling inferences", and in those circumstances the majority erred in so doing.

Erroneous finding of breach of duty

54. The majority concluded that the appellant had breached its duty of care[63] or that the helicopter had a relevant defect. While the majority's reasons are, respectfully, opaque, the breach (for the purposes of the negligence claim) or defect identified (for the purposes of the claim under the *Trade Practices Act 1974*) seems to be that the Manual did not direct LAMEs to apply a torque wrench to Bolt 4 during 100 hourly inspections.

55. There are two problems with that approach.

56. *First*, the majority's conclusion was not open on the evidence. The majority failed to deal in their reasons with the fact that:

    (a) the Manual directed the technicians to "verify [the] security" of Bolt 4;

    (b) both Mr Bray and Mr Fisher knew that:

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62 *McDermott & Ors v Robinson Helicopter Company Incorporated* [2014] QCA 357 at 2.
63 *McDermott & Ors v Robinson Helicopter Company Incorporated* [2014] QCA 357 at [101] to [103].

(i) Bolt 4 was an important part of the security of the flexplate[64];

(ii) Bolt 4 had to be torqued to the degree specified in the manual[65]; and

(iii) the way to ascertain the torque of the nuts on Bolt 4 was to use a torque wrench[66]; and

(c) it was Mr Bray's usual practice to apply a spanner to the head of Bolt 4 in any event[67].

57. *Secondly*, the majority did not analyse why it was unreasonable (or defective) for the appellant not to have included that instruction in the Manual where there was evidence that the applicant had identified and considered countervailing risks that might be created by its doing so[68]. Section 9(1)(c) of the *Civil Liability Act 2003* (Qld) compelled their Honours to do that.

58. As a basis for its finding, the majority relied upon evidence about the contents of another helicopter manufacturer's manual[69]. However, the majority failed to deal with the evidence, or the applicant's submissions, to the effect that:

(a) the other manufacturer's helicopter was unlike the R22 because that helicopter used an older technology and required a significantly different maintenance regime from that required by the R22[70]; and

(b) in the circumstances, the contents of that other manufacturer's manual was irrelevant to an assessment of the adequacy of the Manual.

Failure to deal with the question of causation

59. While finding the appellant liable, the majority of the Court of Appeal did not (save for a conclusion drawn in passing by the President, without reasons or reference otherwise to any supporting evidence[71]) consider at all the question of causation, under:

(a) the general law or by those elements of which it was required by s 11 of the *Civil Liability Act 2003* (Qld) to be satisfied; and

(b) s75AD of the Trade Practices Act 1974 (Cth).

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64 T4-6, line 5, and T4-12, lines 23 to 27.
65 T4-6, line 20, and T4-12, lines 29 to 31.
66 T4-6, line 35, and T4-12, lines 43 and 45.
67 *McDermott & Ors v Robinson Helicopter Company Incorporated* [2014] QCA 357 at [30].
68 T5-46, line 55 to T5-47, line 1; *McDermott & Ors v Robinson Helicopter Company Incorporated* [2014] QCA 357 at [100].
69 *McDermott & Ors v Robinson Helicopter Company Incorporated* [2014] QCA 357 at [91].
70 T4-85, line 37 to 46; and T5-4, line 56 to T5-5, line 6; and T5-49, line 15 to 45.
71 *McDermott & Ors v Robinson Helicopter Company Incorporated* [2014] QCA 357 at [23].

60. The respondent contends that it was "common ground" that the LAMEs Bray and Fisher would have followed any direction in the manual[72]. The appellant denies that – no such concession was made in the pleadings or before the Court of Appeal.

61. As set out below, the question of causation remained live and was one which the majority was obliged to consider, but did not.

62. At trial, the respondents pleaded that the appellant's alleged negligence was the cause of their loss and damage[73]. The appellant denied that allegation[74].

63. In his reasons, the trial judge said[75] that:

(a) although the respondents had expressly referred to s 9 and 11 of the *Civil Liability Act 2003* (Qld) in their written submissions, they had not attempted to apply them directly to the facts of the case; and

(b) by reason of the conclusions his Honour had reached, s 11 of the *Civil Liability Act 2003* (Qld) was "irrelevant".

64. That approach is unsurprising in circumstances where no breach was found.

65. On appeal, the question of causation remained in issue.

66. The appellant submitted (in the first paragraph of its outline of argument) that: "if the Maintenance Manual was defective in the way for which the [respondents] contend... the [respondents] failed to prove that it was the cause of the [respondents'] loss and damage"[76].

