



**Aviation Law Association of Australia and New Zealand
26th Annual Conference
Thursday, 3 May 2007, 9:15am
Conference Opening**

**The Hon Paul de Jersey AC
Chief Justice of Queensland**

I am very pleased to welcome you to this jurisdiction, and immediately to express the hope that you find the conference stimulating and helpful – even, dare I add, enjoyable.

For those of you who come from outside South-East Queensland, I can speak of one thing with absolute authority: there will over the next two days be perfectly fine weather. There will absolutely be no rain, not a drop. We have started praying, but heaven is light years away.

I was last associated with the conference in 1999. I was then privileged to deliver the David Boughen Memorial Address. My subject was “The disclosure in evidence of black box recordings”. I am very pleased to see that the memorial address endures, and that this year my colleague Justice Callinan of the High Court of Australia will deliver it.

I knew David Boughen personally for all his career at the Queensland Bar. He was an accomplished lawyer. His tragic death from the air substantially diminished a community which respected and admired him. His manner of death was especially tragic for his parents, because his father is himself an enthusiastic pilot. I express my gratitude to Justice Callinan for his preparedness to deliver this important address this year.

There are two features of the conference programme which particularly struck me. The first is the geographical reach of the Association in relation to its capacity to attract speakers – from Ottawa, Sao Paulo, London, New York, Germany – enough for us antipodeans to salivate. But then of course our overseas participants themselves are no doubt enthusiastic to be in Australia: and I particularly welcome our New Zealand cousins. I congratulate the Association on its capacity to attract high level international speakers, and I sincerely thank those speakers for their participation.



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By its very nature as a means of transporting people and goods from one country to another, aviation law issues cross national boundaries and involve the laws of many nations, and indeed, international law. Complex and unique multi-national issues arise in aviation, as may be seen with the Lockerbie bombing, for example, where the suitcase said to contain the explosive device was introduced as unaccompanied baggage in Malta, conveyed by an Air Malta flight to Frankfurt, then transferred onto a flight to Heathrow, for the fateful flight heading to New York. The 270 victims of the disaster were citizens of 21 nations, and the two men accused of the attacks were Libyan, tried, without a jury, by a Scottish Court constituted in the Netherlands on the site of a former US air force base. For the trial, witnesses came from the UK, USA, Libya, Japan, Germany, Malta, Switzerland, Slovenia, Sweden, the Czech Republic, India, France and Singapore. Languages translated in court were Arabic, French, Czech, Japanese, Swedish, Maltese and German. Civil proceedings were also brought in US Courts against the Libyan government by relatives of the victims.

Fortunately, tragedies such as these are rare, but the Lockerbie disaster does demonstrate that where aviation issues arise, many jurisdictions and legal systems are involved, and experienced and specialized practitioners are required. I note that session 4 will include discussion on Litigating Australian Accidents in the US

The second feature which struck me, but would I imagine to you be unsurprising, is the complication of the issues confronting aviation law in this era. Those who read the financial press are seized generally of the issues involved in competition for air routes, which of course involves executive as well as legal considerations. But to this humble common lawyer, there is a moment of professional self-doubt when from the programme I read topics such as: "General Aviation: Self Administration of VH Aircraft below 5700kg: Why not?", and "Space Law Liability". Are these issues for which I should be preparing the Judges of the Supreme Court of Queensland? Maybe not now, I suppose, but it is reassuring that relevant matters of prospective concern are now to be subjected to this sort of analysis and debate.



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It is interesting to think back to when aviation law itself was a matter of prospective, rather than current, concern. In a 1918 article in the South African Law Journal, an author made mention of “one of the first notable cases in which the aeroplane has figured in the law reports”, a case in which the pilots of two British planes were held to be entitled to bounty awarded for destroying an armed German cruiser in German East Africa (now known as Tanzania). The author speculated about the situation “if many thousands of aeroplanes are navigating the air over this country in a few years hence”. The author went on to comment presciently that “aerial travel will not end with the war. The great development in aviation due to the war, when turned to the more beneficial uses of peaceful occupation, will give rise to important legal questions.... The war will end some day, and the sky will be full, not with aeroplanes on military service, but with all kinds of aircraft plying for profit or pleasure, carrying passengers, no doubt, or even His Majesty’s mails”.

One wonders what the author would have made of the paying space tourists we hear of today, not to mention the 1967 Outer Space Treaty, the existence of a publication called the *Journal of Space Law*, and the startling claim by Ram Jakhu, associate professor of law at McGill University, that the increasing use of space for activities such as telecommunications, weather forecasting and military operations may result in a "shortage of space in space".

Aviation was described in 1930 by Manley O Hudson, Bemis Professor of International Law, Harvard Law School as a “wholly new and unexpected phase of international life”. The first multilateral agreement on international aviation law was made little over a decade earlier. Then, issues of territorial sovereignty with regard to airspace were being discussed, as “the hazards of aviation are still so great and the danger to persons on land so imminent”. Aviation and the law surrounding it has progressed a great deal since this time, but as all of you here today would well recognize, there are many challenges in aviation law that remain to be addressed. Indeed, Mr Hudson’s comments may be equally applicable today – the September 11 attacks again brought about a new and unexpected phase of international life, including, but of course not limited to, impacts upon the aviation



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industry. Though the hazards of aviation and the “danger to persons on land” are not what they were in the 1930s, hazards and dangers of course remain. Who could have foreseen that I would not be able to take a bottle of water on to certain international flights, and be required to remove my shoes before boarding?

As an avid air traveller, I was naturally attracted by the topic, “Security in the Current Aviation Environment”, attention to which inspires confidence. I am very pleased in that regard to note the participation in the conference of representatives of a number of major airlines.

I warmly wish you all well for an informed and stimulating conference, and it is now my great pleasure to declare open, the 26th Annual Conference of the Aviation Law Association of Australia and New Zealand.