COURT: MAGISTRATES COURT OF TASMANIA

CITATION: *Director of Public Prosecutions v Rosemary Gamble T/A Taz-Zorb [2025] TASMC* 3

PARTIES DIRECTOR of PUBLIC PROSECUTIONS
v
ROSEMARY GAMBLE t/as TAZ-ZORB

FILE NO: 91520/2023

DELIVERED ON: 6 June 2025

DELIVERED AT: Hobart

HEARING DATE: 5-8, 11-15, 18 November 2024 and 17 February 2025

DECISION OF: Magistrate R Webster

CATCHWORDS:

Work, health and safety legislation – Duties and offences – *Workplace Health and Safety Act* 2012 (Tas) (*WHS Act*), s32 – Failure to comply with health and safety duty - Wind event – Risk of death or serious injury - s19(2) *WHS Act* – whether defendant in conducting a business ensured, so far as was reasonably practicable, the health and safety of other persons was not put at risk from the operation of the business, s17 *WHS Act* – Management of risks - s18 *WHS Act* – What is reasonably practicable in ensuring health and safety.

Work Health and Safety Act 2012(Tas), ss 17, 18, 19, 32.

Saunders Civilbuild Pty Ltd v SafeWork New South Wales [2023] NSWCCA 261; *Whittaker v Northern Beaches Council (No 3)* [2018] NSWLEC 143, 235 LGERA 5; *Bulga Underground Operations Pty Ltd v Nash* [2016] NSWCCA 37, 93 NSWLR 338; *Simpson Design Associates Pty Ltd v Industrial Court of New South Wales* [2011] NSWCA 316, 213 A Crim R 340; *Nash v Resource Pacific Pty Ltd (No 3)* [2018] NSWSC 45; *Baiada Poultry Pty Ltd v The Queen* [2012] HCA 14; 246 CLR 92; *Laing O'Rourke (BMC) Pty Ltd v Kirwin* [2011] WASCA 117; *Kent v Gunns Ltd* [2009] TASSC 30; (2009) 18 Tas R 454; *MR & RC Smith Pty Ltd t/as Ultra Tune (Osborne Park) v Wyatt (No 2)* [2012] WASCA 110; *Director of Public Prosecutions v JCS Fabrications Pty Ltd and JMAL Group Pty Ltd* [2019] VSCA 50; *R v Anderson* [2000] VSCA 16; *R v AN; R v LM* [2022] NSWSC 776; *Velevski v R* (2002) 187 ALR 233, [2002] HCA 4; *Ussher-Clarke v R* [2018] NSWCCA 61; *National Foods Milk Ltd v Smith* [2006] TASSC 24; *Chugg v Pacific Dunlop Ltd* [1990] HCA 41; (1991) 170 CLR 249; *Chugg v Pacific Dunlop Ltd (No 2)* [1993] 3 VR 934 at 940 – 945; *R v Australian Char Pty Ltd* [1999] 3 VR 834; *Slivak v Lurgi (Australia) Pty Limited* [2001] HCA 6, (2001) 205 CLR 304; *Dinko Tuna Farmers v Markos* [2007] SASC 166; (2007) 98 SASR 96; *Wyong Shire Council v Shirt* [1980] HCA 12; 146 CLR 40; *Tenix Defence Pty Ltd v MacCarron* [2002] WASCA 165.

REPRESENTATION:

***Counsel*:**

Prosecution: M Wilson SC and E Bill

Defendant: C Dockray SC

Solicitors:

Prosecution: Director of Public Prosecutions

Defendant: Clyde and Co

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DIRECTOR of PUBLIC PROSECUTIONS v ROSEMARY GAMBLE t/as TAZ-ZORB

REASONS FOR DECISION **WEBSTER, R**
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INTRODUCTION

1. On Thursday 16 December 2021, students and staff of Hillcrest Primary School (the School), situated at 5 Lawrence Drive Devonport, were celebrating the end of the school year with an activities day called the "Big Day In". The Big Day In was held at the School with various activities split between four separate zones at the School, with students rotating through the activities over the course of the day. One of the zones was on the School oval. A teacher at the School had engaged the defendant, Rosemary Gamble (Ms Gamble), to provide and operate an inflatable jumping castle and zorb balls together with an inflatable border (the zorb ball arena) which was used to contain the zorb balls when in use. Ms Gamble was assisted in the operation of the inflatable devices at the Big Day In on the School Oval by Robert Monte and Jesse Barrett.

2. The jumping castle had been inflated and pegged down to the ground in four places. The jumping castle was connected to a yellow fan (the blower) which was used to inflate the jumping castle. The blower was plugged into a power socket in a nearby classroom using an extension cord. In addition to the jumping castle, Ms Gamble provided four zorb balls, which were contained inside an inflatable zorb ball arena or barrier which was inflated and not connected to a blower. The zorb ball arena was pegged down in six places. The defendant also set up a three metre by three metre gazebo between the jumping castle and zorb ball arena, to sit under and use as a workstation. This was secured by four pegs. At the time the inflatable devices and the gazebo were setup, it was calm and sunny, there was no wind, just dry heat, with perhaps the slightest breeze.

3. At approximately 10:00am witnesses describe a strong wind which came out of nowhere. The prosecution case is that at this time, three students, namely JW, DB and AP, were in zorb balls in the zorb ball arena. The fourth ball, a purple one, was being repaired by Mr Monte and it was ripped out of his hands by the wind. The three balls containing the students were lifted into the air. The pink zorb ball containing DB landed heavily near the soccer goals, JW's zorb ball landed on the western side of the oval and AP was assisted out of her zorb ball by friends. At the same time, Jye Sheehan, Jalailah Jones, Zane Mellor, Chace Harrison, Peter Dodt, LR and BM were on the jumping castle when it was lifted into the air by the wind. BM fell from the slide of the jumping castle as it became airborne. Master Sheehan fell from the jumping castle shortly afterwards, and the remaining children were carried on the jumping castle by the wind to the eastern side of the oval where the castle landed. In addition, the prosecution allege Addison Stewart was lined up to take a turn on the zorb balls when the jumping castle became airborne. As that occurred the blower attached to the jumping castle was also lifted and it hit her in the head. Tragically six children died in this incident and others suffered serious injuries to varying degrees (the incident).

4. Prior to the commencement of the hearing, I conducted a view at the School Oval and of the jumping castle, zorb ball arena, zorb balls and blower on 4 November 2024.

THE PROSECUTION CASE AND THE DEFENDANT'S POSITION

5. Ms Gamble has been charged on Complaint 91520/2023 with a failure to comply with a work, health and safety duty, contrary to s32 of the *Work Health and Safety Act* 2012 (the Act). That provision is as follows:

> *"A person commits a Category 2 offence if –*
>
> *(a) the person has a health and safety duty; and*
>
> *(b) the person fails to comply with that duty; and*
>
> *(c) the failure exposes an individual to a risk of death or serious injury or illness.*
>
> *Penalty: In the case of –*
>
> *(a) an offence committed by an individual (other than as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking), a fine not exceeding $150 000; or*
>
> *(b) an offence committed by an individual as a person conducting a business or undertaking or as an officer of a person conducting a business or undertaking, a fine not exceeding $300 000; or*
>
> *(c) an offence committed by a body corporate, a fine not exceeding $1 500 000."*

Parliament has determined the penalty for this offence is a fine. That is imprisonment is not a sentencing option with respect to someone who is found guilty of this offence.

6. The prosecution allege that on 16 December 2021, Ms Gamble was a person conducting a business or undertaking within the meaning of the Act. Accordingly, Ms Gamble owed a duty pursuant to s19(2)[1] of the Act to ensure, so far as is reasonably practical, that the health and safety

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[1] **19. Primary duty of care**

(1) A person conducting a business or undertaking must ensure, so far as is reasonably practicable, the health and safety of –

(a) workers engaged, or caused to be engaged by the person; and

(b) workers whose activities in carrying out work are influenced or directed by the person –

while the workers are at work in the business or undertaking.

(2) A person conducting a business or undertaking must ensure, so far as is reasonably practicable, that the health and safety of other persons is not put at risk from work carried out as part of the conduct of the business or undertaking.

(3) Without limiting subsections (1) and (2) , a person conducting a business or undertaking must ensure, so far as is reasonably practicable –

(a) the provision and maintenance of a work environment without risks to health and safety; and

(b) the provision and maintenance of safe plant and structures; and

(c) the provision and maintenance of safe systems of work; and

(d) the safe use, handling and storage of plant, structures and substances; and

(e) the provision of adequate facilities for the welfare at work of workers in carrying out work for the business or undertaking, including ensuring access to those facilities; and

of other persons was not put at risk from work carried out as part of the conduct of the business or undertaking. It is alleged Ms Gamble failed to comply with this duty and exposed individuals to a risk of serious injury or death.

7. Further particulars set out in the Complaint are as follows:[2]

   (a) At all material times Ms Gamble operated a business trading as Taz – Zorb.

   (b) At all material times Ms Gamble was a person conducting a business or undertaking within the meaning of the Act who owed health and safety duties to ensure that others were not put at risk from work carried out as part of the conduct of the business or undertaking.

   (c) At all material times Ms Gamble operated a business or undertaking that provided inflatable amusement devices for hire.

   (d) At all material times Ms Gamble was engaged by the Crown in right of Tasmania (Department of Education) to operate inflatable amusement devices at Hillcrest Primary School for the end of school year celebrations.

   (e) On 16 December 2021 Ms Gamble and two workers arrived at Hillcrest Primary School and set up the inflatable amusement devices, comprising an inflatable jumping castle model number E2 – 030 Crayon jumping castle "inflatable jumping castle", zorb balls and a zorb ball arena.

   (f) The inflatable jumping castle was inflated by an electric blower which was attached to the device and provided continuous airflow in order for the device to remain inflated.

   (g) The inflatable jumping castle had eight anchorage points to secure the device to the ground.

   (h) The inflatable jumping castle was tethered to the ground using pegs at four of the anchorage points.

   (i) Students of Hillcrest Primary School were allowed to take turns to play on the inflatable jumping castle.

   (j) At approximately 10:00am on 16 December 2021 seven students were on the inflatable jumping castle when a significant weather event occurred which lifted the inflatable jumping castle causing it to become dislodged from the anchorage points and to become airborne. Students playing on the inflatable jumping castle were carried on the device and lifted into the air by the wind.

   (k) Students fell from the inflatable jumping castle and suffered serious injury and/or death. Further, the blower was lifted from its position and hit a student in the vicinity of the inflatable jumping castle.

(f) the provision of any information, training, instruction or supervision that is necessary to protect all persons from risks to their health and safety arising from work carried out as part of the conduct of the business or undertaking; and

(g) that the health of workers and the conditions at the workplace are monitored for the purpose of preventing illness or injury of workers arising from the conduct of the business or undertaking.

(4)…

(5)…"

[2] Particulars (a) to (k) in paragraph 7 are either agreed or established by the evidence.

(l) The **hazard**[3] giving rise the risk, was the failure of the anchorage system to anchor the inflatable device to the ground.

(m) The **risk**[4] arising out of the said hazard was the risk of death or serious injury associated with falls from height and/or being struck by the inflatable device or any part attached thereto, due to the inflatable device becoming dislodged from the anchorage points and becoming airborne.

(n) Ms Gamble failed, so far as was reasonably practicable to ensure the health and safety of other persons was not put at risk from work carried out as part of the conduct of the business or undertaking, in that she failed to:

a. Ensure the provision and maintenance of safe systems of work, in that Ms Gamble failed to ensure that the anchorage system was sufficient to prevent lift of the inflatable device, in that she failed to do one or more of the following;

(i) Failed to ensure a peg was installed at each of the anchorage points on the inflatable jumping castle, in accordance with the manufacturer's instructions; and/or

(ii) Failed to ensure that each face of the inflatable jumping castle was secured by installing pegs at each anchorage point; and/or

(iii) Failed to use the pegs recommended by the manufacturer for use on the inflatable jumping castle or a suitable alternative as recommended by a competent person; and/or

(iv) …

(v) Having departed from the manufacturer's recommendation to install pegs at each of the anchorage points, did not engage a competent person to recommend a suitable alternative anchorage system and implement that recommendation and/or

(vi) Having departed from the manufacturer's recommendation to install the manufacturer's pegs, did not engage a competent person to recommend a suitable alternative anchorage system and implement that recommendation; and/or

(vii) …

(viii) failed to use a continuous wind monitoring anemometer; and/or

(ix) failed to apply the controls that had been identified in previous risk assessments, namely the use of star pickets.[5]

b. Ensure the safe use, handling and storage of plant, structures and substances; in that Ms Gamble failed to do one or more of the following:

Particulars (i)-(ix) listed under a. were repeated under b.[6]

c. Ensure the provision of any information, training, instruction or supervision that is necessary to protect all persons from risks to their health and safety arising from work

[3] Emphasis added. The meaning of hazard is considered in paragraphs 10-20.
[4] Emphasis added. The meaning of risk is considered in paragraph 21.
[5] Particulars (iv) and (vii) were omitted by consent on 5 November 2024. See Transcript (T) page 9 line 24 to page 10 line 12.
[6] Particulars (iv) and (vii) were omitted by consent on 5 November 2024. See T9 line 24 to T10 line 12.

carried out as part of the conduct of the business or undertaking in that Ms Gamble failed to do one or more of the following:

(i) Failed to provide the workers with information including the manufacturer's operating manual for the inflatable jumping castle; and/or

(ii) Failed to provide the workers with training and instruction in accordance with the manufacturer's operating manual for the inflatable jumping castle, including the requirement to use each of the anchorage points; and/or

(iii) Failed to provide the workers with training and instruction in accordance with the manufacturer's operating manual for the inflatable jumping castle, including the requirement to use the manufacturer's pegs; and/or

(iv) Failed to provide workers with adequate supervision during the set up of the inflatable jumping castle.

Contrary to s19(3)(c), (d) and (f) of the Act.

(o) The measures referred to above were reasonably practical because:

(i) The manufacturer's instructions were available to be downloaded and clearly stated that all anchorage points were to be used;

(ii) The manufacturer's instructions were available and clearly stated the requirements of the retention pegs;

(iii) The manufacturer supplied retention pegs that accorded with their own manufacturer's requirements;

(iv) Ms Gamble had a sufficient number of pegs available to her to use at each of the anchorage points;

(v) A suitable alternative to the retention pegs, in the form of star pickets were available on site for use;

(vi) Weather monitoring devices or anemometers had been used in the past and were available commercially;

(vii) A competent person could be engaged to provide advice about suitable alternative anchorage systems;

(viii) The manual contained illustrations of how the pegs should be inserted into the ground.

(p) Ms Gamble's failure to take the steps particularised in paragraph (n) either individually or in combination exposed others to the risk of serious injury and/or death.

8. In summary the prosecution says Ms Gamble owed a health and safety duty to others to ensure that the jumping castle was securely tethered to the ground, and that the anchorage system did not fail.[7] The risk being, that if the anchorage system failed and the jumping castle became airborne, that those playing on the jumping castle might suffer serious injury or death, from falls from height, or from being struck by the device itself, or any part attached to it. The prosecution alleges Ms Gamble failed to discharge her duty to eliminate or mitigate the risks to health and

[7] No breach of duty and therefore no charge has been laid with respect to the zorb balls despite DB, JW and AP sustaining injuries which arose out of their use.

safety, so far as was reasonably practical, by failing to implement the measures particularised in paragraph (n), that those measures were reasonably practicable because of the matters pleaded in paragraph (o) and her failure to implement those measures either individually or in combination exposed others to the risk of serious injury and/or death as pleaded in paragraph (p).[8]

9. In order to prove the charge the prosecution must therefore establish, beyond reasonable doubt[9] that:

   (a) Ms Gamble had a health and safety duty: s32(a) of the Act;

   (b) She failed to comply with that duty on 16 December 2021: s32(b) of the Act, which requires proof, by reference to s19, that;

      (i) she was conducting a business or undertaking at the relevant time;

      (ii) there was a risk to health and safety arising from the conduct of that business or undertaking;

      (iii) she failed to take the steps particularised in the Complaint at paragraph (n) a, b and c contrary to s19(3)(c), (d) and (f) of the Act; and

      (iv) it was reasonably practicable for her to have taken those steps as pleaded in paragraph (o) of the Complaint; and

   (c) Ms Gamble's alleged failure exposed individuals to a risk of death or serious injury as pleaded in paragraph (p) of the Complaint: s32(c) of the Act.

10. Ms Gamble's position with respect to paragraph 9 is she:

   (a) admits she had a health and safety duty to those present: s32(a) of the Act;

   (b) denies she failed to comply with that duty, asserting that she took all reasonable steps to discharge that duty: s32(b) and s19; and in doing so she:

      (i) admits she was conducting a business or undertaking at the time;

      (ii) admits there was a risk to health and safety arising from the conduct of that undertaking, but says that the extent or content of her duty required her to guard against normal, unusual or unexpected natural phenomena, which fall within the range of ordinary human experience, as opposed to the extraordinary, overwhelming, unpredictable and unprecedented operation of natural forces, which fall outside the range of ordinary human experience, and in particular, in this case, the dust devil;

      (iii) says that there were no reasonable or practicable measures which she could have taken which would have eliminated or reduced the hazard giving rise to the risk.[10]

11. The position set out in paragraph 10(b)(iii) was based upon a wider definition of *hazard* than that contended by the prosecution which is set out in paragraph 7(l). Ms Gamble says *hazard* should be defined as:

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[8] M Wilson SC; opening address T19 line 29 to T20 line 40.
[9] See paragraphs 24 to 28.
[10] Ms Gamble's submissions dated 31 January 2025 at [4.2].

> *"The hazard giving rise to the risk, was the failure of the anchorage system to anchor the inflatable device to the ground due to the application of vertical wind force, and in particular the dust devil."*[11]

12. This definition was correctly objected to by the prosecution in submissions[12] and Mr Dockray SC conceded in his closing address[13] this definition was too narrow and that he would be content with a definition of hazard as set out in paragraph 11 but with the words *", and in particular the dust devil"* omitted. That said, he still contends the failure of the anchorage system was due to the application of a vertical wind force as distinct from a horizontal wind force or wind simpliciter.

13. Why the definition in paragraph 11 is too narrow can be appreciated if regard is had to the guiding principles that relate to the duties imposed by s19 of the Act. In *Saunders Civilbuild Pty Ltd v SafeWork New South Wales* [2023] NSWCCA 261 Walton J, with whom Beech-Jones CJ (as he then was) and McNaughton J agreed considered the general principles concerning s19 of the Act at [154]-[178]. The relevant principles in summary are:

    a) The offence is directed to the *risk* to health and safety and not dependent on the manifestation of the risk. (see *Director of Public Prosecutions (Vic) v Vibro-Pile (Aust) Pty Ltd* (2016) 49 VR 676; [2016] VSCA 55 at [682];

    b) The risk must be identifiable: *Kirk v Industrial Relations Commission of New South Wales* (2010) 239 CLR 531; [2010] HCA 1; and

    c) A breach may occur as a consequence of a failure to take a measure that would have managed or *mitigated* the risk, even if the measure does not entirely eliminate the risk: *Bulga Underground Operations Pty Ltd v Nash* (2016) NSWLR 338; [2016] NSWCCA 37 at [118].

14. At [160] in *Saunders Civilbuild Pty Ltd v SafeWork New South Wales* (supra) Walton J observed:

> *"Thus, it is wrong, in considering whether a breach occurred to reason from the actual incident causing injury "as such an approach may lead to a misunderstanding of the real facts on which a charge is based." (citing Morrison v Powercoal Pty Ltd (2004) 137 IR 253; [2004] NSWIRComm 297 at [97(5)])*

15. At [161] his Honour adopted the comments of Basten JA in *Unity Pty Ltd v Safe Work NSW* [2018] NSWCCA 226 at [55] which are as follows:

> *"While prosecutions for breach of occupational safety laws are rarely, if ever, brought where there has not been a serious injury or death,* ***the test of a breach of duty nevertheless remains prospective****. However, there are different levels of particularity at which risks can be assessed. Prospectively,* ***a reasonably broad approach may be appropriate; by contrast a retrospective analysis of the precise circumstances of an injury or fatality may lead to a narrow description of the risk which materialised****. While an accident may demonstrate the existence of a risk, it may not demonstrate that the risk was prospectively foreseeable, nor that the consequences were necessarily*

[11] Ms Gamble's submissions dated 31 January 2025 at [3.8].
[12] Prosecution submissions dated 10 February 2025 at [14]-[25].
[13] T960 lines 9-12.

serious; generally the precise circumstances of the accident should not be relied on to define the risk" (emphasis added).

16. For the same reasons I also think it is an error for the definition of hazard to include any reference to vertical wind force as contended by the defence in paragraphs 11 and 12. I do however agree with the defence's submission that the definition of hazard as framed in paragraph 7(l)*"is sufficiently broad so as to constitute, effectively, the failure of the jumping castle anchorage system for any reason at all, and in any circumstances, weather related or not."*[14]

17. Mrs Wilson SC conceded during submissions, quite properly in my view, the risk as pleaded being the failure of the anchorage system to anchor the inflatable device to the ground was inextricably linked to wind.[15] She submitted the pleaded hazard was permissible in its current form but to the extent there was any inadequacy she indicated there would be no objection to the addition of the word wind;[16] that is wind *per se*, not dust devils, cyclones, typhoons or tornadoes[17] or any reference to vertical force.[18]

18. The word *hazard* is not defined in the Act. By reference to the ordinary and natural meaning of the word it is defined by the Macquarie Dictionary[19] as:

> *"1. a risk; exposure to danger or harm.*
>
> *2..the cause of such a risk; a potential source of harm, injury, difficulty, etc.*"

In *Whittaker v Northern Beaches Council (No 3),*[20] in the context of a planning case in the NSW Land and Environment Court, Pepper J said:

> *"66… it is nevertheless necessary in light of the way in which the Council put its case to also have regard to the definition of "hazard". The Macquarie Dictionary (online ed) defines the term as a "risk; exposure to danger or harm". The Oxford English Dictionary (online ed) has a similar definition, viz, 'a risk of loss or harm posed by something'"* (emphasis added).

19. Defining *hazard* as *risk,* that is adopting the first definition in paragraph 18 cannot be the correct interpretation as to do so would mean there is no distinction between those terms in the Act when it is clear Parliament intended there would be a distinction between them. It is *"exposure to"* or the *"harm posed by something"*, that is the happening of an event or circumstance, in this case wind *per se* which forms a constituent element of the hazard and is therefore a necessary part of its definition.

20. I therefore determine the hazard giving rise to the risk, in this case, was the failure of the anchorage system, due to the application of wind on the jumping castle, to anchor the jumping castle to the ground.

21. There was no disagreement between the parties as to the characterisation of risk, in this case, as is particularised in paragraph 7(m); that is the risk arising out of the hazard was the risk of death

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[14] Ms Gamble's submissions in reply dated 14 February 2025 at [11].
[15] T932 lines 14-29.
[16] T933 line 39 to T934 line 2.
[17] T932 line 25.
[18] T933 lines 21-23.
[19] On-line edition.
[20] [2018] NSWLEC 143, 235 LGERA 5.

or serious injury associated with a fall from height and/or being struck by the inflatable device or any part attached thereto, due to the inflatable device becoming dislodged from the anchorage points and becoming airborne. I also agree with that characterisation.

22. Having regard to the relevant legislative provisions and the wording of the Complaint, my task is to consider whether I am satisfied beyond a reasonable doubt[21] of the following matters:

- That Ms Gamble, as a person conducting a business or undertaking, had a duty to ensure, so far as was reasonably practicable:
  (a) the provision and maintenance of safe systems of work, and
  (b) the safe use, handling and storage of plant, structures and substances, and
  (c) the provision of any information, training, instruction or supervision that is necessary to protect all persons from risks to their health and safety arising from work carried out as part of the conduct of the business or undertaking: ss19(3)(c) (d), (f) and 32(a) of the Act;
- That Ms Gamble failed to comply with one or more of those duties in one or more of the respects alleged in the particulars of the Complaint: s32(b) of the Act; and
- That Ms Gamble's failure or failures exposed children at the School to a risk of serious injury or death: s32(c) of the Act.

23. As to s32(c) the question is whether any failure or failures by the applicant to comply with its duties was or were a *"substantial or significant cause"* of the risk of serious injury or death, as distinct from the sole cause of such a risk: *Bulga Underground Operations Pty Ltd v Nash* [2016] NSWCCA 37, 93 NSWLR 338 at [127]; *Simpson Design Associates Pty Ltd v Industrial Court of New South Wales* [2011] NSWCA 316, 213 A Crim R 340 at [104]- [105]; *Nash v Resource Pacific Pty Ltd (No 3)* [2018] NSWSC 45 at [375]. The prosecution must prove a relevant failure on the part of the defendant and a causal link between the defendant's acts or omissions and the consequent risk to health and safety. Causation is to be viewed in a common sense way.

BEYOND REASONABLE DOUBT AND THE ONUS OF PROOF

24. A basic principle of the criminal justice system in this country is the presumption of innocence. This means Ms Gamble is presumed to be innocent unless and until the prosecution persuades a magistrate that she is guilty beyond reasonable doubt. The obligation or burden to prove Ms Gamble's guilt is placed on the prosecution with respect to every element or essential fact that makes up the offence with which she has been charged. The burden never shifts to Ms Gamble and she is not obliged to prove any fact or issue that is in dispute. It is not for her to prove her innocence but for the prosecution to prove her guilt.

25. Proving Ms Gamble's guilt beyond reasonable doubt is the standard of proof the prosecution must achieve before a magistrate can convict her. The words *"beyond a reasonable doubt"* are ordinary everyday words which mean exactly what they say.[22] Proof of a matter beyond reasonable doubt involves rejection of all reasonable hypotheses or any reasonable possibility inconsistent with the prosecution case.[23] If there is a reasonable possibility of some exculpatory

[21] See paragraphs 24 to 28.
[22] *R v GWB* [2000] NSWCCA 410 at [44].
[23] *Moore v R* [2016] NSWCCA 185 at [43], [94] and [125].

factor existing then a magistrate should find in favour of Ms Gamble. It is for the prosecution to *"eliminate any reasonable possibility"* of there being some exculpatory factor.[24]

26. When deciding this case I am only permitted to take into account the evidence that has been admitted at the hearing. This includes the answers witnesses have given to questions while in the witness box and any documents or other exhibits that have been taken into evidence. I will not take anything else into account. Attached and marked "A" is the list of exhibits.

27. The prosecution bears the onus of proof of a breach of duty in s19(2), including the question as to whether reasonably practicable precautions were available to eliminate or reduce the risk.[25] In *Baiada Poultry Pty Ltd v The Queen* [2012] HCA 14; 246 CLR 92 the High Court said at [55]:

> *"The language of "defences". The parties persistently, though not universally, spoke of the appellant's "defences". However, as Nettle JA recognised in his dissenting judgment, this terminology is inappropriate. These "defences" were not matters on which the appellant as the accused bore any burden of proof, whether legal (ie persuasive) or evidential. They were not matters which the appellant as the accused was required to establish in order to avoid the prosecution's prima facie entitlement to a conviction. Rather, they were denials of essential ingredients in the prosecution's case. They were matters on which the prosecution bore a legal (ie persuasive) burden of proof beyond reasonable doubt. Thus, in relation to the first "defence", it was for the prosecution to establish beyond reasonable doubt that the appellant did have control, or a right to control, over forklift traffic management outside broiler sheds at grower farms. And, in relation to the second "defence", it was for the prosecution to establish beyond reasonable doubt that there were reasonably practicable measures open to the appellant additional to its engagement of subcontractors."*

28. In the WA Court of Appeal, Murphy JA in *Laing O'Rourke (BMC) Pty Ltd v Kirwin* [2011] WASCA 117 said:

> *" 37.The prosecution bears the onus of proving a breach of duty in s19(1), including the question of practicability: Ball & Sons Pty Ltd v Stewart (Unreported, WASC, Library No 8829, 24 April 1991); Chugg v Pacific Dunlop Ltd (260 - 263). A finding of breach cannot be based upon speculation. Each element must be proved by evidence: Interstruct Pty Ltd v Wakelam (110) (Wallace J, Rowland J agreeing); Ball v Stewart.*
>
> *...*
>
> *72. Senior counsel for the respondent, in effect, submitted in response that the prosecution did not bear the onus of proving what, in the circumstances, it was practicable for the appellant to do. That submission of the respondent cannot be accepted. The requirement of practicability is an integral part of the employer's duty and is, therefore, an essential element of the offence which must be proved by the prosecution beyond reasonable doubt: Chugg v Pacific Dunlop Ltd; Interstruct Pty Ltd v Wakelam (110); Ball v Stewart (6 - 7)."*

[24] *Moore v R* [2016] NSWCCA 185 at [99] and [125].
[25] *Chugg v Pacific Dunlop Ltd* [1990] HCA 41; 170 CLR 249 at 260, 263.

AGREED FACTS[26]

29. The parties in this case agreed a number of facts pursuant to section 191 of the *Evidence Act 2001* so that the following facts are not in dispute.

The parties

30. At all material times, Ms Gamble:

a) operated a business trading as Taz-Zorb (ABN 64 344 167 401) (Taz-Zorb); and

b) operated a business of hiring inflatable amusement devices.

31. Ms Gamble had operated Taz-Zorb as a sole trader since 1 March 2012.

Taz-Zorb engagement

32. On 4 November 2021, Jamie-Lea Ackerley (Ms Ackerley), on behalf of the Department of Education contacted Taz-Zorb and arranged for the supply and operation of inflatable amusement devices, including a jumping castle and zorb balls at the Hillcrest Primary School (the School) located at 5 Lawrence Drive, Devonport, for the end of school year celebrations known as the 'Big Day In' held on 16 December 2021 (the Big Day In).

Big Day In

33. Taz-Zorb was engaged to operate inflatable amusement devices as part of the Oval activities.

34. On 16 December 2021 (Incident Date), Taz-Zorb supplied and operated the following amusement devices and associated devices at the School:

a) One (1) inflatable jumping castle model number E2-030 Crayon jumping castle (the jumping castle). The jumping castle was:

i. in the shape of a crayon and had a slide for participants to play on or exit the jumping castle;

ii. approximately five (5) metres in length, five (5) metres in width and five (5) metres in height; and

iii. had eight (8) anchorage points.

b) Four (4) inflatable zorb balls (zorb balls) and one (1) inflatable zorb ball arena (zorb ball arena).

iv. Each zorb ball was:

a. identifiable by different colours: purple, red, green and pink; and

b. inflatable and weighed approximately 45.3kg to 45.8kg without any participant inside.

v. The zorb ball arena was:

a. blue in colour;

b. inflatable and weighed approximately 82.5kg; and

[26] The facts which follow are contained in Exhibit P1.

c. measured 42 metres in length and was approximately 800mm in height.

(Collectively referred to as "Amusement Devices").

c) a gazebo, anchorage pegs, electric blowers, tools and all other items used to erect, anchor and operate the Amusement Devices.

35. Two volunteers, Robert Monte (Mr Monte) and Jesse Barrett (Mr Barrett) attended the School for the Big Day In with Ms Gamble. Mr Monte and Mr Barrett assisted with the set-up, operation and supervision of the Amusement Devices for Taz-Zorb.

The set-up of amusement devices

36. Prior to the Incident Date, Taz-Zorb had been engaged and attended the School for end of year celebrations in 2020. At that time, Taz-Zorb set-up a jumping castle on the School oval in a location as directed by Ms Ackerley. Ms Ackerley directed Taz- Zorb to set up the Jumping Castle on a flat section of the School oval.

37. The oval at the School is located on the eastern side of the School. The Amusement Devices were set up on a flat surface approximately three (3) to four (4) metres from the hill on the School oval.

38. There was one (1) gazebo set up between the Amusement Devices. Exhibit P2 is an aerial (photoshopped) photograph showing the position of the jumping castle and zorb ball barrier prior to the wind event. Exhibit P3 is a video taken of the set up on the morning of the Incident Date prior to the incident.

39. Grade 5/6 teacher Gaye Kelly (Ms Kelly) provided Mr Monte with an outlet to connect the extension cord to the jumping castle blower to inflate it. Otherwise, no employee or teacher employed at the School provided direction, assistance or supervision during the set-up of the Amusement Devices on the Incident Date.

40. Ms Ackerley had no involvement and was not present on the oval during the set-up of the Amusement Devices on the Incident Date.

41. On the Incident Date Taz-Zorb set-up the Amusement Devices on the School oval in a location it had been directed to set-up during a previous event at the School.

Jumping castle

42. On the Incident Date:

a) Taz-Zorb commenced the setup of the jumping castle at 8:10am.

b) Mr Monte inflated the jumping castle.

c) The jumping castle was tethered to the ground with metal anchorage pegs hammered down through the D-rings connected to the jumping castle.

d) Two (2) anchorage pegs were inserted before inflating the jumping castle to put it in position, and then two (2) anchorage pegs were hammered in after the jumping castle was inflated.

e) In total, four (4) anchorage pegs were hammered through the D-rings in the corners of the jumping castle.

f) Mr Monte hammered in two (2) anchorage pegs on the left sided corners of the jumping castle and Mr Barrett hammered in the other two (2) anchorage pegs on the right sided corners of the jumping castle.

g) The four (4) anchorage pegs were hammered into the ground until they reached the point where their tops were flush to the ground.

h) The jumping castle was then deflated until the students were ready to use it.

i) Ms Gamble checked the four (4) anchorage pegs after Mr Monte and Mr Barrett had installed the pegs on the Jumping Castle.

Zorb Balls and Zorb Ball Arena

43. On the Incident Date:

a) Mr Barrett repaired the red zorb ball in the morning prior to the incident.

b) The purple, red, green, and pink zorb balls were in use.

c) Mr Monte inflated the zorb balls and zorb ball arena.

d) The zorb ball arena was anchored into the School oval using anchorage pegs inserted into D-rings which were attached to one (1) to two (2) bungee cords.

e) Mr Monte and Mr Barrett anchored the zorb ball arena using six (6) anchorage pegs.

f) Mr Barrett hammered in four (4) anchorage pegs to secure the zorb ball arena. Mr Monte hammered in two (2) anchorage pegs to secure the zorb ball arena.

g) The zorb ball arena was anchored using anchorage pegs supplied by Taz-Zorb.

h) The anchorage pegs were hammered at a 10-degree angle[27] until the top of the anchorage pegs were flush with the ground.

i) Ms Gamble inspected the anchorage pegs after Mr Monte and Mr Barrett had completed anchoring the zorb ball arena.

Operation of the Amusement Devices

<u>Jumping castle</u>

44. On the Incident Date:

a) Ms Gamble supervised and directed students using the jumping castle.

b) Prior to using the jumping castle, students were required to remove their shoes

c) Students were permitted entry and play time in the jumping castle for five (5) minutes at a time.

<u>Zorb balls and zorb ball arena</u>

45. On the Incident Date:

a) Mr Monte supervised and directed students of the School while using the zorb balls and zorb ball arena.

[27] This cannot be correct. The evidence at paragraph 320 is due to the hardness of the ground the pegs could only be hammered in at a slight angle; i.e. near straight. Therefore, this paragraph should probably read at a 80-degree angle. At a 10-degree angle the pegs would have been hammered in close to the horizontal not vertical axis.

b) One student could use one zorb ball at any one time.

c) Students were only allowed to participate in the zorb balls for three (3) minutes at any one time due to the heat.

d) The zorb ball arena was hit by the zorb balls while in use and did not move.

46. On the Incident Date, Mr Barrett assisted with all Amusement Devices where needed.

47. School Principal, Mr Jerome Pape (Mr Pape), was allocated the task of supervising students on the oval.

Weather and wind event

48. The weather on the Incident Date was described by witnesses as "*very warm*", "*a dryheat*", "*very calm*" and a "*beautiful day*" prior to the incident.

49. At approximately 10:00am witnesses at the School described a *"strong breeze"* which "*happened out of nowhere. No warning or nothing. It was just instant wind*". It has also been described by witnesses as "*two gusts of wind, um going towards each other and formed a tornado*" (collectively referred to as the "Wind Event").

50. The change in the wind conditions on the Incident Date that occurred around 10:00am was not forecast by the Bureau of Meteorology.

The event

51. At approximately 10:00am, the Wind Event occurred and the Amusement Devices became airborne.

52. The Jumping Castle was carried approximately 62 metres across the School Oval, as determined by using a Lufkin measuring wheel.

53. A number of students were either hit by or carried in or on the Amusement Devices and were injured or died.

The aftermath

54. Ambulance Tasmania, Tasmania Police, and employees/volunteers of the School provided medical and emergency services to the students involved in the incident on the School oval and down an embankment beside the oval. Students of the School were directed by employees of the School to classrooms.

55. Mr Joseph Pawlasty, Duty Manager of Ambulance Tasmania (Mr Pawlasty), was first called around 10:04am regarding the incident at the School. Mr Pawlasty:

a) Arrived at the scene at 10:09am.

b) Observed there was at least one (1) ambulance car, and two (2) or three (3) ambulance vehicles on site.

c) Observed multiple people on the ground and observed that there were ambulance staff concentrated at two sites, at the northern and southern side of the School oval.

d) Coordinated the medical response and arranged, inter alia, transport for the injured children to hospital, allocating Ambulance Tasmania resources and supporting Tasmania Police resources. Two helicopters were despatched, and he requested that one of those be sent directly to the scene.

e) Left the scene at 12:50pm after all other Ambulance Tasmania resources had left the site.

56. Inspector John King arrived at the School at 10:21am. He observed two children on the western side of the oval being attended to by police and ambulance officers. These children were Addison Stewart and Jye Sheehan. He also observed a male child lying on the northeast side of the oval near the soccer goal posts being attended to by two police officers; this was DB. He further observed five children on the eastern side of the oval down an embankment.

57. As a result of the investigations carried out and photographic evidence taken in this matter, an aerial plan of the oval and the approximate positions of the children was prepared by First Class Constable M Johnston. Exhibit P4 is the aerial plan showing the approximate positions of the children.

Students involved in the incident

58. On the Incident Date, at approximately 10:00am, there were:

a) Approximately six (6) students from the School situated on or around the jumping castle;

b) Approximately three (3) or four (4) students from the School situated on or around the zorb balls; and

c) At least one student from the School situated near the entrance to the zorb ball arena. (collectively referred to as "Incident Location").

59. The students of the School in the Incident Location were:

a) Peter Anthony Dodt;

b) Jalailah Jane-Maree Jones;

c) Zane Mellor;

d) Jye Sheehan;

e) LR;

f) BM;

g) Chace Craig Harrison;

h) DB;

i) JW;

j) AP; and

k) Addison Stewart.