67. In oral argument, Holmes JA engaged with the respondents' senior counsel directly on the respondents' causation theory[77]. In answer to her Honour's questions, it was not suggested that causation was not in issue.

68. The appellant went on to argue that:

(a) the Manual was predicated on the basis that maintenance on the helicopter would only be carried out by LAMEs who held the qualifications the Manual specified as being required[78];

(b) as to the alleged deficiency, in the Manual's not defining the term "verify security", there was no evidence that there was any doubt on the part of

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72 Transcript, Special Leave application – [2015] HCATrans 274, line 385 to 389.
73 Seventh Amended Statement of Claim, paragraphs 40 and 42.
74 Defence of the First Defendant to the Seventh Amended Statement of Claim, paragraphs 32 and 33.
75 *McDermott v Robinson Helicopter Company* [2014] QSC 34 at [243].
76 Outline of Argument on Behalf of the Respondent, paragraph 1(d).
77 Court of Appeal transcript, 1-21 (line 39) to 1-23 (line 33).
78 Outline of Argument on Behalf of the Respondent, paragraph 14(a).

the LAMEs Mr Bray and Mr Fisher as to what that meant and, to the contrary, there was evidence that they understood what it meant[79];

(c) on the evidence, neither Mr Bray or Mr Fisher required the term "verify security" to be defined in the Manual, because neither of them needed to be specifically told that a wrench was needed to verify the tightness of Bolt 4[80];

(d) the respondents' own experts had given evidence to the effect that – during the 100-hourly inspection - any reasonably competent maintainer of an R22 helicopter should verify the security of Bolt 4 by attaching a properly calibrated torque wrench to the head of the bolt[81]; and

(e) the evidence suggested that Mr Bray and Mr Fisher had not adopted "usual maintenance practice" – irrespective of what the Manual said – because they did not do what the respondents' experts contended a reasonably competent maintainer would do (namely, that described in the preceding paragraph above)[82].

69. In oral argument before the Court of Appeal, senior counsel for the appellant addressed the Court on matters touching upon the issue of causation, particularly:

(a) in respect of LAMEs responses to torque stripes, the usual practices of Mr Bray and Fisher[83];

(b) in respect of the open possibility on the evidence that the LAMEs failed to check the condition of Bolt 4 (that issue being the subject of direct questions by Holmes JA of the respondents' senior counsel, about which more is said below)[84]; and

(c) the fact that Mr Bray and Mr Fisher readily understood that they had to do the very things the respondents asserted made the Manual defective by not expressly directing them to do[85].

70. Each of those of the appellant's submissions, to which reference has just been made, were:

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79 Outline of Argument on Behalf of the Respondent, paragraph 22 to 24.
80 Outline of Argument on Behalf of the Respondent, paragraph 25.
81 Outline of Argument on Behalf of the Respondent, paragraph 27.
82 Outline of Argument on Behalf of the Respondent, paragraph 29.
83 Court of Appeal transcript, 1-31 (line 13 to line 30); 1-32 (line 23 to 40).
84 Court of Appeal transcript, 1-38 (line 35 to 38), which was a reference to submissions contained in the appellant's outline of argument
85 Court of Appeal transcript, 1-39 (line 6 to 30),

(a) concerned with the question of what the phrase "verify security" meant to LAMEs, and whether the absence of a definition in the manual was the cause of the respondents' loss and damage; and

(b) by the very nature of the allegation that the direction to "verify security" was deficient, inexorably concerned with the question of causation.

71. Those questions were (and remain) central to the appellant's case.

72. Only against that background can the appellant's "abandonment"[86] of its notice of contention before the Court of Appeal – by reference to which the respondents assert that causation was not in issue[87]– be properly understood.

10 73. The appellant's senior counsel:

(a) drew a distinction between grounds two to seven[88] and grounds eight to 11[89] of the notice of contention;

(b) observed that grounds two to seven had been "attracted by some of the width of things… raised by the notice of appeal", which had itself agitated some 19 grounds;

(c) expressly stated that "as the matter has been conducted, the question is what was required in order to verify security and the adequacy of that instruction to verify security…"[90] – which, as submitted in paragraph 70 above, required consideration of the question of causation;

20 74. What the appellant conceded by its senior counsel was that it was unnecessary for the Court of Appeal "to decide" certain questions positively framed by the notice of contention including, relevantly, that it was open to the trial judge to find that the cause of the respondents' loss and damage was negligence on the part of one of Mr Bray or Mr Fisher.

