



## HIGH COURT OF AUSTRALIA

6 February 2019

WORK HEALTH AUTHORITY v OUTBACK BALLOONING PTY LTD & ANOR  
[2019] HCA 2

Today the High Court, by majority, allowed an appeal from the Court of Appeal of the Supreme Court of the Northern Territory. The majority held that ss 19 and 32 of the *Work Health and Safety (National Uniform Legislation) Act* (NT) ("the NT WHS Act") are not inconsistent with a body of Commonwealth civil aviation laws ("the Commonwealth civil aviation law") which includes the *Civil Aviation Act 1988* (Cth) ("the CA Act").

Outback Ballooning Pty Ltd ("Outback Ballooning") operates a business in Alice Springs which provides rides in hot air balloons. In July 2013, an incident occurred during embarkation of one of the hot air balloons which resulted in the death of an intended passenger. The Work Health Authority ("the WHA") filed a complaint against Outback Ballooning under s 32 of the NT WHS Act, in which it was alleged that Outback Ballooning failed to comply with the duty imposed on it by s 19(2) of that Act to ensure, so far as is reasonably practicable, that the health and safety of persons was not put at risk from work carried out as part of the conduct of its business. The WHA's complaint was particularised as a failure to eliminate or minimise risks to embarking passengers that arose from the use of a fan to inflate the hot air balloon. The complaint was dismissed by the Northern Territory Court of Summary Jurisdiction as invalid on the basis that the subject matter of the complaint was within the field covered by the Commonwealth regulatory scheme with respect to aviation.

The WHA sought an order in the nature of certiorari in the Supreme Court of the Northern Territory, which was granted on the basis that embarkation procedure, the subject of the complaint, is not so closely connected with safety in flight as to be exclusively regulated by the Commonwealth civil aviation law. The Court of Appeal allowed an appeal against that decision on the basis that the Commonwealth civil aviation law was a complete statement of the relevant law, which extended to the embarkation of passengers.

By grant of special leave, the WHA appealed to the High Court. By majority, the High Court held that, as a matter of construction, the NT WHS Act is not inconsistent with the Commonwealth civil aviation law. The CA Act in relevant respects is designed to operate within the framework of other State, Territory and Commonwealth laws. The NT WHS Act is one such law. The CA Act does not contain an implicit negative proposition that it is to be the only law with respect to the safety of persons who might be affected by operations associated with aircraft, including embarkation of passengers.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*