Fatalities and injuries

60. As a consequence of the Wind Event/incident, the following fatalities occurred:

a) Peter Anthony Dodt (DOB 22 August 2009), who died at the Launceston General Hospital on 16 December 2021. The cause of his death was multiple (head, thorax, pelvic and limb) injuries caused by a fall from height.[28]

b) Jalailah Jayne-Marie Jones (DOB 2 April 2009), who died at the scene on 16 December 2021. The cause of her death was multiple (head, trunk and limb) injuries, caused by a fall from height.[29]

c) Zane Timothy John Mellor (DOB 2 November 2009), who died at the scene on 16 December 2021. The cause of his death was multiple (head, neck, trunk and limb) injuries, caused by a fall from height.[30]

d) Jye Max Sheehan (DOB 10 September 2009), who died at the Mersey Community Hospital on 16 December 2021. The cause of his death was multiple (head, neck, trunk and limb) injuries caused by a fall from height.[31]

e) Chace Craig Harrison (DOB 3 October 2010), who died at the Royal Hobart Hospital on 19 December 2021. The cause of his death was hypoxic brain injury due to, or because of, post-traumatic cardiac arrest due to, or because of, head, brain and chest injuries due to, or because of, a fall from height.[32]

f) Addison Tabitha May Stewart (DOB 14 January 2010), who died at the Mersey Community Hospital on 16 December 2021. The cause of her death was a head injury caused by blunt force trauma. The blunt force injury pattern is consistent with one or more impacts on a hard surface or from a heavy object either secondary to, and associated with the momentum from, an uncontrolled fall from height, or from another mechanism in which the force is derived from a moving object. The possibility that the injury was caused by a heavy object falling onto her head cannot be excluded.[33]

61. The following students sustained injuries as a result of the incident:

a) DB who was in a zorb ball at the time of the incident was taken to the Mersey Community Hospital, where multiple injuries were diagnosed including a laceration across the entire mid portion of the right kidney with a small perinephric haematoma, comminuted fractures of the right iliac bone and left sacral alar with fractures through the right traverse processes of L2/3/4/5, spinous processes of L4 and L5, dislocated left hip and lung contusions. DB was later transferred to the Royal Hobart Hospital and discharged on 31 December 2021.

b) LR was identified by witnesses as being on the jumping castle at the time of the incident. Wedge compression fractures of the T3 and T5 vertebral bodies, a minimally displaced fracture of the manubri sternum, a minimally displaced supratrochanteric fracture of the right femur, a moderate to large right pneumothorax, a small left pneumothorax, a large pneumomediastinum and significant subcutaneous emphysema over the chest, neck and face were suffered. LR was taken by ambulance to the Mersey Community Hospital. That same evening, a transfer to the Royal Hobart Hospital by helicopter took place together with an admission to the Intensive Care Unit with intubation until 21 December 2021. On

[28] Exhibit P5-affidavit of the forensic pathologist Dr Andrew Reid.
[29] Exhibit P6- affidavit of the forensic pathologist Dr Andrew Reid.
[30] Exhibit P7- affidavit of the forensic pathologist Dr Andrew Reid.
[31] Exhibit P8- affidavit of the forensic pathologist Dr Andrew Reid.
[32] Exhibit P9- affidavit of the forensic pathologist Dr Andrew Reid.
[33] Exhibit P10- affidavit of the forensic pathologist Dr Andrew Reid.

the 22 December 2021 there was a transfer to the paediatric ward until discharge on the 29 December 2021.

c) BM had just descended the slide on the jumping castle when the Wind Event occurred. He says he was hit in the face by a camp chair before being lifted into the air on the jumping castle, then he fell to the ground. BM remained lying on the ground for a couple of seconds before walking to the School office. He was taken to the Mersey Community Hospital by his mother, before being transferred to the North West Regional Hospital by ambulance. BM suffered a right reduced distal radial fracture and moderate swelling and bruising over his left maxilla.

62. The following students were also involved in the incident:

a) JW was inside a zorb ball at the time of the incident. JW's leg was hurting from the knee down to the ankle, and an arm, shoulder and neck were hurting.

b) AP was inside a zorb ball at the time of the incident. AP sustained bruising and a jarred tail bone.

Witness accounts

63. A number of statements or transcripts of video recorded statements which describe the incident, the Wind Event, and its aftermath were tendered on the hearing by consent as the evidence of each witness. Those exhibits were marked P11 to P69 and they appear in Annexure "A".

64. On 24th February 2022 Detective Senior Sergeant Simon Conroy attended the School with Constable Wotherspoon (drone pilot) to ascertain the height the jumping castle reached in reference to the perspective of witness Lisa Shepherd. Constable Wotherspoon and Detective Senior Sergeant Conroy assessed where the jumping castle would have had to have been when she observed it and Constable Wotherspoon deployed a drone to lift vertically from that location. The officers ascertained that from the position that Ms Shepherd stated she was at, the drone came into vision at a height of 16 metres from where it was launched. The line of sight included across the School hall which is how Lisa Shepherd described her observations. Tendered on the hearing and marked P70 is a photograph of the position that Ms Shepherd was standing in when she made her observations.

65. Police investigations revealed that there was no CCTV footage of the incident available from the School.

66. First Class Constable Colin Wilcox assisted forensics at the scene where the jumping castle had been located on the western side of the oval, prior to the incident. He observed a number of pegs, both still in the ground and also on the ground. There were also carabiners and broken strapping on the ground. Constable Wilcox assisted with marking the locations of these items of relevance.

67. Senior Sergeant Russell Judges led a team who conducted a line search of the area of and surrounding the oval where the jumping castle was situated. He and his team were tasked with locating any evidence that may relate to the jumping castle. They were particularly briefed to be alert for small metal objects such as eyelets. The search was conducted as a close quarters line search. Officers were within one metre of one another. Several items which may have been associated with the jumping castle were located. When this occurred Forensic Services members

of Tasmania Police were notified, and the position was marked by them, and the item catalogued by them.

THE WEATHER EVENT

Eyewitness Accounts

68. The principal of the School, Jerome Pape, says in his statutory declaration dated 16 December 2021:[34]

> *"When the jumping castle was set up I would describe the conditions as very calm, a beautiful day with little to no breeze…I felt a strong breeze which came out of nowhere. The balls lifted up, I don't know how high, I am guessing three to five metres, but it is a guess… The jumping castle took off and flew to the other side of the oval, so maybe 75 metres away… This entire wind event was over in seconds. Apart from a strong breeze and then a whoosh happened but it was a flash event and gone as quickly as it came… I have been here for the rest of the day and there has been no further strong wind or breeze. It appeared to me an absolutely freak event, in no way foreseeable or preventable."*

69. Stephen Fenn, a teacher at the School, in his affidavit dated 16 December 2021[35] says:

> *"The gust was like a whirlwind motion going around and lifting debris off the ground such as grass and dust. I thought this was unusual but within seconds it had increased in energy and then started lifting everything off the ground… I thought that it was very unusual because it was going in a circular motion and was like a whirlwind. It started lifting the surround of the zorb balls in the air. The surround was a one metre high inflated sausage that went around the perimeter of where the zorb balls were used. It was pinned down to stop it moving when the zorb balls hit it. It was quite secure. The zorb balls were hitting it continually and it wasn't moving anywhere…Not long after (less than twenty seconds) I saw the jumping castle hit the ground on the oval on the eastern edge before the land drops down. I was looking around at the time trying to find it so I didn't really see how hard or fast it hit the ground I just saw the last part of it where it hit the ground. It lifted up again about 20 metres into the air and then came down again in around the same spot…The oval is about 70 metres wide. The jumping castle would have hit down around 70 metres from where I was."*

70. Another teacher at the School, Gaye Kelly, in her affidavit dated 16 December 2021[36] says:

> *"Around 10:00 a.m., I was standing on the oval, when I felt a cool breeze come through. It felt nice and refreshing while I was standing in the sunlight. There hadn't been much of a breeze throughout the morning. I looked up and could see, Stephen Fenn holding onto the gazebo as it was lifting off the ground. That's when I realised the breeze was stronger than I'd first thought. I remember seeing the wind picking up dust and swirling, like a mini-tornado. It was narrow, but it would have been 2-3 metres high. I was about to help Stephen, when I noticed that a zorb ball was in the air. I saw it come to the ground, near the embankment at the edge of the oval. I went over to the ball and found*

[34] Exhibit P11 Court Book Volume (CBV) 1 pages (pp) 87-89.
[35] Exhibit P18 CB V1 pp 111-114.
[36] Exhibit P16 CB V1 pp 103-105.

one of the students, JW, inside. J seemed to be okay. He got out of the zorb ball by himself and said something similar to, 'I need to sit down'. I then looked up and noticed that the jumping castle was on the opposite side of the oval. I can't remember if it was deflated or not. I also saw a blue inflatable boundary marker, which had been used to mark the zorb ball boundary, in a tree."

71. Ms Kelly's son, D, who was 15 years of age decided to come and assist at the School's end of year celebrations.[37] He says in his affidavit dated 16 December 2021:[38]

"We lined up and took our shoes off ready as we did this Brock took his hat off and sat it with his shoes. As it was about to be our turn a strong gust of wind came through and blew Brock's hat got blown away.

Brock ran off to go get his hat, as he did this I noticed that the gazebo roof ripped off the metal frame in the wind. I also noticed an inflatable barrier that was keeping the zorb balls in place was starting to lift up so I rushed over and put my weight down on the barrier to stop it from flying off in the wind.

I then noticed the jumping castle had lifted off the ground, it flew a couple of metres in the air, I'm not sure [how] high it reached however it reached the height of a large gum tree I would guess is about 30 metres tall….

The castle started spinning and around in the air"

72. Lisa Willett, a teacher's assistant at the School, in her affidavit dated 16 December 2021[39] says:

"I saw the jumping castle was in the air. It was a long way up, a couple of stories easy. I could see the jumping castle above the trees. It was high. I could see the air/wind moving around like a tornado/cyclone. The zorb-balls were also spinning around off the ground. They went flying across the oval also. There was a blow-up plastic barricade that surrounded the zorb ball area. This barricade also went up in the wind and this caused the zorb-balls to raise from the ground and fly everywhere. I remember seeing the barricade spinning with the wind in a circular motion.

…it went up initially, then went back down, and then it went up a second time and slammed into the trees."

73. Lisa Shepherd, a teacher's assistant at the school, in her affidavit dated 16 December 2021[40] says:

"… and I turned around and I saw a jumping castle up in the air. It was blue. I didn't see it lift into the air, it was just up in the air already.

I could see the jumping castle up in the air over the top of other buildings. From where I was, I had to look over a classroom and over the top of the hall. The jumping castle would have been at least 10 metres in the air. I didn't feel any wind where I was standing.

It didn't look like a jumping castle, it was all crumpled and mixed up. It was rotating horizontally while in the air."

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[37] Exhibit P16 CB V1 p 103.
[38] Exhibit P17 CB V1 pp 106-110.
[39] Exhibit P14 CB V1 pp 94-97.
[40] Exhibit P15 CB V1 pp 98-100.

74. Robert Boutcher, who lived across the road from the School in Lawrence Drive, Devonport, says in his affidavit dated 17 December 2021:[41]

> *"It was really weird as there was not a gust of wind when I was out for my bike ride. The gust of wind came out of nowhere. I saw that the castle which was dark blue was completely off the ground. It looked like it was trying to turn in the air in a horizontal motion. It was probably two or three metres, maybe a bit more. My house sits below the level of the school so I look up hill at the oval.*
>
> *The jumping castle was gusted into the air and started to twirl around".*

75. VB, a student, in a recorded interview conducted on 21 December 2021[42] says:

> *"…wasn't, like really a gust of wind because otherwise it would have pushed them along the oval and, but it actually kind of like um, up, pushed up and I would just call it a mini tornado honestly.…*
>
> *..so there was things just flying round in circles and stuff moving, it, I would say that the tornado was kind of like spinning up and throwing stuff in the air but also pushing stuff one way, so it sort of like, you could say it was on sort of an angle and going that way.…*
>
> *Well I know it was barely even a breeze before the mini tornado came and afterwards there was still barely a breeze, it was just like, "Woosh" and then nothing."*

76. BM, a student, in a recorded interview conducted on 18 December 2021 says:[43]

> *"No one was expecting the moment to happen… It was just like today just sunny, no wind, no nothing and all of a sudden it just struck.*
>
> *So after I went down I seen all these leaves like start floating up and start twisting around and everything…and it was pretty scary…and I look up and it's just like a whole bunch of leaves and, or leaves getting pulled off trees and everything like that yeah… Then it picked up the jumping castle and the zorb balls and everything and, like it was just spinning around, the jumping castle and I got flung out of it and that's when it must of shot, like towards trees and everything down the back of the oval because, it was like halfway down the bank."*

77. DB, a student, in a recorded interview conducted on 8 February 2022 says:[44]

> *"… there was a big gust of wind and all of a sudden it got really windy and … everyone shot up*
>
> *Pretty high, I was…I'm pretty sure it was about 15 metres or somethin' like that … Well I'm pretty sure it was a bit higher than a telegraph pole…It looks higher when you're up, the distance to the ground was higher than a telegraph pole. And about like, so another like 4, 5 metres higher than that.*
>
> *And when your zorb ball went in the wind, how was it moving?*

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[41] Exhibit P26 CB V1 pp 130-131.
[42] Exhibit P42 CB V1 pp 211-238 at page 221.
[43] Exhibit P67 CB V1 pp 765-801 at p 770 and pp 777-778.
[44] Exhibit P27 CB V1 pp 132-139 at pp 133, 134 and 138.

Well, in the air, it was goin' straight up…then just goin' side to side while I was in it, before I… think I came out… I'm pretty sure it just went straight up and kept goin' while I was going straight up."

78. JW, a student, in a recorded interview conducted on 21 December 2021 says:[45]

"… everything just went up into the sky, even me…"

Okay, can you describe to me what um, what the jumping castle was doing in the sky?

It was spinning around and going into the sky and making the sound, clip bang, clip bang."

79. AP, a student, in a recorded interview conducted on 22 December 2021 says:[46]

"So when you say the jumping castle went up twice, what do you mean by that?

So it went up and came down and went up again"

… and so you said that the jumping castle went up and back down then up again. When it first went up do you know how high it went?

Um, about like fifteen metres."

… well they were, they were like on the zorb balls and then all of a sudden they went up and I saw one person fall out.

when you first seen him floating up, how high did he, was his zorb ball going?

Higher than the jumping castle.

…

D went up like really high, probably higher than C but he didn't fall out.

…

J went about the same height as me…

what happened to [the jumping castle]?

Um, it just blew away… Far away."

80. Janelle Hays, the mother of a student and a volunteer at the school on the day in question says in her affidavit dated 20 December 2021:[47]

"When I got down to the oval, it was a beautiful day. The kids were laughing and having a great time... The wind started to get up a bit and the kids on the bank were getting a bit worried. I wanted to turn around and tell them not to worry and then the jumping castle started to lift. The wind kept getting stronger and stronger and it just looked like a twister. It picked them up and twisted them in the air. I thought it would just lift a little and resettle but it just kept lifting and lifting. I saw the jumping castle become airborne and it went high. I reckon it was at least ten metres in the air. It flipped in the air and when the wind stopped, it just came down but upside down. It kept getting higher and

[45] Exhibit P65 CB V1 pp 721-737 at pp 726 and 735.
[46] Exhibit P69 CB V1 pp 811-828 at pp 814, 817, 818 and 824.
[47] Exhibit P25 CB V1 pp 128-129.

higher and the zorb balls also lifted off the ground and kept going and going. The wind stopped suddenly and all the stuff came down. As quick as the wind came, it stopped."

81. AB, a student, in a recorded interview conducted on 20 December 2021 says:[48]

"…I don't remember it going up in the air but I remember it being in the air and two zorb balls and it wasn't windy at all that day so I think it was like a mini tornado cause that's what it looked like, it looked like a mini tornado… Because it's completely sunny and a really nice day and then it just happened…"

…when you saw the wind, what did it look like?

A tornado, I didn't, it was all spinning up in the air… And there was lots of dirt going up in the air as well… Yeah, it was a perfect sunny day and then just wind and I thought it was just a massive gust of wind…but then mentioned a mini tornado and yeah, that's what it seemed like a mini, a miniature tornado."

82. AB, a student, in a recorded interview conducted on 20 December 2021 says:[49]

"…, it went from just a breeze to a huge gust of wind because it knocked over a lot, it knocked over a few people, like just with the wind."

83. MB, a student, in a recorded interview conducted on 22 December 2021 says:[50]

"…it was just like a little daydream to me until I turned around and everything was like bang."

84. IH, a student, in a recorded interview conducted on 20 December 2021 says:[51]

"…until that happened it wasn't actually windy at all.

…it was all swirling around and then it was swirling, the jumping castle around for a bit and then sort of just took it over to the tree down the back of the oval… It was just spinning around up in the air…"

85. NJ, a student, in a recorded interview conducted on 20 December 2021 says:[52]

"I played around on, on the jumping castle and when I was lining up to go on the zorb ball um, a gust of wind picked up and or the tornado, and um, and launched the jumping castle and zorb balls up into the air with the kids inside them."

…first it was kind of like a soft breeze then it just picked up and formed a tornado.

what about when the wind, did you feel the wind? Could you feel the wind?

Um, not really."

86. TM, a student, in a recorded interview conducted on 22 December 2021 says:[53]

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[48] Exhibit P43 CB V1 pp 239-259 at pp 248 and 253.
[49] Exhibit P44 CB V1 pp 260-304 at p 273.
[50] Exhibit P45 CB V1 pp 305-331 at p 310.
[51] Exhibit P50 CB V1 pp 423-441 at pp 428 and 433.
[52] Exhibit P52 CB V1 pp 466-477 at pp 467-469 and 474.
[53] Exhibit P55 CB V1 pp 535-552 at pp 537 and 542.

"…I went to, to the line with the zorb balls with a couple of my friends then out the corner of my eye I see this (swirling hand) I think, either it was a tornado, whir…,whirl, or, mini-whirlwind and that took off with the jumping castle and the zorb balls.

So I think it happened so sudden, so suddenly I didn't even think I'd have time to recognise what to do"

87. MP, a student, in a recorded of interview conducted on 20 December 2021 says:[54]

"It um, flew to the back of the oval and then a tornado, mini tornado it started spinning around in circles and you could see like leaves and like branches inside the tornado and then the castle fell into the tree at the back of the oval.

So um, the castle flew up into the air and, like really high um, it went high and then it went that way on an angle and then over there it started spinning around and around and then it landed kind of in a tree at the back.

It just went up and it was like just started spinning in circles and then it just flew down, more down the hill.

And how long did that take?

Like fifteen seconds, it wasn't that long."

88. MP, another student, in a recorded interview conducted on 22 December 2021 says:[55]

"Okay, and I know you said, I'm just going back a little bit but you said the jumping, you saw the jumping castle spin a little bit."

(nodding yes)

Yeah, was it, when the jumping castle blew up, did it go, did it spin in a fast sort of way or sort of medium or something else?

Medium."

89. WS, a student, in a recorded interview conducted on 21 December 2021 says:[56]

"…it just kind of like a nice day just muckin' around on the oval and jumping castle and zorb balls and then um, I was next in line for the zorb balls and all of a sudden the grass started to flip up, all of the grass had been cut just left on top and people's hats were flying and the gazebo was um, like flapping around and then the zorb balls and jumping castle were in the air…"

90. BT, a student, in a recorded interview conducted on 20 December 2021 says:[57]

"…the wind came and picked everything up… It was like just instant, like couple of seconds and it blew the wind and it just, a whole heap of wind and everything just started picking up…. Like I remember seeing the jumping castle just go and then it started doing circles and then it's gone near the tree and then… I don't really know what the zorb

[54] Exhibit P57 CB V1 pp 566-587 at pp 571-571 and 585-586.
[55] Exhibit P58 CB V1 pp 588-608 at p 606.
[56] Exhibit P62 CB V1 pp 661-683 at p 663.
[57] Exhibit P63 CB V1 pp 684-700 at pp 690-691.

ball done but I remember seeing the thing that holds the zorb balls just coming up in the sky and just flipping around."

91. MW, a student, in a recorded interview conducted on 20 December 2021 says:[58]

"…I saw a little circle of dirt or dust, I'm not sure, it was just circling about a metre from the jumping castle and as soon as I looked back they started going up in the air and then the zorb balls were going round in a circle and then they went down and so did the jumping castle. The jumping castle went down and people, went back up and people fell out and it folded in half."

…first I saw the jumping castle go in the air… then I saw the zorb balls and the thing going around the zorb balls.

…what about this, the swirl, how did you see that move? Did you see that at all?

I just saw it going round and round… and it didn't move at all it was just in the one spot."

92. Kylie Brown, who lives on Arden Avenue and who could see the School from her house, says in her affidavit dated 17 December 2021:[59]

"I was in my loungeroom when I heard a really loud bang and I thought it was a car tyre exploding. I looked out the loungeroom window and I saw a part of the jumping castle flying through the air. I came outside and then I realised that the whole jumping castle was in the air. The thing that I saw flying through the air was blue. I could see the castle in the air and bouncing along.

It was really weird. There was no wind at all. It was a beautiful day."

93. First Class Constable Colin Willcox, in an affidavit dated 11 January 2022 says:[60]

"At the time of my arrival at the scene,[61] *the weather was fine and clear. There was minimal wind present throughout the entire time I spent at the scene".*

94. Robert Monte said in his record of interview with the Regulator, WorkSafe Tasmania (WorkSafe):

"… all of a sudden the wind was there.[62]

…the whole lot was done-over and done with in about 20 seconds, it was that fast…"[63]

95. Jesse Barrett said the following in cross examination:

"Can you remember where you were um on the oval when this event unfolded?

Ah I believe I was inside the Zorb ball barrier[64]

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[58] Exhibit P64 CB V1 pp 701-720 at pp 703 and 708.
[59] Exhibit P30 CB V1 pp 146-147.
[60] Exhibit P33 CB V1 pp 156-158.
[61] First Class Constable Willcox was tasked to attend the School at approximately 10:05am on 16 December 2021 and he made his way to the School immediately. He was there until after 1:45pm.
[62] Exhibit P112B p 7 line 29.
[63] Exhibit P112B p 8 lines 1-2.
[64] T269 lines 1-3.

...what about the wind?

Um I just felt it, the wind, and then I heard like, you know, like a bit of yelling and um I do remember like flapping, a flapping sound now. I don't know whether it was the gazebo or what. Um and then yeah that the wind, like it was going around and around.[65]

Did you notice then either of the amusement devices, inflatables, at that time?

Um yeah after Rosemary I looked over my right shoulder and the jumping castle was in the air."[66]

96. Mr Barrett said in his record of interview with WorkSafe:

"And could you just describe the wind event itself?

Yeah, it just happened out of nowhere. No warning or nothing. It was just instant wind. When I looked at Rosemary the gazebo roof tent thing was flapping and then I looked up and it was just in the sky. There was no strong wind before it. It was straight – instant.[67]

And can you just explain to us the wind event?

So I remember – I think I was crouched down and the wind picked up, and I looked to my left and saw Rosemary holding down the gazebo, and then I looked to my right and the bouncy castle was up in the sky. And then I looked at Bobby, yeah.[68]

So the wind event came and there was no warning, you said?

Yeah, no warning at all.[69]

Okay, Jesse, we're just going to talk about the wind event. What do you remember about the wind event in your own words?

It was very quick. It was real, real strong wind. It was out of nowhere, no warning. Yeah, it was circling. It wasn't just wind. It circled. Yeah, that's pretty much it.[70]

So from the other side of the school to where the car park is?

...You couldn't hear it coming or anything. It just hit.[71]

And, sorry, how long do you think it lasted?

"Thirty seconds or something."[72]

97. Mr Barrett gave evidence he was inside the zorb ball arena when the weather event unfolded. He became aware of the wind going "*around and around*", heard a flapping sound and yelling. He noticed Ms Gamble holding the gazebo down and the fabric roof was flapping around. He then

[65] T269 lines 14-18.
[66] T269 lines 27-29.
[67] Exhibit P112A p 11 lines 472-477.
[68] Exhibit P112A p 10 lines 455-460.
[69] Exhibit P112A p 11 lines 495-497.
[70] Exhibit P112A p 35 lines 1743-1748.
[71] Exhibit P112A p 36 lines 1813-1819.
[72] Exhibit P112A p 37 lines 1837-1839.

looked over his right shoulder and observed the jumping castle 10 metres high in the air and "*probably 15-20 metres*" towards the middle of the School oval.[73]

98. Mr Monte and Mr Barrett ran after the jumping castle. Mr Barrett noticed the jumping castle and the zorb ball arena spiralling in the air while he was running. As Mr Barrett was running, the zorb ball arena came down and hit Mr Monte and the wind knocked Mr Barrett to the ground and he was also hit by the zorb ball arena.[74] The zorb ball arena came back to the ground, and "*came around again but I managed to duck it. Then I got up and started running after the castle again.*"[75]

99. Mr Barrett described how the jumping castle was going "*around and around but further towards the outside of the oval.*"[76] The jumping castle touched the ground "*for a little, for a split second*" and that is when the children fell out of the jumping castle, and then the jumping castle went back up.[77] Mr Barrett was directed by Mr Monte to see whether there were any children remaining inside the jumping castle once it landed. He checked and noted there were no children remaining inside the jumping castle. Mr Barrett noticed the zorb ball arena landed in *"one of the trees.*"[78] Upon walking past the original position where the jumping castle had been erected, Mr Barrett noticed one of the jumping castle pegs still in the ground, along with a folded out piece of metal.[79] What he saw is consistent with the photograph which is depicted at page 41 of Court Book Volume 2.[80]

100. LW, a student, in her record of interview conducted on 21 December 2021 says,[81] she was at the volleyball area when she felt a big gust of wind which knocked over the volleyball net. Her friend was unable to pick it back up because the wind was too strong. She said:

> *"I watched the castle in the air. It kind of looked like a tornado, but at the same time it didn't."* She described *"the jumping castle lift up into the air, three corners went up and then there was another bit that was still attached to the thing that inflates it, …and then it just went up… It was very quick… And then it launched up into the air and I think it deflated a little bit, but it was air, but still had air in it."*

101. Another student, BB, was playing dominos above the stairs which lead down to the School oval when she became aware that the inflatables were going up in the air. With respect to the weather she said:[82]

> *"It was really windy, and then just a random gust of wind came and just blew it up in the air, and then I don't really remember what happened after that*." She said two zorb balls*" landed not far from where they were set up…And I couldn't see the other two… and the bouncy castle was near where the dip of the hill was to go down to there and it ended up on the complete other side of the oval, so pretty far away".* The ring from the zorb balls *"was in a tree… on the other side as well…."*

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[73] T269 line 3 to T270 line 3.
[74] T270 lines 6-19.
[75] T270 lines 21-23.
[76] T270 lines 26-27.
[77] T270 lines 30-33.
[78] T270 lines 38 to T271 line 1.
[79] T271 lines 36-41.
[80] T272 lines 1-13.
[81] Exhibit P40 CB V1 pp 176-193 at pp184-186.
[82] Exhibit P41 CB V1 pp194-210 at pp 198 and 201.

102. LD, a student at the School, says in his record of interview conducted on 21 December 2021:[83]

> *"I was playing volleyball with some of my friends, and… the volleyball pole fell down because of this big gust of wind" …* The jumping castle was in the air *"like sideways… the zorb balls were like the jumping castle and flying around everywhere in the air."* With respect to the weather he said: *"it was sunny um, very warm, there was no wind until it happened."*

103. CD, a student at the School, says in her record of interview conducted on 22 December 2021:[84]

> *"…it was all very sudden…the jumping castle just sort of picked up in the wind, it slid on the grass a little bit and then it went in the air... one kid… he flew out of it and like landed like near me… It was a huge gush of wind... it was very sudden, it happened very quickly..."*

104. LM, a student at the School, says in her recorded interview conducted on 21 December 2021:[85]

> *"…first it was the zorb balls and like the base around keeping everything in, it also went up, up into the air and the zorb balls went into the air, and then another few seconds the jumping castle went into the air."*

She described the wind as getting more windy as the seconds went by. She described the zorb ball barrier going into the air at probably treetop height.

105. TS, a student at the School, says in her recorded interview conducted on 22 December 2021:[86]

> *"I saw dirt from the dead patch of grass start um, like going into the air and then I saw the jumping castle go up and I saw one of my friends fall out and then I saw the zorb balls go and then the ring around the zorb balls and then I um, saw people fall out over the hill and then two of my friends helped one of my friends out of one of the zorb balls and then we got moved to one of the classrooms…when I got to the oval… I saw like all the dirt go up and then everything else happened. ..all the dirt started going up and it was like, and then it went to the jumping castle… it had hit the tornado, I saw like the front bit," talking of the jumping castle, "go up and then the rest of it go up and then one of my friends," who she named as a survivor, "fell out."*

106. Jeff McCormack lives next to the school. As he was driving on Arden Drive, he had an unobstructed view of the school grounds. He told police in his statement of 16 December 2021:[87]

> *"As I drove down it dips and you lose sight of the school grounds… At this time, I could see a large bouncy castle in the air, being tossed around. The castle was of bright and light colours. I hadn't seen this before and I didn't know that there was an event at the school. There is a large gum tree on the grounds of Hillcrest Primary School between the oval and the school itself. I would estimate that the bouncy castle was at around 75 to 80% of the height of this tree. I would estimate this would be 8 to 10 metres. I lost sight temporarily, as I said, as the bouncy castle was drifting in the air across the oval towards another tree. I pulled into my address in my car and walked to the backyard. I*

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[83] Exhibit P47 CB V1 pp 361-381 at pp 366-367, 372 and 378.
[84] Exhibit P48 CB V1 pp 382-401 at pp 385 and 392.
[85] Exhibit P56 CB V1 pp 553-565 at pp 557, 560 and 563.
[86] Exhibit P61 CB V1 pp 647-660 at pp 649-651.
[87] Exhibit P19 CB V1 pp 115-116.

had no sight at this point, but I heard a very loud bang and I immediately thought it was the castle hitting and popping on a tree. I went back to my back fence for a look and I could see what looked like the remainder of the bouncy castle wrapped around the tree."

Impact of the dust devil on the amusement devices

107. First-Class Constable Wotherspoon arrived at the School at about 10:30am on the 16 December 2021.[88]

108. After the incident the yellow blower which had been connected to the jumping castle was found under a tree near the classrooms[89] on the bank situated on the western side of the School oval.[90] On inspection of the yellow blower, the fan was off-centre and a number of electrical wires were disconnected from their joiners/connectors.[91] In addition there was a broken fan mount on the base of the fan and rusty material on a rectangular section of the blower.[92]

109. First-Class Constable Wotherspoon weighed the Zorb ball arena which he found to be 82.5 kilograms.[93] The purple zorb ball was deflated and weighed 45.3 kilograms[94] and the green, pink and red zorb balls weighed 45.8 kilograms.[95] The jumping castle weighed 137.3 kilograms[96] (net). Pegs contained at cones marked 1, 2 and 3[97] were provided to WorkSafe Inspector James Day on 17 October 2022.[98] Their measurements were:

i. a J-shaped peg at cone 1 which was 30 cm long and which had a diameter of 11.9 mm;[99]

ii. a J-shaped peg at cone 2 which was 30 cm long and which had a diameter of 11.9 mm;[100] and

iii. a folded peg at cone 3 which was 34.5 cm long and which had a diameter of 11.1 mm.[101]

110. First-Class Constable Wotherspoon gave evidence regarding close up photographs taken of a peg at cone 5 which was attached to a D-ring, shock cord and two accessory carabiners.[102]

Expert Evidence: Dr Earl-Jones

111. Dr Nicholas Earl-Jones gave expert evidence on behalf of the prosecution. He was the only weather expert to give evidence in this case. He was eminently qualified to do so.[103] His expertise and evidence was not disputed. Dr Earl-Jones and his colleague Mr Ben Weeding provided a detailed meteorological report dated 15 December 2022[104] (the report) and Dr Earl-Jones

[88] T59 lines 32-33.
[89] T65 lines 24-26.
[90] T203 lines 28–29.
[91] T203 lines 38-40.
[92] T204 lines 1-6.
[93] T142 lines 16-19.
[94] T142 lines 25-28.
[95] T142 lines 30-32.
[96] T142 lines 21-23.
[97] Exhibit P72 CB V2 pp32-33, 39-43.
[98] T208 lines 4-8.
[99] T208 lines 18-21.
[100] T208 lines 23-24.
[101] T208 lines 26-27.
[102] T81 lines 21-29, Exhibit P72 CB V2 pp 46-47.
[103] See exhibits P92 and P93 which are his CV and Google Scholar respectively.
[104] Exhibit P90 CB V4 pp 43-72.

provided an undated supplemental proof of evidence, which was served on Ms Gamble's legal representatives on 1 November 2024.[105]

112. Dr Earl-Jones says in the report the evidence he reviewed by way of witness statements[106] suggests a tornado like feature although he says an actual tornado would be impossible given the weather conditions. In addition he says the weather conditions, together with the local nature of the extreme winds and evidence of other dust devils in the area, by which he refers to evidence from the Devonport airport,[107] indicate that a dust devil was the only realistic possibility.[108] He was *"absolutely certain"* that this Wind Event was a dust devil.[109]

113. As to wind speed the report says "[i]t is almost impossible to accurately measure the speed within a dust devil…as dust devils are very small and the wind speed within varies greatly in time and space, and from one dust devil to the next." However Dr Earl-Jones estimated that wind speeds can reach 100 km/h or faster and that "the Devonport dust devil would have been at least 60-80 km/h."[110] He goes on to say *"[i]t was not the speed of the winds however which is what provided the lift, but the pressure drop in the middle of the vortex, which is up to 1000 Pa… lower than the immediate surrounding atmospheric pressure. This had the effect of sucking the inflatables into its centre of the dust devil and up off the ground in the associated updrafts."*[111]

114. Based on the eyewitness statements, the direction of travel of the inflatables and the direction of the sea breeze as it moved over the School grounds Dr Earl-Jones concluded the dust devil was travelling from the north-west of the oval, from the school car park, parallel to the direction of the sea breeze, which was moving over the area from the north-west. He says the dust devil then moved across the oval to the eastern side of the oval in an east – south-east direction. It is likely to have dissipated in the trees to the east of the school as dust devils need a constant source of heat/energy to be maintained or it moved along the sea breeze towards the south-east.[112] In addition he says the dust devil is likely to have formed at a point at which the north westerly winds from the sea breeze met the southerly winds from the synoptic flow which he says Devonport experienced throughout the morning. He says there are many different land use types in the vicinity of the school such as the hot asphalt car park and nearby wooded areas and this could have triggered the intense convection and updrafts which formed the dust devil.[113]

115. In the report Dr Earl-Jones says:

> *"…given a pressure drop of 1000 Pa in the centre of the dust devil over a surface area for the jumping castle of approximately 16 square metres, this would result in a force equivalent to 1.6 metric tons in weight – equivalent to a medium sized car… Given an estimated mass of the jumping castle and occupants of 300 kg, this force would be sufficient to cause extremely rapid acceleration of the jumping castle and occupants*

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[105] Exhibit P91.
[106] Dr Earl-Jones also had regard to a video of the set up (Exhibit P3), a video of a dust devil at the Devonport airport (Exhibit P71B), photographs (Exhibit P72), and materials provided by the Bureau of Meteorology (Exhibit P89). See T322 to T323.
[107] See the first clip on Exhibit P71B particularly after 10:03am.
[108] Exhibit P90 CB V4 p 50.
[109] T324 lines 26-27.
[110] Exhibit P90 CB V4 p 50.
[111] Exhibit P90 CB V4 pp 50-51.
[112] Exhibit P90 CB V4 p 51.
[113] Exhibit P90 CB V4 p 52.

once the securing pegs had been pulled from the ground by the force of the dust devil."[114]

116. As to the duration of the dust devil Dr Earl-Jones says:

"Dust devils in general can last from a few seconds to hours, though given the rough and varied terrain, this one was likely relatively short (seconds or a minute)."[115]

117. Dr Earl-Jones was asked to provide his opinion on the likelihood of occurrence of a dust devil in the following locations:

At the School oval: "A dust devil of this intensity is unprecedented in the area in my opinion".[116]

In Devonport generally: "… dust devil occurrences in Devonport are very rare and one of this intensity is unprecedented in my opinion…."[117]

In Tasmania generally: "… occurrence in Tasmania is very rare and one of this intensity is unprecedented in my opinion. There are no media reports or scientific literature mentioning such severe dust devil events in Tasmania." [118]

118. The prosecution asked Dr Earl-Jones what indicators increase the potential for such a meteorological event to occur. He says the following factors increase the potential for dust devil formation:

- dry conditions,
- relatively calm conditions,
- a clear day with strong sunshine,
- slope facing the morning sun heating up quickly,
- strong temperature gradient, relatively cool air above a hot surface,
- flat dry oval exposed to the sun, with cooler areas (not sun facing, and tree covered) in the vicinity, leading to low level convergence and the creation of convective updrafts, and
- sea breeze formation with uplift on the boundary.[119]

119. Despite these factors Dr Earl-Jones goes on to say that it is *"essentially impossible to predict such an event with any degree of accuracy. Even once formed, dust devils move sporadically and unpredictably…to predict the dust devil of such severity is in this exact location not realistic."*[120]

120. Dr Earl-Jones acknowledged it is straightforward to predict the conditions that are conducive to dust devil formation however:

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[114] Exhibit P90 CB V4 p 51.
[115] Exhibit P90 CB V4 p 52.
[116] Exhibit P90 CB V4 p 55.
[117] Exhibit P90 CB V4 p 55.
[118] Exhibit P90 CB V4 p 55.
[119] Exhibit P90 CB V4 p 56.
[120] Exhibit P90 CB V4 p 56.

> *"predicting the formation of a dust devil of the magnitude observed at a specific location in a climate like Tasmania would be impossible."* [121] *"It is essentially impossible to have predicted the occurrence of this event"* [122] and from what he could determine *"...no meteorological agency provides dust devil forecasts"* [123] and *"[w]ith the unprecedented nature of this event, there was no indication of dangerous weather that would have been of concern."* [124]

121. Dr Earl-Jones says there was no response to the Wind Event which occurred at the School on 16 December 2021 which the operators of Taz-Zorb could have taken. He says:

> *"[t]here was no indication of gusts above 40 km/h (or even above 20 km/h) in the weather forecast, and no observation sites recorded gusts of that magnitude. Therefore, the operator of Taz-Zorb followed the relevant guidelines."*[125]

122. In his supplemental proof Dr Earl-Jones says the winds of the dust devil would not have been coming from a single direction. They are very chaotic and variable as it pulls in the air around it. *"The dust devil would likely have pulled air underneath the jumping castle."*[126]

123. In his evidence Dr Earl-Jones said dust devils form when there is a huge temperature contrast "*between the surface and higher up*" causing a "*big temperature contrast*" similar to boiling a pot and "*the bubbles*" come up. The air is warm below which rises and if that air becomes "*disturbed then it can start spinning and um that can form a dust devil which then sucks in the energy from around it*" as it pulls in air from around it.[127] If there is cooler air around the dust devil, the energy it gains is "*from that bottom half a metre, above the surface*". The scale is "*very small*" between one metre diameter and the biggest is 50 metres in diameter.[128] The dust devil moves around picking things up and it moves to different heat sources[129] and once it moves to cooler ground, it loses energy, such as when you have trees creating shade on the ground.[130] If the dust devil collects no debris, it is invisible.[131] Exhibit P95 demonstrates the lifecycle of a dust devil.

124. Dr Earl-Jones said that the conditions that give rise to a dust devil are predictable however whether a dust devil will form in these conditions is "*very unpredictable.*"[132] A video taken in America in 2023 or 2024[133] demonstrated a jumping castle being lifted into the air vertically rather than horizontally and how localised the dust devil was because only metres away, there was no wind visible at all.[134] This exhibit demonstrates how powerful and destructive the vertical suction force of a dust devil can be.

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[121] Exhibit P90 CB V4 p 57.
[122] Exhibit P90 CB V4 p 57.
[123] Exhibit P90 CB V4 p 57.
[124] Exhibit P90 CB V4 p 58.
[125] Exhibit P90 CB V4 p 57.
[126] Exhibit P91 at [4].
[127] T325 lines 10-39.
[128] T325 line 42 to T326 line 4.
[129] T326 lines 5-10.
[130] T326 lines 15-17.
[131] T325 lines 35-36.
[132] T329 lines 4-5.
[133] Exhibit P96.
[134] T330 lines 35-38.