75. The fact that the Court of Appeal was invited not to decide that question is different from its obligation – both under common law and statute – to consider the question of whether the appellant's alleged breach was the cause of the respondents' loss and damage, before making a finding of liability against the appellant, whether for negligence or under s 75AD of the *Trade Practices Act* 30 *1974* (Cth).

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86 *McDermott & Ors v Robinson Helicopter Company Incorporated* [2014] QCA 357 at [23]; and see Court of Appeal transcript, 1-45 (line 47) to 1-46 (line 8).

87 Respondents' Summary of Argument in the special leave application, paragraph [35].

88 Court of Appeal transcript, 1-46 (line 1 and 6).

89 Court of Appeal transcript, 1-46 (line 8).

90 Court of Appeal transcript, 1-46 (line 8).

76. That was especially so in circumstances where no subsisting finding by the trial judge about causation had been made.

77. Indeed, before this Court, on the appellant's special leave application, despite asserting that causation was not in issue, the respondents' senior counsel made a submission which implicitly accepts that it was for the respondents to prove causation[91], by saying: "...**if** we established that the failure... to detect the defect was due to no instruction being contained in the manual, which would have served to direct them to that, then we win".

78. That "if" is the step overlooked by the majority of the Court of Appeal.

79. It is trite to observe that, as plaintiffs, the respondents bore the onus to prove:

(a) in their negligence case, that the alleged negligent act or omission on the part of the appellant caused the loss or injury constituting their damage: *Tabett v Gett* (2010) 240 CLR 537 at [111], per Kiefel J (with whom Hayne and Bell JJ agreed), and s 12 of the *Civil Liability Act 2003* (Qld); and

(b) in their claim under s 75AD of the *Trade Practices Act 1974* (Cth), in addition to the defect complained of and the fact of their injury, that the injury came about because of the defect, applying a common sense approach: *Carey-Hazell v Getz Bros & Co (Aust) Pty Ltd* (2004) ATPR ¶42-014 at [191] to [195], per Kiefel J, and s 12 of the *Civil Liability Act 2003* (Qld).

80. To find the applicant liable, the majority was obliged to consider and make findings as to how the absence from the Manual of a direction to apply a torque wrench to Bolt 4 during the 100 hourly inspection, was causative of the respondents' loss, in circumstances where:

(a) the Manual directed LAMEs to "verify security";

(b) the Manual did not direct LAMEs *not* to apply a torque wrench to Bolt 4;

(c) Bray and Fisher knew that the only way they could be certain that Bolt 4 was torqued to the proper degree was to apply a torque wrench[93];

(d) there was no evidence – in circumstances where the respondents bore the onus of proof – that if the Manual had contained such an instruction Bray and Fisher would have necessarily followed it, but there was

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91 Special Leave transcript at line 411 to 414.
93 T4-6, line 20 to 35; T4-12, lines 23 to 45.

evidence that they did not necessarily follow the Manual while conducting 100 hourly inspections[94]; and

(e) Bray had not completed the applicant's factory training course and, in the premises, was not qualified and competent to conduct a 100 hourly inspection of an R22 in any event[95].

81. The Court of Appeal did not deal with that evidence or provide any explanation of how, against that background, any difference in the Manual would have prevented the loss and damage sustained by the respondents.

82. By contrast, in dissent, Holmes JA dealt expressly with causation and, by reference to the evidence, found (properly, with respect) against the respondents[96].

83. For the reasons set out above, the Court of Appeal erred.

Part VII: Provisions, statutes, regulations

84. Please refer to Annexure 1.

Part VIII:

85. The appellant seeks the following orders:

(a) That the appeal be allowed.

(b) That the orders of the Court of Appeal of the Supreme Court of Queensland delivered on 19 December 2014 in appeal number 3840 of 2014 be set aside and, in its place, an order that the appeal be dismissed with costs.

(c) That the respondents pay the appellant's costs of and incidental to this appeal.

(d) Such further or other order as the Court deems appropriate.

Part IX:

86. The appellant's estimate is that 3 hours will be required for the presentation of its oral argument.

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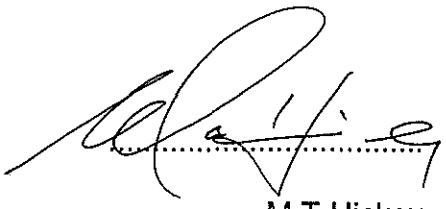
94 T4-6, line 50, and T4-13, lines 20 to 38.
95 T4-8, line 15.
96 *McDermott & Ors v Robinson Helicopter Company Incorporated* [2014] QCA 357 at [40].

