



# Legal Considerations for the RPA Industry of the Future

PRESENTED BY

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# Introduction

Two challenging areas for RPA Industry:

1. Interaction between Federal, State and Local regulation of RPA operations.

A High Court decision ***Work Health Authority v Outback Ballooning Pty Ltd [2019] HCA 2*** was handed down on **6 February 2019** with potentially significant ramifications for the RPA industry

2. Contentious issue of privacy law in Australia and how it applies to RPA operations.

The issue is very much a developing issue, which, if not handled correctly, could end up imposing significant restrictions on the use of RPAs

# Part 1: Interaction between Federal, State and Local Government Laws and Regulations

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# Regulations and Restrictions on RPA Usage

## Commonwealth Regulation:

- Civil Aviation Act 1988 (Cth) – Comprehensively regulates the **safety** of civil aviation in Australia – including RPA
- Civil Aviation Safety Regulations 1998 (Cth) (CASR) - Part 101 – regulates unmanned aircraft

## State:

- State and Local Governments also enacting laws restricting drone operations
- Examples:
  - Major Events Act 2009 (NSW) – e.g. ASEAN summit, Cricket World Cup, Asian Cup soccer
  - National Parks and Wildlife (National Parks) Regulation 2016

# *Work Health Authority v Outback Ballooning Pty Ltd*

## [2019] HCA 2

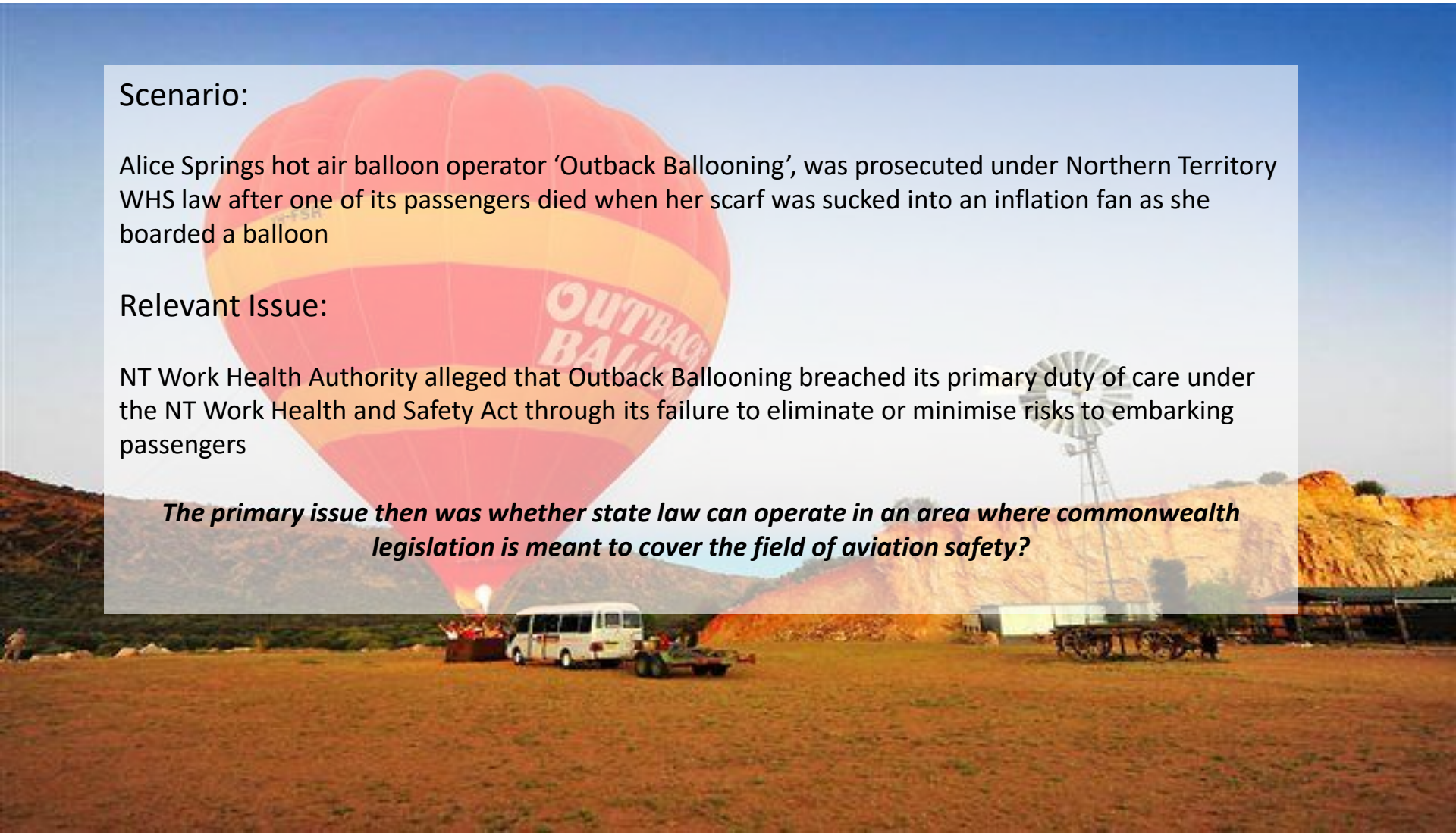
### Scenario:

Alice Springs hot air balloon operator 'Outback Ballooning', was prosecuted under Northern Territory WHS law after one of its passengers died when her scarf was sucked into an inflation fan as she boarded a balloon

### Relevant Issue:

NT Work Health Authority alleged that Outback Ballooning breached its primary duty of care under the NT Work Health and Safety Act through its failure to eliminate or minimise risks to embarking passengers

***The primary issue then was whether state law can operate in an area where commonwealth legislation is meant to cover the field of aviation safety?***



# *Work Health Authority v Outback Ballooning Pty Ltd* [2019] HCA 2

## Conclusion:

Court held sections 19 and 32 of the NT WHS Act are not inconsistent with the Commonwealth civil aviation regime and concluded that the Civil Aviation Act cannot be said to be the only law with respect to the safety of persons who might be affected by operations associated with aircraft.

## Consequences:

- Operators subject to **both** Commonwealth **and** State or Territory Laws
- Costs of defending against alleged breaches of State or Territory Laws significant
- Time and expense in re-evaluating procedures and practices to conform with not only Federal but State or Territory laws and regulations
- Even more confusion for RPA operators as to what laws apply, where

# Local Government / Council regulation

## Increasing local Council regulation as drone use increases:

- Differ widely across Australia
- Victorian Moonee Valley Council – prohibits commercial or recreational operation on Council land without a permit
- Councils general have jurisdiction over use of land and may have power to regulate
- Incumbent on operators to find out what restrictions may apply in each location – at a local, State and Federal level



# Law reform

Senate inquiry released report in July 2018 and Government responded late last year.

Recommendation	Government response
Conduct or draw on research re collision testing of RPAs under 2kg	Notes
Implement a mandatory registration regime	Agrees
Implement a tiered mandatory education and accreditation program	Notes
Prohibit RPAs in airspace above significant public buildings, critical infrastructure and vulnerable places	Agrees in principle
Work with manufacturers to develop technical safety features such as restrictions on altitude and distance for off-the-shelf RPAs	Notes
Develop airworthiness standards for RPAs of all sizes and operations. At a minimum, fail-safe functions such as 'return to home' safe landing functionality and forced flight termination, should be mandated	Agrees in principle
Develop import controls on RPAs	Does not agree
Develop a whole-of-government policy for RPAs in Australia - <i>“the harmonisation of state and territory privacy laws should also be considered”</i>	Agrees in principle
Implement a comprehensive research and data gathering regime	Agrees in principle
Implement a nationally consistent enforcement regime for remotely piloted aircraft systems. Under this regime, enforcement bodies would be delegated powers to provide on-the-spot fines and report infringements of the regulations directly to CASA.	Agrees



# Part 2: Privacy Law in Australia

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# Privacy Law landscape in Australia

## Applicability to RPA operations:

- Primary concern for the public: Standing Committee on Economic Development and Tourism is calling for submissions to its inquiry into RPA delivery systems in the ACT.
- Civil Aviation legislative regime regulates safety-related matters, ***not privacy implications***.
- No common law tort of privacy.



# Privacy Law landscape in Australia cont.

## Landscape:

- **Commonwealth legislation** – *Privacy Act 1988* (Cth) (respective States have similar legislation) – applies generally to government agencies and organisations with annual turnover over \$3million (some exceptions to apply to small businesses as well).
- Collecting, handling and disclosing ‘personal information’.
- Personal Information includes:
  - ‘Information or an opinion about an identified individual, or an individual who is reasonably identifiable:
    - a. whether the information or opinion is true or not; and
    - b. whether the information or opinion is recorded in a material form or not.’
- Personal information can be captured ***in any format***.

# Privacy Law landscape in Australia cont.

## Landscape:

- **State Surveillance legislation:**

State	Legislation
NSW	Surveillance Devices Act 2007
Victoria	Surveillance Devices Act 1999
South Australia	Surveillance Devices Act 2016
Western Australia	Surveillance Devices Act 1998
Northern Territory	Surveillance Devices Act 2007

# Privacy Law landscape in Australia cont.



## Landscape:

- **Common Law:**
- No common law tort of privacy
- Claims for nuisance? *Bernstein v Skyviews*
- Claims for trespass, interference with ordinary use or enjoyment of land?

# Mitigating Privacy Risks


## Steps:

1. Establish an internal privacy policy.
2. Assessment of projects should be undertaken to identify privacy impacts and any actions that need to be taken to minimise those impacts.
3. Ensuring systems that store information have adequate safeguards such as password protection and encryption to address vulnerabilities.
4. Give some basic form training to employees so that they are aware of good privacy practices and risks.



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