125. Dr Earl-Jones referred to an article in his report[135] which noted that between 1 January 2000 and 31 December 2021, there had been 132 reported incidents worldwide involving jumping castles and wind events, which resulted in 479 injuries and 28 deaths.[136] This article and the associated website does not refer to any reported jumping castle incidents involving wind events in Tasmania.[137]

126. Dr Earl-Jones said with respect to the predictability of dust devils that *"[i]t's not completely impossible because they do form- in other parts of the world…at certain types of times of day… scientists have studied these in places like ah the Arizona desert where the conditions are very often ideal for the formation of dust devils…in that kind of situation they can be predicted. But in Devonport it's impossible to predict a dust devil in my opinion, with any kind of accuracy."*[138]

127. Dr Earl-Jones said in evidence that at 10:00am on 16 December 2021, north westerly winds from the sea breeze met southerly wind from the background weather conditions at that boundary and it was at that boundary the dust devil formed.[139] A dust devil forms when the:

> *"ground is very dry and the sun is very strong, then you get very strong surface heating"* and *"if it's dry no energy is lost in evaporating water so all the sun's energy turns into heat energy… this creates the - what's known as a thermal… a thermal is when you have just upward motion of air in certain areas um and um when the sea breeze front has come over the school one of these thermals has started to spin and um this basically creates a kind of um a kind of chimney-like structure in the atmosphere um and then that kind of retains the heat ah in the system and it literally sucks in the air from the surface around it um and um and as it gets taller the spin gets faster. Um and it's it's basically self-sustaining um if there's a energy source."*[140]

128. Dr Earl-Jones was of the view the thermal *"gained energy from the large tarmacked road in front of the school as it was coming from the north west and um and of the carparks in the er associated with the school."*[141] Dr Earl-Jones said the dust devil travelled from the carpark, travelling northwest which was parallel to the sea breeze and then it dissipated in the trees,[142] gaining energy from the dark tarmac of the carpark which *"would've been very warm um compared to the other areas around it so that would've had lots of… energy, lots of heat energy and it would've sucked in that energy and that would've given the dust devil a boost."*[143]

129. Dr Earl-Jones estimated the speed of the dust devil moving along with the sea breeze was approximately 10 – 20 kilometres per hour.[144] As to the wind speed inside the dust devil, Dr Earl-Jones said it is "*very difficult to estimate*" because dust devils are "*highly variable*" and "*vary along their own life cycle*" and "*vary between dust devils*". Dr Earl-Jones said, consistent with his report, "*people have measured within dust devils, um I believe around 60 to 80 kilometres an hour*" which is described as a "*pretty typical um wind speed within the dust devil itself*".[145]

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[135] Exhibit P94.
[136] T321 lines 26-36.
[137] See Exhibit P90 CB V4 p 70 (Exhibit P94 refers to the website of incidents: All Incidents - Weather to bounce).
[138] T334 line 40 to T335 line 4.
[139] T324 lines 17-24.
[140] T324 line 31 to T325 line 1.
[141] T325 lines 1-4.
[142] T327 lines 24-28.
[143] T328 lines 4-7.
[144] T327 lines 1-5.
[145] T327 lines 8-14.

He said it is impossible to estimate how far the dust devil actually travelled[146] however it's duration was likely short because there is evidence of "*multiple dust devils on this ah sea breeze front, so I believe that this specific one um is likely to have dissipated after ah leaving the school oval.*"[147]

130. Dr Earl-Jones said it was hard to say how the dust devil picked up the amusement devices because he had not seen a video of this particular dust devil however its scale may have grown once it got onto the oval because it *"would've got some energy from that dry hot area. So it could've been metres across* [in diameter]. *So yeah technically it could've picked up both"* the zorb ball arena and jumping castle.[148] The dust devil was a chaotic system moving along the sea breeze and to where the source of energy was so it would pick up some things and not others and so while it travelled the 75-metre distance across the School oval, the dust devil could have picked up both the jumping castle and zorb ball arena which he noted was implied from the witness statements.[149] Over that journey, the dust devil would gain energy, lose energy and regain energy again. This explains some of the evidence that the jumping castle was observed to come back down to the ground before rising into the air again.[150]

131. Dr Earl-Jones said if an anemometer was available at the time, it would have read light southerly winds and then as the dust devil and sea breeze front approached, air would have sucked into the anemometer, sending it into chaos and it too would have likely lifted with the dust devil if it was not tied down.[151] He said that an anemometer would have been *"useless in the circumstances."*[152]

REVIEW OF MS GAMBLE'S COMPLIANCE WITH THE AUSTRALIAN STANDARDS

132. The prosecution called Mr Roderick McDonald whereas the defence called Professor David Eager. Both witnesses gave expert engineering evidence. Three Australian Standards were referred to by Mr McDonald and Professor Eager and they were:

    (a) AS 3533.4.1:2005 – Amusement rides and devices – Part 4.1: Specific requirements – Land-borne inflatable devices;[153]

    (b) AS 3533.1:2009 – Amusement rides and devices – Part 1: Design and Construction;[154] and

    (c) AS 3533.2:2009 – Amusement rides and devices – Part 2: Operation and Maintenance.[155]

133. Mr McDonald and Professor Eager agreed, consistent with the Preface to the Standards, that the *'specific'* amusement devices Standard, AS 3533.4.1:2005, takes precedence over corresponding

[146] T328 lines 9-11.
[147] T328 lines 16-18.
[148] T332 lines 12-17.
[149] T332 lines 21-34.
[150] T332 lines 46-42.
[151] T334 lines 17-30.
[152] T333 lines 7-8.
[153] Exhibit P102 CB V4 pp 205-256.
[154] Exhibit P100 CB V4 pp 77-204.
[155] Exhibit P101-standalone court book.

requirements of the *'general'* Standards, AS 3533.1:2009 and AS 3533.2:2009, where there is conflict between them.[156]

134. The Standards contain a number of appendices, some of which are marked "Normative" and others "Informative". "A 'normative' appendix is an integral part of a Standard, whereas an 'informative' appendix is only for information and guidance."[157]

Ms Gamble's compliance with the Australian Standards

135. Mr McDonald advised Ms Gamble's operation of the jumping castle was not compliant with a number of aspects of the Australian Standards or he advised he could not determine from the evidence whether or not she had complied with the Standards. See for example his comments with respect to:

    (a) AS 3533.4.1:2005:
        (i) Section 15: Inspection;[158]
        (ii) Section 16: Maintenance;[159]
        (iii) Section 17: Supervision;[160]
        (iv) Section 18: Operation;[161]

    (b) AS 3533.2:2009:
        (i) Section 2.1 – Site Layout[162]
        (ii) Section 2.2 – Assembly and erection[163]
        (iii) Section 3.1 – Planning[164]
        (iv) Section 3.2 – Operation[165]
        (v) Section 5 – Maintenance, Replacement, Repair and Inspection[166]

The correlation between Ms Gamble's asserted failure to comply with the Australian Standards and East Inflatables failures to comply with the Australian Standards

136. While failure to comply with the Australian Standards is not particularised in the Complaint, it was central to Mr McDonald's analysis of the failure of the anchorage system of the jumping castle. He accepted there appeared to be a direct correlation between Ms Gamble's non-compliance with the Australian Standards and the non-compliance by East Inflatables with their obligations under the Standards with respect to the following matters:[167]

    (a) AS 3533.4.1:2005:
        (i) Section 15: Inspection;[168]

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[156] Exhibit P102 CB V4 p 210, T553 lines 5-6, T647 lines 36-41.
[157] Exhibit P102 CB V4 p 208.
[158] Exhibit P112 CB V5 pp 67-72.
[159] Exhibit P112 CB V5 pp 72-74.
[160] Exhibit P112 CB V5 pp 74-79.
[161] Exhibit P112 CB V5 pp 79-82.
[162] Exhibit P112 CB V5 pp 83-87.
[163] Exhibit P112 CB V5 pp 87-90.
[164] Exhibit P112 CB V5 pp 92-103.
[165] Exhibit P112 CB V5 pp 103-106.
[166] Exhibit P112 CB V5 pp 106-109.
[167] T530 line 27 to T541 line 26.
[168] T530 lines 27-30.

(ii) Section 16: Maintenance;[169]
(iii) Section 17: Supervision;[170]
(iv) Section 18: Operation;[171]

With respect to the alleged breaches of AS 3533.2:2009:

(i) Section 2.1 – Site Layout;
(ii) Section 2.2 – Assembly and erection;
(iii) Section 3.1 – Planning;
(iv) Section 3.2 – Operation; and
(v) Section 5 – Maintenance, Replacement, Repair and Inspection;

Mr McDonald advised because the specific standard (AS 3533.4.1:2005) prevails over the general standard (AS 3533.2:2009), those parts of AS 3533.2:2009 which are also covered by AS 3533.4.1 would not be applicable,[172] albeit he acknowledged the Australian Standards are complex and difficult to understand.[173]

Design of System by *"Competent Person"*

137. Another concern raised by Mr McDonald about Ms Gamble's operation of the jumping castle was that in the absence of sufficient information or a compliant amusement device, she should have engaged a *"competent person"* to provide advice as to the design and operation of the jumping castle.

138. The definition of *"competent person"* relied upon by Mr McDonald in the context of design is contained in clause 1.3.8 of AS 3533.1:2009 with reference to Appendix B which suggests what training, qualifications or experience it is appropriate for the various competent persons, set out in that appendix, to have. This appendix stipulates it is *"informative"* only. Clause 1.3.8 and Appendix B contains a different definition of *"competent person"* to that which appears in the operation standard: AS 3533.2:2009 at clause 1.3.10 and Appendix B.

139. AS 3533.1:2009, the design standard, at clause 1.3.8 and Appendix B provides:

"1.3.8 Competent Person

A person who has acquired through training, qualifications or experience, or a combination of these, the knowledge and skills enabling that person to perform a specified task.

NOTE: Appendix B provides suggestions for the training, qualifications or experience considered appropriate to possess for the various competent persons referred to in this Standard.

...

Appendix B

Suggested Training, Qualifications and Experience for Competent Persons

[169] T529 line 5 and T 530 lines 27-30.
[170] T534 line 7 to T537 line 24.
[171] T537 line 26 to T540 line 26.
[172] T551 line 6 to T553 line 32.
[173] T553 lines 34-36.

(Informative)

…

Role/responsibility/task:	*Training/Qualification/ experience:*
Design, or other individual (whether or not nominated by the designer) responsible for undertaking work for which the designer would normally be responsible in accordance with this Standard.	*This person should possess formal (tertiary) qualifications in engineering and sufficient experience to fully comprehend the concept of the amusement device, its probable mode and environment of operation, and the provisions relative to its maintenance.*

(emphasis added)

140. Ms Gamble relied upon East Inflatables' assurance the jumping castle was compliant with the Australian Standards. She was therefore not aware of any deficiencies in the design of the jumping castle, nor the fact that East Inflatables was in breach of its obligation to provide information in compliance with the Australian Standards. She was also not aware that the information she obtained from the manual which she downloaded was deficient. There is no suggestion in the evidence that her reliance on the assurance she was given or the information she was provided by East Inflatables or obtained herself was unreasonable. It was put to Mr McDonald that his position, against this background, was Ms Gamble ought to have understood and applied the relevant standards. In response to that proposition Mr McDonald said:

> "*I would say she should have sought help. The trigger for knowledge of whether you need help is maybe the question."*[174]

141. When questioned about what the *"trigger"* for seeking assistance was, Mr McDonald said that the *"trigger"* was the provision of only four pegs, when the one page manual referred to 8 pegs.[175] When directed back to one of the assumptions which underpinned his cross examination, namely that the only manual which Ms Gamble had was the two page manual which she downloaded from the East Inflatables website, Mr McDonald conceded:

> *"Yes, that trigger doesn't exist with that manual."*[176]

142. The fact that Ms Gamble had operated the jumping castle in excess of 100 times without incident prior to the Wind Event is relevant to whether or not she needed to obtain advice particularly when her system of operation is considered. This system is considered at paragraphs 223 to 324.

143. Given Ms Gamble reasonably believed the jumping castle complied with the Australian Standards, her lack of knowledge of any defects, and her experience in operating the jumping castle for in excess of five years without incident prior to the Wind Event leads me to conclude she was not under any obligation to obtain the advice recommended by Mr McDonald. My conclusion is influenced by the statement of Murphy JA in the WA Court of Appeal decision of *Laing O'Rourke (BMC) Pty Ltd v Kirwin* [2011] WASC 117 where he said:

> *"In my respectful view, by concluding that the appellant was required to carry out its own inquiries and investigations, including by obtaining engineering advice, into the*

[174] T553 lines 40-42.
[175] T542 lines 22-32.
[176] T543 line 1.

design and fabrication of the dongas for the purpose of assessing their suitability for cyclonic conditions, his Honour ascribed a content to the duty under s19 which went beyond what was reasonably practicable in the circumstances"[177]

Was Ms Gamble a *"competent person"* to operate the jumping castle?

144. *"Competent person"* is not defined in the specific amusement devices Standard: AS 3533.4.1:2005.[178] The operation standard defines *"competent person"* in clause 1.3.10 and Appendix B as follows:

> ***"1.3.10 Competent person***
>
> *A person who has acquired through training, qualifications or experience, or a combination of these, the knowledge and skills enabling that person to perform a specified task.*
>
> *NOTE: Appendix B provides suggestions for the training, qualifications or experience considered appropriate to possess for the various competent persons referred to in this Standard.*
>
> *...*
>
> *APPENDIX B*
>
> *SUGGESTED TRAINING, QUALIFICATIONS AND EXPERIENCE FOR COMPETENT PERSONS*
>
> *(Informative)*

Role/responsibility/task	*Training/qualifications/experience*
Assembly, set up, operation, dismantling and transportation of amusement rides and devices (and supervision thereof)	*Persons involved in such operations should have sufficient experience and knowledge of the device to enable such operations to be carried out safely and in accordance with the manufacturer's instructions*
Hazard identification and risk assessment	*Any person conducting a hazard identification and risk assessment on an amusement device (or any part or component thereof) should have a thorough knowledge of the operation of the device, and of the general history of such a device. This person should be able to complete such a hazard identification and risk assessment to the satisfaction of the relevant regulatory authority*

[177] At [65].
[178] It is however defined in clause 4 of AS 3533.4.1:2018 however this standard does not apply as the jumping castle was manufactured before this Standard commenced operation.

Maintenance, replacement and repair of amusement devices or components thereof	*Persons undertaking maintenance, replacement and repair of amusement devices or components thereof should, where necessary, possess relevant certificates of competency. Where formal qualifications are not required (e.g. for routine tasks), persons should be fully trained in the requirements of the task to be performed*

(emphasis added)

145. Professor Eager was of the view both Ms Gamble and Mr Monte were *"competent persons"* within the meaning of clause 1.3.10 of AS 3533.2:2009 as operators of the jumping castle, because:

    (a) Ms Gamble and Mr Monte had operated the jumping castle 100-200 times over five years;[179]

    (b) they completed risk assessments;[180]

    (c) they used the device diligently and competently in the absence of any adequate instructions from the manufacturer;[181] and

    (d) their system of work had proven to be safe and reliable.

146. Professor Eager also said *"competency"* is relative to the particular amusement device so for a class five ride like a roller coaster you need an engineer. However for a class two device like this jumping castle *"what we've got is sufficient experience and knowledge of the device to enable such operations to be carried out safely and in accordance with the manufacturer's instructions."*[182]

147. Professor Eager referred to Appendix B of AS3533:2:2009 and said:

> *"The suggested training, qualifications and experience for the assembly, set up, operation, dismantling and transportation of amusement rides and devices (and supervision thereof) 'is sufficient experience and knowledge of the device to enable such operations to be carried out safely and in accordance with the manufacturer's instructions.'"*[183]

148. Professor Eager's view was *"based on the evidence reviewed, the assembly and erection of the inflatable devices was carried out by or under the direction supervision of competent persons [Gamble and Monte] in accordance with the manufacturer's instructions"*; those instructions being the two page manual which Ms Gamble accessed online.[184] Accordingly Ms Gamble and Mr Monte were "competent persons" to assemble, set up, operate, dismantle and transport the

[179] T666 line 38 to T667 line 6.
[180] T667 line 24 to T668 line 21.
[181] T667 lines 11-22.
[182] T666 lines 29-31.
[183] Exhibit D8 CB V7 p 34.
[184] Exhibit D8 CB V7 p 34.

jumping castle safely. This view is supported by the system of work analysed at paragraphs 223 to 324.

149. I do not accept Mr McDonald's view that the use of four pegs rather than eight is a design issue. This is because, as Professor Eager pointed out, the use of four pegs rather than eight was an operational issue in the sense that the jumping castle was not set up or operated in the manner in which the anchorage system had been designed to be utilised.[185]

APPLICABILITY OF THE AUSTRALIAN STANDARDS

150. The parties agree the Australian standards have no legal application unless adopted and applied by contract or statute.[186] They may however still be relevant if the standards are accepted as representing a consensus of professional opinion and practical experience about sensible, safe precautions.

151. This issue was dealt with in Tasmania by Justice Porter, as he then was, in *Kent v Gunns Ltd* [2009] TASSC 30; (2009) 18 Tas R 454, where his Honour said the following at [47]-[52]:

> *"[47] Counsel for the applicant submitted that the respondent had a "clear duty to comply with AS-1755 and had it done so the machine would have been guarded prior to the events of 24 August 2006." He observed that as the magistrate had made no mention of the Standard, it was not possible for this Court to ascertain what, if any, consideration the magistrate gave to the "requirement" under the Standard.*
>
> *[48] The issue which needs to be considered is the status of the Standard in the sense of whether and to what extent, if any, it governed or affected the activities of the respondent on and before the date of the accident. As I have noted, the Standard was tendered by consent. There was no evidence relating to it other than Ms Rabe's stated familiarity with it. A similar situation arose in Chicco v City of Woodville (1990) Aust Tort Reports 81-028. At 67,895 King CJ said:*
>
> > *"Publications containing safety standards approved by the Standards Association of Australia were admitted by consent. These standards do not have legal force, except, of course, to the extent that they may be given such force by a particular statute. They had no legal force in the circumstances of the present case.* ***It is permissible for an expert on safety to have recourse to such published standards, if he sees fit, as one of the sources from which he informs himself as to matters relating to the subject on which he is expert. But the standards, of themselves, have no legal or evidentiary force."***
>
> *[49] At the same page, Cox J said that viewed "testimonially", the standards appeared to be expressions of opinion. At 67,897, Millhouse J said that the standards were "merely the expressions of opinion of people speaking under the aegis of the association". Later, his Honour said:*
>
> > *"I suggest tender of the Standard should not have been allowed. As it was, it got in by consent and there it is. I reiterate though, that such a 'Standard' is not evidence."*

[185] T741 line 4 to T744 line 21.
[186] DPP's submissions dated 10 February 2025 at [32] and Mrs Gamble's submissions dated 31 January 2025 at [20.13.1].

[50] In short, ***a Standard such as AS-1755 is merely a guideline without any legally binding effect. In the absence of statutory embodiment, their relevance in any proceedings would only be to the extent that there has been expert evidence as to the extent to which they express good practice****; see Reed v Peridis [2005] SASC 136 at [39] and Hughes v Van Eyk [2008] NSWSC 525 at [68].*

[51] There is no law, and there was no evidence before the magistrate, to suggest that AS-1755 was something that the respondent was required to obey or would have been well advised to observe. Of itself, the Standard added nothing to the appellant's case before the magistrate. Although count 2 was particularised as including a failure to provide and maintain guards in accordance with AS-1755, there was also a particular relating to a failure to provide guards so as to ensure persons using the conveyor were not exposed to risks to health and safety. That particular contained no reference to the Standard. The case as to count 2 was thus squarely put on the basis of a failure to guard the conveyor, and in his reasons, the magistrate addressed the absence of the guard at the time of the accident and the later installation of the switch/guard.

[52] The Standard added nothing to the appellant's case at the hearing. From all of that, it follows that this ground is without merit".

(emphasis added)

152. In addition Pullin JA in the WA Court of Appeal in *MR & RC Smith Pty Ltd t/as Ultra Tune (Osborne Park) v Wyatt (No 2)* [2012] WASCA 110 [187] (Ultra Tune) said:

"[69] The trial judge said the Australian Standard was 'relevant' but did not explain why this was so. Standards Australia or its predecessors have existed since 1922. See the history set out in Benchmark Certification Pty Ltd v Standards Australia International Ltd [2004] FCA 1489; (2004) 212 ALR 464 [16] [19]. Standards published by Standards Australia have no legal application unless adopted and applied by statute or by contract.

[70] However, even if there is no statutory or contractual application of an Australian Standard, it may still be relevant in evidence if it is accepted as representing a consensus of professional opinion and practical experience ***about***[188] *sensible, safe precautions. In that way, an Australian Standard can assist the court in determining whether some aspect in the construction of a building constitutes a danger which must be guarded against by the exercise of reasonable care: see Fitzpatrick v Job [2007] WASCA 63 [94]…*

153. The only reference to the Australian Standards in the Tasmanian Work, Health and Safety legislation is a reference to the registration of amusement devices in Parts 1 and 2 of Schedule 5 of the *Work Health and Safety Regulations* 2012.[189] Accordingly other than the requirement for registration of certain amusement devices, it follows that Ms Gamble was under no obligation imposed by law to comply with the Australian Standards.

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[187] At [69]-[70] per Pullin JA.
[188] Emphasis added.
[189] These Regulations were in force at the time of the Wind Event. They have been replaced by the 2022 Regulations.

154. If the Standards are relevant, assessing their probative value is a matter for the Court. In *Ultra Tune*, Pullin JA said:

> *"[21] Whether the Building Code of Australia or the Australian Standard applied to the construction of the building by statute was a matter for the court to decide as a matter of law. Construing the provisions of the relevant Building Code of Australia and Australian Standard was also a matter for the court to decide as a matter of law. The opinions of witnesses about the correct construction of domestic statutes do not bind a court."*[190]

155. In submissions Ms Gamble argued with respect to the interpretation of consensus as set out in paragraph 152 above that it might be:

- consensus between the two engineers who gave evidence about Ms Gamble's compliance; that is Mr McDonald and Professor Eager and there was no consensus between them on that issue;
- consensus of the standards committee which drafted the Standards which only Professor Eager can give evidence about given he was the chair of the committee when AS 3533.4.1:2005 was drafted and he advised the committee reached *"a consensus from all the divergent views within the room"*[191] in writing the standards. As such it was submitted his interpretation of the standards and their application to Ms Gamble's amusement devices can be accepted as the consensus view of this committee, or
- they represented a consensus of professional opinion about sensible, safe precautions.

156. In my view, what Pullin JA is referring to is not the first two interpretations of consensus but the third given that the reference is to consensus between professionals and those with practical experience of sensible safe precautions. This interpretation is supported in the evidence as follows.

157. Mr Shahandeh, the geotechnical engineer, gave evidence about the role of various Australian Standards which he referred to in his report.[192] He said it was industry standard and considered best practice for any construction works in Australia to follow the relevant standard. Although it was a voluntary document, it was often turned into law by references in legislation. He said that if there was an Australian Standard for a job, or work, or services, the preference is to refer to and follow that guideline.[193]

158. On this issue Mr McDonald said the following in evidence:

> *"…the best way to think of Australian Standards, they're they're a a body of knowledge by an industry panel of experts that has been built up in consensus to provide a series of controls that are relevant to the device. So within the part 4 part 1, it basically tells you what the minimum practice of what you should be doing within the use of an inflatable [Indistinct word(s)]. It tells you the minimum practice of what you should be*

[190] [2012] WASCA 110 at [21].
[191] T592 lines 18-19.
[192] Exhibit P111 CB V4 pp 356-411.
[193] T385 lines 6-30.

doing in regards to inspection and and design, and construction and operation. It it really steps it out." [194]

159. There was the following exchange with Professor Eager when he gave evidence:

"Professor Eager, isn't it a case that the stan – Australian Standards essentially set out a bare minimum standard in accordance with a particular aspects of a standard that are being identified?..... I don't say bare minimum, um the committees that I chaired and the committees that I'm on, they're are minimum safety like like a a technical standard for safety yes, but, yes."[195]

160. While there was no legal obligation upon Ms Gamble to comply with the Standards, they provide a measure of what is reasonably required, according to industry standards, in order to implement sensible, safe precautions with respect the design, operation and use of the inflatable amusement devices. As such these Standards provide the guidelines against which *"reasonably practicable"* steps should be measured.

161. Having said that it is clear from the evidence the Standards are complex and in some instances ambiguous and deficient. Mr Shahandeh said AS 3533.4.1:2018 which superseded AS 3533.4.1:2005, which was applicable at the time the jumping castle was purchased in or about 2015, and which had not materially changed since the 2005 version, significantly lacked information and required revision *"to provide a more appropriate specification of suitable anchor types and dimensions and practical methods for operators to assess soil conditions, a prescriptive empirical methodology to assess the anchor retention capacity and appropriate methods of installation."*[196] Mr McDonald[197] said understanding the standards was complex and difficult and it follows that would be particularly so for someone like Ms Gamble who is not a qualified engineer.

MS GAMBLE'S BUSINESS

Purchase of the jumping castle

162. In Ms Gamble's response to WorkSafe's request for information pursuant to s155 of the Act she looked at the East Inflatables Manufacturing Co Ltd's (East Inflatables) website which said its jumping castles complied with Australian Standards and it listed AS 3533.4.1 which I infer is AS3533.4.1:2005.[198] In evidence Mr Monte said both he and Ms Gamble had a discussion about the significance to them of the reference to Australian Standards because *"we were trying to make sure it was legal here in Australia, up to Australian Standards."*[199]

163. On 5 November 2015, Ms Gamble purchased an E2-030 jumping castle from East Inflatables for USD $2,500.00.[200] Ms Gamble believed she was purchasing the jumping castle from the East

[194] T416 lines 12-19.
[195] T618 lines 1-9.
[196] Exhibit P111 CB V4 p 378 [9.2].
[197] T553 lines 34-36.
[198] Exhibit P81 CB V3 p 13 and p 70.
[199] T238 line 25 to T239 line 9.
[200] Exhibit P81 CB V3 pp 148-149.

Inflatables Sydney warehouse located at 1/35 Amsterdam Circuit, Wyong NSW 2259 (website: www.east-inflatables.com.au).[201]

164. Further evidence with respect to this appears:

In Mr Monte's record of interview with WorkSafe:

"Do you know how the jumping castle was purchased? Direct from the manufacturer or…
…The manufacturer was overseas we found out. But we thought it was actually here in Sydney. They have a warehouse in Sydney. And if you go onto the site it's– it's all up to the Australian Standard for it, so."[202]

In evidence Mr Monte said:

"…see the phrase there that ah the jumping castles, they were especially designed to comply with Australian Standards, AS3533.4.1? See that? Do you-

That's exactly right. I think that's, yeah, exactly right.

And did you Rosemary have a discussion about the significance of that – of the reference to the Australian Standards?

Of course. We – we were trying to make sure it was legal here in Australia, up to Australian Standards. We always did."[203]

In Ms Gamble's response to the s155 Notice from WorkSafe she advised in response to a request for *"[d]etails of the purchase of the inflatable amusement devices"*:

Ms Gamble first contacted East Inflatables via email believing she was purchasing a jumping castle directly from a Sydney warehouse as there were Sydney contact details on the East Inflatables website www.east-inflatables.com.au with a Sydney warehouse location at 1/35 Amsterdam Circuit, Wyong NSW 2259: Phone: 02 8091 5166."[204]

165. The East Inflatables website represented it was a member of the International Association of Amusement Parks and Attractions (IAAPA): Member No. 385887. According to its website, their inflatables are said to be designed to comply with Australian Standards, specifically AS 3533.4.1.[205]

166. It was not until 14 November 2015 after a number of emails from Ms Gamble to *"Fiona"*, 9 days after payment had been made and the purchase completed, that *"Fiona"* advised, *"This unit is in China factory stock and we deliver it to you by DHL."*[206]

167. When the jumping castle arrived:

- Mr Monte was working with Ms Gamble and was present on the day she opened the package containing the jumping castle received from East Inflatables.[207]

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[201] Exhibit P81 CB V3 p 13.
[202] Exhibit P112B p 14 lines 12-18.
[203] T239 lines 1-9.
[204] Exhibit P81 CB V3 p 13.
[205] Exhibit P81 CB V3 p 13 and p 70.
[206] Exhibit P81 CB V3 p 115.
[207] T225 lines 39-41.

- Mr Monte confirmed Ms Gamble's s155 response that the jumping castle arrived with four (4) anchorage pegs[208] measuring 300mm[209] a catalogue booklet detailing other jumping castles available for purchase from East Inflatables[210] and spare patches.[211]

- Mr Monte said East Inflatables did not provide eight (8) anchorage pegs with the jumping castle which is contrary to what East Inflatables advised WorkSafe in its s155 response.[212]

- There was no operating manual received with the jumping castle.[213] Specifically, the one page E2-030 manual,[214] or the 13 page operating manual[215] were not included with the jumping castle.

- Ms Gamble had to download a manual[216] from the East Inflatables website.[217] Mr Monte said in evidence Ms Gamble showed the two-page manual,[218] which she had downloaded to him "*later on*".[219] Mr Monte said he read that manual.[220] He advised that manual's instruction at paragraph 7 "*Extend the strap drive the provided stakes through the ring at the end of the strap*" was interpreted by him and Ms Gamble to mean that the number of pegs required to install the jumping castle was four stakes,[221] which equated to the number of pegs supplied by East Inflatables.[222]

- Ms Gamble confirmed in her s155 response to WorkSafe that on 20 September 2021, Taz-Zorb purchased a new Huawei electric blower for the jumping castle.[223]

Representations made by East Inflatables to Ms Gamble

(a) Compliance with the Australian Standards:

168. *"Fiona"* advised Ms Gamble in an email of 4 November 2015:

> *"Our products are produced according to Australian standards, even certified by the most strict European standards.*
> *Hence, don't worry about our product quality."*[224]

Additionally, Mr Heikkilae, an information technology specialist, gave evidence that on a number of dates from the time of purchase up to 9 December 2021 East Inflatables represented on its website that the jumping castle complied with Australian Standards.[225]

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[208] T226 lines 29-32.
[209] T240 lines 1-3.
[210] T226 lines 24-27, T240 line 9.
[211] T240 line 5.
[212] T240 line 40 to T241 line 2. See also CB V3 p 13 and p 197.
[213] T226 lines 1-4.
[214] Exhibit P84 CB V3 p 206 and T240 lines 11-21.
[215] Exhibit P84 CB 3 pp 207-219 and T240 lines 23-38.
[216] T226 lines 1-3.
[217] T226 lines 34-36.
[218] Exhibit P81 CB V3 pp 26-27.
[219] T241 lines 24-34.
[220] T241 line 36.
[221] T241 line 41 to T242 line 6.
[222] T240 lines 1-3.
[223] Exhibit P81 CB V3 p 13 in answer to request for information (rfi) number 12 and page 159.
[224] Exhibit P81 CB V3 p 128.
[225] Exhibits D14, D15, D16, D22 and D23.

169. In an email exchange on 29 March 2022 between *"Candy"* from East Inflatables and James Day at WorkSafe the following representations were made:[226]

> *"Could I please request from you additional information in relation to the bouncy castle, namely;*
>
> *...*
>
> *Any information pertaining to testing or certification to Australian Standards"*
>
> *"We have EN 14960, pvc material and blower certificate. See attached.*
> *What's more, we produce inflatables according to Australian standard enclosed."*

170. Mr McDonald confirmed in his report that:

> *"As stated above, East Inflatables provided, in my opinion, self-declarations in communications, on their website and in a document entitled "Our Castles Meet AS3533.4-2005" of conformity to the Standard."*[227]

(b) East Inflatables email correspondence regarding purchase and delivery:

171. *"Fiona"* wrote to Ms Gamble about the jumping castle on 4 November 2015 indicating that:

> *"This unit is in stock and ready to ship now if interested.*
>
> *It takes around 5 working days to deliver to your door directly.*
>
> *Our products are produced according to Australian standards, even certified by the most strict European standards.*
>
> *Hence, dont worry about our product quality."*[228]

172. Ms Gamble responded to that email in the following terms:

> *"Fantastic, thank you Fiona, I will buy it ..*
>
> *Please send me an invoice for payment of crayon playland.*
> *can we do western union ??"*[229]

173. Ms Gamble paid for the jumping castle on 5 November 2015 and provided her shipping details to East Inflatables by email on 5 November 2015.[230]

174. From then until 13 November 2015 Ms Gamble made six requests for *"Fiona"* to provide the tracking number, including contacting DHL directly to request details of the parcel/tracking number.[231] On 13 November 2015 Ms Gamble emailed *"Fiona"* in the following terms:

> *"I have had no reply from you regarding the crayon castle, no tracking number, NOTHING. I needed this castle for my business and therefore will be losing business because of your company.*
>
> *I have called the Sydney office and no one answers !!!!!!!*

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[226] Exhibit P85.
[227] Exhibit P112 CB V5 p 49.
[228] Exhibit P81 CB V3 pp 127-128.
[229] Exhibit P81 CB V3 p 127.
[230] Exhibit P81 CB V3 p 124.
[231] Exhibit P81 CB V3 pp 116-122.

> *If I do not receive a legitimate tracking number by end of business today I will be requesting my money back and if needed begin legal action."* [232]

A tracking number was supplied by *"Fiona"* but Ms Gamble learnt, on checking, the jumping castle was in Hong Kong. Upon querying this with *"Fiona"* Ms Gamble was advised by email on 14 November 2015 *"[t]his unit is China factory stock…"*.[233] When the jumping castle was shipped to Australia by East Inflatables Ms Gamble required an invoice for customs import duty purposes, which she requested on 17 November 2015.[234] *"Fiona"* sent Ms Gamble an invoice for the incorrect amount which she explained in the following terms:

> *"I help amend your invoice amount to be $660 to help you lower your tax.*
> *Hence, you should tell them the product is $660.*
> *According to your country policy, you won't be charged for tax until your product exceeds $1000."* [235]

175. Further evidence of East Inflatables' misrepresentations about the shipping of the jumping castle to Ms Gamble appears on the Quality Assurance document for that product which is dated 15 November 2015.[236] This document suggests the jumping castle could not have left the factory before that date because it had not been cleared to do so – despite the representations made by *"Fiona"* to Ms Gamble between 4 November 2015 and 13 November 2015 to the contrary.

176. I therefore find East Inflatables induced Ms Gamble to believe the jumping castle:

- met Australian Standards when it did not;[237]
- was in stock and ready to be shipped from East Inflatables' Sydney warehouse when it was not;
- had been collected by DHL and was in transit shortly after it had been purchased when it was not. When pressed a tracking number was provided by *"Fiona"* on 13 November 2015.[238] Ms Gamble enquired of DHL and determined the tracking number was incorrect as the delivery address was Hong Kong. It was not until then that *"Fiona"* admitted the jumping castle was being shipped from the East Inflatables' factory in China;[239] and
- East Inflatables then invited Ms Gamble to deceive Australian Customs; an invitation which she rejected.[240]

Representations made by East Inflatables to the Regulator

177. East Inflatables made the following claims on 24 March 2022 in its s155 response to WorkSafe:[241]

> *Hello James,*
> *We would like to response you as follows:*

---

[232] Exhibit P81 CB V3 p 117.
[233] Exhibit P81 CB V3 p 115.
[234] Exhibit P81 CB V3 p 114.
[235] Exhibit P81 CB V3 p 110.
[236] Exhibit P84 CB V3 p 226.
[237] See subsequent discussion.
[238] Exhibit P81 CB V3 p 117.
[239] Exhibit P81 CB V3 pp 115-116.
[240] Exhibit P81 CB V3 p 110.
[241] Exhibit P84 CB V3 p 197.

...
2. See attached generic jumping castles operation manual and E2-030 manual.
3. For E2-030, it comes with blower, pegs, ground sheet and repair kits.
4. We provide blower, pegs, ground sheet and repair kits for each castle, this is the standard factory configuration. Our accessories photos are attached.
5. E2-030 comes with 8 pegs.
6. The length of peg is 47cm, diameter is 1cm, weight is about 600g. It is J shape. Material is deformed bar. Peg photos are attached.
7. We provided all accessories and instructions, see attached.
...
9. E2-030 comes with 8 pegs, floor plans are attached.
...
11. Due to the long time gap, we only can find the invoice at the moment.
...
Sincerely Yours,
Candy (Sales Manager)

178. Where the evidence of East Inflatables on these matters is inconsistent with that of Ms Gamble and Mr Monte, I accept the evidence of Ms Gamble and Mr Monte. The only evidence contrary to their evidence on these issues is the evidence of East Inflatables which is not credible given that company's misrepresentations highlighted in paragraph 176 and the unimpressive evidence of Mr Chen which is discussed below.

179. I therefore do not accept the claims made by East Inflatables because in order of those made in paragraph 177:

2. neither the generic (13 page) operation manual nor the specific (1 page) E2-030 manual were supplied with the jumping castle;

3. no blower was supplied;

4. the accessories photograph shows accessories which were not supplied, i.e. 8 x 470 mm pegs, blower, different repair kit, 13 page operation manual and E2-030 1 page manual;

5. only 4 x 300 mm pegs were supplied;

6. the pegs both described and depicted in the photographs were not those supplied;

7. not all of the accessories were supplied, and by *"Candy's"* own admission they could only allegedly find the invoice. This does not establish what accessories were supplied;

9. only 4 pegs were supplied, no floor plan was attached to the response, nor was it provided on purchase; and

11. the "Pro Forma invoice"[242] supplied is clearly a reconstruction and does not match that produced to WorkSafe by Ms Gamble.[243]

180. Mr Heikkilae gave evidence regarding the East Inflatables website as follows:

[242] Exhibit P84 CB V3 p 228.
[243] Exhibit P81 CB V3 p 149.

- in his first report dated 14 October 2024[244] he was able to establish by snapshots[245] on 5 November 2017,[246] 4 May 2018, 11 May 2018 and 13 April 2020 that only the 2 page manual downloaded by Ms Gamble was available for download/printing from the East Inflatables website on those dates;
- he was also able to conclude that 8 snapshots of the 13 page manual *"East-Inflatables-Manual.pdf"* were available between 29 June 2022 and 26 October 2023. While the 29 June 2022 snapshot was incomplete, corrupted or otherwise unreadable, the second snapshot, dated 1 November 2022,[247] linked to an identical copy of the 13 page manual. It follows that it is likely that the first time that a snapshot of the 13 page manual was available online was 29 June 2022. That is after the Wind Event;
- in his second report dated 3 November 2024[248] he examined the home page of the East Inflatables website, and specifically the links in the footer of the Website to *"Manual"* (which he determined to be a link to the 2 page manual) and to *"Operation Manual"* (which he determined to be a link to the 13 page manual). The first time that a link appeared to an *"Operation Manual"* (13 page manual) was on 24 March 2022.[249] No link appeared to the *"Operation Manual"* on a snapshot of the website on 23 March 2022.[250] These dates are after the Wind Event; and
- at no time was Mr Heikkilae able to find the 1-page E2-030 manual available for downloading/printing online.
- having regard to Mr Heikkilae's findings, noting that the s155 Notice was served on East Inflatables via email on 23 March 2022,[251] on the following day, for the first time, the link to the *"Operation Manual"* (13 pages) appears on the East Inflatables website. This is unlikely to have been a coincidence.