Dated: 27 November 2015



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ANNEXURE 1 TO PART VII OF APPELLANT'S SUBMISSIONS

LEGISLATIVE PROVISIONS

With this annexure are the applicable constitutional provisions, statutes and regulations as they existed at the relevant time, set out verbatim.

These provisions, except Items 2, 5 & 6 are still in force, in this form, at the date of making the submissions.

As to Item 2: the Civil Aviation Safety Authority introduced a new approach to licensing licensed aircraft maintenance engineers (LAMEs) as Part 66 of the *Civil Aviation Safety Regulations 1988,* and those licensing regulations replace regulation 31 of the *Civil Aviation Regulations 1988*. Reg 31 was in effect at all relevant times and thus the new provisions of Part 66 of *the Civil Aviation Safety Regulations 1988* are not applicable to this case.

As to Items 5 & 6: While the *Trade Practices Act 1974* has been supplanted by the *Competition and Consumer Act 2010*, the provisions of the new Act are not applicable to this case.

No.	Description of Document	Pages
1.	Regulation 2A of the *Civil Aviation Regulations 1988* (Cth)	1 – 3
2.	Regulation 31 of the *Civil Aviation Regulations 1988* (Cth)	4 - 6
3.	Regulation 42V of the *Civil Aviation Regulations 1988* (Cth)	7 - 8
4.	Regulation 42ZC of the *Civil Aviation Regulations 1988* (Cth)	8 - 11
5.	Section 75AD of the *Trade Practices Act 1974* (Cth)	12 -13
6.	Section 75AE of the *Trade Practices Act 1974* (Cth)	13 – 14
7.	Section 9(2) of the *Civil Liability Act 2003* (Qld)	15 - 16
8.	Section 11 of the *Civil Liability Act 2003* (Qld)	17 – 18
9.	Section 12 of the *Civil Liability Act 2003* (Qld)	18

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Civil Aviation Regulations 1988

Statutory Rules 1988 No. 158 as amended

made under the

Civil Aviation Act 1988

This compilation was prepared on 20 February 2004
taking into account amendments up to
Act No. 105, 2003 and SR 2003 No. 365

The text of any of those amendments not in force
on that date is appended in the Notes section

This document has been split into five volumes
Volume 1 contains Parts 1 to 4D
Volume 2 contains Part 5
Volume 3 contains Parts 7 to 20.
Volume 4 contains the Schedules
Volume 5 contains the Notes
Each volume has its own Table of Contents

Prepared by the Office of Legislative Drafting,
Attorney-General's Department, Canberra

(b) the vertical dimension of an object;

as the case requires.

(11) For the purposes of these regulations, any reference to endorsement in a licence or other document shall be read as a reference to endorsement on the document, and matter shall be deemed to be endorsed on a document if it is written on any part of the document.

(12) A provision in these regulations that requires, prohibits or authorises the doing by an aircraft or a person of an act or thing at night or by night shall be read as a provision that requires, prohibits or authorises, as the case may be, the doing by the aircraft or the person of the act or thing when the aircraft or person is at or over a place:

(a) if a period has been determined in accordance with regulation 310 in respect of the area in which the place is — at any time in that period; or

(b) in any other case — at any time after evening civil twilight at that place has ended and before morning civil twilight at that place next commences.

(13) Notes in square brackets in these regulations are included for information only and do not form part of the regulations.

2A Approved maintenance data

(1) Subject to subregulation (3), the approved maintenance data for an aircraft, aircraft component or aircraft material consists of the requirements, specifications and instructions that are:

(a) contained in the maintenance data set out in subregulation (2); and

(b) applicable to the maintenance of the aircraft, aircraft component or aircraft material, as the case requires.

(2) For the purposes of paragraph (1) (a), the maintenance data are:

(a) requirements in:

(i) regulations 42U, 42W, 42X, 42Y, 42Z and 42ZA or in instruments made under those regulations; and

(ii) directions (however described) made under an airworthiness directive or under regulation 25, 38 or 44;

being requirements that specify how maintenance on aircraft, aircraft components or aircraft materials is to be carried out; and

(b) specifications in documents or designs approved under regulations 22 or 35 by CASA or by authorised persons as to how maintenance on aircraft, aircraft components or aircraft materials is to be carried out; and

(c) instructions, issued by the manufacturers of aircraft, aircraft components or aircraft materials, that specify how maintenance on the aircraft, components or materials is to be carried out; and

(d) instructions, issued by the designers of modifications of aircraft or aircraft components, that specify how maintenance on the aircraft or components is to be carried out; and

(e) any other instructions, approved by CASA under subregulation (4) for the purposes of this paragraph, relating to how maintenance on aircraft, aircraft components or aircraft materials is to be carried out.

