IN THE HIGH COURT OF AUSTRALIA
DARWIN REGISTRY **No. D4 of 2018**

BETWEEN:

WORK HEALTH AUTHORITY
Appellant

AND

OUTBACK BALLOONING PTY LTD
First Respondent

AND

DAVID BAMBER
Second Respondent

ATTORNEY GENERAL FOR WESTERN AUSTRALIA (INTERVENING)

OUTLINE OF ORAL ARGUMENT

PART I: SUITABILITY FOR PUBLICATION

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

PART II: OUTLINE OF ORAL SUBMISSIONS

No real conflict between laws (*WA Submissions* [8]-[13]; *Appellant's Reply* [13])

2. The ultimate question, when determining whether an irreconcilable conflict exists between a law of the Commonwealth and a law of the Northern Territory, is whether a real conflict exists between the two laws.

   Jemena Asset Management (3) Pty Ltd v Coinvest Limited (2011) 244 CLR 508, 525 [42] (The Court).

3. It is submitted that no such conflict arises.

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4. The two statutory regimes that the First Respondent states are in conflict deal with different subject matter and were enacted for different purposes.

5. The *Work Health and Safety (National Uniform Legislation) Act* 2011 (NT) (**NT WHS Act**) provides for a wide, balanced and nationally consistent framework to secure the health and safety of workers and other persons in workplaces (s 3(1)).

6. The *Civil Aviation Act* 1988 (Cth) (**CAA**) establishes a regulatory framework for maintaining, enhancing and promoting the safety of civil aviation, with particular emphasis on preventing aviation accidents and incidents (s 3A).

10 7. In following the conclusion in *Heli-Aust v Cahill*[1] that the Civil Aviation Law exhaustively regulated aviation safety, the Court of Appeal determined that there was a relevant conflict between the laws in question (CAB 68 – 70)[2]. However, inconsistency does not lie in the mere coexistence of two laws which are susceptible to simultaneous obedience.

Ex parte McLean (1930) 43 CLR 472, 483 (Dixon J).

8. The application of the NT WHS Act in this case does not impair, detract or alter the Civil Aviation Law.

Momcilovic v The Queen (2011) 245 CLR 1, 111 (Gummow J).

9. Section 28BE(5) of the CAA (*WA Submissions* [20]-[38]), expressly indicates
20 that the CAA is not intended to be an exhaustive statement of the law with respect to the duty to act with a reasonable degree of care and diligence in relation to activities conducted in the context of civil aviation.

Chicago Convention obligations not impaired (*WA Submissions* [22]-[24]; *Appellant's Reply* [12])

10. Contrary to the First Respondent's submission ([7(a)], [11]-[23]), the Chicago Convention does not positively require that the Civil Aviation Law prescribe

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[1] (2011) 194 FCR 502.
[2] At paragraph [55] of Southwood J's reasons, the references to paragraph [53] of the judgment appear to reference paragraph [48].

and enforce safety standards for the broad topic of "civil aviation" to the exclusion of workplace health and safety regimes.

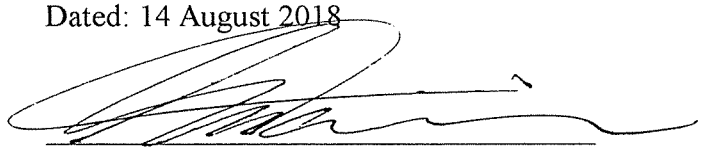
11. Unless the nature of the subject matter requires that there be only one, uniform law on the topic (which the safe embarkation of passengers does not), it defies logic to suggest that the fulfilment of obligations to ensure safety in civil aviation is impaired by the benefits of a complementary and more comprehensive workplace safety regime, as exemplified in the detailed complaint (CAB 33 – 34).

The Civil Aviation Law is not exhaustive and the NT WHS Act is complementary

12. The complementary operation of the Civil Aviation Law and NT WHS Act, and the non-exhaustive nature of the Civil Aviation Law, is demonstrated by the present case.

13. The specific rules and obligations contained in the Civil Aviation Law (First Respondent's Submissions at [52] to [64]) are complemented, not impaired, by the broad duties of care imposed by the NT WHS Act.

Dated: 14 August 2018



George Tannin SC