East Inflatables obligations under the Standards and its compliance with those Standards

<u>East Inflatables obligations as to design and manufacture</u>

181. At the time of purchasing the jumping castle in early November 2015, the following Australian Standards placed mandatory obligations upon East Inflatables:
    - AS 3533.1:2009, Amusement rides and devices Part 1: Design and construction, provides the technical requirements for design and construction of amusement rides and devices. It required East Inflatables to ensure the jumping castle was fit for purpose.[252]
    - Section 2.1 Classification - The design of the jumping castle by East Inflatables affects the classification of the jumping castle.[253] If the jumping castle was classified as higher than a class 2 device, Taz-Zorb was required to register the jumping castle with WorkSafe in accordance with the *Work Health and Safety Regulations* 2012. There is no evidence East Inflatables informed Taz-Zorb or provided any information which would assist in

[244] Exhibit D12 CB V6 pp 1-40.
[245] He explained what a snapshot was at T802 lines 11-29.
[246] Exhibit D14 and CB V4 pp 23-24.
[247] Exhibit D23.
[248] Exhibit D13.
[249] Exhibit D16.
[250] Exhibit D15.
[251] Exhibit P84 CB V3 pp 207-219 and p 197.
[252] Exhibit D8 CB V7 p 16 lines 376 to 384.
[253] Exhibit D8 CB V7 p 16 line 385 to p19 line 428.

classifying the device in accordance with clause 2.1 of AS 3533.1:2009. Mr Monte gave evidence his understanding was the jumping castle was classified as a class 1 device because the slide platform was less than 3 metres in height.[254] This understanding was gleaned from information obtained from Safe Work Australia with respect to how to class the jumping castle.[255]

- Section 4 Testing - This section requires the jumping castle to be load tested by East Inflatables.[256] There is no evidence East Inflatables performed any load testing in accordance with Section 4 of AS 3533.1:2009.
- Section 6 Information – This section requires East Inflatables to provide Ms Gamble with all information for the safe deployment and operation of the jumping castle.[257]
- AS 3533.4.1:2005 Amusement rides and devices Part 4.1: Specific requirements – Land-borne inflatable devices also places mandatory obligation on East Inflatables which will be highlighted below.[258]

182. There is agreement between Mr McDonald and Professor Eager that despite the jumping castle being a class two device (although Ms Gamble and Mr Monte believed it was a class one device) it did not require registration.[259]

183. In addition there is evidence from Mr McDonald, Professor Eager and Dr Peiris as to breaches of the Standards by East Inflatables as the manufacturer, including:

- AS 3533.1:2009:
  - s4: The failed D ring and the tested D ring revealed that the anchors were not load tested by East Inflatables;[260]
  - s6: East Inflatables did not provide Ms Gamble with the information required for the safe deployment and operation of the jumping castle;[261]
  - s7: There were deficiencies in marking, particularly as to the classification of the device under the Australian Standards;[262]
- AS 3533.4.1:2005:
  - s13: Information, in particular a failure to provide a report as to the device's status in conformity with this standard, or any installation, inspection, maintenance and operations information;[263]
  - s15: Marking: failure to provide classification of the device in accordance with AS 3533.4.1:2005[264]

[254] T227 lines 30-33.
[255] T239 lines 29 – 40, Exhibit P81 CB V3 p 30.
[256] Exhibit D8 CB V7 p 19 line 429 to 430.
[257] Exhibit D8 CB V7 p 20 lines 436 to 438.
[258] Exhibit D8 CB V7 p 16 lines 376 to 381.
[259] T419 line 6 to T420 line 14, T653 lines 4-12.
[260] Exhibit D8 CB V7 p 19.
[261] Exhibit P112 CB V5 pp 180-184, Exhibit D8 CB V7 pp 20-21, Exhibit D17 CB V6 p 47.
[262] Exhibit P112 CB V5 pp 180-184, Exhibit D8 CB V7 p 27.
[263] Exhibit P112 CB V5 pp 180-184, Exhibit D8 CB V7 p 28-30, Exhibit D17 CB V6 p 47.
[264] Exhibit P112 CB V5 pp 180-184, Exhibit D8 CB V7 p 30-31.

East Inflatables obligation to provide information

184. Section 13 of AS 3533.4.1:2005[265] imposed a mandatory obligation on the manufacturer or supplier to provide information with respect to:

- s13.1: general product information;[266]
- s13.2.1: installation information;[267]
- s13.2.2: inspection and maintenance information;[268] and
- s13.2.3 operating information.[269]

185. Mr McDonald said that *"[t]he information provided by East Inflatables is predominately generic and general in nature"*.[270] He agreed with Professor Eager that East Inflatables, as the manufacturer, did not comply with s13. Clause13.1 provides:

> *"**13.1 General product information***
> *General product information shall be provided by the manufacturer and supplier and shall:*
>
> - *be printed legibly in English and in simple form; and*
> - *use illustrations wherever possible.*
>
> *The information shall include, as a minimum, details of installation, operation, inspection and maintenance, in particular the following;*
>
> *(i) The height clearance and space required to operate the equipment safely.*
> *(ii) Any restrictions relating to operation, operating surfaces and anchorages.*
> *(iii) Intended restrictions for patrons expressed in height and weight.*
> *(iv) Intended number of patrons with reference to their height and weight.*
> *(v) Overall packed dimensions and weight.*
> *(vi) The requirements for the air supply and pressure.*
> *(vii) The type, extent and placement of impact absorbing material to be used.*
>
> *A report indicating the device's status with respect to conformity with this Standard shall also be provided."*

186. Mr McDonald, with whom Professor Eager agreed, concluded that none of the three manuals met the minimum information requirements of s13.1.[271]

187. Section 13.2 is titled Minimum requirements for installation, maintenance and operating manuals. It is in the following terms:

> *13.2.1 Installation information*
>
> *The supplier or manufacturer shall provide the following installation information:*
>
> *(a) A list of equipment.*
> *(b) The method of anchorage, number of anchorage points and test method.*

[265] Exhibit P102 CB V4 pp 227-228.
[266] Exhibit P102 CB V4 pp 227-228.
[267] Exhibit P102 CB V4 p 228.
[268] Exhibit P102 CB V4 p 228.
[269] Exhibit P102 CB V4 p 228.
[270] Exhibit P112 CB V5 p 50.
[271] Exhibit P112 CB V5 pp 46-51.

(c) The maximum safe wind speed in and out of service (deflated).
(d) Siting, height and operational space requirement.
(e) The maximum allowable slope of the site.
(f) Crowd control measures.
(g) The air performance requirement of the blower.
(h) That a residual current device needs to be sued in the electricity supply.
(i) Lightning requirements, both operational and emergency.

13.2.2 Inspection and maintenance information

The supplier or manufacturer shall provide information on the inspection and maintenance of the equipment covering, as a minimum, the Items listed in Clauses 15 and 16.

13.2.3 Operating Information

The manufacturer or supplier shall provide all necessary operating information and requirements, including but not limited to the following:

(a) Staffing-minimum number of operators and attendants required.
(b) Supervision-where to locate staff to ensure constant observation of all parts of the playing area and all activity on the inflatable, admission of patrons to the inflatable in a controlled and safe manner, keeping the entrance free from obstruction at all times and use of a whistle or other loud signal to attract the attention of the patrons.
(c) Patron limits-restriction of the maximum number of patrons at one time to the design number, restriction of the maximum height of the patrons to the design height.
(d) Environmental conditions affecting the set up of the device and patrons on the device, e.g. site suitability, heat, moisture, treatments for surfaces, e.g. slide mats.
(e) Patron dress code-suitable attire, including footwear, eyewear and removal of hard, sharp, loose or dangerous objects.
(f) Activity controls-separation of larger or more boisterous users from smaller or more timid ones, prevention of patrons from climbing or hanging on the containing walls, prevention of inappropriate activities (e.g. somersaults and rough play), restrictions on the consumption of food, drink and gum and the enforcement of correct riding position on slides.
(g) The procedures to be followed in the event of an emergency or accident.
(h) Refuelling procedures-evacuation of the inflatable prior to refuelling of a blower powered by an internal combustion engine.

188. Mr McDonald, with whom Professor Eager agreed, concluded that none of the three manuals in evidence met the minimum information requirements of s13.2.1[272], s13.2.2[273] and s13.2.3.[274]

189. Mr McDonald provided a very detailed analysis of East Inflatables non compliance with s13 of the Standard in separate tables in his report as follows:

[272] Exhibit P112 CB V5 p 55.
[273] Exhibit P112 CB V5 p 59.
[274] Exhibit P112 CB V5 p 65.

a) s13.1: general product information;[275]

b) s13.2.1: installation information;[276]

c) s13.2.2: inspection and maintenance information;[277] and

d) s13.2.3: operating information.[278]

190. In those tables he considers in detail each sub paragraph of those sections as they relate to the 1 page E2-030 manual, the two page manual which Ms Gamble printed from the East Inflatables website and the 13 page operating manual. While Mr McDonald concluded that none of those documents complied with the requirements of s13 as they relate to the provision of information, and on the assumption Ms Gamble was not provided with the 1 page E2-030 manual and the 13 page operating manual, it follows that:

a) Ms Gamble was provided with no information, other than an assurance by East Inflatables, the jumping castle complied with Australian Standards;

b) the information that Ms Gamble was able to obtain, by downloading and printing the 2-page manual from the East Inflatables website, was grossly inadequate when assessed against the Australian Standards, and in particular s13 of AS 3533.4.1:2005; and

c) Ms Gamble's alleged failures to comply with the Standards are directly correlated with the failures by East Inflatables to comply with its mandatory obligations as a manufacturer and supplier, with respect to s13 of AS 3533.4.1:2005.

Mr "Andy" Chen's evidence

191. Mr Chen confirmed that *"Candy",* a sales member, responded on 24 March 2022[279] to a letter from WorkSafe regarding the jumping castle.[280] Mr Chen said *"Candy"* wrote the response and he went through it with her.[281] Mr Chen then said he reviewed the content of the response she had prepared and it was "*roughly the same as what our situation is*"[282] and he made minor amendments to the response before it was sent.[283] *"Candy"* was not called to give evidence. Her response to WorkSafe, approved by Mr Chen, included a false invoice.[284] Under cross examination Mr Chen eventually accepted the invoice provided by Ms Gamble in her s155 response[285] was the true tax invoice.[286]

192. Mr Chen said:

[275] Exhibit P112 CB V5 pp 46-51.
[276] Exhibit P112 CB V5 pp 51-55.
[277] Exhibit P112 CB V5 pp 55-59.
[278] Exhibit P112 CB V5 pp 59-65.
[279] Exhibit P84 CB V3 pp 197-231, T156 lines 31-34.
[280] Exhibit P83 CB V3 pp194-196, T156 lines 17-29.
[281] T156 lines 36-38.
[282] T156 lines 40-41.
[283] T157 lines 1-2.
[284] Exhibit P84 CB V3 p 228.
[285] Exhibit P81 CB V3 p 149.
[286] T176 lines 5-23. See the exchange from T173.

a) the one page manual[287] and 13 page manual[288] are the same, or roughly the same as the manuals available in November 2015.[289] When asked whether the manuals were provided with the jumping castle, Mr Chen said "*So, mmm, yes uh in general we will provide the manual. So, sometimes we could send elec- - uh electrician*[290][sic] *versions to the customers.*"[291]

b) East Inflatables provided a copy of the floor plan depicted at pp 202 - 203 of Case Book Volume 3 with the E2-030 jumping castle "*if the customer asks…*".[292] When asked what process or person was in place at East Inflatables to ensure both manuals were included with the purchase of E2-030, he responded, *"I I don't know, I'm not so sure about this… So so its nearly like 10 years, it's been for a long time.*"[293]

c) in November 2015, with respect to packing personnel "*So so we have few people involved in the packing because this is a very huge item, so we have two or three people involved in packing*".[294] Mr Chen indicated everyone knows what to pack and there is no form to tick what has been packed in each package before it is sent out. This was *"roughly the same in 2015."*[295]

193. Mr Chen said the photograph of the jumping castle and accessories[296] included in East Inflatables s155 response depicted the same accessories provided with the E2-030 jumping castle.[297] He clarified that the E2-030 jumping castle came with an average four (4) to eight (8) pegs:[298] "*in general, we provide four to eight pegs, uh it depends, uh it varies between customers. Some customers would like to purchase some more*".[299] When asked when four pegs would be provided instead of eight, Mr Chen confirmed that "*usually if it's below 20 square ah metres, it will be four, and over will be eight.*"[300] When asked specifically how many pegs would be provided with the E2-030 model, to which the interpreter clarified "*So – so, do you mean like how many pegs were anchored?.*"[301] Before a response was provided, Mr Chen said "*I think it would be eight, should be eight.*"[302]

194. Mr Chen said the dimensions of the pegs supplied are "*roughly the same*" as those shown in the photographs[303] provided with East Inflatables' s155 response.[304] When asked if at November 2015, East Inflatables supplied 300 millimetre by 10 millimetre J-shaped pegs, Mr Chen said "*because it's been 10 years, a while, but now we use the seven – 47 centimetre one*".[305] However East Inflatables' s155 response to WorkSafe represented eight 47 cm pegs were supplied with

[287] Exhibit P84 CB V3 p 206.
[288] Exhibit P84 CB V3 pp 207-219.
[289] T158 line 33 to T159 line 5.
[290] Which I interpret to mean electronic.
[291] T160 lines 11-14.
[292] T161 lines 30 – 36.
[293] T163 lines 13-20.
[294] T163 lines 29-32.
[295] T164 lines 2-10.
[296] Exhibit P84 CB V3 p 229.
[297] T159 lines 11-14.
[298] T159 lines 16-36.
[299] T159 lines 38-42.
[300] T169 lines 31-32.
[301] T170 lines 30-31.
[302] T170 line 33.
[303] Exhibit P84 CB V3 pp 223-225.
[304] T160 lines 35-36.
[305] T171 lines 28-32.

the purchase of a E2-030 Jumping Castle from which the inference is drawn that these pegs were supplied to Ms Gamble.[306]

195. Mr Chen confirmed the quality assurance examination (QA) on the jumping castle[307] was performed by a production manager by the name of *"Jack"*[308]. He accepted in cross examination that the date of the QA document was 15 November 2015 and that was the order date.[309] Mr Chen said that the QA included checks for sewing and reinforcement to ensure the product is "*strong enough and can endure longer.*"[310]

196. East Inflatables s155 response provided test results with respect to European Standards.[311] Mr Chen also gave evidence that East Inflatables "*produce our product in Australian Standard.*"[312] I do not accept this evidence given the evidence of Mr McDonald and Professor Eager that Ms Gamble's jumping castle did not comply with the Australian Standards. Mr Chen was cross-examined about whether a screen shot shown to him demonstrated the homepage for East Inflatables as at 19 September 2015[313] to which he responded, "…*it seems like the one because that's the internet order IT Department, but for me, it seems like the one.*"[314] When asked whether sales representative *"Fiona"* of East Inflatables was authorised to represent that the E2-030 jumping castle model complied with Australian Standards, Mr Chen reiterated that "*we produce the product according to Australian Standard".*[315] Mr Chen eventually conceded that East Inflatables did not perform or arrange for their products to be tested or assessed to confirm they comply with Australian Standards.[316]

197. Mr Chen said *"Fiona"* from East Inflatables was using her private email to correspond with Ms Gamble when *"Fiona"* offered to amend the tax invoice to enable Ms Gamble to avoid paying tax in Australia.[317] Mr Chen later confirmed in answer to a proposition that *"Fiona"* was negotiating with Ms Gamble regarding the dry slide sold by East Inflatables that "*So, ah generally we just – we will say if they can get order and then we will produce the product*". This is in stark contrast to "*Fiona's"* email representations to Ms Gamble.[318]

The "Coco" email

198. Exhibit D5 details an email exchange between *"Coco"* (beancoco23@gmail.com) and *"Candy"* (sales-03@east-inflatables.com) which is as follows:

From *"Coco"* on 25 January 2024:

---

[306] It is unfortunate the s155 notice from WorkSafe asks for information about E2-030 jumping castles generally. The questions are not specifically directed towards the jumping castle purchased by Ms Gamble.
[307] Exhibit P84 CB V3 pp 226 – 227.
[308] T161 line 38 to T162 line 16.
[309] T179 lines 12-23.
[310] T162 lines 10-13.
[311] Exhibit P84 pp 233 – 285 and T162 lines 32-40.
[312] T162 lines 26-30.
[313] Exhibit D2.
[314] T172 lines 18-22.
[315] T172 line 31 to T173 line 5.
[316] T184 lines 21-29.
[317] T180 lines 6-19.
[318] For example Exhibit P81 CB V3 p147.

"Good morning. I am interested in x2 of your jumping castles. pick up Sydney warehouse.
E 102038
E 102036
Could I please get some information on size as well as what is included in the package. Such as blower. Cords .pegs etc. And a how many are supplied .
Thankyou so much for your time.

Regards
Coco"

and *"Candy's"* response to *"Coco"* on 25 January 2024:

"Hello Coco,
Thank you for your kind inquiry!
In the attachment, please check our Sydney warehouse stock list.
We have E102038, but no E102036.
Each castle come with a blower, 4 pegs and some repair materials.
Dear "Coco", please kindly advise your final order.
Your early reply will be highly appreciated.

Sincerely Yours,

Candy (Sales Manager)

East Inflatables Manufacturing Co., Ltd."

199. Mr Chen confirmed that jumping castle E102038 is the crayon jumping castle referred to in *"Candy's"* email.[319] This I find, after comparing Exhibit P81 (Court Book Volume 3 page 75 fifth product down the page on the left hand side), Exhibit P84 (Court Book Volume 3 pages 202, 206 and 228) and Exhibit D6 page 2 (third product down the page on the left hand side), to be the same jumping castle as that purchased by Ms Gamble in November 2015. Mr Chen also confirmed *"Candy"* was their sales manager and she also responded to WorkSafe on behalf of East Inflatables and she was the same person who wrote the email set out above on 25 January 2024.[320] Mr Chen further confirmed that *"Candy"* was of similar seniority to him at East Inflatables, although maybe she was slightly junior to him.[321]

200. This email exchange supports, by inference, a finding that given the E102038 jumping castle is the same as the E2-030 jumping castle then only four pegs were supplied to Ms Gamble when she purchased the jumping castle in November 2015. This is notwithstanding Mr Chen asserting that the email of *"Fiona"* inviting Ms Gamble to commit customs fraud were personal emails using her personal email address and by inference they were written without the manufacturer's authorisation. In my view the entire email exchange between "Fiona" and Ms Gamble makes it clear *"Fiona"* was communicating with Ms Gamble for the purpose of selling a product on behalf of East Inflatables. As to *"Candy's"* email – the email address used (sales-03@east-inflatables.com) is clearly, on its face, an authorised email address of East Inflatables and, further,

[319] T189 lines 5-8.
[320] T189 lines 10-25.
[321] T189 lines 37-40, T190 line 11.

was clearly from a sales person sent to *"Coco"* in response to an enquiry about purchasing jumping castles from East Inflatables.

How many pegs were supplied to Ms Gamble?

201. In addition to the evidence canvassed above about the number of pegs supplied to Ms Gamble at the time of purchase further evidence is as follows:

(i) In Ms Gamble's s155 response to WorkSafe she says:

"When the jumping castle arrived, it was supplied with 4 pegs from the manufacturer. A manual was not provided. Ms Gamble had to obtain a copy of the manual from the manufacturer's website."[322]

(ii) Mr Monte said in his interview with WorkSafe:

"And what does it say about setting up the jumping castle?

Ah, put four pegs in on an angle. That's all it was, um, shipped with it. Pretty hard to put a peg in on a 45 degree angle."[323]

(iii) Mr Monte gave evidence in chief as follows:

"Okay and when you said um something about four pegs, was that something that was in relation to the other jumping castles?

That's what – that's what come out of the castle. That's what we received, is – is the four pegs."[324]

(iv) In cross examination Mr Monte said:

"Now, when the um jumping castle arrived, ah you were there when – when it was unpacked, contained the four 300 millimetre pegs you've referred to, it contained a ground sheet, correct?

That is true."[325]

"If we can go to CB 3 229? That's it. Mr Monte, was the jumping castle delivered with eight pegs of the – of the length –

No.

-depicted – of the length depicted in that photo?

No, not at all, only four."[326]

202. In spite of East Inflatables claim that it *"usually"* supplied eight pegs, with this model of inflatable device, it produced no record or proof that in fact occurred. The absence of that evidence, the evidence I have highlighted above together with issues associated with East Inflatables credibility, including the inference to be drawn from the *"Coco"/"Candy"* email,

[322] Exhibit P81 CB V3 p 13.
[323] Exhibit P112B p 15 lines 33-36.
[324] T226 lines 29-32.
[325] T240 lines 1-3.
[326] T240 line 40 to T241 line 2.

result in a finding that only four non-compliant pegs were delivered to Ms Gamble with the jumping castle.

Was a manual supplied to Ms Gamble?

203. In her s155 response to WorkSafe[327] Ms Gamble said the following regarding East Inflatables' failure to supply the jumping castle with an operating manual, or any operating instructions at all:

> *"Details of any instructions provided by you to the operators as it relates to setting up of the inflatable amusement devices*
>
> *A manual was not provided with the jumping castle when purchased by Taz-Zorb. On her own initiative Ms Gamble downloaded a manual from the manufacturer's website (copy attached [328]).*[329]
>
> *Details of the purchase of the inflatable amusement devices:*
>
> *When the jumping castle arrived, it was supplied with 4 pegs from the manufacturer. A manual was not provided. Ms Gamble had to obtain a copy of the manual from the manufacturer's website."*[330]

204. Mr Monte also gave evidence regarding the manual:

> *"Were you working with um Ms Gamble when she obtained the jumping castle?*
>
> *Yeah, I was there the day she opened it.*[331]
>
> *Okay and um, did you receive an operations manual in relation to the jumping castle?*
>
> *No. I think Rosemary had to download it, actually. Um, I think it – we received a um – just a brochure of different types of jumping castles they had on offer."*[332]

205. In his taped Record of Interview with WorkSafe on 22 March 2022[333] Mr Monte said:

> *"Are you aware of any operators manual for the jumping castle?*
>
> *It come on a – ah, what was it, a, um, oh, a booklet. It was on a back of a booklet. And that's what they send you. A catalogue basically. And it's on the back of that."*[334]

206. However in his evidence Mr Monte said:

> *"I was mistaken there. I thought I'd seen it, but what it was, was the – I think it had on the back of it "four times pegs," and then ah Rosemary had to download it, then I read the download.*[335]
>
> *Is the – is the booklet that came with it, a catalogue? Are you describing a catalogue?*

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[327] Exhibit P81 CB V3 pp 10-193.
[328] Exhibit P81 CB V3 pp 26-27.
[329] Exhibit P81, CB V3 p 11.
[330] Exhibit P81 CB V3 p 13.
[331] T225 lines 39-41.
[332] T226 lines 1-4.
[333] Exhibit P112B.
[334] Exhibit P112B p 15 lines 14-15 and 21-23.
[335] T226 lines 17-19.

Yes, it was a catalogue. It was a catalogue of different other jumping castles that you could buy..."[336]

207. Mr Monte also gave evidence with respect to how Ms Gamble obtained the two page manual:

"...you indicated um that Rosemary Gamble had downloaded something from the website, which you had read?

Yes, that is true. That is true.[337]

But as far as the instructions that were contained on the document that Rosemary downloaded, do you recall if the instructions were specific to that model of jumping castle, the crayon jumping castle or not?

No, I don't think so.[338]

So once you received the um jumping castle, and ah did you and Rosemary go online again together to see if you could find a manual?

Um, Rosemary did ... and then she showed it to me later on.[339]

Does that appear to be ah the manual which Rosemary showed to you, which she sourced online?[340]

Yes, yes, that is."[341]

208. Mr Heikkilae's findings, summarised at paragraph 180 are relevant to this issue.

209. Accordingly I find no manual was supplied with the jumping castle by East Inflatables and in addition:

(i) Ms Gamble went online and downloaded/printed the two page manual, most likely on 3 December 2015;
(ii) the 13 page manual was not available on the East Inflatables website in late November/early December 2015, and did not become available on its website until 24 March 2022, after East Inflatables received the s155 Notice from WorkSafe; and
(iii) the one page manual upon which the prosecution was largely based was not available for downloading on the East Inflatables website at any time.

Ms Gamble and Mr Monte's interpretation of the manual

210. Mr Monte gave evidence regarding his interpretation of the two page manual downloaded by Ms Gamble, both in evidence and in his interview with WorkSafe on 22 March 2022.

211. In evidence he said:

"...what instructions were given about um installing the pegs?

Well, they had to be on an angle, um that's um – so, we tried to put them on an angle the best we can – or we could.

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[336] T226 lines 24-26.
[337] T226 lines 34-36.
[338] T227 lines 24-27.
[339] T241 lines 24-28.
[340] Referring to the two page manual at CB V3 pp 26-27, T241 lines 32-34.
[341] T241 line 34.

And was that all that the instructions said about the installation of the pegs?.....

Yes, it said 45 degrees. I remember that.[342]

Did you do any research in relation to the pegs that should be used, or the number of pegs?

No. Like, I said, I was always – always under the impression with – impression that um that was the bare minimum, is what they sent.[343]

...what instructions did that document give you about operating in the wind?

The – the one that Rosemary downloaded, um I think it – ah, not to be running in winds over – I'm not sure if it was in miles an hour or kilometres an hour. Um, it – it basically went through how to unroll the castle, ah put it up, deconstruct it, what we've just been through.[344]

...the sentence "Extend the strap drive – extend the strap, drive the provided stakes through the ring at the end of the strap." What did you interpret that to mean in terms of the number of stakes that you had to install…?

Four, four stakes."[345]

212. In his Record of Interview Mr Monte said:

"And what does it say about setting up the jumping castle?

Ah, put four pegs in on an angle. That's all it was, um, shipped with it. Pretty hard to put a peg in on a 45 degree angle.[346]

Does it talk about the wind?

No, not that I think, no. I'm sure it doesn't. I'm not quite sure to be honest.[347]

Do you know how many retention pegs must be used for the device to achieve its maximum operating wind speed?

Ah, four is as far as I'm aware. From – from the manual."[348]

213. Mr McDonald,[349] Professor Eager[350] and Dr Peiris[351] accepted that such an interpretation was open to a lay person if only four pegs were supplied. Informed by what the Standard required, each agreed that such an interpretation was erroneous but by inference an innocent and understandable error on both Ms Gamble and Mr Monte's part.

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[342] T227 lines 4-10.
[343] T228 lines 12-15.
[344] T226 line 38 to T227 line 2.
[345] T242 lines 1-6.
[346] Exhibit P112B p 15 lines 33-36.
[347] Exhibit P112B p 17 lines 20-23.
[348] Exhibit P112B p 23 lines 12-15.
[349] T522 lines 6-7 and 21-26.
[350] T660 lines 5-29.
[351] Exhibit D17 CB V6 p 57 at [151].

The history of Ms Gamble's business

214. Ms Gamble started her business, known as Taz-Zorb, in 2012[352] after she received a $5,000.00 loan from her mother.[353] Mr Monte and Ms Gamble travelled to Zoodoo near Hobart and saw water balls in use. After seeing children using water balls, Ms Gamble and Mr Monte discussed how that would be a good business idea.[354] They undertook research and decided on purchasing land based zorb balls for safety reasons. They settled on purchasing three zorb balls to start Ms Gamble's business. They initially operated zorb balls at the Esk Market[355] for "*some months*" after which Ms Gamble gradually expanded the business to councils, fairs and birthday parties.[356]

215. Taz-Zorb initially utilised a steel barrier which went all the way around the zorb balls at the Esk Market.[357] Once Taz-Zorb started operating at different locations, Ms Gamble designed and arranged for the manufacture of the zorb ball arena.[358]

216. Ms Gamble operated the jumping castle for five months of the year keeping it in storage for the remainder of the year. Typically, the jumping castle was hired for use on weekends.[359]

217. Ms Gamble put the revenue from the hire of the amusement devices back into the business in order to grow the business, and to replace the zorb balls every 9 to 12 months[360].

Ms Gamble's use of the jumping castle

218. Mr Monte's evidence included the following:

    (a) use of the jumping castle was seasonal; from spring to autumn;[361]

    (b) there were occasions where the Zorb balls or the jumping castle would be used separately *"depending on who – who wanted them and where…"*.[362]

    (c) the number of times he had erected the jumping castle at events between its purchase and December 2021 would be *"in the hundreds somewhere… I wouldn't say it's 200, but probably 100 times, around there somewhere."*[363]

219. In his record of interview with WorkSafe Mr Monte said he had set up of the zorb ball arena *"100s"* of times in the past.[364]

220. In her s155 response to WorkSafe Ms Gamble explained the background to the purchase of the jumping castle as follows:[365]

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[352] T236 lines 3-5.
[353] T236 lines 7-10.
[354] T236 lines 12-17.
[355] T236 lines 19-35.
[356] T237 lines 1-6.
[357] T236 lines 34-39.
[358] T239 lines 21-26.
[359] Exhibit P81 CB V3 p 13 in answer to rfi number13.
[360] T237 lines 14-19 and Exhibit P81 CB V3 p 14 in answer to rfi number 13.
[361] T242 lines 25-27.
[362] T242 lines 29-32.
[363] T242 lines 34-39.
[364] Exhibit P112B p 30 lines 22-30.
[365] Exhibit P81 CB V3 pp 10-193.

"Details of the history of use of the inflatable devices

The jumping castle was purchased in November 2015. The jumping castle is used for approximately 5 months of the year and is in storage for the rest of the year due to weather. Typically, the jumping castle is hired for used (sic) on weekends."[366]

221. Ms Gamble was also asked by WorkSafe to provide, *"Details of any prior incidents or injuries associated with the use of the inflatable amusement devices"*, to which she responded:

"One incident occurred 4 years ago when a 10-year-old boy suffered a bleeding nose while he was in the zorb ball on a hot day. No accident or incident as such occurred."[367]

222. Ms Gamble was asked by WorkSafe to provide details of the experience of the operators of the inflatable amusement devices. In her s155 response[368] Ms Gamble advised:

Ms Gamble: 9 years zorbs; 5 years jumping castle

Mr Monte: 9 years zorbs; 5 years jumping castle

Mr Barrett: 1 year Zorbs; approximately 1 month jumping castle[369]

What was Ms Gamble's system with respect to operating the jumping castle prior to 16 December 2021 and was it effective?

223. Particular n) a. in the Complaint alleges a failure with respect to the *"...provision and maintenance of safe systems of work..."*; s19(3)(c), with the alleged failure the subject of seven Particulars. Where the Crown alleges a failure to maintain a safe system of work, the Court must examine the whole system. In *Director of Public Prosecutions v JCS Fabrications Pty Ltd and JMAL Group Pty Ltd* [2019] VSCA 50 at [41] the Victorian Court of Appeal said:

> *"41. Subject to the further observations below, in the instant case, the prosecution alleges that the respondents failed to maintain a system with respect to the unloading of the plant by failing to ensure that a forklift supported the plant before the restraint strapping was released during the task of unloading the plant. Putting the case in that fashion invites scrutiny of the whole system — including the experience, skill, knowledge and training of those employees who were part of the system — so as to determine whether JMAL failed to ensure so far as is reasonably practicable that non-employees were not exposed to risks to their health and safety in the conduct of JMAL's undertaking."*

224. Ms Gamble's system will be assessed in light of the following facts:

(a) East Inflatables' recommendation that the jumping castle could be operated to a wind speed of 25 mph.[370] Ms Gamble says she understood 25 kmph to be the wind speed, in

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[366] Exhibit P81 CB V3 p 13.
[367] Exhibit P81 CB V3 p 14.
[368] Exhibit P81 CB V3 pp 10-193.
[369] Exhibit P81 CB V3 p 11.
[370] Exhibit P84 CB V3 p 211 although the photograph of the jumping castle at P72 CB V2 at pages 250 and 252 depicts advice from East Inflatables advising that the jumping castle not be operated in winds in excess of 20 mph. **So on this point there is conflicting advice from East inflatables.**

excess of which, use of the jumping castle was prohibited but she cannot recall the source of that advice;[371]

(b) Ms Gamble and Mr Monte's acceptance of representations by East Inflatables that the jumping castle complied with Australian Standards;

(c) Only four pegs and no manual was supplied;

(d) Ms Gamble downloaded a two page East Inflatables manual in December 2015, which she and Mr Monte interpreted to mean – insert a minimum of four pegs;

(e) Ms Gamble did not obtain any external advice, but she and Mr Monte developed a system of work via research online, including the downloaded manual, material from Safe Work Australia, watching YouTube videos, observing the activities of other amusement device industry operators at local shows and carnivals, and by Ms Gamble undertaking a NEIS course (New Business Assistance and New Enterprise Incentive Scheme);[372] and

(f) Ms Gamble and Mr Monte successfully and without incident operating the jumping castle over 100 times over 5 years without incident.[373]

225. The relevant elements of Ms Gamble's system of work for the operation of the jumping castle included:

(a) training and instruction;

(b) supervision;

(c) risk assessment;

(d) inspection and maintenance;

(e) site selection and set up;

(f) weather monitoring;

(g) risk tolerance;

(h) wind tolerance;

(i) planning and flexibility of set up;

(j) tethering and cancellation;

(k) monitoring child welfare;

(l) pulling the jumping castle taut; and

(m) use of star pickets.

226. In accordance with *Director of Public Prosecutions v JCS Fabrications Pty Ltd and JMAL Group Pty Ltd* (supra) each element will be considered in turn.

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[371] Exhibit P81 CB V3 page 12 in answer to rfi number 8.
[372] Exhibit P81 CB V3 page 11 in answer to rfi number 6 and 7, Exhibit P81 CB V3 page 12 in answer to rfi number 8, T243 lines 33-35.
[373] Exhibit P81 CB V3 page 13 in answer to rfi number 13 and page 14 in answer to rfi number 14.

Ms Gamble's system regarding training and instruction

227. Mr Monte and Mr Barrett were volunteers [374] however by virtue of s7(1)(h) of the Act, both were deemed to be *"workers"*.

228. Ms Gamble's s155 response to WorkSafe[375] confirmed the following:

> *The training undertaken/provided by operators:*
>
> *"Ms Gamble and Mr Monte are self-trained. To the best of their knowledge, there was no training course available on for* (sic) *the use and operating of jumping castles when they purchased the device in November 2015. Ms Gamble and Mr Monte visited YouTube websites to learn how jumping castles were set up, and specifically observed others setting up jumping castles at Showman's Guild events."*[376]

229. Details of instructions provided by Ms Gamble to operators for setting up the amusement devices:

> *"Ms Gamble and Mr Monte by practice and observation learnt how to erect and secure the device, and had successfully set it up, without incident, dozens of times over many years.*
>
> *Ms Gamble and Mr Monte subsequently instructed Mr Barrett on the safe setting up of the inflatable amusement devices in a manner consistent with the manufacturer's manual and the best practice they had observed and implemented. Mr Barrett was not responsible for setting up the inflatable devices alone. He was always supervised by either Ms Gamble or Mr Monte."*[377]

230. Mr Monte gave evidence regarding the training of Ms Gamble and himself in the operation of the jumping castle:

> *"...you said that it was all self-taught. How did you teach yourself to um anchor the jumping castle?*
>
> *Well, we did – we did a lot of ah YouTube searching, ah watching other people, Showmen's Guild, that sort of thing. They set up castles, how they rolled them up, how they unrolled them, and um, yes, we were sort of all self-taught, yes."*[378]
>
> *"...the self-taught aspect was looking at a lot of YouTube and going to Showmen's Guild, and seeing how other operators – ..... Yeah, a – a lot of places, yes. A lot of places, yes."*[379]
>
> *"And um, was that something that you did together, or did Rosemary Gamble instruct you in how to setup the jumping castle?..... It's something that we did together."*[380]

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[374] Exhibit P81 CB V3 page 11 in answer to rfi number 4.
[375] Exhibit P81 CB V3 pp 10-193.
[376] Exhibit P81 CB V3 p 11 in answer to rfi number 6.
[377] Exhibit P81 CB V3 p 11 in answer to rfi number 7.
[378] T228 lines 1-5.
[379] T228 lines 17-19.
[380] T228 lines 24-26.

"…can you confirm that the extent of um your on the job training extended to watching YouTube videos and going to Showman's Guild in order to…

Yes. Yes. Yes. And on-the-job training, as well. As in we had to learn ourselves."[381]

"…what did you learn or observe in relation to the pegging of jumping castles?

Well, to peg down all points, um yeah, and – and on an angle. Um, I didn't know if it was exactly a 45 degree angle, but I knew it was a angle.

...And through the D-rings.

...And the tie down points."[382]

231. Mr Monte also gave evidence that Ms Gamble had learned about completing risk assessments in her NEIS course.[383]

232. Mr Monte gave evidence regarding training in his Record of Interview with WorkSafe on 22 March 2022 as follows:

    (a) He and Ms Gamble learnt by themselves[384] and had watched YouTube videos to see how amusement devices were set up and pulled down. There was no course they could complete in Tasmania.[385]

    (b) They learnt over time, through operating the business,[386] setting the devices up around one hundred times.[387]

233. Mr Barrett gave evidence he had not seen an operating manual for the jumping castle, other than the label on the side[388] but confirmed that he had received *"on the job training."*[389]

234. Mr Barrett confirmed in his Record of Interview with WorkSafe on 23 March 2022 that *"I was trained to do it all, just by them, not, you know – yeah, I was trained to do it."*[390]

235. Taz-Zorb's system regarding training and instruction is consistent with the relevant requirements of ss17 and 18 of AS 3533.4.1:2005 and s3.2 of AS 3533.2:2009.

<u>Ms Gamble's system regarding supervision</u>

236. Mr Barrett gave evidence regarding his supervision on the morning of the Wind Event:

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[381] T261 lines 12-15.
[382] T242 lines 16-23.
[383] T243 lines 28-35.
[384] Exhibit P112B p 8 line 30 and p 30 line 35.
[385] Exhibit P112B p 5 lines 42-44 and p 6 lines 14-15.
[386] Exhibit P112B p 14 lines 36-37, p 8 line 30.
[387] T242 lines 34-39.
[388] T272 lines 15-18.
[389] T273 lines 14-16.
[390] Exhibit P112A p 6 lines 235-236.

"And what was the extent of any supervision that was given to you by Rosemary Gamble?