(3) CASA may, for the purpose of ensuring the safety of air navigation, declare in writing that an instruction mentioned in paragraph (2) (c) or (d) that CASA thinks is deficient is not included in the approved maintenance data for an aircraft, aircraft component or aircraft material.

(4) CASA may, for the purposes of paragraph (2) (e), approve instructions relating to how maintenance on aircraft, aircraft components or aircraft material is to be carried out.

2B Powers to issue directions etc

(1) If:

(a) a provision of these regulations refers to a prescribed act done by CASA or an authorised person; and

(b) there is no provision of the Act or these regulations expressly authorising CASA or an authorised person to do the act:

30B Notice of events to be given

(1) Subject to subregulation (2), CASA may, by notice in writing given to the holder of a certificate of approval, require the holder to notify CASA of the happening of an event specified in the notice within a specified period.

(2) Events specified in the notice must be events that CASA thinks might adversely affect the carrying out of the activities covered by the certificate of approval.

(3) The holder of the certificate of approval must comply with the notice.

Penalty: 5 penalty units.

(4) An offence against subregulation (3) is an offence of strict liability.

Note For ***strict liability***, see section 6.1 of the *Criminal Code*.

31 Aircraft maintenance engineer licences

(1) A qualified person may apply to CASA for the issue of an aircraft maintenance engineer licence in one or more of the following categories:

(a) airframes;

(b) engines;

(c) radio;

(d) electrical;

(e) instruments.

(1A) CASA may issue to the person a licence in the category specified in the application.

(1B) When issuing a licence, CASA must endorse it with the category in which the licence is issued.

(2) CASA may, when issuing an aircraft maintenance engineer licence or at any time while such a licence is in force, enter an endorsement on the licence specifying the limits of the work to which the licence relates.

(2A) A person must not carry out work that exceeds the limits of the work specified in an endorsement on his or her licence.

Penalty: 25 penalty units.

(2B) An offence against subregulation (2A) is an offence of strict liability.

Note For ***strict liability***, see section 6.1 of the *Criminal Code*.

(3) CASA may, for the purpose of ensuring the safety of air navigation, include in an aircraft maintenance engineer licence an endorsement that the licence is issued subject to a condition set out in the endorsement or in a specified Part or Section of Civil Aviation Orders.

(3A) A person must not contravene a condition subject to which his or her licence is granted.

Penalty: 25 penalty units.

(3B) An offence against subregulation (3A) is an offence of strict liability.

Note For ***strict liability***, see section 6.1 of the *Criminal Code*.

(3C) It is a defence to a prosecution under subregulation (3A) if the defendant had a reasonable excuse.

Note A defendant bears an evidential burden in relation to the matter in subregulation (3C) (see subsection 13.3 (3) of the *Criminal Code*).

(4) In this regulation, ***qualified person*** means a person who:

(a) has attained the age of 21 years; and

(b) satisfies CASA that he or she possesses such knowledge as CASA requires of:

(i) the principles of flight of aircraft;

(ii) the assembly, functioning and principles of construction of, and the methods and procedures for the maintenance of, those parts of an aircraft that CASA considers relevant having regard to the licence sought; and

(iii) these regulations and the Civil Aviation Orders; and

(c) satisfies CASA that he or she has had such practical experience of the duties performed by a holder of the

licence sought as CASA requires and directs in Civil Aviation Orders; and

(d) satisfies CASA that he or she is not suffering from any disability likely to affect his technical skill or judgment; and

(da) satisfies CASA that he or she possesses sufficient knowledge of the English language to carry out safely the duties required to be performed by a holder of the licence; and

(e) has passed such examinations as CASA requires to be passed by an applicant for the licence sought.

(5) Any requirement formulated by CASA for the purposes of subregulation (4) shall be not less than the corresponding minimum requirement adopted in pursuance of the Convention.

(6) Where a person satisfies CASA that the person:

(a) is the holder of a licence equivalent to the licence sought issued by a competent authority in, and in force in accordance with the law of, a country other than Australia;

(b) has complied with the minimum conditions required under the Convention and with such other requirements as CASA specifies; and

(c) does not suffer from any disability likely to affect his or her technical skill or judgment;

CASA may, for the purposes of this regulation, treat the person as if he or she were a qualified person.

