

# Northern Territory balloon crash: 13 die

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On a clear, cold August morning in 1989, four balloons rose into the brightening sky from Wallaby Flat, 15 kilometres south of Alice Springs. These were commercial flights catering for tourists. Each of the passengers had bought tickets hoping to experience something of the area and to have a bit of fun. One of the balloons, not long after take off, plummeted to the earth, killing all 13 occupants.

The Coroner found that one of the other balloons, piloted by Michael Sanby descended rapidly, causing its basket to collide with the balloon below it, tearing the balloon and allowing the hot air to escape, causing it to plunge to the ground. The Coroner, Mr D J Barritt found that "On the evidence that has been led and tendered before me, I am satisfied that Michael Sanby acted in a grossly negligent manner to an extent incurring criminal culpability".

The families of the 13 people killed in

the accident, brought actions in the Northern Territory against the company that operated the two balloons, as well as the pilot. It became quickly apparent that the Defendants had no assets. What took longer to emerge, was a lack of records kept by the Defendant company which prevented the identification of any insurer. There was also uncertainty as to whether an insurance policy, if discovered, would provide indemnity, given the findings of criminal culpability by the Magistrate.

Judgment was entered in all the matters without Defences being filed, but there continued to be little hope of recovering compensation. Because of the difficulties in locating any insurer to indemnify the Defendant and to avoid incurring any further expenses for the Plaintiffs, an examination of the Insurance Law was undertaken.

It was found that in New South Wales, the Australian Capital Territory and New Zealand there was legislation which enabled a third party to proceed directly against an insurer in certain circumstances. Unfortunately, there was no similar provision in the Northern Territory. The *Insurance Contracts Act 1984* did enable a party in the Northern Territory to proceed directly against an insurance company in certain circumstances, but contained an important exception in Section 9 sub-section 3 "This Act does not apply in relation to contracts and proposed contracts of insurance entered into or proposed to be entered in to in respect of air craft engaged in commercial operations".

Some of the Plaintiffs wrote to their Federal Members of Parliament. As a result, David Hawker, the Member for Wannon approached the former Labor Attorney General and then subsequently the Honourable Daryl Williams when he became Attorney General after the election of the Howard Government. The Government undertook to take the fami-

lies representation into consideration when reviewing the *Insurance Contract Act*. As a result, in December 1996, the *Insurance Contracts Act* was amended so that the only aircraft insurance policies excluded from the operation of the Act are commercial aircraft policies covering war risks.

The case raises important issues about insurance coverage. The tourist industry is one of Australia's major export earners and a substantial industry in its own right. Many overseas visitors have travel insurance which covers them for some of the risks that they undertake in travel. Australian tourists in their own country are less likely to have such insurance. In any event, many insurance policies exclude injuries sustained in recreational or other "dangerous" activities. The tourism industry will suffer if it does not ensure that its providers are adequately covered for insurance risks. It may even be an area in which the Government should legislate to compel insurance cover to be taken out.

The lesson to be learnt from the Alice Springs balloon crash for solicitors is that before undertaking litigation, adequate searches need to be made for the company's records, assets and insurance coverage. Where an investigation or an inquest is held, it may be possible to extract the information about insurance policies and coverage through the process of those enquiries and inquests. ■



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