Um the extent of it, she just basically showed me what to do and told me, you know, what I needed to do. Um I didn't really do anything without being told to really."[391]

237. Taz-Zorb's system of supervision is consistent with the relevant requirements of s17 of AS 3533.4.1:2005.

Ms Gamble's system regarding risk assessments

238. Ms Gamble's s155 response to WorkSafe[392] responded to a request for *"Copies of any risk assessments conducted for each of the inflatable amusement devices"* as follows:

"Taz-Zorb independently developed and documented a risk assessment for both the jumping castle and zorb balls (copies attached).[393] *In relation to both activities, Taz-Zorb identified high winds as a potential hazard and, under the heading 'Actions to be Taken' mitigated the potential hazard presented by wind by prohibiting use of either amusement when winds reach 25kmph. This threshold is a lesser threshold than currently mandated by Safe Work Australia, which suggests operation of land-borne inflatable devices should cease when wind gusts exceed 40kmph."*[394]

and

"Taz-Zorb also developed and documented its own Emergency Management Plan (copy enclosed[395]*) which it deployed at events at which inflatable amusements were operated."*[396]

and

"Ms Gamble also took it upon herself to download an 'Amusement Device Operator Checklist' from the Safe Work Australia website. Copies of recent checklists completed by Taz-Zorb are attached."[397]

239. Mr Monte said the risk assessment checklist for the jumping castle[398] was prepared by Ms Gamble. She learnt to prepare risk assessments and she learnt other aspects of her business through the NEIS course she completed.[399] Mr Monte was familiar with the risk assessments with respect to each inflatable device,[400] and had, on occasions, completed the risk assessments which were conducted on each occasion the inflatable devices were used.[401]

240. Mr Monte gave evidence regarding his role in conducting risk assessments. He said that while on the morning of the Wind Event, there was no opportunity to formally complete risk assessment

[391] T275 lines 10-13.
[392] Exhibit P81 CB V3 pp 10-193.
[393] Exhibit P81 CB V3 pp 32-35.
[394] Exhibit P81 CB V3 p 12.
[395] Exhibit P81 CB V3 p 29.
[396] Exhibit P81 CB V3 p 12 and pp 39-68.
[397] Exhibit P81 CB V3 p 12 and pp 39-68.
[398] Exhibit P81 CB V3 p 33.
[399] T243 lines 33-35.
[400] T243 line 33 to T244 line 42, CB V3 pp 32 – 35.
[401] T244 line 35-39, Exhibit P81 CB V3 pp 48, 53-56, 58-61.

documentation, a risk assessment would have been done.[402] The following exchange took place between Mrs Wilson SC and Mr Monte:

> *"Was that something that you routinely did yourself? No, I actually started it with Rosemary, and um we did a lot of it from memory, and then we'd sit down at night and – or when we could, um write out the assessment….We'd done it repeatedly, over and over again, so it -it was second nature to us."*[403]

241. Mr Monte was familiar with Taz-Zorb's Emergency Management Plan[404] and Risk Assessment Checklist,[405] *"which was to be completed on the occasion of every time you ah did a job?..... Yes, exactly."*[406]

242. Mr Monte said he had completed risk assessments on occasions, but from those in evidence it appears Ms Gamble completed most of the risk assessments.[407] In his Record of Interview with WorkSafe on 22 March 2022, the following exchange took place:

> *"And who is responsible for checking the condition of the jumping castle each time it's erected*
>
> *Rosemary and I."*[408]

243. Mr Barrett gave evidence, consistent with the hierarchy of responsibility:

> *"Jesse, do you know what a risk assessment is?*
>
> *Yep.*[409]
>
> *Was that something you were ever asked to do?*
>
> *I was never asked to do it, no. ...*
>
> *It was always someone above me that had to do that."*[410]

244. Mr Barrett said the following in response to questions in his Record of Interview with WorkSafe on 21 February 2022:

> *"Did you do a check of the – a visual check of the jumping castle while you were putting it up?*
>
> *Yes. So when you're just putting it up, you look at it and see if anything needs to be done, but, yeah."*[411]
>
> *"...Are you aware if a risk assessment had been conducted prior to setting up the jumping castle at the Hillcrest Primary School on 16 December 2021?*

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[402] T229 lines 17-24.
[403] T229 lines 9-15.
[404] T244 lines 20-26.
[405] T244 lines 29-33.
[406] T244 lines 35-36.
[407] Exhibit P81 CB V3 pp 39-68.
[408] Exhibit P112B p 17 lines 39-42.
[409] Exhibit P112A p 13 lines 615-617 and T273 lines 1-2.
[410] T273 lines 5-9.
[411] Exhibit P112A p 13 lines 600-604.

I'm not sure. Maybe. Don't know."[412]

245. Taz-Zorb's system regarding risk assessments is not inconsistent with the relevant aspects of s18 of AS 3533.4.1:2005 and s3.2 of AS 3533.2:2009.

Ms Gamble's system regarding inspection and maintenance

246. In Ms Gamble's s155 response to WorkSafe[413] she advised:

"The jumping castle is carefully inspected before use to ensure that there are no tears/holes or other defects. Otherwise, cleaning and inspection after every use occurs. Taz-Zorb has never identified any damage or defect in the jumping castle."[414]

"The jumping castle was in excellent condition and at the time only required inspection and cleaning. No structural maintenance has been required to either the jumping castle or the zorb ball arena. Zorb balls are replaced approximately every 9-12 months, (see above)." [415]

247. Mr Monte says in his Record of Interview:

"At what intervals do you undertake the maintenance and inspection of the jumping castle?

...when it's being cleaned before and after use.[416]

And who is responsible for checking the condition of the jumping castle each time it's erected?

Rosemary and I.[417]

Prior to the incident on the 16th of December, 2021 did you observe any defects on the jumping castle?

No. As far as I concerned it was pretty good. [418]

Have you completed an entry into the logbook for the erection, storage or maintenance of the zorb ball arena?

No. But we do store – we did store, um, all this stuff in a storage unit during the winter months. Or right through, actually. "[419]

248. Mr Monte said the following in his evidence:

"...how would you describe the general condition of the jumping castle on the day, prior to its use?

Well, when I seen it, I thought it was quite good, actually.[420]

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[412] Exhibit P112A p 14 lines 625-629.
[413] Exhibit P81 CB V3 pp 10-193.
[414] Exhibit P81 CB V3 p 14 in response to rfi number 15.
[415] Exhibit P81 CB V3 p 14 in response to rfi number 17.
[416] Exhibit P112B p 11 lines 18-21.
[417] Exhibit P112B p 17 lines 39-42.
[418] Exhibit P112B p 19 lines 11-14.
[419] Exhibit P112B p 31 lines 10-14.
[420] T230 lines 11-14.

Um, did you um check the condition of the equipment before it was used?..... Meaning the D-rings? Oh, well any of it. Did you check it for holes or damage?..... Yeah, I – I often did check – check the D-rings um there was like a little bit of surface rust, but that was about it. Um, I - I'd have a look inside, see if it was clean, look up the slide, see if that was all clean. Um, if I saw anything, I – I would have – I wouldn't have used it at all, to be honest. [421]

Had you ever conducted any repairs on the jumping castle in the past?

No. I – I've never seen anything wrong with it. [422]

-what – what checks are you aware of that were done prior to going to Hillcrest Primary School on the 16th?..... You mean beforehand or? Yeah, beforehand, in the lead-up to this um booking?..... Well, beforehand, I mean if we did a job, we'd check it when we pulled it down anyway. Um, and then, we'd pack everything up, we knew it was already checked as we pulled down. So, when we setup, we knew everything was going to be okay. [423]

Do you recall whether or not you checked the condition of the D-rings on the day for the jumping castle before setting it up?

Yes, I – I did. I always did. Um, there seemed to be a little bit of surface rust, nothing to really worry about, but um, yes, always did. " [424]

249. Mr Barrett told WorkSafe in his record of interview:

"did you do a check of the – a visual check of the jumping castle while you were putting it up?

Yes. So when you're just putting it up, you look at it and see if anything needs to be done, but, yeah." [425]

250. While the level of documentation required by the Australian Standards is absent, it is clear, given the evidence which confirms the jumping castle was in *"good"* condition[426] Ms Gamble was strongly focussed on inspection and maintenance. This adds weight to Professor Eager's opinion there was compliance with the *"general intent"* of the relevant Standards regarding maintenance and inspection. My conclusion, having conducted a view on 4 November 2024, is the jumping castle was in good condition.[427]

251. Taz-Zorb's system regarding inspection and maintenance is consistent with the relevant requirements of ss 15 and 16 of AS 3533.4.1:2005 and s3.2 of AS 3533.2:2009.

<u>Ms Gamble's system regarding site selection and set up</u>

252. In her s155 response to WorkSafe, Ms Gamble said:

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[421] T230 lines 15-23.
[422] T230 lines 39-40.
[423] T232 lines 18-26.
[424] T234 lines 20-24.
[425] Exhibit P112A p 13 lines 600-604.
[426] T230 lines 11-14, T668 line 42.
[427] *Evidence Act* 2001 s54.

"...It was agreed between Hillcrest and Ms Gamble that the devices would be on the oval as the devices needed to be set up on a flat surface due to safety requirements and at least 3-4 metres away from the hill on the oval. There was an entire cleared football field where the devices were set up, with no nearby trees."[428]

Details of who determined the set up location of the inflatable amusement devices.

Ms Gamble and a teacher from Hillcrest, Jamie-Lee Duff"[429]

253. Regarding the selection of the site, Mr Barrett said in his Record of Interview with WorkSafe:

"So when we got there and we were deciding where to put it, Rosemary and Bobby sort of discussed where they should put it. I think they said something to each other like, "Where did we put it in previous years?", but, yeah, that was my first time at Hillcrest, so –"[430]

254. Mr Monte's evidence regarding the set up for the day was as follows:

"What were your duties on the day after you arrived at the school?

Um, we rolled out the castle um ah put it up, positioned it, pegged it down, then we moved on to the border, blew it up ah pegged it down, blew up the Zorb balls um and basically after that we were pretty ready to go, ah."[431]

And when you say "we rolled out the jumping castle," who was involved in doing that?

I think the whole three of us, really.[432]

...who was involved in staking down the jumping castle and the border?

I was and Jesse was.[433]

And how many pegs were used to anchor the jumping castle on the 16th of December 2021?

Two that I put down and two that Jesse put down, so four.[434]
...who selected the pegs that were used?

Rosemary threw them out um and she always did that anyway.[435]

When you say she threw them out, what do you mean by that?..... Well, she she placed them near the D-rings where we needed to peg down.[436]

We had a lot of trouble trying to get the pegs down actually. The ground was incredibly hard.[437]

And were all the pegs exactly the same, or were there some difference between the pegs?

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[428] Exhibit P81 CB V3 p 14 in response to rfi number 18.
[429] Exhibit P81 CB V3 p 16 in response to rfi number 24.
[430] Exhibit P112A p 14 lines 634-637.
[431] T217 lines 35-39.
[432] T217 lines 41- 42.
[433] T218 lines 1-2.
[434] T218 lines 16-18.
[435] T218 lines 20-21.
[436] T218 lines 23-25.
[437] T218 lines 30-31.

No, they were mixed. They were mixed."[438]

255. Mr Barrett gave evidence about setting up the jumping castle as follows:

"Okay and what about the jumping castle? Can you tell us how you started to um erect that inflate that?

Yes. We put it into its rough position of where it's gonna be, then we unfolded it and um pulled the corners you know like dragged it into place and then started inflating it.[439]

...the base is all stretched out and then um you started to inflate it. What happened next?

yeah once it's pulled taut and inflated yeah hammering the pegs on the castle.[440]

...who hammered in the pegs on the castle on this day?

Robert and myself.[441]

And is anything else done to secure the anchors?

Um no you just hammer them in and you pull it taut."[442]

256. Mr Barrett confirmed he was instructed to ensure the pegs were hammered in until they were flush to the ground.[443]

257. The following exchange appears in Mr Monte's Record of Interview with WorkSafe:

"Robert, could you please tell us in your own words, what you did on the 16th of December, 2021? From what you remember of that day.

...I went over to see Rosemary. There was two bent pegs, as I've said before. There two bent pegs I took them over to the box, left them in the box."[444]

258. In his Record of Interview with WorkSafe Mr Barrett said:

"...we just set up the big blower that goes on the back of it and we zip up all the outlets for air. And you have to wait for the bouncy castle to be inflated for a bit because you have to make sure the base of it is nice and tight. And then when it was up a bit, Bobby gave me two stakes to hammer into the bouncy castle."[445]

This therefore suggests further inflation takes place after the pegs are hammered in.

259. The evidence is clear that, in accordance with best practice as cited by Dr Peiris,[446] the stakes were inserted near vertically and flush to the ground.[447]

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[438] T218 lines 37-39.
[439] T264 lines 18-22.
[440] T264 lines 29-32.
[441] T264 lines 34-35.
[442] T266 lines 15-16.
[443] T276 lines 3-5.
[444] Exhibit P112B p 6 lines 42-43 and p 7 lines 18-19.
[445] Exhibit P112A p 12 lines 551-555.
[446] Exhibit D17 CB V6 p 49 [42].
[447] Exhibit P112B p 22 lines 2-14, T276 lines 3-5.

260. Accordingly Taz-Zorb's system regarding site selection and set up correlates with the relevant requirements of s18 of AS 3533.4.1:2005 and ss 3.1 and 3.2 of AS 3533.2:2009.

Ms Gamble's system regarding weather monitoring

261. Ms Gamble was not asked about weather monitoring in the s155 Notice she received from WorkSafe.[448]

262. Mr Monte gave evidence that he and Ms Gamble monitored weather conditions in the following manner:

> *"From apps on our phone. Ah, Rosemary had BOM, I had Weatherzone. Um, hers was more about hour by hour update, mine was – ah, the radar was just a lot better on mine, so we could see any clouds, stuff like that, coming across."*[449]

263. Mr Barrett confirmed this in his evidence when he said:

> *"And um how did you check the wind before letting everybody else on? How would you do that?*
>
> *Ah weather, weather radar, weather apps on the phone.*[450]
>
> *And was that you who – would you check a weather app or did other people check the weather apps?*
>
> *Ah no it was mostly – well pretty much all Rosemary and Bobby."*[451]

264. Mr Monte confirmed in his Record of Interview with WorkSafe that on 16 December 2021, the weather was monitored in the manner described above when he said:

> *"…Robert who was monitoring the wind speed on site on the 16th of December, 2021? Both. Rosemary and I we – the night before we, um, we looked at the weather. She has BOM. I weather zone. And in the morning before we went down, um, and we looked on the news basically in the morning. And we keep an eye out that way."*[452]

Taz-Zorb's system regarding weather monitoring is consistent with the relevant requirements of s18 of AS 3533.4.1:2005 and ss 3.1 and 3.2 of AS 3533.2:2009.

Ms Gamble's system regarding risk

265. Jaime-Lea Duff, a teacher employed at the School who had arranged for Ms Gamble to supply the amusement devices for the "Big Day In", says in her affidavit dated 17 December 2021:

> *"[f]rom my observations of how they operate and seeing how they were prepared to cancel the zorb balls knowing that it would be a great disappointment for the children I was more than happy to use them again this year. I was very confident that they were responsible operators and safety conscious in their setup and equipment use."*[453]

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[448] Exhibit P80 CB V3 pp 2-5.
[449] T231 lines 32-36.
[450] T274 lines 11-13.
[451] T274 lines 15-17.
[452] Exhibit P112B p 13 lines 11-17.
[453] Exhibit P13 CB V1 p 92.

It is clear Ms Duff's opinion that Ms Gamble was safety conscious and a responsible operator was based on her dealings with Ms Gamble and her observations of the operation of the amusement devices at the School the previous year.

266. Similarly, Gaye Kelly, a grade 5/6 teacher at the School, says in her affidavit of 16 December 2021:

> *"In 2020, the contractors responsible for setting up the equipment determined that it was too windy for the zorb balls, so they only set up the jumping castle. The event was successful, and everyone appeared to enjoy themselves. There were no injuries or safety issues identified."*[454]

267. Ms Gamble's safety conscious approach to risk in the operation of the jumping castle is demonstrated by the evidence with respect to the following aspects of the system of work.

268. Taz-Zorb's system regarding risk is consistent with the relevant aspects of s18 of AS 3533.4.1:2005 and ss 3.1 and 3.2 of AS 3533.2:2009.

<u>Ms Gamble's system regarding wind tolerance</u>

269. Ms Gamble says in her s155 response:

> *"Ms Gamble is now unable to recall the source of what she understood was a recommendation not to operate in wind conditions exceeding 25 kmph however recalls that this policy was always adhered to at events where Taz-Zorb was operating inflatable amusements."*[455]

270. Mr Monte also gave evidence with respect to this issue:

> *"…and ah you mentioned that there was a, a limit that was either in miles or kilometres. I don't recall whether or not you said what that was?..... I think – Do you remember now?..... I think it was around 25 kilometres."*[456]
>
> *"Now, the jumping castle came with a wind limit for its inflatable of 25 miles per hour. Why did you and Rosemary decide on a wind limit of 25 kilometres per hour?*
>
> *We just thought it was a lower speed, um a safer speed to operate um jumping castles, zorb balls in. But zorb balls were um they were very unpredictable, so we tried to just run them in small winds and that sort of thing"*[457]
>
> *"…But as far as the jumping castle was concerned … it's limit was 25 kilometres an hour wind speed?*
>
> *Yes, as far as we were concerned, yes."*[458]
>
> *"Had had there been occasions when um the wind speed had been – had exceeded 25 kilometres an hour and you've – you've taken action to deflate it and pull it down?*

[454] Exhibit P16 CB V1 p 103.
[455] Exhibit P81 CB V3 p 12 in response to rfi number 8.
[456] T231 lines 26-30.
[457] T242 line 41 to T243 line 4.
[458] T243 lines 6-8.

Of course, you you you wouldn't run it in the wind, in high winds. It it was just ludicrous. I could see the the potential danger in it. I mean, same with the zorb balls, you know, they're like big sails."[459]

271. In his Record of Interview with WorkSafe, Mr Monte said:

"Do you know what the maximum operating wind speed is for the jumping castle?

Um, I'm not sure it – I'm pretty sure it was 25 kilometres and that was pull down time after that.[460]

It might be higher, I don't know. But, um, when I operate the balls I'll be really honest with you, um, on the first one you pull them down if it gets windy. They're just – they can be dangerous.[461]

... having set up the castle on numerous occasions are you aware of the notice I'm referring too?[462]

Yes, I am. We wouldn't have set it up if it was windy like that. The bottom line."[463]

"You wouldn't set it up ...

No – no way."[464]

...do you know what the maximum operating wind speed is for the zorb ball arena?

No. But I probably myself I, um, zorb balls are like a big sail, all right. Um, I probably would've operated any – in anything above say 10 or 15 kilometres an hour. Or if I felt it was, um, if it was dangerous.[465]

And who makes the decision to cease operation if it becomes too windy?

Rosemary or myself."[466]

272. Mr Monte's evidence that the trigger to cease zorb ball activities at wind speeds of 10-15 km/h suggests a risk averse and responsible approach to risk. This approach is corroborated by Mr Barrett whose evidence follows.

273. In his Record of Interview with WorkSafe, Mr Barrett was questioned about wind speed and he said:

"Jesse, who makes the decision to cease the operations involving the jumping castle if it exceeds the wind rate that you mentioned earlier?
Rosemary or Bobby. They don't usually go to 25 kilometres, though. Just a slight wind is enough to put them off.[467]

Do you know what the maximum operating wind speed is for the use of the zorb balls?

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[459] T243 lines 10-15.
[460] Exhibit P112B p 19 lines 25-29.
[461] Exhibit P112B p 19 lines 33-36.
[462] That is the notice which appears on the jumping castle. See CB V2 p 250 and p 252 which warns against operating the jumping castle in winds in excess of 20 mph.
[463] Exhibit P112B p 20 lines 17-21.
[464] Exhibit P112B p 20 lines 23-25.
[465] Exhibit P112B p 33 lines 13-18.
[466] Exhibit P112B p 33 lines 38-41.
[467] Exhibit P112A p 15 lines 701-705.

... No, I don't know. I do know that if it is a slightly – the slightest bit of wind, that Bobby will put the trailer behind the zorb ball border and he'll hook up ropes – or Rosemary will do this – and he'll hook up ropes just in case they have to tie the balls down for a bit. They've done that at Deloraine Primary when I helped there."[468]

274. Mr Barrett gave the following evidence:

"Did you receive any instruction from Rosemary Gamble um about other other times when um you might need to watch the wind?

Yeah. Um if there was ever – I was told if there was ever wind um get the kids off and you know, make sure it died down before you put anyone else back on or make sure you check that it's not gonna come back before letting anyone else go on it.[469]

How risk averse or conscious of the wind and the effect of wind were Rosemary and Bobby as a general rule?

Oh they were very aware of it yeah. They were always cautious of it.[470]

What what what amount of wind would put them off and call to a halt the zorb balls or the jumping castle?

Um I don't know an exact number but it would've been – it's a lot less than what was on the jumping castle.[471]

"So ah would a slight wind be enough for them to um take an assessment of the ongoing use of the devices?

Yes, yeah."[472]

275. Taz-Zorb's system regarding wind tolerance is consistent with the relevant aspects of s18 of AS 3533.4.1:2005 and ss 3.1 and 3.2 of AS 3533.2:2009.

<u>Ms Gamble's System regarding weather/forecasting and responses to weather change</u>

276. Mr Monte and Ms Gamble had an operating wind limit of 25km/h for the jumping castle.[473] Mr Monte confirmed that the jumping castle would not be operated in high winds as he could see the potential danger in it.[474] Before an event, Mr Monte checked apps and the news to keep an eye on the weather.[475]

277. On occasions Taz-Zorb tied the jumping castle to the nearest tree or their car if Mr Monte thought that the jumping castle could become unstable.[476] During high wind gusts (by inference exceeding 25 km/h), Mr Monte would tether the jumping castle and see how the weather went. During this time, he and Ms Gamble would monitor the weather on their phones.[477] Once the

[468] Exhibit P112A p 33 lines 1636-1637 and lines 1643-1647.
[469] T274 lines 4-9.
[470] T276 lines 14-16.
[471] T276 lines 18-21.
[472] T276 lines 23-24.
[473] T242 line 41 to T243 line 8.
[474] T243 lines 10-15.
[475] T250 lines 25-28.
[476] T245 lines 19-23 and T246 lines 23-34.
[477] T246 lines 18-29.

jumping castle was tethered and if there was no indication the weather would improve the jumping castle would be deflated.[478]

278. Mr Barrett was aware of the maximum wind limit displayed on the front of the jumping castle. Mr Barrett was informed that if the wind increased, he was to get the children off the jumping castle and make sure the wind decreased prior to allowing anyone else to go back on.[479] Mr Barrett said that Ms Gamble and Mr Monte would check the weather on their phones before anyone would be allowed back on the jumping castle. Mr Barrett never made a decision on issues relating to the wind or weather conditions.[480] Mr Barrett gave evidence that Ms Gamble and Mr Monte were "*very aware*" of the wind and they were "*always cautious of it*".[481] The wind speed limit for Taz-Zorb was "*a lot less than what was on the jumping castle*". A *"slight wind"* would cause Taz-Zorb to make an assessment of the ongoing use of the amusement devices.[482]

279. Taz-Zorb's system regarding weather forecasting and response to weather change correlates with the relevant requirements of s18 of AS 3533.4.1:2005 and ss 3.1 and 3.2 of AS 3533.2:2009.

The Bureau of Meteorology (BoM) Weather Forecast for 16 December 2021

280. Mr Monte gave evidence that before the Wind Event on 16 December 2021, he considered the weather apps and the news in order to keep an eye on the weather.[483]

281. The BoM forecasts for Devonport for the afternoon of 15 December 2021 and 16 December 2021[484] were:

> ***Issued at 4:15 pm EDT on Wednesday 15 December 2021***
> *Forecast for Thursday 16 December*
> *Sunny. Winds southwesterly 15 to 20 km/h becoming light in the morning then becoming north to northeasterly 15 to 20 km/h in the late afternoon.*
> *Precis: Sunny. Min 12 Max 21*
> *Chance of any rain: 0%*
> *...*
> ***Issued at 5:30 am EDT on Thursday 16 December 2021***
> *Forecast for the rest of Thursday 16 December*
> *Sunny. Light winds becoming north to northeasterly 15 to 20 km/h in the evening then turning easterly in the late evening.*
> *Precis: Sunny. Max 21*
> *Chance of any rain: 0%*
> *...*
> (emphasis added)

282. Professor Eager made the following observations regarding the BoM forecasts which appear in Appendix J of his report:[485]

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[478] T246 lines 31-34.
[479] T273 line 37 to T274 line 9.
[480] T274 lines 11-19.
[481] T276 lines 15-16.
[482] T276 lines 18-24.
[483] T250 lines 25-28.
[484] Exhibit P89 CB V4 pp 13-14.
[485] Exhibit D8 CB V7 p 524ff.

"1. The forecast wind speed was 15 to 20 km/hr at 4:15 pm Wednesday 15 December 2021.
2. The forecast wind speed prior to this forecast dropped from 25 to 20 km/hr.
3. The forecast and the observed wind speeds at 10 am (time of Incident) were both 8km/hr.
4. After 10 am the forecast wind speed dropped to 3 km/hr at 3 pm.
5. After 10 am the observed wind speed increased steeply to more than 25 km/hr at 2 pm."[486]

283. The Beaufort Scale appears at Appendix C of the BoM Data[487] The relevant parts of the scale are reproduced below:

Beaufort Scale No.	**Descriptive Term**	**Units in km/h**	**Units in knots**	**Description on Land**	**Description at Sea**
0	Calm	0	0	Smoke rises vertically	Sea like a mirror
1-3	Light winds	19 km/h or less	10 knots or less	Wind felt on face; leaves rustle; ordinary vanes moved by wind	Small wavelets, ripples formed but do not break: A glassy appearance maintained.
4	Moderate winds	20-29 km/h	11-16 knots	Raises dust and loose paper; small branches are moved.	Small waves – becoming longer; fairly frequent white horses
5	Fresh winds	30-39 km/h	17-21 knots	Small trees in leaf begin to sway; crested wavelets form on inland waters	Moderate waves, taking a more pronounced long form; many white horses are formed – a chance of some spray
6	Strong winds	40-50 km/h	22-27 knots	Large branches in motion; whistling heard in telephone wires; umbrellas used with difficulty.	Large waves begin to form; the white foam crests are more extensive with probably some spray

[486] Exhibit D8 CB V7 p 108.
[487] Exhibit P89 CB V4 pp 33-34.

284. Applying Ms Gamble and Mr Monte's self-imposed wind limit of 25 kmph suggests that in accordance with the Beaufort Scale the jumping castle could be operated safely in *"Moderate Winds"*. Applying East Inflatables recommended wind limit of 25 mph implies the jumping castle, according to the manufacturer, could be operated safely at the top of *"Fresh Winds"* or at the bottom of *"Strong Winds"* given 25mph is equivalent to 40.2335 kmph.

285. The Beaufort Scale is included at Appendix A of AS 3533.4.1:2005 as an informative appendix.[488]

286. The wind limit imposed on operations by Ms Gamble and Mr Monte meant that they were in essence applying, without knowing it, the Beaufort Scale. In the opinion of Professor Eager Ms Gamble:

> *"did what a reasonable operator would do. She checked the weather with the BOM, who we respect, they're, you know, an Australian Federal Government organisation. She she checked with them the night before. Not only did she do that, she checked in the morning of the event, and she's most probably looking at the trees and the leaves and and using a bit of common sense, and none of that's changing to give her any any indication that we've got to get the kids out, or strip it down, or you know, let the air out. It just ha- – the evidence is, it it it came from nowhere and ended as quickly as it came. We've we've we've got that from from several eyewitnesses."*[489]

287. While the BoM forecast was for *"Light winds"* (i.e. 19 km/h or less), what was observed on the 6 Lawrence Street CCTV footage[490] and the video of the set up of the zorb balls[491] suggests that the conditions at around 10.00 am on 16 December 2021 were in fact *"Light Winds"* and *"Calm"* respectively. These winds appear, from exhibits P3 and P71B and from the eyewitness accounts as to the conditions prior to the Wind Event, to be very light.

288. Given that the dust devil was unpredictable and, according to Dr Earl-Jones, incapable of being forecast it was reasonable for Ms Gamble to rely on the BoM forecast for 16 December 2021.

289. In her response to the WorkSafe s155 Notice, Ms Gamble said:

> *"Ms Gamble confirmed the weather report on 16 December 2021 prior to set up and at the site from the start of the day itself the weather conditions were still and relatively calm. Winds were light and variable until the unexpected and sudden circumstances associated with the tragedy occurred."492*
>
> and she
>
> *"Watched the Channel 7 news the night before and on the morning of 16 December 2021 for the weather forecast for Devonport;*
>
> *Checked the Bureau of Meteorology app on her phone both the evening before and on the morning of 16 December 2021 for the weather forecast for Devonport, which*

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[488] Exhibit P102 CB V4 p 233.
[489] T707 lines 6-16.
[490] Exhibit P71B.
[491] Exhibit P3.
[492] Exhibit P81 CB V3 p 15 in response to rfi number 18.

provided hourly temperature, rain and wind forecasts, including maximum gusts for the day.

Additionally, Mr Monte checked his Weatherzone app on the phone on the morning of the incident for the Devonport forecasts for 16 December 2021."[493]

290. Mr Monte said in evidence:

"But just in relation to the weather, what checks were made about the weather conditions for the 16th of December 2021 before you went to Hillcrest Primary School?

Oh, I looked on – on the weather app at night, I also checked the news, same with in the morning, um and I just kept an eye on the weather through our apps, really. Um, that's the only way you could do it. There was nothing forecast at all, really, ah not that I could see, anyway[494]

"And you kept an eye on that?

Yeah, I always did. I always did, whatever job.[495]

...what steps did you take to assess the weather conditions before an event?

Ah, apps, the news – news, um that sort of thing, just keep an eye on the weather."[496]

291. In Mr Monte's Record of Interview with WorkSafe the following exchange took place:

"...Robert who was monitoring the wind speed on site on the 16th of December, 2021?

Both. Rosemary and I we – the night before we, um, we looked at the weather. She has BOM. I weatherzone. And in the morning before we went down, um, and we looked on the news basically in the morning. And we keep an eye out that way.

And how was it being monitored on site?

From the App"[497]

292. In his Record of Interview with WorkSafe, Mr Barrett said:

"Jesse, was anyone monitoring the wind speed on the site on the 16th of December 2021 at Hillcrest Primary School?

We had all checked the weather and it said it would be fine. There was no wind before it

And what – did you check the weather yourself?

Yeah.

And what did you use to do that?

Just my phone.

And that was prior to the event?

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[493] Exhibit P81 CB V3 p 15 in response to rfi number 18.
[494] T232 lines 28-34.
[495] T232 lines 41-42.
[496] T250 lines 25-28.
[497] Exhibit P112B p 13 lines 11-21.

Yeah."[498]

293. That Ms Gamble, Mr Monte and Mr Barrett were monitoring the weather suggests an appreciation of the risks due to weather when operating the inflatable devices.

294. Professor Eager gave evidence that the BoM was a trusted Australian Government Agency whose weather forecasts are based on the best available data and that it was reasonable for a person to rely on its forecasting.[499] However Mr McDonald said monitoring weather through weather apps was not sufficient. He contended that "*they're not locally accurate…they're not continuous…[and] don't provide local accuracy*"[500] Professor Eager conceded *"[w]eather at the very local level can vary from the regional level and weather can be unpredictable."*[501] Dr Earl-Jones confirmed that it is "*a lot easier to give a general weather forecast rather than um what the – a person is going to be experiencing in a specific location.*"[502]

295. In addition, Mr McDonald said *"[t]here are numerous methods to monitor wind including the Beaufort scale, there are wind socks, there are little devices you can buy…there are devices that are cheap and readily available."*[503]

296. In his evidence Dr Earl-Jones confirmed that the dust devil was likely invisible to the naked eye. He said a wind anemometer would have been *"useless"* in the circumstances.[504] Professor Eager confirmed that the use of an anemometer would not have prevented this tragedy.[505] By analogy, familiarity with the Beaufort Scale, or utilising a wind sock, would have been *"useless"* in the circumstances.

297. What was required of Ms Gamble was vigilance with regard to available sources of weather forecasting, particularly the BoM, constant vigilance on the ground, and a system ready to change or be locked down should climatic circumstances change. I am satisfied such a system was in place on 16 December 2021. This system would however been enhanced if an anemometer was used.

<u>Ms Gamble's system regarding planning and flexibility in set up</u>

298. In evidence Mr Monte said:

> *"…was there any reason why eight pegs weren't used to anchor down each of the eight D-rings on that day?*
>
> *Well, it was a nice day, and I've always been under the impression that four was bare minimum.*
>
> *And where did you get that impression from?*
>
> *Um, from when received the jumping castle.*
>
> *…Had you ever used any more than four pegs?*

[498] Exhibit P112A p 12 line 517 to p 13 line 533.
[499] Exhibit D8 CB V7 p 111 lines 2356-2367.
[500] T539 lines 38-41.
[501] Exhibit D8 CB V7 p 111 lines 2361-2362.
[502] T328 lines 40-42.
[503] T469 lines 7-13; here Mr McDonald was referring to wind meters or anemometers.
[504] T333 lines 4-8.
[505] T704 lines 23-24.

Yes, in windier weather, yes, of course.

...Had you ever used all eight pegs at all eight anchorage points?

Of course, yes.

...was wind the – the factor that distinguished how many pegs you would insert into the jumping castle on any day?

Yes, of course, yes."[506]

299. In his WorkSafe Record of Interview Mr Monte said:

"Why weren't eight retention pegs installed on the 16th of December to the jumping castle?

Well we worked to the condition. So, no wind so you should set up light. If it gets windier you pin it down even harder. Same as the boarder.

On previous occasions when you've operated the jumping castle, how many retention pegs would you have used to secure it?

Depending on the weather, four to eight.

Have you ever operated the jumping with all eight D rings secured?

Yes

Do you know how many retention pegs must be used for the device to achieve its maximum operating wind speed?

Ah, four is as far as I'm aware. From – from the manual"[507]

300. In his evidence Mr Barrett said:

"...had you ever seen the jumping castle used with more than four pegs?

Yeah. Yeah.

Had you ever seen it used with eight pegs?

Ah I'm not sure. Well if it [indistinct word(s)] the full eight but I've seen it used with more than four."[508]

301. In his WorkSafe Record of Interview Mr Barrett said:

"So there are eight D-rings on the jumping castle. Were eight retention pegs installed into the D-rings prior to the incident on 16 December 2021?

No, there was four. Depending on the weather, we would put – yeah, we were just working to conditions...

On previous occasions, have you observed the jumping castle being operated with less than eight retention pegs to secure it?

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[506] T225 lines 15-34.
[507] Exhibit P112B p 22 line 40 to p 23 line 15.
[508] T268 lines 23-28.

Yeah…

When you've set up the jumping castle previously, how many retention pegs would you have used?

At least four."[509]

302. Taz-Zorb's system regarding planning and flexibility in set up is consistent with the relevant aspects of s18 of AS 3533.4.1:2005 and ss 3.1 and 3.2 of AS 3533.2:2009.

Ms Gamble's system regarding tethering and event cancellation

303. When referring to the Risk Assessment Checklist for 10 October 2021,[510] in explaining what the notation *"tethered"* meant, Mr Monte said:

"…what's that word meant to convey about what happened that day?

Tethered? Well, we would tether it with a rope ah through um the two back D-rings um if we thought it was going to become unstable. We'd tie it to ah say the nearest tree or bring up the car and we would do it that way.[511]

…there were times when you actually went further than tethering, and made the decision to actually deflate the jumping castle. Correct?

Yes, that's very true, yes.

…how would you determine what the trigger was for you to go to the next step, the final step of actually deflating? What would trigger that?

Just just high wind gusts. Um, yeah, it's hard to explain, to be actually honest with you. Um, we would just tether it and see how the weather went and keep an eye on our apps on our phones, ah stuff like that. That's the only way I can sort of explain it.

And so, do I take it from that that once it got to the point where um the castle had been tethered, and there was really no hope that the weather was going to improve, was that the point – the trigger for you to deflate?

Oh, yes, yes, for sure. For sure, yes."[512]

304. With respect to an example of a prior decision not to use the zorb balls due to wind, which transpired to be at the Hillcrest Primary School, Mr Monte said:

"…There was one year there I refused to set up the balls it was too windy. They weren't really happy…"[513]

305. Gaye Kelly confirms in her affidavit that in 2020 it was too windy for the zorb balls so only the jumping castle was set up. She says that event was successful.[514]

306. During his Record of Interview with WorkSafe Mr Barrett said:

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[509] Exhibit P112A p 16 lines 742-766.
[510] Exhibit P81 CB V3 p 44.
[511] T245 lines 19-23.
[512] T246 lines 18-34.
[513] Exhibit P112B p 16 lines 32-34.
[514] Exhibit P16 CB V1 p 103.

> *"…Do you know what the maximum operating wind speed is for the use of the zorb balls?*
> *… No, I don't know. I do know that if it is a slightly – the slightest bit of wind, that Bobby will put the trailer behind the zorb ball border and he'll hook up ropes – or Rosemary will do this – and he'll hook up ropes just in case they have to tie the balls down for a bit. They've done that at Deloraine Primary when I helped there."*[515]

307. Taz-Zorb's system regarding tethering and event cancellation is consistent with the relevant aspects of s18 of AS 3533.4.1:2005 and ss3.1 and 3.2 of AS 3533.2:2009.

Ms Gamble's system regarding child welfare

308. Since the children at the School were clearly *"persons"* within the meaning of s19(2) of the Act, Mr Monte said the following in evidence, when asked about what occurred once the children arrived on 16 December 2021:

> *"… they started um, ah getting in the balls and I um – we cut down the time to three minutes because the balls get hot inside, and usually it'd go four minutes. I'm just trying to think. Yeah. And – and just rotating the kids, we get them to take their shoes off, anything sharp, worn that's going to get hot in there, so I'd keep a really – a really good eye on the kids in the balls themselves, if they're overheating, you get the general idea."*[516]

309. In his Record of Interview with WorkSafe, Mr Monte said:

> *"I went over to Rosemary to se –talk to her about how many – whether we could, um, cut the time down on the balls because it was hot and the kids do get hot in there. So we cut it down from 5 minutes to 3."*[517]

310. This evidence is corroborated by Gaye Kelly in her affidavit of 16 December 2021 wherein she says *"the contractors informed me that the students could only use them for three minutes (instead of the usual five) as the weather was too hot."*[518]

311. This evidence demonstrates an intention on the part of Taz-Zorb to maintain a working environment that was safe and without risks to the health and safety of the children and in that regard its system regarding child welfare complies with the relevant aspects of s18 of AS 3533.4.1:2005 and ss3.1 and 3.2 of AS 3533.2:2009.

Ms Gamble's system regarding pulling the base of the jumping castle *"taut"*

312. Mr Barrett's evidence on this issue was as follows:

> *"…the base is all stretched out and then um you started to inflate it. What happened next?*
>
> *…yeah once it's pulled taut and inflated yeah hammering the pegs on the castle."*[519]
>
> *"…is anything else done to secure the anchors?*

[515] Exhibit P112A p 33 lines 1636-1647.
[516] T233 lines 12-18.
[517] Exhibit P112B p 7 lines 21-24.
[518] Exhibit P13 CB V1 p 104.
[519] T264 lines 29-32.

...no you just hammer them in and you pull it taut."[520]

313. In his Record of Interview with WorkSafe Mr Barrett said:

"...we just set up the big blower that goes on the back of it and we zip up all the outlets for air. And you have to wait for the bouncy castle to be inflated for a bit because you have to make sure the base of it is nice and tight. And then when it was up a bit, Bobby gave me two stakes to hammer into the bouncy castle."[521]

314. Professor Eager gave evidence with regard to the difficulties of pulling the base of the jumping castle taut when using star pickets which given this evidence and that of Mr McDonald on this issue[522] is important:

"The the other thing – point I'd like to make is it's really difficult to tension them. Like, you've you've you've got this carabiner, and just by its very nature, it's got – I mean you'd you'd need something else inside to take take up the slack. You – like the carabiner, it's it's a bit like when we went out to the the site inspection and the police had erected it, and it was flopping in the breeze... Um, and and they used star pickets, and this is probably the reason it was slack. Like, there was no tension... Whereas, with with the the the stake, you can pull it out and and hammer it in so you've got the tension on it when you – when you you hammer it in. You don't don't have that same sort of control with the the star picket." [523]

315. An examination of the photographs of the star pickets with carabiners attached[524] confirms both how much of the star pickets would be protruding from the ground which creates a trip and/or injury hazard, and how difficult it would be to pull the base of the jumping castle taut.