31A CASA may specify activities relating to categories

In Civil Aviation Orders, CASA may specify:

(a) the activities; and

(b) the parts of an aircraft or the aircraft components;

covered by a category referred to in subregulation 31 (1).

31B Classification of a category into ratings

In Civil Aviation Orders, CASA may:

(a) classify a category referred to in subregulation 31 (1) into ratings; and

Division 4 How maintenance is to be carried out

42U Modifications and repairs: approved designs

(1) A person may modify or repair an Australian aircraft only if:

(a) the design of the modification or repair:

(i) has been approved under regulation 35; or

(ii) has been specified by CASA in, or by means of, an airworthiness directive or a direction under regulation 44; or

(iii) is specified in the aircraft's approved maintenance data; and

(b) the modification or repair is in accordance with that design.

Penalty: 50 penalty units.

(2) An offence against subregulation (1) is an offence of strict liability.

Note For ***strict liability***, see section 6.1 of the *Criminal Code*.

42V Maintenance: approved maintenance data

(1) A person carrying out maintenance on an Australian aircraft must ensure that the maintenance is carried out in accordance with the applicable provisions of the aircraft's approved maintenance data.

Penalty: 50 penalty units.

Note Regulation 2A sets out what is approved maintenance data for an aircraft.

(2) Subregulation (1) has effect subject to the requirements of Division 5 ('Who may carry out maintenance').

(3) An offence against subregulation (1) is an offence of strict liability.

Note For ***strict liability***, see section 6.1 of the *Criminal Code*.

Penalty: 50 penalty units.

(3) An offence against subregulation (2) is an offence of strict liability.

Note For ***strict liability***, see section 6.1 of the *Criminal Code*.

42ZB Exemptions and variations

This Division has effect subject to Division 7 ("Exemptions from, and variations of, requirements").

Division 5 Who may carry out maintenance

42ZC Maintenance on Australian aircraft in Australian territory

(1) The holder of the certificate of registration for, the operator of, and the pilot in command of, an Australian aircraft must not authorise or permit any maintenance to be carried out on the aircraft in Australian territory by a person if the person is not permitted by this regulation to carry out the maintenance.

Penalty: 50 penalty units.

(2) An offence against subregulation (1) is an offence of strict liability.

Note For ***strict liability***, see section 6.1 of the *Criminal Code*.

(3) Subject to subregulation (5), a person may carry out maintenance on a class A aircraft in Australian territory if:

(a) the person:

(i) holds an aircraft maintenance engineer licence, an airworthiness authority or an aircraft welding authority covering the maintenance; and

(ii) either:

(A) holds a certificate of approval covering the maintenance; or

(B) is employed by, or working under an arrangement with, a person who holds a

certificate of approval covering the maintenance; or

(b) the following requirements are satisfied:

(i) the person is employed by, or working under an arrangement with, a person who holds a certificate of approval covering the maintenance; and

(ii) the maintenance is carried out under the supervision of a person who holds an aircraft maintenance engineer licence covering the maintenance and who either:

(A) holds a certificate of approval covering the maintenance; or

(B) is employed by, or working under an arrangement with, a person who holds a certificate of approval covering the maintenance; or

(c) the person is a pilot of the aircraft and is authorised to carry out the maintenance by the aircraft's approved system of maintenance; or

(d) the person is authorised by CASA under subregulation (6), or an authorised person under subregulation (7), to carry out the maintenance and the maintenance is carried out in accordance with any conditions subject to which the authorisation is given.

(4) Subject to subregulation (5), a person may carry out maintenance on a class B aircraft in Australian territory if:

(a) the person:

(i) holds an aircraft maintenance engineer licence, an airworthiness authority or an aircraft welding authority covering the maintenance; and

(ii) either:

(A) holds a certificate of approval covering the maintenance; or

(B) is employed by, or working under an arrangement with, a person who holds a certificate of approval covering the maintenance; or

(b) except where the maintenance is specified in Schedule 7, the person:

(i) holds an aircraft maintenance engineer licence, an airworthiness authority or an aircraft welding authority covering the maintenance; and

(ii) either:

(A) is not an employee; or

(B) is employed by another person who holds an aircraft maintenance engineer licence, an airworthiness authority or an aircraft welding authority; or

(c) the person carries out the maintenance under the supervision of a person who:

(i) holds an aircraft maintenance engineer licence covering the maintenance; and

(ii) is permitted by paragraph (a) or (b) to carry out the maintenance; or

(d) the person is the holder of a pilot licence (not being a student pilot licence) that is valid for the aircraft and the maintenance is specified in Schedule 8; or

(e) the person is authorised by CASA under subregulation (6) to carry out the maintenance and the maintenance is carried out in accordance with any conditions subject to which the authorisation is given.

(5) In spite of subregulations (3) and (4), a person may carry out maintenance on an aircraft component, or an aircraft material, if:

(a) the person is employed by, or working under an arrangement with, the holder of a certificate of approval that covers the maintenance; and

(b) in the case of maintenance that is either:

(i) an inspection using a non-destructive testing method; or

(ii) manual welding;

the person is authorised by CASA under subregulation (6) to carry out the maintenance and the maintenance is carried out in accordance with any conditions subject to which the authorisation is given.

(6) CASA may, in writing, authorise a person for the purposes of paragraph (3) (d) or (4) (e) or subregulation (5).

(7) An authorised person may, in writing, authorise a person for the purposes of paragraph (3) (d).

(8) An authorisation is subject to any conditions that:

(a) CASA or authorised person, as the case may be, considers are necessary in the interests of the safety of air navigation; and

(b) are included in the authorisation.

(9) For the purposes of this regulation, an aircraft maintenance engineer licence covers the maintenance if the licence:

(a) is issued in the category; and

(b) is endorsed with a rating;

that covers the maintenance.

(10) For the purposes of this regulation, an aircraft welding authority covers maintenance of a particular kind if the authority is issued for the type of manual welding and the parent metal group that is appropriate to that kind of maintenance.

42ZD Maintenance on Australian aircraft outside Australian territory

(1) The holder of the certificate of registration for, or the operator or pilot in command of, an Australian aircraft must not authorise or permit any maintenance to be carried out on the aircraft outside Australian territory by a person if the person is not permitted by this regulation to carry out maintenance.

Penalty: 25 penalty units.

(1A) An offence against subregulation (1) is an offence of strict liability.

Note For ***strict liability***, see section 6.1 of the *Criminal Code*.

(2) A person may carry out maintenance on an Australian aircraft outside Australian territory if:

Trade Practices Act 1974

Act No. 51 of 1974 as amended

VOLUME 1

This compilation was prepared on 1 March 2004
taking into account amendments up to Act No. 134 of 2003

The text of any of those amendments not in force
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be affected by application provisions that are set out in the Notes section

Volume 1 includes:	Table of Contents
	Sections 1 - 110
Volume 2 includes:	Sections 10.01 - 173
	Schedule
Volume 3 includes:	Table of Acts
	Act Notes
	Table of Amendments
	Notes
	Table A

Prepared by the Office of Legislative Drafting,
Attorney-General's Department, Canberra

TPA1974Vol1.doc 26/02/2004 2:29 pm

Section 75AD

75AD Liability for defective goods causing injuries—loss by injured individual

If:

(a) a corporation, in trade or commerce, supplies goods manufactured by it; and

(b) they have a defect; and

(c) because of the defect, an individual suffers injuries;

then:

(d) the corporation is liable to compensate the individual for the amount of the individual's loss suffered as a result of the injuries; and

(e) the individual may recover that amount by action against the corporation; and

(f) if the individual dies because of the injuries—a law of a State or Territory about liability in respect of the death of individuals applies as if:

(i) the action were an action under the law of the State or Territory for damages in respect of the injuries; and

(ii) the defect were the corporation's wrongful act, neglect or default.

75AE Liability for defective goods causing injuries—loss by person other than injured individual

(1) If:

(a) a corporation, in trade or commerce, supplies goods manufactured by it; and

(b) they have a defect; and

(c) because of the defect, an individual suffers injuries; and

(d) a person, other than the individual, suffers loss because of:

(i) the injuries; or

(ii) if the individual dies because of the injuries—the individual's death; and

(e) the loss does not come about because of a business relationship between the person and the individual:

then:

(f) the corporation is liable to compensate the person for the amount of the person's loss; and

(g) the person may recover that amount by action against the corporation.

(2) For the purposes of this section:

(a) a profession is taken to be a business; and

(b) a relationship between employer and employee or a similar relationship is a business relationship.

75AF Liability for defective goods—loss relating to other goods

If:

(a) a corporation, in trade or commerce, supplies goods manufactured by it; and

(b) they have a defect; and

(c) because of the defect, goods of a kind ordinarily acquired for personal, domestic or household use (not being the defective goods) are destroyed or damaged; and

(d) a person who:

(i) so used; or

(ii) intended to so use:

the destroyed or damaged goods, suffers loss as a result of the destruction or damage:

then:

(e) the corporation is liable to compensate the person for the amount of the loss; and

(f) the person may recover that amount by action against the corporation.