<u>Ms Gamble's system/experience regarding the use of star pickets</u>

316. Mr Monte gave evidence about this issue as follows:

"...Mr Monte, um these are what you thought were the 40 centimetre – about 40 centimetre star pickets that appear to have carabiners inserted in them?

Yep.

did did you trial the use of those for the purpose of staking the jumping castle down at some point in time?

Yes, we did.

was it successful, and if it wasn't, why?

No, it wasn't because um we found that they were a tripping hazard. Ah, we put them, we put caps on them, but kids would take the caps off, um and as you can see from the top there, um when you hammer them down, it actually frays the metal on the top. So, caps coming off, kids around, it it's just – no, it was just not on.

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[520] T266 lines 15-16.
[521] Exhibit P112A p 12 line 550.
[522] T574 lines 19-34.
[523] T705 lines 2-16.
[524] Exhibit P72 CB V2 pages 243-244 (photographs numbered 261-262).

It was a trip hazard. I've tripped over it, so if I trip over it, I put myself in a position where if I'm going to trip over it, other people are going to trip over it, so that's why we stopped using them.

...the star picket couldn't fit through the D-ring, so you had to attach it to the –

No.

You had to attach it to the D-ring

That's why we had the carabiners.

...if the star pickets had been able to be put fully flush into the ground, how difficult would – would it have been, or was it to remove them from the ground?

Very, very difficult because if you were to put them in on say a 45 degree angle and flush into the ground, how do you remove it?

you're saying you can't think of any way by which they could have been removed without great difficulty?

Not off-hand, no."[525]

317. Professor Eager gave further evidence regarding the use of star pickets and the risks they posed:

"...so, what observations would you make about the safety and otherwise utility of using star pickets with carabiners attached to them like that?

Um, well, I must confess I don't particularly like star pickets on inflatables because they introduce other other hazards. Like, you've got lots of excited children running around with these exposed ends that after you've hammered in a few times, get really sharp razor-bladey um things on them if they impale themselves, and I've seen photos of kids where they've impaled their their calf muscle, like the the the picket's gone through there. It's it's horrible. It's really – not as bad as death, I know."[526]

Set-up on 16 December 2021

318. Mr Monte gave evidence that on 16 December 2021, he picked up the trailer from Ms Gamble's home at 6:30am and drove to Devonport arriving at approximately 7:45am. Mr Monte walked around the School to find someone to plug in power for the Amusement Devices. He unpacked equipment and put out the power leads when Ms Gamble and Mr Barrett arrived at the school.[527] Mr Monte and Mr Barrett pegged down the jumping castle and zorb ball arena.[528] Mr Barrett and Ms Gamble inflated the zorb balls, and Mr Monte inflated the zorb ball arena. Mr Monte and Mr Barrett undid the straps and unrolled the jumping castle, opening the two halves up, did up the zippers and attached the blower. The jumping castle was blown up, positioned, and let down again before being pulled taut and pegged to the ground.[529] Mr Monte hammered in two pegs to anchor the jumping castle and Mr Barrett hammered in another two pegs.[530] Mr Monte inserted the pegs on the left side of the jumping castle, as he faced it, at points "C" and "E" identified on

[525] T247 line 27 to T248 line 32.
[526] T704 line 34 to T705 line 2.
[527] T216 line 32 to T217 line 30.
[528] T217 lines 35-39.
[529] T 217 line 14 to T218 line 14.
[530] T217 lines 16-18.

Exhibit P78,[531] and Mr Barrett hammered the pegs on the right side.[532] Mr Monte inserted at least one j-shaped peg[533] at the front left side of the jumping castle.[534] Mr Monte said he hammered in a peg similar to the one contained at photograph 545[535] which was described as a folded down peg on the back left side of the jumping castle.[536]

319. Mr Monte gave evidence that he ensured the ground was firm to support the weight of the jumping castle,[537] there were no drainage issues,[538] the ground was suitable to hold the anchoring system,[539] there was adequate clearance between the jumping castle and buildings, trees and powerlines,[540] and there was safe access for participants and emergency vehicles.[541]

320. The pegs inserted to secure the jumping castle were described by Mr Monte as "*mixed*" and approximately 300 mm in length.[542] He said the ground surface of the School's oval was "*incredibly hard*".[543] Mr Monte said that because the ground was incredibly hard, it made it difficult to insert the pegs at an angle.[544] The pegs were therefore hammered into the ground near vertically and flush to the ground.[545]

321. The zorb ball arena was secured with six pegs of a similar shape and size as the pegs used on the jumping castle.[546]

322. When Mr Barrett arrived at between 8.30am and 9.00am, he assisted Mr Monte unstrap and remove the Amusement Devices from Mr Monte's trailer and the tray of his ute.[547] Mr Barrett and Mr Monte unfolded and pulled the corners of the jumping castle, dragged it into position and started to inflate it with a big fan.[548]

323. Mr Barrett said in evidence the jumping castle tethers were pulled *"taut"*, and four pegs were hammered into place on four of the eight tether points of the jumping castle by both Mr Barrett and Mr Monte.[549] Mr Barrett hammered pegs at points marked "G" and "H" on First Class Constable Wotherspoon's plan of the jumping castle (Exhibit P78).[550] Mr Barrett said he hammered a J-shaped peg and another "*sort of folded down style hook*"[551] peg through the D-rings on the jumping castle[552] and hammered the pegs into the ground using "*a big mallet*

[531] T219 line 13 to T220 line 2.
[532] T219 lines 16-17.
[533] CB V2 p 426 (photograph no. 528).
[534] T220 lines 21-31.
[535] CB V2 p 443.
[536] T220 line 33 to T221 line 9.
[537] T248 lines 34-37.
[538] T248 lines 39-40.
[539] T249 lines 1-2.
[540] T249 lines 4-5.
[541] T249 lines 7-8.
[542] T218 lines 33-39.
[543] T218 line 31.
[544] T219 lines 7-11.
[545] T219 lines 7-11.
[546] T221 lines 25-26.
[547] T263 lines 5-8 and T264 lines 1-3.
[548] T264 lines 14-27.
[549] T264 lines 29-42.
[550] T265 lines 10 to 30.
[551] T265 lines 37-39.
[552] T266 lines 1-2.

hammer."[553] Mr Barrett confirmed he pulled the anchorage ties of the jumping castle taut before hammering the pegs in.[554]

324. Mr Barrett also assisted with unfolding, moving into position and inflating the zorb balls and zorb ball arena, as well as setting up and securing the gazebo.[555] Mr Barrett confirmed the pegs with "*folded down type ends*" were used to secure the zorb ball arena and were the same length as the jumping castle pegs.[556]

INTERPRETATION AND APPLICATION OF THE AUSTRALIAN STANDARDS AND THE CAUSE OF THE ANCHOR FAILURE

Introduction

325. As will be discussed below there is little difference between the experts on what level of downward force would have been required to resist upward forces which lifted the jumping castle and the patrons using it into the air. There are however significant differences in the opinions:

- between Mr McDonald and Professor Eager with respect to interpretation and application of the Australian Standards to Ms Gamble; and
- between Mr McDonald and Professor Eager as to the application of wind force; that is whether it was a horizontal or vertical wind force which led to the failure of the jumping castle's anchorage system.

Mr McDonald

326. The prosecution called Mr McDonald who is an expert in mechanical engineering and inflatable amusement devices.[557] In addition to the evidence he gave in court his opinions are contained in his report.[558]

327. Mr McDonald reviewed the design and operation of the jumping castle against the following standards:

(a) AS 3533.4.1-2005 – Amusement rides and devices – Part 4.1: Specific requirements – Land-borne inflatable devices[559]

(b) AS 3533.1-2009 – Amusement rides and devices – Part 1: Design and Construction[560]

(c) AS 3533.2-2009 – Amusement rides and devices – Part 2: Operation and Maintenance[561]

328. AS 3533.4.1-2005 says it is intended to be used in conjunction with AS 3533.1-2009 and AS 3533.2-2009 *"which provide requirements and recommendations on matters common to all*

[553] T266 lines 7-8.
[554] T264 lines 30-32.
[555] T266 lines 20-32.
[556] T267 lines 1-5.
[557] T410-411 and Exhibit P112 CB V5 p 254-257.
[558] Exhibit P112 CB V5 pp 1-329.
[559] Exhibit P102 CB V4 pp 205-256.
[560] Exhibit P100 CB V4 pp 77-204.
[561] Exhibit P101.

amusement rides and devices. Specific requirements in this Standard take precedence over corresponding requirements in AS 3533.1 and AS 3533.2."[562]

329. In AS 3533.4.1-2005 the terms 'normative' and 'informative' have been used to describe the manner in which a certain appendix applies. *"A 'normative' appendix is an integral part of a Standard, whereas an 'informative' appendix is only for information and guidance."*[563]

330. Mr McDonald said these Standards provide the framework for a comprehensive assessment based on the minimum requirements and specifications to ensure safety, reliability and consistency in equipment and operation.[564]

331. Mr McDonald examined the jumping castle, zorb ball arena and zorb balls over a period of two and a half days and spent six months writing his report. He had regard to all the materials referred to in Attachment two to his report[565] and all the documents listed on pages 6-9 in the preparation of his report. These documents included the Laboratories for Materials Advanced Testing Services (LMATS) load test and hardness reports[566] and the Geoton Pty Ltd report.[567]

332. In summary Mr McDonald concluded the jumping castle was not compliant with Australian Standards or the manufacturer's specifications at the time of the incident. The impact of these failures was to significantly reduce and undermine the risk controls required for the safe performance and operation of the jumping castle on the day of the incident. He says there was:

> *"limited capability within the system due to the use of only four under-capacity, non-compliant ground anchor pegs installed (of the required 8 anchorages)"*[568] which resulted in the *"defeat in the anchorage system at relatively low wind speeds."*[569]

333. At the outset Mr McDonald determined the jumping castle was an amusement device under the relevant suite of Australian Standards. He then assessed the jumping castle against the specific Australian Standard AS3533.4.1-2005, and in particular Section 6 of that standard titled Anchorage. Section 6.1 provides:

> *"Sufficient anchorage points shall be provided and located such as to enable stability and restraint to be maintained under the designers stated operating conditions.*
> *The wind speed for which inflatable devices shall be designed shall be not less than 11.1m/s (40km/h).*
>
> *The number of anchorage points to address wind loads shall be calculated in accordance with Appendix B."*[570]

334. Mr McDonald then used Appendix B to calculate the number of anchorage points required for this jumping castle. He says the number and location of anchor points on an individual jumping castle design is a function of windage area and wind velocity; and must be calculated and

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[562] Exhibit P102 CB V4 p 210.
[563] Exhibit P102 CB V4 p 208.
[564] Exhibit P112 p 8.
[565] Which included photographs, video recordings, documents and interviews-See Exhibit P112 CB V4 p 242-246.
[566] Exhibits P106 and P107 CB V4 pp 314-345 and pp 346-351.
[567] Exhibit P111 CB V4 pp 356-410.
[568] Exhibit P112 CB V5 p 4.
[569] T417 line 33 to T418 lines 1-2.
[570] Exhibit P102 CB V4 pp 214-215 and Exhibit P112 CB V5 p 24.

determined for each jumping castle design. The minimum number of anchor points required is calculated on a force (derived from a specified wind velocity) applied to a jumping castle's face area/s. Having measured the two faces of the jumping castle to be 4.5m and 5m, it was determined that each face of the jumping castle required a minimum of two standard anchorages (appropriately located).

> *"A standard anchorage being an anchor point capable of withstanding 1600N horizontally and for a very low angle position anchor strap (0-30 degrees…), such as an anchor point originating from the base of the jumping castle, the vertical component of the design force on each anchor is required to be not less than 500N."*[571]

Mr McDonald's examination of the jumping castle revealed it was fitted with two anchor points per side, located adjacent to the main corners, so that it had a total of eight anchor points. The design of the jumping castle was therefore compliant with the anchorage requirements of AS3533.4.1-2005.[572]

335. The evidence of Mr Monte and Mr Barrett together with the evidence of First Class Constable Wotherspoon, who inspected the scene after the Wind Event, establishes only four anchor points using pegs hammered into the ground through a D ring attached to the jumping castle were used to anchor the jumping castle to the ground. The pegs used were two J shaped pegs which were 300mm long and had a diameter of 11.9mm and two folded V shaped pegs which were 345mm long and which had a diameter of 11.1mm.[573] They were inserted into the anchorage points at locations shown at C, E, G and H on P78.

336. In addition AS3533.4.1-2005 required that *"each anchorage point on the inflatable and its stake or stakes shall withstand a minimum horizontal force of 1.6kN."*[574] All but one of the pegs[575] tested by GeoTon, including three of the pegs used on the day to anchor the jumping castle, were found to be able to withstand the minimum horizontal force given the manner in which they were hammered into the ground on the day; that is the full length of each peg was hammered into the ground at near 90 degrees to the angle of the peg.

337. Mr McDonald advised the pegs used on 16 December 2021 were not compliant with the Standard because they were not 16mm in diameter[576] and not compliant with the manufacturer's instructions because they were of a mixed configuration (J and V pegs), nor was there a consistent approach to the set-up, that is Ms Gamble varied the pegs used from site to site.[577] However, he noted that there were some star pickets with carabiners in the toolbox on the back of the trailer, which was at the School, that were compliant with the Standard.[578]

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[571] Exhibit P112 CB V5 p 25.
[572] Exhibit P112 CB V5 pp 24-25 and T422 line 30 to T427 line 23.
[573] Exhibit P111 CB V4 p 364.
[574] Exhibit P102 CB V4 p 215 at clause 6.2 (b) and at T427. A kilonewton (kN) is a unit of force equal to 1,000 newtons.
[575] Peg 6 of 7; see Exhibit P111 CB V4 pp 366-372.
[576] Exhibit P102 CB V4 p 215 clause 6.2(e).
[577] T428 to T429.
[578] T431 lines 19-37.

338. Australian Standard AS3533.4.1-2005 dealing with anchorages also specified *"[t]he anchorage system shall be designed so that the anchor ropes or straps are secured in a manner that prevents the device lifting off the ground."*[579]

339. Mr McDonald said in his evidence there are a number of mechanisms associated with preventing lift in a jumping castle. The key one is *"putting in anchorages"* at all; and the other is related to the process and sequence of installation of the anchorages. As to this Mr McDonald specified that by laying the inflatable out in a deflated form and stretching the anchorages, inserting the pegs then (lastly) inflating the jumping castle creates tension within the bottom membrane of the castle and the anchorages. This changes the mechanism as to how the anchorages are loaded and helps to hold the castle down.[580]

340. The evidence is that on 16 December 2021 two anchorage pegs were inserted before the jumping castle was inflated to put it into position and then two anchorage pegs were hammered in after the jumping castle was inflated.[581] The effect of anchoring the inflatable after it was inflated means that, according to Mr McDonald *"you wouldn't have that tension within the straps, and you're at risk of bringing… your anchorages into a vertical load pattern. So, part of the key to how you prevent lift is actually the installation or erection of the castle."*[582] Mr McDonald has however proceeded on the basis of the Tasmania Police report regarding the order of installation which was the jumping castle was laid out, it was inflated and then anchored.[583] This is at variance with the evidence.

341. Further Mr McDonald said had all eight anchorages been used in the configuration provided by the manufacturer, then if the castle had been inflated correctly (i.e. the tension in the straps) then that would have prevented lift considering the wind loads within the Standard.[584] Mr McDonald was of the view the anchorage system in use on 16 December 2021 was not suitable because the method of installation did not provide the necessary tension and that the failure to anchor each face by anchoring the two sides left the front edge unrestrained and that, consequently, *"the whole front of the mattress… can lift. There's nothing actually holding it"*[585]

342. Mr McDonald's evidence was that the configuration of the anchorage on the jumping castle on the day, namely at C, E G and H (Exhibit P78) meant that the face that represents G and H would probably be reasonably secure, but the back, left and front sides would not be secure. The effect of his evidence on this point was that the anchorage system used on the day meant three of the four faces of the jumping castle were unsecured.[586]

343. Paragraph 6.2(i) of AS3533.4.1-2005[587] provides *"[a]nchorage systems shall be consistent…"*. Mr McDonald said this means the same system was to be used each time. He said that the instructions from the downloaded manual, which is the 2 page manual Ms Gamble downloaded from the East Inflatables website, to *"Locate all of the tie down straps on the bottom of the*

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[579] Exhibit P102 CB V4 p 215 clause 6.2(h) and Exhibit P112 CB V5 p 29.
[579] T428 to T429.
[580] T432 lines 27-40.
[581] Exhibit P1 at [5.7(d)].
[582] T432 line 40 to T443 line 3, T574 lines 20-27.
[583] T433 lines 6-9 and T574 lines 23-25.
[584] T433.
[585] T433.
[586] T434 line 24 to T435 line 7.
[587] Exhibit P102 CB V4 p 215 clause 6.2(i).

unit…., Extend the strap drive the provided stakes through the ring at the end of the strap"[588] conformed with the requirement to be 'consistent and reproducible' and the manufacturer's instructions did not allow for any deviation in the application of the anchorage system.[589] He reviewed material related to how the anchorage system was implemented by Ms Gamble and concluded she did not comply with AS3533.4.1-2005 as there were inconsistencies in the installation of the anchorage system, as installation depended on the weather and the retention pegs used were mixed up quite a bit. Different anchorage systems were devised and used on different occasions.[590]

344. Part 6 of AS 3533.4.1 is very specific regarding the anchorage system. Mr McDonald says the anchorage system:

> *"is complex and relies on a critical and deliberate relationship between components to meet a specific performance standard. This necessitates a designer who is able to fully understand the functionality, mechanisms and forces at work within the anchorage system for the specific device. If an element or elements are subtracted, altered or substituted, this changes the relationship between components and constitutes a new system."*

This and every new system he says must be assessed by a person who is able to fully understand and account for the mechanisms and forces at work within the anchorage system for the specific device. This feature of design requires a competent person with engineering qualifications in accordance with the definition of competent person in AS3533.1-2009 Appendix B[591].

345. In addition Mr McDonald says part 18 of AS3533.4.1-2005 titled *'Operation'* provides if the manufacturer's anchorage system is not suitable for use, for example the instructions are incomplete or the equipment is non-compliant, then the device is not to be used until appropriate direction has been sought from the manufacturer or a competent person has assessed and advised on the system.[592]

346. The evidence of Ms Gamble contained in the response to the s155 notice and Mr Monte's evidence was to the effect that she did not receive any manuals and she only received four pegs when she received the jumping castle from East Inflatables. The evidence of East Inflatables was there was a one page manual specific to the E2-030 jumping castle which indicated it had eight tie downs which *"must be either staked to the ground with at least a 45cm long stake…"*, and that this manual was available at the time the jumping castle was purchased by Ms Gamble and could be sent electronically. However, this was not obtained by the defendant who only downloaded a two page manual from the website.[593] Interestingly on this point the one page manual[594] which I have found Ms Gamble did not receive talks about using 45cm stakes whereas the response of East Inflatables to the s155 notice says each stake or peg is 47cm.[595]

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[588] Exhibit P81 CB V3 page 26.
[589] T435 line 39 to T436 line 20.
[590] T436 line 29 to T437 line 13.
[591] Exhibit P100 CB V4 p 87 and p 174, Exhibit P112 CB V5 pp 30-32.
[592] Exhibit P102 CB V4 p 232 and T441 line 27 to T443 line 2.
[593] Exhibit P81 CB V3 pp 26-27, Exhibit P84 CB V3 pp 197-200, T158 line 33 to T160 line 18.
[594] Exhibit P84 CB V3 p 206.
[595] Exhibit P84 CB V3 p 197.

347. In any event, Mr McDonald was of the view that the manufacturer's instructions (based on the two page downloaded manual) required pegs to be driven through all the tie down locations that had been identified, and that the jumping castle had been designed, in accordance with the Standard, to have two anchorage points at each corner. However, Ms Gamble did not follow those instructions as she oversaw a system on the day where only four pegs were inserted into the anchorage points at C, E G and H depicted in Exhibit P78. The prosecution questioned the reasonableness of Ms Gamble's interpretation irrespective of her assertion she was only provided with four pegs, given the obvious eight anchor points on the jumping castle, and the fact that she did, on other occasions, peg all eight anchor points. This is to be contrasted with the evidence at paragraphs 210 to 213 including that of Mr McDonald.

348. Further, it is apparent those instructions were open to different interpretations, so in the absence of clear instructions, Mr McDonald says it was incumbent on Ms Gamble to engage a competent person to advise her on the appropriate anchorage system. This is discussed in more detail below.

349. Mr McDonald says the effect of the anchorage system in place on the day was that it was inadequate to address the lateral load requirements under the Standard and it did not secure the leading edge on three of the four faces of the jumping castle. This enabled air to infiltrate the mattress and put the jumping castle into vertical lift, which was the configuration which offered the least retention capacity for the pegs that were in use. Those pegs were themselves not compliant with the Standards or the manufacturer's instructions.

350. Mr McDonald also considered the requirements Section 13 of AS 3533.4.1-2005 imposed on the manufacturer and supplier in relation to information they are to provide. He compared the three manuals that were said to be in existence at the time, namely the downloaded manual (two pages), the E2-030 specific manual (one page) and the generic manual (13 pages).[596] Each of the three manuals contained instructions about the method of anchorage and the number of anchorage points. In particular he concluded that each of the manuals provided that each of the tie down straps were to be staked – see Exhibit P112 (CB V5 p52).[597] The one page specific manual contained instructions to use eight pegs and specified that the pegs to be used were to be 45cm in length.[598] Further, Mr McDonald said none of the three manuals provided for an alternative staking set up.[599] He concluded that all three manuals were deficient in the provision of information in respect of certain elements of Section 13.[600]

351. Section 17 of AS 3533.4.1 provides:

> *"[a]n inflatable device shall, while operating, be under the control and supervision of a competent person."* Competent Person is defined in paragraph 1.3.8 of AS3533.1-2009 as *"[a] person who has acquired through training, qualifications or experience… the knowledge and skills enabling that person to perform a specified task".*

While acknowledging that there was no known course for operating inflatables, Mr McDonald noted that valuable training and experience could come from being instructed by an engineer in the Standards and operation of the device.[601] At pp 75-76 of Exhibit P112 Mr McDonald says Ms

[596] Exhibit P112 at pp 46-65, T456 to T458.
[597] P112 CB V5 pp 51-52, T457 lines 21-24, T458 lines 20-29.
[598] Exhibit P84 p 206, T457 lines 26-32.
[599] T458 lines 1-14.
[600] Exhibit P112 CB V5 pp 55-59.
[601] T461 lines 15-33.

Gamble and Mr Monte could not *"fulfil the role of a competent person in relation to the Standard"*, an opinion which was based on their lack of familiarity or compliance with the A3533 suite of Standards as demonstrated by multiple instances of their failure to comply with the Standards, not following the East Inflatables' manual which was demonstrated by multiple deviations from the instructions contained therein and a lack of concurrence with regulatory advisories and relevant codes of practice. Further, the knowledge of Ms Gamble, Mr Monte and Mr Barrett of the operating requirements of the E2-030 jumping castle were inconsistent (eg. as to the number of patrons permitted on the jumping castle, operating wind speed and anchorage requirements).[602]

352. Section 18 titled *'Operation'* of AS3533.1-2005 provides:

> "*The manufacturer's and supplier's instructions and requirements shall be followed, particularly in relation to installation, operation, maintenance and inspection. In the absence of such information, the inflatable device shall not be used until the information has been sought from the manufacturer or supplier or a competent person has provided the necessary information."*[603]

353. This Standard also requires the device to be set up in accordance with *"the manufacturer's instructions with all device anchor points connected to ground anchor stakes in the correct positions. Where the manufacturer's instructions are not clear or cannot be complied with, the anchorage system shall be designed by a competent person."*[604]

354. In addition AS3533.1-2005 requires that ground stakes be installed in accordance with the manufacturer's instructions and they are to withstand a horizontal force of 1.6kN, that weather conditions are continuously monitored and the use of an anemometer is recommended.[605]

355. Mr McDonald advised the manufacturer's instructions Ms Gamble downloaded from the website contained the key information regarding anchorage but it was not a complete manual. He said that if there is a risk that the information was ambiguous or incomplete then the Standard required the operator to consult with a *"competent person"* and he stressed the importance of using someone who understands the requirements of the Standard (locally), within the local environment and with the people who are using the device.[606]

356. Mr McDonald indicated if there is reinterpretation, redesign or modification of an engineering control system, such as what anchorages should be used, a *"competent person"* needs to be someone of a similar competence to a designer and in Australia that is seen as being a tertiary qualified engineer. He said there were 26,000 mechanical engineers alone in Australia and he expected the cost of an engineer conducting an investigation and providing the necessary advice to be in the vicinity of $1,000-$2,000 on 2020 rates.[607]

357. Mr McDonald also reviewed AS3533.2-2009 which covers operations and maintenance with respect to amusement rides and devices.[608] In relation to organisational arrangements and

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[602] T462 line 6 to T463 line 13, Exhibit P112 CB V5 pp 76-79.
[603] Exhibit P102 CB V4 p 232.
[604] Exhibit P102 CB V4 p 232 at paragraph 18(b).
[605] Exhibit P102 CB V4 p 232 at paragraphs 18(c) and (f) and T463 lines 15 to 37.
[606] T464 lines 19-40.
[607] T465 lines 8-38 and T466 to T467 line 5.
[608] Exhibit P101.

planning Mr McDonald advised it was difficult to discern any consistent policies and procedures of Ms Gamble which were invariably applied, adhered to and undertaken at each hire, set-up, operation, dismantling and storage of the jumping castle.[609] He reviewed some of the risk assessments Ms Gamble had undertaken and acknowledged she had identified wind as a hazard and she had imposed a limit of 25kph which was lower than that required in Section 6 of AS3533.1-2005.[610] However she did not have a system for monitoring wind speeds and she did not use an anemometer.[611] Further in one assessment the defendant had identified the use of star pickets (there were several located in the toolbox on the trailer on the day of this incident) as a control measure to address the hazard of wind. However, the lack of consistency of practice meant that the control measure was not adequately implemented and therefore it cannot be said that the risks posed by wind had been adequately addressed.[612]

358. In addition Mr McDonald was not satisfied Ms Gamble adequately addressed the requirement in AS3533.2-2009 to train workers.[613] In particular, he found no evidence from the material supplied to him of training records or procedures. This, combined with the numerous examples of non-compliance with the Standards, led Mr McDonald to conclude Ms Gamble was not competent to train the staff as they were consistently inconsistent with everything: *"[t]here's no consistency in anchorage, there's no consistency in knowing what the wind speed was, there's no consistency in the number of patrons. There's no evidence of things* like *...practising the emergency evacuation."* His conclusion therefore was there was insufficient training of staff.[614]

359. Mr McDonald also noted from the evidence supplied to him that it was highly likely that a copy of the instructions developed in accordance with Section 3.1(a) and (c) of AS3533.2-2009[615] were not available at all times to the workers. He also concluded that there was evidence pegs had been previously damaged and replaced and the replacement pegs did not match the specifications of the manufacturer or the jumping castle's design, and that the defendant was not competent to change the system in so far as it related to the pegs used.[616]

360. Mr McDonald was asked a number of questions in the letter of instruction he received from WorkSafe Tasmania which he addressed at p168 onwards in his report.[617] In particular, he examined the three versions of the manufacturer's instructions and concluded there had been critical non-compliance by Ms Gamble in respect of the jumping castle, in so far as it related to

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[609] Exhibit P112, CB V5 p 92.
[610] Exhibit P102 CB V4 p 214. The wind speed is 11.1 m/s or 40 km/h.
[611] T467 line 19 to T469 line 13.
[612] T468 line 30 to T469 line 17, Exhibit P112 CB 5 p 93.
[613] Exhibit P101 Section 3.1(e).
[614] T470 line 21 to T471 line 33. See also T476.
[615] *"**3.1 Planning***
An amusement ride or device shall only be operated when the following planning has been carried out:
(a) Policies relating to an amusement device and procedures for its operation have been prepared and communicated to all staff and are adhered to at all times.
(b) ...
(c) In addition to the relevant specific requirements outlined in Section 4, all manufacturer's instructions relating to the safe operation of an amusement device and any rider restrictions specified by the manufacturer, or determined by a competent person in the absence of any instructions from the manufacturer, are followed."
[616] T471 line 36 to T472 line 29.
[617] Exhibit P112 CB V5. The letter of instruction is at pp 237-240.

the pegs used in the anchorage system and the number of pegs utilised (specifically the failure to install eight pegs) on the date of the incident.[618]

361. Mr McDonald was also asked whether the jumping castle complied with the relevant Australian Standards at a component level; that is the fine detail of the pegs, anchorage, the material it was made out of, corner stitching, the size of the emergency exit and the like.[619] The main areas where there was non compliance on the day of this incident with AS3533.1-2005, related to design and manufacture, and were in respect of anchorages; that is the supplied stakes did not comply with the Australian Standard's requirement that they be of a diameter of 16mm, nor did the anchorage system used by Ms Gamble on the day, comply with the requirement to install eight pegs in accordance with both the manufacturer's instructions and the Australian Standards.[620]

362. There were also a number of non-compliance issues related to the deficiencies in the information to be provided by the manufacturer, supplier or *"competent person"*.[621] Mr McDonald said if information is missing then you go back to the manufacturer and if you still fail to obtain the necessary information you engage a competent person. He said a competent person would also be required to advise on information which was incorrect for the Australian context and/or was incomplete. This is to all occur before the jumping castle is used. Accordingly in the absence of receiving an operating manual, Ms Gamble should have made the necessary enquiries to obtain complete, correct and appropriate information before using the jumping castle.[622] In the case of deficiencies, a competent person with engineering qualifications should have been engaged to advise on remedies with respect to the non-compliance issues.[623]

363. Mr McDonald was asked to determine if Ms Gamble operated the jumping castle, on the day of this incident, in accordance with the relevant Australian Standards. He set out his findings in Exhibit P112 at pages 190 to 193. In evidence Mr McDonald described the deficiencies in the defendant's operation of the jumping castle as *"systemic."*[624] He made observations of particular failures in respect of AS3533.1-2005 regarding anchorages and operations. Mr McDonald advised that the jumping castle, as set up on the day, was not compliant with the manufacturer's instructions, primarily due to the failure to follow the manufacturer's specification (or the Australian Standard) as to the type and number of pegs used to anchor the jumping castle.[625]

364. It follows as the set up did not comply with the manufacturer's specifications then Mr McDonald found the jumping castle was not operated in accordance with the manufacturer's instructions, namely to anchor using eight pegs and to use the manufacturer's pegs. Nor had the defendant engaged a competent person, to address the absence of fundamental components and required information.[626]

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[618] Exhibit P112, CB V5 pp 168-178, T473 line 1 to T474 line 12.
[619] Exhibit P112 CB V5 pp 180-186, T474 line 18 to T475 line 15. Where the jumping castle was not compliant *"it was manageable in a compliant way."*
[620] T475 line 33 to T476 line 9.
[621] T475 lines 11-29, Exhibit P112 CB V5 p 184.
[622] T477 lines 1-12, Exhibit P112 CB V5 p 184.
[623] T 477 lines 13-16, Exhibit P112 CB V5 p 184.
[624] T477 to T479.
[625] Exhibit P112 p 196, T479 to T481.
[626] Exhibit P112 pp 197 to 200 and T482 lines 8-32.

365. Mr McDonald was then asked to determine the impact of these failures on maintaining control over a hazard such as wind. In his evidence Mr McDonald explained the hierarchy of controls[627] and identified wind as a hazard in the use of inflatable amusement devices.[628] At pp 201-205 of his report,[629] Mr McDonald says the effect of wind on the jumping castle is an ever-present risk when it is set up outside. During his evidence he acknowledged that in those circumstances wind as a hazard cannot be eliminated, and therefore it is the operator's duty to minimise the risks that are associated with the hazard. He identified that an engineering control was required to restrain the inflatable device. AS3533.1-2005 requires the use of a formula that enables the calculation of wind loads imposed on the jumping castle in order to determine the minimum number of anchorages to withstand a minimum wind speed of 40kph.[630] In this case that was calculated to be eight pegs. Further, the pegs were required to be 16mm in diameter and fit for purpose. This took into account the diameter, peg length, length to achieve penetration into the soil and whether the pegs are "V" or "J"-style pegs or star pickets.[631]

366. Mr McDonald also noted that continuous accurate local wind monitoring was required and that the use of an anemometer was recommended. He also referenced AS3533.1-2005 Section 18(b) and the requirement for the device to be *"set up in accordance with the manufacturer's instructions* (in this case eight pegs) *with all device anchor points connected to ground anchor stakes in the correct positions. Where the manufacturer's instructions are not clear or cannot be complied with, the anchorage system shall be designed by a competent person."*[632] Mr McDonald noted the manufacturer's instructions provided specified that all anchor points (of which there were eight) were to be used and he noted that the documentation provided to him for his review (including Safe Work Australia Amusement Device Operator Checklists and the defendant's completed risk assessments which referenced wind and the use of star pickets), establish Ms Gamble knew wind was a hazard.[633]

367. Mr McDonald said the installation of the anchorage system on the day of this incident did not comply with the manufacturer's instructions or the Standard and as such it provided significantly lower restraint to wind which he says was effectively half the capacity recommended by both the manufacturer and the Standard. He noted that there was a sequence of failures, the first being that by virtue of the anchorage configuration, the defendant failed to prevent horizontal wind from penetrating underneath the castle which in turn changed the desired loading behaviour of the pegs by changing the load from a horizontal force to a vertical force resulting in the pegs sequential failure.[634]

368. In addition Mr McDonald says Ms Gamble was not competent to design the anchorage system and by extension, was not competent to make changes to the anchorage system by installing a reduced number of pegs.[635] The effect being that the change reduced the capacity of the engineering control; ie the anchorage system. In addition the anchorage system which she used on this day increased the likelihood of its partial or full failure and as such it could not adequately

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[627] An order of how things are controlled by methodology; see T484 line 36 to T484 line 41.
[628] T485.
[629] Exhibit P112.
[630] Exhibit P112 p 201 and T486 line 22 to T487 line 9.
[631] Exhibit P112 p 202 and T487 lines 16-42.
[632] Exhibit P102 CB V4 p 232.
[633] Exhibit P81 CB V3 for example at pp 33, 37, and 39-68.
[634] Exhibit P112 pp 202 to 203, T488 line 17 to T489 line 33, Exhibit P112 p 205.
[635] Exhibit P112 p 203 as to competency.

prevent lift, which likely magnified the potential consequences through reaction to wind gusts or events; namely the dust devil.[636]

369. The capacity of the changed design of the anchorage system used by Ms Gamble on this day was dependent on relatively calm wind or weather for the duration of the event at the School and/or sufficient warning of a change in wind conditions so she could act if wind increased. However, there was no evidence Ms Gamble continuously and accurately monitored local wind speeds in order to adhere to the identified control to cease operations if the wind speed reached the specified limit of 25kph.[637] This significantly increased the exposure of patrons to the adverse effects of wind.

370. Finally, the reliance by Ms Gamble and Mr Monte on weather applications meant that the information received was based on regional forecasts that did not account for localised terrain influences on wind.[638]

371. Mr McDonald concluded by saying Ms Gamble's decision to alter the anchorage system was made without the competence, qualifications, knowledge, training and specific experience of or from a competent person, with the effect that the hazards and risks associated with wind were not properly controlled.[639] He went on to say:

> *"[i]t is my opinion that the overarching impact of the significant reduction in controls (from the non-compliance of the amusement devices to Australian Standards and the erosions of controls in operations) meant that when the system was tested at the occurrence of the wind event, the devices and the risk controls were significantly and overwhelmingly under the required and expected capacities. This affected the manner in which the devices responded to the wind event. It is my opinion that the Taz-Zorb inflatable amusement devices present on the 16th December 2021 at Hillcrest Primary School, as set up and operated by Taz-Zorb, had extremely limited capacity to resist and no resilience to potentially endure the event or reduce the exposure to or magnitude of consequences through slowing failure."*[640]

372. He expanded on this in his oral evidence and explained that as the anchorage system was already reduced (by virtue of only having half the number of required pegs), this had a bearing on the retention capacity of the existing pegs, which was critical in light of the likely exposure of the castle to the extreme weather event of 1-2 seconds. In particular, if configured properly, there was the potential to minimise the consequences of the Wind Event passing over the jumping castle by the pegs not completely coming out and there not being a total failure of the anchorage system.[641]

373. Mr McDonald prepared some calculations to determine the point at which the retention of the pegs in the soil started to fail, in other words, the ultimate capacity of this jumping castle if properly anchored.[642] Mr McDonald determined the ultimate capacity of the unladen jumping castle on its front and back face, side faces and underside of the mattress in lift. He determined

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[636] Exhibit P112 p 203, T490 lines 1-5 and lines 12-23.
[637] Exhibit P112 p 204, T490 lines 12 to 41.
[638] Exhibit P112 p 204.
[639] Exhibit P112 p 218, T492 line 38 to T493 line 3.
[640] Exhibit P112 p 219.
[641] T493 line 22 to T494 line 35.
[642] Exhibit P112 pp 220 to 230 and at T496 to T511.

that at the time the Wind Event occurred the jumping castle was already in lift. In a lift situation, in addition to the forces from the retention pegs, the mass of the inflatable device and the mass of the patrons on board would act against the vertical lift force. Upper and lower measurements were provided for each of these factors to determine that the ultimate theoretical capacity of the E2-030 jumping castle in lift was between 87.1- 100.4kph, noting that this was based on an even loading of all anchor points and pegs and therefore does not consider the load distribution within the jumping castle at the time of the incident which he said is unknown and cannot be accurately estimated. Furthermore he says the structural stiffness of the jumping castle is treated as being even in his calculations. As structural stiffness varies and specifically changes between the jumping compartment and the climb/slide space – he says it is likely that the jumping castle would not lift evenly or in a level manner. Other influencing variables include wind direction, weakest capacity peg, load distribution and structural mass distribution.[643]

374. Mr McDonald also reviewed the evidence of a lack of peg shaft bending failure and the absence of evidence of hole structural failure, combined with witness accounts of the event to determine that the failure of the anchorage system was due to the defeat of three fundamental serial controls brought about by a significant reduction in the capacity and restraint of the anchorage system in installation. These were 1) the installation of only four pegs which facilitated the infiltration of air pressure under the mattress and activated the risk of device lift, placing the jumping castle into a state of abnormal operation. 2) As a result, preventing full lift was reliant on the anchorage system in place on the day. With only half the required pegs, the retentive capacity of the anchorage system was also halved. 3) Lastly, the pegs used did not have the required capacity under the Standard owing to the pegs having a diameter of less than 16mm.[644] Further the evidence supported a finding that the complete failure of the anchorage system was while it was in vertical lift.[645]

375. The combined force of the weight of the castle and its patrons and the retention capacity of the four pegs installed on the day meant that the total force acting on the jumping castle to resist lift was between 5256N and 7849N. The minimum pressure required to lift those forces was between 218-333Pa. This translates to a minimum wind speed of between 71-87kph to achieve static equilibrium between lift and restraint.[646]

376. Mr McDonald advised both the Standard and the manufacturer's instructions specified that eight pegs be used to anchor the device. He then compared, in table 10.9.2 of his report, the retention capacity of the four mixed pegs used on the day, with the retention capacity of eight pegs of the same dimensions as those Ms Gamble says she received, eight pegs which were compliant with AS3533.4.1, eight pegs matching the manufacturer's specifications[647] (J shape, 470mm shaft length, 10mm diameter) and eight star pickets (450mm length, 30mm leg). Had any one of the final three configurations been used on the day, then he says any of those configurations would have had the capacity to resist lift of the jumping castle.[648]

377. Table 10.9.3 on page 226 of Exhibit P112 illustrates that based on a comparison of half of the same configurations as above (i.e. four pegs only) that only four star pickets with rated carabiners

[643] See Exhibit P112 pp 220 to 222.
[644] T503 lines 11-29.
[645] T502 line 26-34.
[646] Exhibit P112 pp 224 to 225.
[647] Exhibit P84 CB V3 pp 197 and 201.
[648] Exhibit P112 p 225.

would have had the capacity to defeat the loss of retention of the pegs and lift of the jumping castle.