Queensland

CIVIL LIABILITY ACT 2003

Reprinted as in force on 8 December 2003
(includes commenced amendments up to 2003 Act No. 77)

Reprint No. 1A

This reprint is prepared by
the Office of the Queensland Parliamentary Counsel

PART 3—INTERPRETATION

8 Definitions

The dictionary in schedule 2 defines particular words used in this Act.

CHAPTER 2—CIVIL LIABILITY FOR HARM

PART 1—BREACH OF DUTY

Division 1—General standard of care

9 General principles

(1) A person does not breach a duty to take precautions against a risk of harm unless—

(a) the risk was foreseeable (that is, it is a risk of which the person knew or ought reasonably to have known); and

(b) the risk was not insignificant; and

(c) in the circumstances, a reasonable person in the position of the person would have taken the precautions.

(2) In deciding whether a reasonable person would have taken precautions against a risk of harm, the court is to consider the following (among other relevant things)—

(a) the probability that the harm would occur if care were not taken;

(b) the likely seriousness of the harm;

(c) the burden of taking precautions to avoid the risk of harm;

(d) the social utility of the activity that creates the risk of harm.

10 Other principles

In a proceeding relating to liability for breach of duty happening on or after 2 December 2002—

(a) the burden of taking precautions to avoid a risk of harm includes the burden of taking precautions to avoid similar risks of harm for which the person may be responsible; and

(b) the fact that a risk of harm could have been avoided by doing something in a different way does not of itself give rise to or affect liability for the way in which the thing was done; and

(c) the subsequent taking of action that would (had the action been taken earlier) have avoided a risk of harm does not of itself give rise to or affect liability in relation to the risk and does not of itself constitute an admission of liability in connection with the risk.

Division 2—Causation

11 General principles

(1) A decision that a breach of duty caused particular harm comprises the following elements—

(a) the breach of duty was a necessary condition of the occurrence of the harm (**"factual causation"**);

(b) it is appropriate for the scope of the liability of the person in breach to extend to the harm so caused (**"scope of liability"**).

(2) In deciding in an exceptional case, in accordance with established principles, whether a breach of duty—being a breach of duty that is established but which can not be established as satisfying subsection (1)(a)—should be accepted as satisfying subsection (1)(a), the court is to consider (among other relevant things) whether or not and why responsibility for the harm should be imposed on the party in breach.

(3) If it is relevant to deciding factual causation to decide what the person who suffered harm would have done if the person who was in breach of the duty had not been so in breach—

(a) the matter is to be decided subjectively in the light of all relevant circumstances, subject to paragraph (b); and

(b) any statement made by the person after suffering the harm about what he or she would have done is inadmissible except to the extent (if any) that the statement is against his or her interest.

(4) For the purpose of deciding the scope of liability, the court is to consider (among other relevant things) whether or not and why responsibility for the harm should be imposed on the party who was in breach of the duty.

12 Onus of proof

In deciding liability for breach of a duty, the plaintiff always bears the onus of proving, on the balance of probabilities, any fact relevant to the issue of causation.

Division 3—Assumption of risk

13 Meaning of "obvious risk"

(1) For this division, an **"obvious risk"** to a person who suffers harm is a risk that, in the circumstances, would have been obvious to a reasonable person in the position of that person.

(2) Obvious risks include risks that are patent or a matter of common knowledge.

(3) A risk of something occurring can be an obvious risk even though it has a low probability of occurring.

(4) A risk can be an obvious risk even if the risk (or a condition or circumstance that gives rise to the risk) is not prominent, conspicuous or physically observable.

(5) To remove any doubt, it is declared that a risk from a thing, including a living thing, is not an obvious risk if the risk is created because of a failure on the part of a person to properly operate, maintain, replace, prepare or care for the thing, unless the failure itself is an obvious risk.

Examples for subsection (5)—

1. A motorised go-cart that appears to be in good condition may create a risk to a user of the go-cart that is not an obvious risk if its frame has been damaged or cracked in a way that is not obvious.

2. A bungee cord that appears to be in good condition may create a risk to a user of the bungee cord that is not an obvious risk if it is used after the time the manufacturer of the bungee cord recommends its replacement or it is used in circumstances contrary to the manufacturer's recommendation.