378. Importantly, Mr McDonald noted that the above calculations were based on static equilibrium and did not take into account the time exposure of the wind event to the jumping castle.[649] Based on witness accounts (and the evidence of Dr Earl-Jones) it is likely that the wind event passed over the jumping castle in a matter of seconds. Had star pickets been used then they would have had greater retention capacity than other configurations which means that it would take the application of a sustained wind of sufficient force and duration to force a peg from the ground. In circumstances where the exposure to the wind event was fleeting, the use of star pickets potentially could have significantly affected whether failure occurred at all, or the behaviour of failure and the magnitude of potential consequences and harm.[650]

379. However the actual anchorage system in use on the day, which was significantly under the required capacity, did not have the base restraint strength nor the endurance capability to sustain retention in a dynamic situation.[651]

380. In summary Mr McDonald concluded that the jumping castle had not been anchored or operated in accordance with the applicable Australian Standards at the time of the incident nor was the jumping castle or its operation compliant with the manufacturer's specifications. In particular, the jumping castle had only been anchored at four anchorage points using non-compliant pegs. Further the configuration of the anchorage system meant that the jumping castle did not meet the horizontal wind load rating which facilitated pathways for air pressure to infiltrate and fill under the jumping castle's mattress providing the impetus for lift. Calculations of wind speeds required in these circumstances to defeat the anchorage system in place on the day showed the jumping castle was likely exposed to wind speeds of 71-87 kph. However had the jumping castle been set up and operated in accordance with the Australian Standards it would have likely had the capacity to withstand speeds of 87.1-100.4kph. Further if star pickets had been used (in fact, the only peg/stake that met the Australian Standard peg specification requirement), as foreshadowed in Ms Gamble's risk assessments, the jumping castle would have likely had the capacity to withstand 109.8-119kph. In his evidence Mr McDonald said he believed that *"if the full eight star pickets had been used, it would have endured the event"*.[652]

381. In addition Mr McDonald concluded that the reductions in risk controls and the substantial reduction in capacity of the jumping castle anchorage system contributed to this rapid failure and its catastrophic consequences. Further, the anchorage system failure was not instantaneous and had the anchorage system been correctly installed it would have likely prevented complete anchorage system defeat or at least slowed failure of the anchorage system during the short event. The slowing of the failure would have likely resulted in a reduction in the magnitude of the consequences.

382. In his evidence Mr McDonald said that the (force of the) dust devil was not the failure.

> *"The failure [is] back at the-trying to prevent lift and anchoring it down correctly, so it can at least withstand the basic wind speeds. The dust devil is the consequence…When*

[649] See the discussion at T493 line 22 to T494 line 35.
[650] Exhibit P112 p 228.
[651] Exhibit P112 p 229.
[652] T509 lines 38-39.

you actually look at the sequence of the failure, the sequence of the installation, the sequence and the configurations used, it's it's much lower down that the failure occurred…"[653]

Professor Eager

383. Professor Eager considered the reports of Dr Earl-Jones and GeoTon, eyewitness accounts, the results of his inspection of the jumping castle and the results of the police investigation.[654] In summary his opinion was as follows: *"[i]t is almost certain that the mechanism of failure was an overloading of the jumping castle anchor system."*[655]

384. Professor Eager's summary of the sequence of events leading to the failure of the jumping castle anchorage system is as follows:[656]

"The Wind Event was an intense circular wind 4m in diameter.

The Wind Event extended vertically from ground level around 15 to 16m above the ground.

The primary direction of the wind was circular, but it also had an upward direction. This meant the air was moving around and around and up, helically or in a spiral.

The Wind Event had a path which took it over and above the jumping castle.

As the Wind Event passed over and above the jumping castle it twisted and attempted to lift the jumping castle in a clockwise direction (when viewed from above).[657]

The base of the jumping castle was constrained to the ground by four stakes so the Wind Event could only twist the upper region of the jumping castle.

The jumping castle stored this twisting as torsional strain energy.

The jumping castle was akin to a coiled spring.

The Wind Event added more and more energy into the twisted jumping castle.

The torsional strain energy built up within the jumping castle until the pneumatic energy now stored within the jumping castle overcame the twisting and the jumping castle sprang back.

This twisting and release repeated over and over in quick succession.

The jumping castle is violently fluttering.

Each time the twisting occurs a moment is applied to the four stakes. This moment violently and repeatedly laterally pulls and releases the stakes.

This violent pulling action jerks the stakes sideways like an operator of an inflatable device hitting them with a hammer.

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[653] T511 lines 7-10 and lines 16-19.
[654] Exhibit D8 CB V7 pp 65-83.
[655] Exhibit D8 CB V7 p 87 lines 1986-1987.
[656] Exhibit D8, CB V7 pp 88-90.
[657] The admissibility of these 2 lines was objected to by the DPP and conceded by defence counsel. They were therefore excluded by me on 14 November 2024 and are ignored for the purposes of this decision.

The stakes move laterally backward and forward each time the jumping castle twists and releases.

Each time the stakes move sideways their containment hole becomes slightly larger.

This action is similar to what an operator of an inflatable device does when packing up the device at the end of an event. The operator will hit the side of the stake sideways several times with a hammer to loosen it before attempting to pull it from the enlarged hole.

The soil retaining the stakes is dry and hard and has little elastic memory.

The oscillation continues until one of the stakes lets go.

Two more stakes let go in quick succession placing all the load on the remaining anchor.

The jumping castle is now held by a single anchor which removes the torsional moment and with this the lateral movement of the remaining stake.

The jumping castle [is] *pulled upward while being held by this remaining stake.*

The pulling compresses the air within the jumping castle to a pressure which exceeds its fabric strength.

This compression caused the fabric of the 'red' crayon to rupture. Figures 20 and 21 are photographs taken before and after the ruptured jumping castle fabric was taped. No evidence was sighted of a failure mode inspection before the taping occurred. The taping may have destroyed vital evidence.

The remaining anchor had a defective poorly welded and structurally inadequate D-ring which instantly and catastrophically failed under the intense vertical suction load.

Immediately after the D-ring catastrophically failed the jumping castle became airborne and was sucked rapidly high into the sky."

385. Professor Eager analysed Dr Earl-Jones' report,[658] as a result of which he concluded:

"The Earl and Weeding Report [13] estimates Wind Event speed to be at least 16.67 to 22.22m/s (60 to 80 km/hr) and a lifting force equivalent to 16kN based on a pressure drop of 1000Pa and an area of 16m2

The magnitude is greater than a maximum 11.1 m/s specified within AS 3533.4.1:2005. The Earl and Weeding Report does not advise the amplification effect of localised turbulence. It also does not provide details of the velocity and acceleration gradients within the boundary layer between the still air and the Wind Event.

The boundary layer would have contained turbulent eddies with localised velocity and acceleration gradients which were considerably greater than these figures.

The estimated localised velocity would have been 100 m/s which is considerably greater than the maximum velocity specified within AS 3533.4.1:2005 (11.1 m/s) while being slower than a jet airplane which cruises at between 150 to 250 m/s."[659]

[658] Exhibit P90 CB V4 pp 43-72.
[659] Exhibit D8 CB V7 p 94 lines 2115-2126.

386. In evidence the following exchange took place about the velocity of the dust devil:

> *"So so the velocity is somewhere between two-thirds and 40% of the velocity that a jet airplane would travel at?.....That is my um opinion, yes, based on my experience…"*[660]

387. While Professor Eager concluded that "*the mechanism of failure was an overloading of the jumping castle system,*"[661] he explained there were three differentials at play, namely velocity, acceleration and jerk.[662]

CONSIDERATION OF THE COMPETING OPINIONS

388. Professor Eager's opinion is that on the day of the incident the jumping castle and its anchor pegs were subject to impulsive jerk like forces as a result of the dynamic and chaotic forces of the dust devil. As a result he said the mode of failure caused by the dust devil, twisting and rotating, coupled with the elastic nature of the jumping castle allowed it to twist and let go. Professor Eager explained this in his evidence in the following terms:

> *"So, it's it's twisting it and let's go, and that letting go is…tapping the stake on the side, so it lets go, and…that force gets transmitted down to the stake, So its not just that its sucking it up…"*[663]
>
> *"…its all happening in a heartbeat…the sequence is is probably less than a second…"*[664]
>
> *"…its going circular… sucking… upwards…[w]e've got four stakes, and they're getting knocked one way or or the other way…and when we hit them on the side, on the head, which is what this thing is doing, each time it goes…its making the hole even if its just a millimetre…is all you need to break that bond, to break that surface tension."*[665]

389. Mr McDonald's horizontal wind hypothesis was disputed by Professor Eager on the basis that the rapid, chaotic and oscillating nature of the dust devil, as described by Dr Earl-Jones, and its circular motion provided a situation where the pegs were rapidly and violently pushed and pulled sideways in all directions by the oscillating movement of the dust devil, widening the holes in which they sat, allowing them to come out of the ground sequentially, albeit in rapid succession one after the other with the exception of the final peg, whose D ring broke before the peg released.

390. Dr Earl-Jones' opinion in his supplemental report was that:

> *"The winds of the dust devil would not have been coming from a single direction but very chaotic and variable in the vicinity, as it pulls in the air around it. The dust devil would likely have pulled air underneath the jumping castle."*[666]

391. Accordingly I accept the oscillating chaotic and variable wind at the base of the dust devil was horizontal (albeit oscillating), and it pulled air underneath the jumping castle, while at the same time subjecting the jumping castle to violent vertical uplift.

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[660] T703 lines 12-14.
[661] Exhibit D8 CB V7 p 87 lines 1986-1987.
[662] T689 line 38 to T690 line 22.
[663] T698 lines 34-37.
[664] T698 line 41 to T699 line 1. See also Exhibit D8 CB V7 p 89 lines 2017-2036.
[665] T700 line 37 to T701 line 9.
[666] Exhibit P91 at [4].

392. Importantly, Mr McDonald said the following during his evidence:

(a) He measured the footprint of the jumping castle at 22.5 m^2; [667]

(b) There was a downward force of between 5.256 kN and 7.849 kN,[668] comprising:

i. the jumping castle mass and patron mass of 3.904 kN – 6.497 kN;[669] and
ii. peg retention based on the GeoTon testing of 1.352 kN;[670]

(c) Assuming eight Australian Standard compliant pegs, each with 0.5 kN of vertical resistance, there would be a downward force of between 7.904 kN and 10.497 kN, comprising:

i. the jumping castle mass and patron mass of 3.904 kN – 6.497 kN; [671] and
ii. the Australian Standard compliant peg retention of 4 kN (i.e. eight compliant pegs x 0.5 kN each);[672]

(d) There was an application of vertical force.[673]

393. Notwithstanding Mr McDonald's hypothesis is based upon horizontal wind speed/force, if one applies Dr Earl-Jones' opinion to Mr McDonald's calculations, assuming a 22.5 m^2 footprint of the jumping castle, then that equates to 22.5 kN of upward lift. However Mr McDonald's maximum calculated downward force figure of 10.497 kN falls well short of the capacity of eight compliant pegs to resist the vertical force applied to the jumping castle. This is demonstrated below.

394. Mr McDonald also agreed that the application of a significant horizontal wind force to the jumping castle would more likely result in a roll over or *"shear",* which he described as *"a sliding action."*[674] However, the behaviour of all of the amusement devices in response to the forces of the dust devil was not consistent with Mr McDonald's theoretical horizontal wind speed of 87.1 – 100.4 km/h[675] being applied to them. For example, the evidence relating to the zorb balls, which were lifted, is that they went up vertically and came down near to where they lifted[676] rather than, as one would expect if subject to a high horizontal wind speed, being pushed across the oval. Similar descriptions were given of the vertical or near to vertical lift of the jumping castle and zorb ball arena and once in the air they travelled across the oval,[677] including by Mr Monte who said in evidence:

> *"...the castle was in the air, it went straight up, the border bounced a few times, and it went straight up as well."*[678]

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[667] T559 lines 38-39.
[668] T559 lines 34-36.
[669] T559 lines 21-25.
[670] T559 lines 27-28.
[671] T559 lines 21-25.
[672] T559 line 41 to T560 lines 1-4.
[673] T560 lines 37-41.
[674] T560 lines 6-28.
[675] Exhibit P112 CB V5 p 222.
[676] Exhibit P27 CB V1 p 138 lines 8-14, Exhibit P51 CB V1 p 450 line 11, Exhibit P66 CB V1 pp 746-747.
[677] Mr Barrett at T269 line 27 to T270 line 41.
[678] T233 lines 29-30.

395. Professor Eager explained that given the extreme nature of the wind event and the forces the jumping castle was exposed to that:

> "*…[e]ight pegs wouldn't have done it, 12 pegs wouldn't have done it, 16 pegs wouldn't have done it, 20 pegs wouldn't have done it…if we multiple or divide this (force) by 0.5* (capacity of the pegs)*, you've got 60 or 84 pegs is what you need.*"[679]

396. A number of propositions were put to Professor Eager about the wind event including:

(a) that anchoring pegs at points C, E, G and H (P78) left a leading edge of the jumping castle exposed leaving it susceptible to wind;[680]

(b) that air penetrated under the jumping castle putting it into the lift and that occurred before the force of the dust devil positioned itself over the jumping castle;[681]

(c) the force of the dust devil amplified the magnitude of the event at the point after which the anchorage system had already failed;[682] and

(d) witness descriptions of the incident suggest the jumping castle was put into vertical lift.[683]

(emphasis added)

397. Professor Eager rejected all of the above propositions and maintained that the force of the dust devil was what caused the anchorage failure, which occurred in milliseconds consistent with a rapid, chaotic, oscillating, impulsive force which created the characteristics of the dynamic jerk differential generating greater force than a static or one directional horizontal wind.

398. Mr McDonald's horizontal wind hypothesis is generally inconsistent with descriptions of the Wind Event by eye witnesses and the evidence of meteorological expert Dr Earl-Jones. Despite this, and his hypothesis of the jumping castle leading edge being left open by Ms Gamble's anchorage system leaving the jumping castle susceptible to wind, none of the available, recommended or required retention systems as outlined by the manufacturer or in the Australian Standards would have prevented the incident from occurring given the calculations of Dr Peiris.

399. Consistent with the GeoTon report, Dr Peiris expressed the opinion that the undrained adhesion strength of the soil at the School provided *"competent foundation material"*[684] and hence the condition of the soil on the School's oval had no impact on anchorage failure.

400. Relying on Dr Earl-Jones' report, suggesting a probable uplift force of about 16 kN (assuming a floor area of the jumping castle of 16 m^2), Dr Peiris provided an analysis of the forces which likely led to the failure of the anchorage system,[685] which he illustrated on the white board during his evidence[686] as follows:

EARL-JONES
16 m^2 (floor area)

[679] T694 lines 7-11.
[680] T760 lines 19-25 and T768 lines 6-20.
[681] T768 lines 22-26.
[682] T768 lines 30-32 and T771 lines 1-7.
[683] T769 line 4 to T770 line 22.
[684] Exhibit D17 CB V6 pp 52-53 at [80]-[87].
[685] Exhibit D17 CB V6 p 52 at [74]-[78].
[686] Exhibit D18.

16 kN	(upward lift force)
137.2 kg	(weight of the jumping castle)
390 kg	(weight of the children)
527.2 kg -> 5.17 kN	(total downward weight/force)
NET 10.83 kN	(net upward force)
8 x 0.5 = 4.0 kN	(downward force of 8 compliant pegs)
6.83	(excess upward force in kN)

401. The excess uplift force of the dust devil over and above the retention capacity of eight pegs which complied with the Australian Standard was 6.83 kN, with an uplift force of 16 kN[687]. As Dr Peiris noted in his report, to resist the net upward force of 10.83 kN, 22 compliant pegs with a vertical resistance force of 0.5 kN each would have been required.[688]

402. Adopting a floor area of the jumping castle of 22.5 m^2, in accordance with Mr McDonald's actual measurements, Dr Peiris illustrated the following on the whiteboard during his evidence:[689]

MCDONALD	
22.5 m2	(floor area)
22.5 kN	(upward lift force)
137.2 kg	(weight of the jumping castle)
390 kg	(weight of the children)
527.2 kg -> 5.27[690] kN	(total downward weight/force)
NET 17.33 kN	(net upward force)
8 x 0.5 = 4.0 kN	(downward force of 8 compliant pegs)
13.33 kN	(excess upward force)

403. On the basis of the actual floor area of 22.5 m2, the excess upward lift force of the dust devil, assuming eight compliant pegs, was 13.33 kN, or over 145% greater than the downward force of 9.17 kN (i.e. 5.17 kN + 4 kN). Applying Dr Peiris' analysis the number of compliant pegs required at 0.5 kN of downward force to resist a net upward force of 17.33 kN is 35.

404. Dr Peiris conducted the same analysis assuming eight star pickets with a downward resistance of 1.128 kN each (per the GeoTon testing).[691] While the calculations were conducted both for a jumping castle floor area of 16 m^2 and 22.5 m^2, given that the actual floor area was confirmed by Mr McDonald to be 22.5 m^2, that is the figure which should be used in the calculations. As illustrated by Dr Peiris on the whiteboard[692]:

MCDONALD	
22.5 m2	(floor area)
22.5 kN	(upward lift force)
137.2 kg	(weight of the jumping castle)
390 kg	(weight of the children)

[687] Which we know is incorrect because the floor are of the jumping castle was 22.5m^2 which provides an upward lift force of 22.5 kN.
[688] Exhibit D17 CB V6 p 52 at [77].
[689] Exhibit D19.
[690] This appears to be an error. The figure should be 5.17, but it does not change the effect of the calculation as the figure for net upward force is correct.
[691] Exhibit D20.
[692] Exhibit D21.

527.2 kg -> 5.17 kN	(total downward weight/force)
NET 17.33 kN	(net upward force)
8 x 1.128 = 9.024 kN	(downward force of 8 star pickets)
8.306 kN	(excess upward force)

405. Applying Dr Peiris' mathematical approach to the number of star pickets required to resist the net upward force of the dust devil, then at 1.128 kN[693] of downward force per star picket 16 star pickets would have been required to resist a net upward force of 17.33 kN.

406. Applying Dr Peiris' methodology to the data agreed to by Mr McDonald at page 224 of Exhibit P112, gives rise to the following by reference to the calculations for eight star pickets:[694]

22.5 m2	(floor area)
22.5 kN	(upward lift force)
3.904-6.497 kN[695]	(total downward weight/force; ie jumping castle and patrons' mass)
NET 16.003-18.596 kN	(net upward force)
8 x 1.128 = 9.024 kN	(downward force of 8 star pickets)
6.979-9.572 kN	(excess upward force)

407. Applying the net upward force range of 16.003 – 18.596 kN to the downward force of each star picket of 1.128 kN reveals, on Mr McDonald's data, that between 15 and 17 star pickets would have been required to resist the upward force of the dust devil. Not only was it possible that the dynamic force of the dust devil exceeded the retention capacity of eight compliant pegs, a proposition Mr McDonald agreed with,[696] given the retention capacity of eight compliant pegs is significantly less than eight star pickets it is probable it did.

408. It follows a minimum of 15 star pickets (16.003kN divided by 1.128) or 33 compliant pegs (16.003 kN divided by 0.5) would have been required to resist the upward suction force of the dust devil. Of itself, leaving aside the issue of breach of duty, this suggests that no reasonable precautions were available that could have eliminated or reduced the risk of the jumping castle being lifted from the ground by the dust devil. The only precaution which was identified in the evidence was not holding the event.[697] Given that the likelihood of occurrence at the School or in Tasmania of a dust devil of this intensity was *"unprecedented"*[698] and it was *"essentially impossible to have predicted the occurrence of this event,"*[699] that precaution was not reasonable in the circumstances. The weather conditions were benign prior to the arrival of the dust devil and they were benign after it had passed. Looked at prospectively, given the weather forecasting and the conditions on the day, it cannot be said the event should have been cancelled at or before the time the jumping castle was erected.

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[693] Exhibit P111 CB V4 p 369.
[694] These calculations were not performed by Dr Peiris in evidence but have been done using the same methodology he used.
[695] This is the range of figures which appear on p 224 of Exhibit P112.
[696] T565 lines 27-30.
[697] T707 line 30 to T708 line 17, Exhibit D8 CB V7 p 112 lines 2391-2392.
[698] Exhibit P90 CB V4 p 55.
[699] Exhibit P90 CB V4 p 57.

409. The calculations set out above assume the application of an even lift of the jumping castle by a static force. However, according to Professor Eager, what was operating on the jumping castle was a dynamic and oscillating uplifting force.

410. As explained by Professor Eager, the author of a number of journal articles on the concept of *"jerk"*:[700]

> *"The Wind Event was not measured so nobody knows for certain the magnitude of the jerk to which the jumping castle was subjected.*
> *The Wind Event was not a static force.*
> *The acceleration was not constant.*
> *The Wind Event was a non-static or impulsive force.*
> *An impulsive force is a force that acts on a body for a shorter period of time and with a greater peak value.*
> *In lay terms, the shorter the time period over which the force is applied the greater the impulsive force."*[701]

411. Professor Eager's opinion was the dynamic force of the dust devil was likely 5 to 7 times the static force required to snap the broken D Ring which we know failed at 6 kilonewtons:[702]

> *"...when things fail catastrophically, they fail at about 5 to 7 times what they fail statically. So, you've got – we know it failed at 6 kilonewtons statically, so somewhere between 5 and 7 times 6, so you've got 6 kilonewtons times either four or five, you've got 30 kilonewtons um minimum um for the D-shackle that catastrophically broke..."*
>
> *"Could be seven times, 42...kilonewtons"*[703]

412. Mr McDonald accepted that the application of dynamic force can be as much as 5 to 7 times that of static force.[704]

413. Professor Eager said that considering the application of scientific principles relating to dynamic force and jerk to the wind event potentially produced an upward force of 30-42 kN; (5-7 times 6 kN), which, allowing for the weight of the jumping castle and children would require the installation of 60–84 pegs[705] which are compliant with the Australian Standards.[706] In this calculation Professor Eager has not taken into account the downward force produced by the weight of the jumping castle or of the patrons. If that is done and using the methodology provided by Dr Peiris the calculations, using 8 pegs which are compliant with the Australian standards and 8 star pickets and a dynamic/jerk force of 30 kN and 42 kN, are:

	0.5 kN Pegs	**1.128 kN Star Pickets**	**0.5 kN Pegs**	**1.128 kN Star Pickets**
Dynamic/jerk force	30	30	42	42

[700] T590 line 10 to T591 line 22, Exhibit D8 CB V7 p 570 lines 3847-3852 and p 571 lines 3853-3855 and 3875-3878.
[701] Exhibit D8 CB V7 p 78 lines 1853-1861.
[702] T692 lines 14-19, Exhibit P106 CB V4 p 314. The D ring tested by LMATS failed at a maximum load of 5.948kN.
[703] T692 line 37 to T693 line 8.
[704] T563 lines 13-15.
[705] That is 30 kN divided by 0.5 kN and 42 kN divided by 0.5 kN.
[706] T693 line 41 to T694 line 11.

downward force produced by the jumping castle and the patrons (per Dr Peiris)	5.17	5.17	5.17	5.17
net upward force	24.83	24.83	36.83	36.83
Anchor downward force	4	9.024	4	9.024
Excess upward force	20.83	15.806	32.83	27.806
Anchors required (**net upward force** divided by kN per peg or star picket; i.e. 0.5 or 1.128 respectively. (emphasis added)	49.66	22.01	73.66	32.65

414. So in order to defeat the dynamic force produced by the dust devil at a dynamic/jerk force of 30kN, 50 pegs compliant with the Standards or 23 star pickets would have been required. At a force of 42kN, 74 pegs compliant with the Standards or 33 star pickets would have been required.[707]

415. It was submitted by the DPP that I should accept Mr McDonald's opinion in preference to Professor Eager's opinion for a number of reasons which in summary included the following:

1. it was apparent throughout his report and during the course of his evidence Professor Eager was not impartial and he was really acting as an advocate for Ms Gamble;
2. his opinion was based upon two things namely the weather event and the risk which in fact materialised which is not the correct basis upon which to assess the evidence and necessarily invited him to engage in impermissible hindsight reasoning;
3. his opinion was not based on all the evidence provided to him for example he had not reviewed the one-page specific manual and had not accessed a number of photographs;
4. his explanation for the mechanism of the failure of the anchorage system was not corroborated by witness accounts;
5. despite his involvement in the development of the relevant Australian Standards he was not previously aware of the University of Illinois tent study, despite it being published in 2004 with a guidebook being available since 2017;
6. he was clearly sympathetic to Ms Gamble and it was suggested this infected many of his responses in cross examination. In addition his answers were often unresponsive whereby he repeatedly and earnestly justified her actions;
7. he only spent two hours examining the jumping castle and three weeks working on his report whereas Mr McDonald said he spent 2 ½ days inspecting the inflatable devices and six months preparing his report;
8. he was an academic with little or no practical experience in applying the Australian standards to the inspection of inflatable amusement devices;

[707] Exhibit P106 shows the D ring actually failed at 5.948 kN. Using this figure instead of 6 kN in the calculations for pegs and star pickets at 5 and 7 times 5.948kN produces the following figures respectively 49.14, 21.78, 72.93 and 32.33; that is at 30kN, 50 compliant pegs or 22 star pickets and at 42 kN, 73 compliant pegs or 33 star pickets would have been required to defeat the force of the dust devil.

9. Mr McDonald was eminently qualified to give his opinion on the failure of the anchorage system of the jumping castle given his many academic qualifications and memberships and relevant practical experience applying the Australian standards to the inspection of inflatable amusement devices; and

10. Mr McDonald was an impressive witness who was measured and gave his evidence impartially. His evidence was coherent and considered and his opinion was based on clear reasoning.[708]

416. As to the first, sixth, ninth and tenth reasons I take the view Professor Eager was very passionate about the engineering aspects of this case and he put his views across forcefully. He clearly believed in his hypothesis and where he disagreed with what was being put to him he unequivocally and clearly said so. This is demonstrated in his very thorough cross examination by Mrs Wilson SC whereby she sought his agreement with Mr McDonald's hypothesis that all the *"significant Wind Event"* did was amplify what occurred after the anchorage system had already failed.[709] In my opinion this does not mean Professor Eager lacked impartiality. In any event the methods used by factfinders to resolve conflicts in evidence given by lay witnesses such as the manner in which a witness gives his or her evidence and demeanour do not help when resolving conflicts between experts. In this case the opinions of the experts are directed towards issues which assist in the determination of Ms Gamble's guilt. In such a case I am only permitted to accept Mr McDonald's opinion to the exclusion of Professor Eager's opinion if I am satisfied beyond reasonable doubt that Mr McDonald's opinion is correct. Authority for this proposition is the decision of the Victorian Court of Appeal in *R v Anderson* [2000] VSCA 16 where the Court said at [61]:

> "*Even if, contrary to the view to which I have come, the jury could properly have been asked to consider the opinions expressed by Campbell and Castle, it was not enough to simply tell the jury that it was for them to determine which of the expert witnesses they preferred. This was a case where there were conflicting opinions bearing upon a critical issue in the trial, and yet little guidance was given to the jury about how to approach such evidence generally, let alone in the specific circumstances of this case. If the jury were to accept the evidence of Campbell and Castle then it was, as I have previously stated, inevitable that the only conclusion to which they could come was that the applicant had not acted in self-defence and had not been provoked, and that, when he had told the witnesses that he had been stabbed by the deceased, he was lying. Although, of course, there will be many circumstances in which a jury will be entitled to act on the opinions expressed by some witnesses in preference to the opinions expressed by others (cf. Chamberlain v. The Queen (1984) 153 C.L.R. 514 at 598 per Brennan, J.), where, as here, the opinions were directed to an issue which would conclude the guilt of the accused, the jury should have been told that they could only accept the opinions expressed by Campbell and Castle, to the exclusion of those expressed by Collins and Wells, if they were satisfied beyond reasonable doubt that the former opinions were correct (R. v. Sodo (1975) 61 Cr.App.R. 131 at 134)"*

417. This decision was recently followed in *R v AN; R v LM* [2022] NSWSC 776[710] which is a case which concerned a conflict between experts as to the cause of death of the victim. In addition *"in*

[708] DPP's submissions dated 10 February 2025 [187]-[196].
[709] See T775 line 6 to T778 line 23.
[710] At [74].

exceptional cases, I may be incapable of resolving a conflict between experts on matters of science. If the conflict relates to an area where I cannot resolve that conflict in a manner which would eliminate reasonable doubt, the accused must be acquitted: *Velevski v R* (2002) 187 ALR 233; [2002] HCA 4; *Ussher-Clarke v R* [2018] NSWCCA 61."[711]

418. Insofar as the second reason is concerned Professor Eager said that in determining the cause of the failure of the anchorage system he first looked at the hypothesis that lateral forces lifted the jumping castle but he did not think that was the cause. He thought there must be some other way and that is when he looked at the possibility of the dust devil lifting the jumping castle and he used his expertise in engineering to explain the mechanics of the failure by reference to calculations relating to the force of the dust devil and how that operated on the anchorage system.[712] Hindsight reasoning which is the basis of the criticism of Professor Eager appears to have been the same process which Mr McDonald used to inform his opinion as to the wind speed of 71 km/h – 87 km/h which led to the failure of the anchorage system.[713] He has started with the failure of the anchorage system, he has noted the configuration of the pegs which were used, the forces resisting lift namely the mass of the jumping castle and the patrons using it, the retention strength of the various pegs, relying on the GeoTon report, and the pressure required to lift the jumping castle, patrons and the pegs. He has then performed a calculation to determine the minimum wind speed, in the range of 71 km/h – 87 km/h, which he says would have led to the failure of the anchorage system. In my experience experts quite often start with the result and work backwards using all the available evidence in order to form an opinion as to the cause of the event which is being examined. I do not criticise either expert for working in this manner.

419. In relation to the third reason there appears to be a reference to the one page manual[714] in Professor Eager's report.[715] It is referenced at page 147 and in appendix A at page 148 in the schedule of documents attached to the second letter of instruction dated 26 June 2024 at document number six. He said in evidence[716] though he had never seen it and there were a number of photographs he did not think he had seen. If one looks at appendix A to his report and the schedule of documents contained in the letter of instruction of 15 June 2022 and those in appendix A to the letter of instruction of 26 June 2024 and those in appendix B to the letter of instruction of 27 August 2024 then the following items refer to photographs provided to him: item 1 in the first letter, items 1, 31, 34, 52, 54, 125, 140, 142, and 144 which appear in appendix A to the second letter and items 2, 3, 4, 5, and 6 which appear in appendix B to the third letter. On the assumption the photos were sent he has examined a large number of photos. It is not clear to me what photographs he has not seen or if he has seen all the photographs in evidence. If Professor Eager has not seen the one page manual, and it is not clear from the evidence whether that is the case, then in my view this makes no difference to his opinion. That opinion is essentially based upon the two page manual which is the only manual I have found Ms Gamble had access to. I cannot make any assessment of the effect on Professor Eager's opinion of him not considering some photographs when it is not clear to me whether he considered them all and if he did not which ones he did not consider. I can say from considering his report that it appears he has considered

[711] *R v AN; R v LM* [2022] NSWSC 776 at [71].
[712] T775 lines 6-26.
[713] Exhibit P112 CB V5 p 224-226.
[714] Exhibit P84 CB V3 p 206.
[715] Exhibit D8.
[716] T737 lines 7-15.

the photographs relevant to his opinion. I therefore conclude there is no substance to this criticism.

420. As to the fourth reason Professor Eager said in evidence the effect of the dust devil resulted in the repeated twisting and releasing of the jumping castle like it was a coiled spring and it would have been violently fluttering. He accepted that there was no eyewitness account which corroborated the movement of the jumping castle in this way.[717] The evidence of Ms Shepherd was discussed with Professor Eager in relation to this issue. She described the jumping castle as *"all crumpled and mixed up"* but it was put to Professor Eager this was not the jumping castle because she described the inflatable device which she saw as blue and the jumping castle was not blue. It was suggested what she saw was the zorb ball arena because that was blue. Professor Eager attempted to reconcile this discrepancy by deducing Ms Shepherd either got the colour of the jumping castle wrong or she did not observe the jumping castle but instead what she observed was the zorb ball arena. However if one considers her statement carefully the conclusion I have come to is that the device she observed in the air was the jumping castle because she goes on to say she saw a child fall out of the jumping castle while it was in the air. The evidence is a boy fell from the jumping castle and no child fell from the zorb ball arena. I therefore conclude the device which Ms Shepherd observed was the jumping castle although she was wrong about the colour. Having said that both Mr Boutcher and Ms Brown also describe the jumping castle as blue[718] and parts of it are in fact blue.[719] Ms Shepherd's description of it being all crumpled and mixed up is not inconsistent with the jumping castle repeatedly twisting and violently fluttering. There is also evidence from other witnesses as to the jumping castle lifting straight up and spinning, twirling and twisting while in the air.[720] This criticism does not affect the veracity of Professor Eager's opinion.

421. There is no substance in the fifth criticism of Professor Eager's opinion. Professor Eager is specifically asked about that study, which he refers to in his report, during cross-examination.[721]

422. In relation to the seventh criticism it does not follow, without more, that because Professor Eager spent less time than Mr McDonald in examining the jumping castle and preparing his report that Professor Eager's opinion is wrong or that Mr McDonald's opinion ought to be preferred.

423. As to the eighth reason while it is clear Professor Eager is indeed an academic the evidence discloses he has vast practical experience including experience in the impact of wind in dynamic circumstances upon structures including amusement devices.[722] This, given his background of being on the committees responsible for numerous standards including AS3533.4.1.2005,[723] would include the practical application of the relevant standards. Professor Eager also has some patents[724] which implies the practical application of relevant standards.

424. In so far as Mr McDonald's opinion is concerned I note he said in evidence he chose not to rely on the contents of Dr Earl – Jones' report because he only had a preliminary version of that report

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[717] T779 lines 1-34.
[718] Exhibit P26 CB V1 pp 130-131, Exhibit P30 CB V1 pp146-147.
[719] Exhibit P72 CB V2 pp 278-279 (photos 300 and 301).
[720] See the affidavits of Ms Shepherd, Ms Kelly's son, Mr Boutcher, Ms Hays and the records of interview of students VB, NT, MP, BT and LW reproduced at pp 21-27 above.
[721] Exhibit D8 CB V7 p 104, T761 line 38 to T762 line 24.
[722] See T584 to T585 and T586 lines 22-41.
[723] Exhibit D8 CB V7 pp 594-601.
[724] Exhibit D8 CB V7 pp 567-568.

when he produced his own report.[725] Dr Earl – Jones was the only meteorological expert called to give evidence at the hearing of this Complaint and his opinion was not challenged. Unlike Dr Earl-Jones, Mr McDonald is not a meteorological expert and therefore, given s79 of the *Evidence Act* 2001, he is not able to provide an admissible opinion with respect to the direction, force, nature and characteristics of the dust devil. He has no expertise in meteorology, specifically wind, which is outside his field of specialised knowledge and training.

425. Mr McDonald's opinion as to the cause of the anchor failure[726] is provided in response to the following question:

> *"Assess the evidence associated with the wind event and determine the likely impact the event had on each device/component [including modes of failure]. Specifically, what wind speed was likely/necessary to result in the incident outcome?"*[727]

426. In summary, Mr McDonald's opinion is that:

> *"…it is highly likely that the front face of the jumping castle did not have any pegs anchoring it to the ground. This provided over five metres of leading edge which was unrestrained from lift… When the sudden and strong wind event arrived and hit the leading edge of the jumping castle mattress, the significant gap in retention provided a pathway of least resistance for air* pressure *to enter under the mattress… The building pressure underneath the mattress put the jumping castle into lift which changed the load orientation on the ground pegs from horizontal pull to a vertical pull…"*[728]

427. Mr McDonald said the calculations he performed in this section of his report,[729] and on which his opinion was based, were qualified[730] as his *"…calculations represent the theoretical ultimate capacity and configuration…*" based upon the requirements of AS 3533.4.1 and assume an *"…even loading of all eight anchor points and pegs…"*. He also said *"…the structural stiffness of the jumping castle is treated as being even in the above calculation"* but that *"…it is likely that the jumping castle would not lift evenly or in a level manner"*. He noted *"other influencing variables include wind direction, weakest capacity peg, load distribution and structural mass distribution."*

428. Although Mr McDonald accepted that the wind event was a dust devil[731] he said, contrary to the evidence of Dr Earl-Jones, that it was horizontal forces that put the jumping castle into lift.[732] Further in his evidence Mr McDonald advised references to wind speed in his report[733] were to horizontal wind speed,[734] which, on his analysis, caused the *"lift"* by horizontal wind entering underneath the leading edge of the jumping castle. The initial failure of the anchorage system was caused by the entry of horizontal wind under the mattress which put the jumping castle into lift. This was prior to the vertical suction forces of the dust devil acting upon the jumping castle.[735]

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[725] T561 lines 1-5.
[726] See Exhibit P112 CB V5 pp 220-236.
[727] Exhibit P112 CB V5 p 240.
[728] Exhibit P112 CB V5 p 224.
[729] Exhibit P112 CB V5 pp 220-236.
[730] Exhibit P112 CB V5 p 222.
[731] See for example T564 lines 15-20, T564 line 41 to T565, T571 lines 10-39.
[732] T572 lines 39-40.
[733] Exhibit P112 CB V5 pp 220, 221, 222, 225, 226 and 227.
[734] T557 line 40 to T558.
[735] T489 lines 19-22, T572 lines 39-40, T573 lines 14-15 and T579 lines 2-3.

That is the anchorage system had already failed before the dust devil was over the jumping castle.[736] The difficulty with this theory is that it does not appear anywhere in Mr McDonald's very thorough and lengthy report. It only came to light during his evidence. It was not suggested to be his evidence in the DPP's opening however it became his position in closing submissions.[737] It is difficult to accept this theory bearing in mind it was Mr McDonald's evidence that it only took 1-2 seconds for the anchorage system to fail and for the jumping castle to become airborne.[738] His opinion ignores the likelihood of dynamic suction forces, as distinct from static horizontal forces, having anything to do with the loss of retention. Having said all of that Mr McDonald went onto concede:

> *"It is possible that the dynamic force exceeded the retention capacity of eight pegs, which otherwise would have complied with the relative Australian Standard. It's possible? ..... It's possible. Possible."*[739]

429. The DPP's closing submissions at paragraphs 130-136 are as follows:

> 130. *"The combined force of the weight of the castle and its patrons and the retention capacity of the ~~4~~ four pegs installed on the day meant that the total force acting on the jumping castle to resist lift was between 5256N and 7849N. The minimum pressure required to lift those forces was between 218-333Pa. This translates to a minimum wind speed of between 71-87kph to achieve static equilibrium between lift and restraint.*[740]
>
> 131. *Both the Standard and the manufacturer's instructions specified that eight pegs be used to anchor the device.*
>
> 132. *Using Table 10.9.2 in P112, it can be seen that had eight pegs compliant with AS3533.4.1; eight pegs matching the manufacturer's specifications (J shape, 470mm shaft length, 10mm diameter) or eight star pickets (450mm length, 30mm leg), been used on the day, then any of those configurations would have had capacity to resist lift of the jumping castle. P112 p225. [Note the configuration of eight J pegs (300mm shaft length, 11.9mm diameter) was omitted from this conclusion].*
>
> 133. *Table 10.9.3 illustrates that based on a comparison of half of the same configurations above (i.e. four pegs only) that only four star pickets with rated carabiners would have had capacity to defeat loss of retention.*[741]
>
> 134. *Importantly, Mr McDonald noted that the above calculations were based on static equilibrium and did not take into account the time exposure of the wind event to the jumping castle. Based on witness accounts (and the evidence of Dr Earl-Jones) it is likely that the wind event passed over the jumping castle in a matter of seconds. Had star pickets been used then they would have had greater retention capacity than other configurations which means that it would take the application of a*

[736] T490 lines 27-29.
[737] See [153] and [280] of the DPP's closing submissions dated 10 February 2025.
[738] T 493 line 15, T559 lines 1-4 and T563 lines 26-28.
[739] T565 lines 27-30.
[740] Exhibit P112 pp 224-225
[741] Exhibit P112 p 226.

sustained wind of sufficient force and duration to force a peg from the ground. In circumstances where the exposure to the wind event was fleeting, the use of star pickets potentially could have significantly affected whether failure occurred at all, or the behaviour of failure and the magnitude of potential consequences and harm.

135. *Further, based on the actual anchorage system in use on the day, which was significantly under required capacity, it did not have the base restraint strength nor the endurance capability to sustain retention in a dynamic situation.*[742]

136. *Mr McDonald concluded that the jumping castle had not been anchored or operated in accordance with the applicable Australian Standards at the time of the incident nor were the devices and their operation compliant to the manufacturer's specifications. In particular, the jumping castle had only been anchored at four anchorage points using non-compliant pegs. Further the configuration of the anchorage system meant that the jumping castle did not meet the horizontal wind load rating which facilitated pathways for air pressure to infiltrate and fill under the inflatable's mattress, providing the impetus for lift. Calculations of wind speeds required in these circumstances to defeat the anchorage system in place on the day showed the jumping castle was likely exposed to wind speeds of 71-87 kph, however had the jumping castle been set up and operated in accordance with the Australian Standards it would have likely had the capacity to withstand speeds of 87-100kph. Further if star pickets had been used (in fact, the only peg/stake that met the Australian Standard peg specification requirement), as foreshadowed in the defendant's risk assessments, it would have likely had the capacity to withstand 110-119kph. In his evidence he stated that he believed that "if 8 star pickets had been used (then) it would have endured the event."*[743]

430. Mr McDonald's evidence about the jumping castle's reaction to a horizontal wind speed was as follows:

"And you were also asked some questions about um horizontal wind and whether ah you would expect the – um how you would expect the castle to react to a horizontal wind at 71 to 87 kilometres or something like that. It was put to you that you'd expect it to um, ah be pushed over. I think your response was that you would expect it to um shear or slide? ..... Yes.

Um, the very clear evidence of Dr Nick Earl-Jones last Friday was that the lateral speed, or the horizontal speed of the wind um that brought the dust devil laterally from the car park across to the oval was 10 to 20 kilometres per hour. Then went onto say that internally perhaps the force within the dust devil was 60 to 80, but very clearly gave some evidence that the horizontal force of the movement of the wind event was 10 to 20 kilometres per hour, um would you expect a wind speed such as that to push over the jumping castle, for example? ..... Ah, trying to convert that to metres per second in my head, which is roughly a third, or –

Well, the the – ..... To to shear and slide or roll a castle, no, it's nowhere near that. Your your weight of the castle and the weight of the patrons inside would – it's – even with

[742] Exhibit P112 pp 228-229.
[743] T509.

the retention system that was fitted, it was still – oof – can't remember off the top of my head, it might have been eight to – eight to nine metres per second if the – and keep in mind, the retention system's different from what I – what I calculated originally, so –

*Yeah. Um, well the – ..... **That that initial wind wouldn't be enough to actually physically move a castle, assuming the retention system had already failed at 10 to 20 kilometres per hour**. I'm doing maths in my head here as well.*

Um, well the the requirement of the standard to um withstand lateral forces of 40 kilometres per hour is based on the 11.1 metres per second, I think, isn't it? ….. Yes.

So, we're talking about half of that, or a quarter to half of that? ….. Oh, sorry, yeah, we're in half of that with half retention. Yes, you're likely to – likely to be failing the – the anchorage system as used on the day at that point.

So, this is consistent with your evidence yesterday, that the initial failure is due to horizontal wind coming and – ..... Yes."[744] (emphasis added)

431. In that passage there is a statement that horizontal wind speed of 10-20 km/h would not be enough to move the castle, assuming the anchorage system had failed, but Mr McDonald goes on to say with half the retention; ie 4 pegs the anchorage system is likely to be failing at that point; ie at 10-20 km/h. I do not understand this evidence in light of his calculations in table 10.9.3 of his report that 4 mixed pegs, which he described as the likely configuration at the time of the incident, were likely to withstand a horizontal wind speed of 71-87 km/h before there is a loss of retention.[745] How has the retention system already failed at 10-20 km/h when that wind did not have the capacity to shear, slide or roll a castle and how does this statement fit with his theory that the anchorage system in use on the day failed at between 71-87 km/h? His opinion was predicated on horizontal wind speeds and not on any internal force within the dust devil. He says the anchorage system had already failed before the vertical suction forces of the dust devil operated on the jumping castle. In fact he has ignored for the purposes of his opinion Dr Earl-Jones' evidence which was as follows:

*"It is almost impossible to accurately measure the speed within a dust devil, using meteorological instruments, or even state of the art remote sensing techniques, as dust devils are very small and the wind speed within varies greatly in time and space, and from one dust devil to the next. However, it is estimated that winds can reach 100 km/h or faster (NOAA, 2022). I estimate that the Devonport dust devil would have been at least 60-80 km/h based on similar events in the USA (NOAA, 2022) and mainland Australia (Watson, 2003) along with the effect of the wind on the inflatables and gazebo as described by the witnesses. **It was not the speed of the winds however which is what provided the lift, but the pressure drop in the middle of the vortex, which is up to 1000 Pa (10 millibars; Balme and Hagermann, 2006) lower than the immediate surrounding atmospheric pressure. This had the effect of sucking the inflatables into its centre of the dust devil and up off the ground in the associated updrafts** (this can be seen in the footage of the Yuncheng County incident in the Appendix A2.)."*[746]

[744] T571 line 41 to T572 line 40.
[745] Exhibit P112 p 226.
[746] Exhibit P90 CB V4 pp 50-51.

432. Therefore according to Dr Earl-Jones it is not the speed of the winds but the pressure drop in the middle of the dust devil which sucked the jumping castle into its centre and up off the ground.

433. Mr McDonald's opinion also appears to be based upon the order of installation reported by Tasmania police that being the castle was laid out, it was inflated and then anchored. He says if you do it the other way around by laying it out, stretching it out, anchoring it and then inflating it you tension the bottom strap which pulls the pegs horizontally. The first method produces slackness in the strapping which enables air to infiltrate under the mattress which puts the castle into lift and allows the straps to pull vertically.[747] The evidence however is that the straps were pulled taut before the pegs were hammered in and therefore there was no slackness which would enable air to infiltrate under the mattress which puts the castle into lift.[748]

434. In addition there was criticism by the DPP that *"significant aspects of Dr Peiris' evidence were not put to Mr McDonald."*[749] The reason for this was, as explained by counsel for Ms Gamble in his submissions in reply, because Dr Peiris' evidence related to the application of vertical wind force, relying on the opinion of Dr Earl-Jones, which was a completely different mode of failure to the opinion expressed by Mr McDonald. Mr McDonald's opinion was that horizontal wind caused the anchorage system to fail before the dust devil arrived, that is *"before the dust devil commenced its vertical suction on the jumping castle."*

435. The DPP also submitted Dr Peiris' calculations were simplistic and they do not engage with Mr McDonald's opinion that the anchorage system failed before the weather event.[750] Just because these calculations were characterised as simplistic does not mean, without more, they were wrong. While the mathematical calculation or process is not difficult the calculation of the various components of the equation is not simplistic. In any event Dr Peiris was not challenged on his calculations and he included an analysis of Mr McDonald's upward and downward force figures bearing in mind Mr McDonald's position is the horizontal wind had already caused the anchorage system failure. When applying a dynamic force which was agreed to be 5 to 7 times greater than a static force Dr Peiris' calculations were not inconsistent with Professor Eager's view that 50 to 74 pegs would not have held the jumping castle down.

436. The final point to mention is the anchorage system consisting of the pegs did not entirely fail. One peg remained embedded in the oval. It was the D ring which was attached to that peg which catastrophically failed.

437. For the reasons expressed in paragraphs 388 to 436 I am not satisfied beyond reasonable doubt that the anchorage system failed because of the application of a horizontal wind force prior to the dust devil commencing its vertical suction on the jumping castle. The evidence does not permit me to exclude, as a reasonable hypothesis, the possibility that Professor Eager's opinion is correct.

DETERMINATION

438. Ms Gamble has conceded she owed the health and safety duty in s32(a) of the Act. In so far as a failure to comply or a breach of that duty under s32(b) is concerned she accepts it is an onerous

[747] T574 lines 19-34.
[748] See paragraphs 255, 258, 312 and 313.
[749] DPP's submissions 10 February 2025 [287].
[750] DPP's submissions 10 February 2025 [283].

one[751] which was explained by Gaudron J and Callinan J (in separate judgments) in *Slivak v Lurgi (Australia) Pty Ltd* [2001] HCA 6; (2001) 205 CLR 304[752] to vary significantly from a general law duty of care.

439. The High Court in *Baiada Poultry Pty Ltd v The Queen* (supra)[753] said that the words *"so far as is reasonably practicable"* direct attention to the extent or content of the duty:

> *"All elements of the statutory description of the duty were important. The words "so far as is reasonably practicable" direct attention to the extent of the duty. The words "reasonably practicable" indicate that the duty does not require an employer to take every possible step that could be taken. The steps that are to be taken in performance of the duty are those that are reasonably practicable for the employer to take to achieve the identified end of providing and maintaining a safe working environment. Bare demonstration that a step could have been taken and that, if taken, it might have had some effect on the safety of a working environment does not, without more, demonstrate that an employer has broken the duty imposed by s 21(1). The question remains whether the employer has so far as is reasonably practicable provided and maintained a safe working environment."*

440. There are a number cases which have discussed the nature of offences such as the charge in this case which qualify the duty, as appears in s19 of the Act, with words such as *"so far as is reasonably practicable"*. Such cases include *National Foods Milk Ltd v Smith* [2006] TASSC 24 and Kent v Gunns Limited (supra), from this jurisdiction, *Chugg v Pacific Dunlop Ltd* [1990] HCA 41; (1991) 170 CLR 249 at 262 – 263, *Chugg v Pacific Dunlop Ltd (No 2)* [1993] 3 VR 934 at 940 – 945, *R v Australian Char Pty Ltd* (above) at 846 – 847, *Slivak v Lurgi (Australia) Pty Limited* (supra) at 319 [39], 324 [58] and 322 [88] – 336 [98] and *Dinko Tuna Farmers v Markos* [2007] SASC 166; (2007) 98 SASR 96 at 104 [26] – 109 [44].

441. From these authorities the following propositions with respect to the charge emerge:[754]

- the primary element of the offence is the failure to ensure so far as is reasonably practicable that each employee, or in this case *"other persons'"* health and safety is not put at risk. The obligation imposed on the defendant is not absolute;
- there is no test or general rule by which it can be determined whether the obligation has been met;
- the onus is on the prosecution to establish such a failure;
- the determination of whether there has been a failure involves a value judgment;
- "reasonably practicable" means something narrower than physically possible or feasible;
- what is reasonably practicable is to be determined on the basis of what was known at the relevant time;
- what is reasonably practicable is a question of fact;

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[751] Ms Gamble's submissions dated 31 January 2025 at [25.6.2].
[752] Gaudron J at [51]-[52] (in dissent) and Callinan J at [87].
[753] At [15].
[754] See Porter J, as he then was, in *Kent v Gunns Ltd* [2009] TASSC 30; (2009) 18 Tas R 454.

- to determine what is reasonably practicable, it is necessary to balance the likelihood of the risk occurring, against the cost, time and trouble necessary to avert that risk;
- while it may be expected similar considerations to those which arise in the determination of a breach of the common law duty, may also arise when considering a breach of the section, common law requirements should not be imported as elements of the offence; and
- foreseeability of risk of injury is a likely consideration when reaching a determination as to whether the element of ensuring safety so far as was reasonably practicable has been made out. However, such a consideration does not import common law requirements into the legislation as an element of the offence.

442. In Laing O'Rourke (*supra*) in considering what was "reasonably practicable" Murphy JA said:[755]

> *"It follows from the definition of 'practicable' that the obligation imposed on an employer by s19(1) is an obligation to provide and maintain a working environment in which its employees are not exposed to hazards only so far as is reasonably practicable. The words 'reasonably practicable' are ordinary words, bearing their ordinary meaning and simply call for the making of a value judgment in light of all the facts: Slivak v Lurgi (Australia) Pty Ltd [2001] HCA 6; (2001) 205 CLR 304, 322 (Gaudron J). Hindsight may mislead. As Harper J said in Holmes v RE Spence & Co Pty Ltd (1992) 5 VIR 119, 123 - 124, in relation to the equivalent provision in the Victorian legislation:*
>
> > *'The Act does not require employers to ensure that accidents never happen. It requires them to take such steps as are practicable to provide and maintain a safe working environment. The courts will best assist the attainment of this end by looking at the facts of each case as practical people would look at them: not with the benefit of hindsight, nor with the wisdom of Solomon, but nevertheless remembering that one of the chief responsibilities of all employers is the safety of those who work for them.'"*

443. The assessment of what was reasonably practicably able to be done to ensure health and safety, in the context of the *"hazard"* and *"risk"*, requires an assessment of *"the likelihood of the hazard or the risk concerned occurring"*, s18(a). This introduces consideration of the issue of foreseeability confirmed by the following statements of the High Court in *Chugg v Pacific Dunlop Ltd* (supra), in the West Australian Court of Appeal in *Laing O'Rourke* (supra) and in the South Australian Court of Appeal in *Dinko Tuna Farmers Pty Ltd v Markos* (supra) respectively:

> *"It is clear from the definition of "practicable" in s.4 of the Act that the issue of practicability requires some consideration of the question of foreseeability…"*[756]
>
> and

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[755] At [31].

[756] At [32] per Dawson, Toohey and Gaudron JJ; with whom Brennan and Deane JJ agreed. By its terms s4 provided: *"Practicable"* means *"practicable having regard to—*
(a) the severity of the hazard or risk in question;
(b) the state of knowledge about that hazard or risk and any ways of removing or mitigating that hazard or risk;
(c) the availability and suitability of ways to remove or mitigate that hazard or risk; and .
(d) the cost of removing or mitigating that hazard or risk."

"The word 'risk' appears in the definition of 'practicable' in pars (a) and (b)(ii) and (iii). In s 3 of the Act 'risk' is defined to mean the 'probability' of the relevant injury or harm occurring, which means no more than the 'likelihood' of the injury or harm occurring: Hamersley Iron Pty Ltd v Robertson (18). This will require some consideration of the question of foreseeability: Chugg v Pacific Dunlop Ltd (265); Hamersley Iron Pty Ltd v Robertson (18). That, in turn, involves consideration of whether it is shown that the employer knew, or that a reasonable employer in the position of the employer would have appreciated or foreseen the risk of the injury or harm to health occurring: Wylie v South Metropolitan College of TAFE [45]; Reilly v Devcon [60]; Silent Vector Pty Ltd v Shepherd [11] - [12].[757]

and,

"In the ordinary case it can be expected that foreseeability of risk of injury is likely to be a subject matter for consideration by a court when reaching a determination as to whether the element of ensuring safety so far as was reasonably practicable, has been made out. However, such a consideration does not import common law requirements into section 19(1) as an element of the offence."[758]

444. As Mason J made clear in *Wyong Shire Council v Shirt* [1980] HCA 12; 146 CLR 40[759] a risk which is not far-fetched or fanciful is real and therefore foreseeable. The threshold for foreseeability is therefore low. In addition, Mason J said the following in so far as the common law is concerned although this is essentially codified in the Act:

"In deciding whether there has been a breach of the duty of care the tribunal of fact must first ask itself whether a reasonable man in the defendant's position would have foreseen that his conduct involved a risk of injury to the plaintiff or to a class of persons including the plaintiff. If the answer be in the affirmative, it is then for the tribunal of fact to determine what a reasonable man would do by way of response to the risk. The perception of the reasonable man's response calls for a consideration of the magnitude of the risk and the degree of the probability of its occurrence, along with the expense, difficulty and inconvenience of taking alleviating action and any other conflicting responsibilities which the defendant may have. It is only when these matters are balanced out that the tribunal of fact can confidently assert what is the standard of response to be ascribed to the reasonable man placed in the defendant's position."[760]

445. It is only when the risk is determined to be foreseeable that the balancing calculus of s18 is undertaken. That is, if the likelihood is zero (or negligible) the factors in s18 need not be considered.

446. When considering foreseeability and the broader issue of practicability, the dangers of the use of hindsight must be kept in mind. At common law, Gummow J in *Roads and Traffic Authority (NSW) v Dederer* [2007] HCA 42; (2007) 234 CLR 330 said:

"Whether reasonable care was exercised in the particular case is a question of fact going to the breach of any duty owed, not to the existence of that duty. In each case, the

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[757] At [34] per Murphy JA.

[758] At [44] per Gray J.

[759] At [13].

[760] At [14].

question of whether reasonable care was exercised is to be adjudged prospectively, and not by retrospectively asking whether the defendant's actions could have prevented the plaintiff's injury".[761]

447. That warning applies in relation to workplace safety prosecutions: *R v Australian Char Pty Ltd* (supra) at 846, *Slivak v Lurgi (Australia) Pty Limited* (supra) per Gaudron J at 322 [53].

448. In addition it is clear an allowance must be made for the fact that inattention or misjudgement are common features of everyday work, and the chance of haste, carelessness, inadvertence, inattention and even unreasonable or disobedient conduct, must be recognised; see also *R v Australian Char Pty Ltd* (supra) at 846 and *Tenix Defence Pty Ltd v MacCarron* [2002] WASCA 165 per Heenan J at [45].

449. As discussed in paragraphs 8 and 9, in order to prove the charge, the prosecution must establish beyond reasonable doubt[762] that:

(a) Ms Gamble had a health and safety duty: s32(a) of the Act;

(b) She failed to comply with that duty on 16 December 2021: s32(b) of the Act, which requires proof, by reference to s 19, that;

(i) she was conducting a business or undertaking at the relevant time;
(ii) there was a risk to health and safety arising from the conduct of that business or undertaking;
(iii) she failed to take the steps particularised in the Complaint at paragraph (n) a, b and c contrary to s19(3)(c), (d) and (f) of the Act; and
(iv) it was reasonably practicable for her to have taken those steps as pleaded in paragraph (o) of the Complaint; and

(c) Ms Gamble's alleged failure exposed individuals to a risk of death or serious injury or illness as pleaded in paragraph (p) of the Complaint: s32(c) of the Act.

450. Ms Gamble's position with respect to paragraph 449 is she:

(a) admits she had a health and safety duty to those present: s32(a) of the Act;

(b) denies she failed to comply with that duty, asserting that she took all reasonable steps to discharge that duty: s32(b) and s 19; and in doing so she:

(i) admits she was conducting a business or undertaking at the time;

(ii) admits that there was a risk to health and safety arising from the conduct of that undertaking, but says that the extent or content of her duty required her to guard against normal, unusual or unexpected natural phenomena, which fall within the range of ordinary human experience, as opposed to the extraordinary, overwhelming, unpredictable and unprecedented operation of natural forces, which fall outside the range of ordinary human experience, and in particular, in this case, the dust devil;

[761] At [65].
[762] See paragraphs 24 to 28.

(iii) says that there were no reasonable or practicable measures which she could have taken which would have eliminated or reduced the hazard giving rise to the risk.[763]

451. As discussed in paragraphs 11 to 20 the hazard giving rise to the risk, in this case, was the failure of the anchorage system to anchor the inflatable device to the ground due to wind. Whereas, in paragraph 21, the risk arising out of the hazard was the risk of death or serious injury associated with a fall from height and/or being struck by the inflatable device or any part attached thereto, due to the inflatable device becoming dislodged from the anchorage points and becoming airborne.

452. The issues left for determination are therefore:

(a) whether Ms Gamble was in breach of her duty to eliminate or reduce the risk; and/or

(b) whether there were reasonably practicable precautions which Ms Gamble could have taken which would have eliminated or reduced that hazard or risk.

The duty to eliminate or reduce risk

453. Ms Gamble's duty in s19(2) required her to *"ensure"*, so far as was reasonably practicable, that the health and safety of persons was not put at risk from the conduct of her business. If it was not reasonably practicable to eliminate the risk, her obligation, under s17, was to reduce that risk so far as was reasonably practicable.

454. The Court must not consider Ms Gamble's alleged acts or omissions with the benefit of hindsight.

455. The Act requires her to adopt a proactive and flexible approach to the potential dangers of her business or undertaking, while recognising that human frailty is an ever-present reality.[764]

Defining the risk to health and safety

456. The *"risk"* in this case is as articulated in paragraph 451.

Proof of the existence of the defined risk provides the factual framework against which the elements in paragraph 449(b)(iii) and (iv) are assessed, namely:

(a) whether Ms Gamble failed to take the measures identified in the Complaint to reduce or eliminate the risk; and

(b) whether it was reasonably practicable for her to have taken those measures.

The particulars contained in the Complaint

457. The law is a defendant is *"entitled to be apprised not only of the legal nature of the offence with which he is charged but also of the particular act, matter or thing alleged as the foundation of the charge."*[765] The function of particulars is to inform a defendant of the case he or she will face

[763] Ms Gamble's submissions dated 31 January 2025 at [4.2].
[764] *Holmes v RE Spence & Co Pty Ltd* (1992) 5 VIR 119; *WorkCover Authority of New South Wales (Inspector Egan) v Atco Controls Pty Ltd* (1998) 82 IR 80; *R v Commercial Industrial Construction Group* (2006) 14 VR 321; *R v Australian Char Pty Ltd* [1999] 3 VR 834; *Director of Public Prosecutions v Packaging Australia Pty Ltd* (2005) 11 VR 557.
[765] *Johnson v Miller* (1937) 59 CLR 467 per Dixon J at p 489.

or is required to meet. Particulars are required to inform a defendant how it is he or she is alleged to have committed the offence.[766]

458. The first thing to note about the particulars is none of them allege a failure by Ms Gamble to comply with the Australian Standards.

459. The particulars in the Complaint allege a breach of the duty in s19(2) of the Act by reference to s19(3)(c), (d) and (f). Those parts of s19(3) are as follows:

> *"Without limiting subsections (1) and (2) , a person conducting a business or undertaking must ensure, so far as is reasonably practicable –*
>
> *(a) …; and*
> *(b) …; and*
> *(c) the provision and maintenance of safe systems of work; and*
> *(d) the safe use, handling and storage of plant, structures and substances; and*
> *(e) …; and….*
>
> *(f) the provision of any information, training, instruction or supervision that is necessary to protect all persons from risks to their health and safety arising from work carried out as part of the conduct of the business or undertaking; and*
> *(g)…"*

The relevant paragraphs of the charge allege:

> *"n) The defendant failed, so far as was reasonably practicable to ensure the health and safety of other persons was not put at risk from work carried out as part of the conduct of the business or undertaking, in that it failed to:*
>
> *a. Ensure the provision and maintenance of safe systems of work, in that the defendant failed to ensure that the anchorage system was sufficient to prevent lift of the inflatable device, in that the defendant failed to do one or more of the following:"* (after which the Complaint lists particulars (i) to (ix); (iv) and (vii) were abandoned by the DPP in opening the case).
>
> *"b. Ensure the safe use, handling and storage of plant, structures and substances, in that the defendant failed to do one or more of the following:"* (after which the Complaint lists the same particulars as are listed under a. namely (i) to (ix); (iv) and (vii) were abandoned by the DPP in opening the case).
>
> *"c. Ensure the provision of any information, training, instruction or supervision that is necessary to protect all persons from risks to their health and safety arising from work carried out as part of the conduct of the business or undertaking in that the defendant failed to do one or more of the following:"* (after which the Complaint lists particulars (i) to (iv)

Particulars (i)-(ix) under paragraphs a. and b. are as follows:

> (i) Failed to ensure a peg was installed at each of the anchorage points on the inflatable jumping castle, in accordance with the manufacturer's instructions; and/or

[766] *Johnson v Miller* (1937) 59 CLR 467; *Veysey v the Queen* (2011) 33 VR 277; *Kirk v Industrial Relations Commission of NSW* [2010] HCA 1

(ii) Failed to ensure that each face of the inflatable jumping castle was secured by installing pegs at each anchorage point; and/or

(iii) Failed to use the pegs recommended by the manufacturer for use on the inflatable jumping castle or a suitable alternative as recommended by a competent person; and/or

(iv) …

(v) Having departed from the manufacturer's recommendation to install pegs at each of the anchorage points, did not engage a competent person to recommend a suitable alternate anchorage system and implement that recommendation; and/or

(vi) Having departed from the manufacturer's recommendation to install the manufacturer's pegs, did not engage a competent person to recommend a suitable alternate anchorage system and implement that recommendation and/or

(vii) …

(viii) Failed to use a continuous win monitoring anemometer; and/or

(ix) Failed to apply the controls that had been identified in previous risk assessments, namely the use of star pickets.[767]

Particulars (i)-(iv) under paragraph c. are as follows:

(i) Failed to provide the workers with information including the manufacturer's operating manual for the inflatable jumping castle; and/or

(ii) Failed to provide the workers with training and instruction in accordance with the manufacturer's operating manual for the inflatable jumping castle, including the requirement to use each of the anchorage points; and/or

(iii) Failed to provide the workers with training and instruction in accordance with the manufacturer's operating manual for the inflatable jumping castle, including the requirement to use the manufacturer's pegs; and/or

(iv) Failed to provide workers with adequate supervision during the set-up of the inflatable jumping castle.

460. The submission by Ms Gamble with respect to paragraphs n) a. (i), (iii), (v) and (vi), n) b. (i), (iii), (v) and (vi); and n) c. (i), (ii) and (iii) is that, if the Court does not accept that Ms Gamble was provided with *"manufacturer's instructions"* by East Inflatables or was able to access material from East Inflatables which provided the instructions alleged, namely requiring her to install a peg at each anchorage point of the jumping castle, she cannot be held to have breached s32 in the manner particularised.

461. I have found that no instruction manual was supplied to Ms Gamble by East Inflatables and she only received four pegs. I accept the interpretation placed on clause seven by Ms Gamble and Mr Monte contained in the two page manual downloaded by Ms Gamble. I have also found only two pegs supplied by East Inflatables and two other V shaped pegs were used on the day. I do not think this means the defendant's submission ought to be accepted although strictly speaking on the evidence it is correct. This is because it is also clear on the evidence that on occasions eight pegs had been used by Ms Gamble to anchor the jumping castle due to the prevailing weather conditions. So without knowing it Ms Gamble had complied in the past with what the DPP says

[767] Particulars (iv) and (vii) were omitted by consent on 5 November 2024. See T9 line 24 to T10 line 12.

were the manufacturer's instructions. She had applied common sense to the operation of the jumping castle. It is also plainly common sense to use eight pegs if there are eight anchorage points. If you bought a tent with eight anchorage points which was supplied with four pegs and no manual would you only use four pegs? I suggest not. The prudent person would source four more similar pegs and use eight pegs.

462. Accordingly was the use of eight pegs on 16 December 2021 at the School reasonably able to be done in relation to ensuring health and safety given the hazard and risk? The hazard being the failure of the anchorage system, due to the application of wind on the jumping castle, to anchor the jumping castle to the ground and the risk being the risk of death or serious injury associated with a fall from height and/or being struck by the inflatable device or any part attached thereto, due to the inflatable device becoming dislodged from the anchorage points and becoming airborne. Turning to the s18 factors:

a) *The likelihood of the hazard or the risk concerned occurring;*

Dr Earl-Jones, Mr McDonald and Professor Eager agreed jumping castles were particularly susceptible to the ever-present hazard of wind. The risk to health and safety due to wind was not one which could be eliminated so it was a risk that had to be mitigated or managed,[768] and it follows the likelihood of a failure of the anchorage system to anchor the jumping castle to the ground due to wind, thereby giving rise to a risk to health and safety, was a continual and ongoing risk when the jumping castle was operated outside where it could be impacted by wind. It follows the risk of death or at least serious injury was likely if the hazard eventuated.

b) *The degree of harm that might result from the hazard or the risk;*

Ms Gamble accepts in her written submissions that the degree of harm that might result from the hazard or risk was significant.[769]

As a matter of common knowledge, falls from height of any degree are associated with the risk of serious injury or death. The higher the fall, the greater the risk.

The degree of harm that could be sustained by being struck by a heavy piece of the jumping castle, for example, the blower could be significant and result in serious injury or death.

c) *What the person concerned knows, or ought reasonably to know, about –*

i. *The hazard or the risk;*

ii. *Ways of eliminating or minimising the risk; and*

There is evidence which establishes the defendant was aware of the hazard and risk associated with a failure of the anchorage system. A prior risk assessment dated 1 August 2016 identified measures such as a self-imposed wind speed limit and the use of star pickets.[770] Ms Gamble also had regard to Safe Work Australia's *"Information Sheet for Inflatable Devices"*[771] which specifically identified the hazard of the jumping castle becoming airborne due to wind. The evidence was Ms Gamble had previously operated the jumping castle with eight pegs; that is using one peg at each anchor point which suggests she was aware of this measure to mitigate the risk.

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[768] Pursuant to s17 of the Act.
[769] See paragraph 25.8.1(b) of Ms Gamble's submissions dated 31 January 2025.
[770] Exhibit P81 CB V3 p 33.
[771] Exhibit P81 CB V3 p 37.

d) *The availability and suitability of ways to eliminate or minimise the risk; and*

The defendant had a sufficient number of pegs available to her on 16 December 2021 to use at each of the anchorage points. The DPP also says a suitable alternative, namely the use of star pickets, were also on site on the day and could have been used. Although the evidence of Mr McDonald was to the effect that mats could be used to minimise the risk of patrons injuring themselves on star pickets and the defendant herself says this risk could be minimised through the use of safety caps or sandbags I do not think star pickets were a viable alternative. The evidence is they created a trip hazard and in order to reduce this risk they had to be hammered right into the ground which made their removal very difficult. In addition to these issues both Mr Monte and Professor Eager said after being hammered in the metal on the top of the star picket becomes frayed and sharp and there is a risk a patron will be injured. Professor Eager indicated he had seen photographs where childrens' calf muscles had been impaled.

e) *… costs associated with available ways of eliminating or minimising the risk…*

There was no additional cost to the defendant to anchor all eight anchor points. There were plenty of pegs on site on the day of this incident.

463. Where these particulars refer to a competent person, namely n) a. (iii), (v), (vi) and n) b. (iii), (v) and (vi) they are not applicable. This is because I am of the view that changes made to the anchoring system are more likely to be operational rather than design issues; that is I am not satisfied beyond reasonable doubt the definition ascribed to this term by Mr McDonald ought be favoured over that used by Professor Eager. Being an operational issue it is clear on the evidence, having considered in detail her system of work at paragraphs 223 to 324, Ms Gamble was a competent person.

464. Returning to s32 Ms Gamble accepts she had a health and safety duty under subsection (a) and I have found she has failed to comply with that duty under subsection (b) by not using eight pegs. However I am not satisfied this failure exposed the students to a risk of death or serious injury under subsection (c). This is because the weather forecast, the eyewitness evidence of the weather conditions before the Wind Event, and the exhibit which shows those weather conditions prior to the Wind Event, all establish the weather conditions were benign. If those conditions had continued it is likely this tragedy would have been avoided. In addition, I am not satisfied beyond reasonable doubt, for the reasons discussed in paragraphs 388 to 436, the anchorage system failed in the manner proposed by Mr McDonald. It is more likely the anchorage system failed due to the significant upward force of the dust devil acting upon the jumping castle. In those circumstances the evidence is that eight pegs would not have prevented the failure of the anchorage system and therefore the failure to comply with the duty was not a substantial or significant cause of the children being exposed to the risk of serious injury or death.[772]

465. Application of the s18 factors to particulars n) a. (viii) and n) b. (viii) namely a failure to use a continuous monitoring anemometer is the same as previously stated for s18(a), (b) and (c), as set out in paragraph 462. As to s18(d) an anemometer has a distinct advantage over using weather apps on phones because the forecasts provided on weather apps are general over a region and do not take into account localised terrain and land features which affect wind. Accordingly weather apps do not enable the user to accurately monitor local wind speeds and accordingly Ms Gamble would not know when a wind speed of 25 km/h had been reached which was when she would cease operations. It appears Mr Monte previously used such a device but had difficulty converting

[772] Applying the cases cited in paragraph 23.

the reading he received from his device from miles per hour to kilometres per hour. He was however, at the time of this incident, in the process of trying to source a new device. Such devices, for the purposes of s18(e) were commercially available and affordable. So again s32(a) and (b) are satisfied. The Wind Event was described by eyewitnesses as coming on *"all of a sudden"* and Dr Earl Jones said it was likely invisible to the naked eye. He and Professor Eager said such a device was useless in the circumstances. Accordingly, the failure to comply with the duty and use an anemometer was not a substantial or significant cause of the children being exposed to the risk of serious injury or death.[773] Section 32(c) has not been made out.

466. Application of the s18 factors to particulars n) a. (ix) and n) b. (ix) namely a failure to apply the controls identified in previous risk assessments, namely the use of star pickets, is the same as previously stated for s18(a), (b) and (c), as set out in paragraph 462. As to s18(e) there was no additional cost to the defendant in using star pickets as there were in excess of eight star pickets available for use on site on the day of the incident. Contrary to Ms Gamble's submissions[774] there is evidence that a risk assessment had identified the control of using star pickets[775] however as to s18(d) while available, I do not consider the use of star pickets was a suitable method by which to eliminate or minimise the risk because of the reasons set out in paragraph 462(d). In addition on the DPP's case, based on Mr McDonald's report, it was not suggested the Australian Standards advised or required the use of star pickets. I am therefore satisfied s32(a) has been made out but not s32(b). There is also evidence that the failure to use of eight star pickets was not a substantial or significant cause of the children being exposed to the risk of serious injury or death.[776] Therefore s32(c) has also not been made out.

467. The remaining particulars are n) a. (ii), n) b. (ii) and n) c. (iv) which provide in summary Ms Gamble failed to ensure safe systems of work and the safe use, handling and storage of plant and structures by failing to ensure that each face of the inflatable jumping castle was secured by installing pegs at each anchorage point and by failing to ensure the provision of any information, training, instruction or supervision that is necessary to protect all persons from risks to their health and safety by ensuring the provision of adequate supervision during the set up of the jumping castle.

468. The first two particulars can be dealt with together. Application of the s18 factors to these particulars is as previously stated for s18(a), (b) and (c), as set out in paragraph 462. As to s18(d) there were pegs available to secure each face and Ms Gamble had previously secured each face when operating the jumping castle. I find Ms Gamble knew or ought reasonably to have known about the hazard or the risk and that this was a method which was reasonably able to be implemented and which at least minimised the risk. As to s18(e) there was no additional cost to the defendant in installing pegs at each anchorage point as there were in excess of eight pegs available for use on site on the day of this incident. I am therefore satisfied s32(a) has been made, as has s32(b). However s32(c) has not been made out because I am not satisfied beyond reasonable doubt that had each face been secured by installing eight pegs that measure would

[773] Applying the cases cited in paragraph 23.
[774] See paragraph 25.4.7 of Ms Gamble's submissions dated 31 January 2025.
[775] Exhibit P81 CB V3 p 33.
[776] See paragraphs 404 to 407 and 413 to 414 and applying the cases cited in paragraph 23.

have made any difference to the tragic outcome; that is the breach was not a substantial or significant cause of the children being exposed to the risk of serious injury or death.[777]

469. The final particular to consider is n) c. (iv) which alleges a failure to adequately supervise during the set up of the jumping castle. In my view the evidence discussed at paragraphs 223 to 324[778] establishes Ms Gamble did adequately supervise Mr Monte and Mr Barrett. If I am wrong about that then the inadequacy had no, or no material, effect on the elimination or reduction of the risk, for the reasons stated in paragraph 439 from *Baiada Poultry Pty Ltd v The Queen* (supra). In addition any breach in this regard was not a substantial or significant cause of the children being exposed to the risk of serious injury or death.[779]

470. Finally I need to consider the *"reasonably practicable"* measures particularised under subparagraph o) of the Complaint which are as follows:

a) The measures referred to above were reasonably practicable because:

(i) The manufacturer's instructions were available to be downloaded and clearly stated that all anchorage points were to be used;

The evidence does not support this particular. The evidence supports the proposition that the manufacturer's instructions were not available to be downloaded at any time before 24 March 2022 when the 13 page *"Operating Manual"*, became available on line. Even then that manual was considered by the experts to be grossly deficient.

(ii) The manufacturer's instructions were available and clearly stated the requirements of the retention pegs;

The evidence does not support this particular for the reasons stated above. Further, the manufacturer's instructions did not clearly state the requirements of the retention pegs, nor was Mr Chen able to provide any cogent or compelling evidence in that regard.

(iii) The manufacturer supplied retention pegs that accorded with their own manufacturer's requirements;

The evidence does not support this particular due to evidence that the manufacturer only provided four pegs which were not compliant with Australian Standards, nor was Mr Chen able to provide any cogent or compelling evidence in that regard.

(iv) The defendant had a sufficient number of pegs available to her to use at each of the anchorage points;

While Ms Gamble did have other pegs available, the evidence is that the use of additional pegs would not have made any difference to the outcome.

(v) A suitable alternative to the retention pegs, in the form of star pickets were available on site for use;

For the reasons previously stated star pickets were not a suitable alternative and their use would not have made any difference. Nor did the content of Ms Gamble's duty require her to use star pickets, which are not referred to in the Australian Standards.

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[777] Applying the cases cited in paragraph 23.
[778] At paragraphs 228 to 237, 252 to 260, 269 to 275, 276 to 279, 303 to 307 and 312 to 315 in particular.
[779] Applying the cases cited in paragraph 23.

(vi) Weather monitoring devices or anemometers had been used in the past and were available commercially;

For the reasons stated a weather monitoring device or anemometer would not have made any difference to the ultimate outcome.

(vii) A competent person could be engaged to provide advice about suitable alternate anchorage systems;

For the reasons stated the evidence does not support this particular. Ms Gamble was a *"competent person"* to operate the jumping castle within the meaning of the specific amusement devices standard AS 3533.4.1:2005.

Mr McDonald conceded there was no *"trigger"* in the manual Ms Gamble downloaded for her to engage a *"competent person"* in the context of the design of the jumping castle, such as an engineer.

In addition the installation of the number of pegs was an operational issue and not a design issue.

Finally there is no evidence a *"competent person"* would have provided any advice about an alternative anchorage system that would have made any difference.

(viii) The manual contained illustrations of how the pegs should be inserted into the ground.

The evidence does not support the proposition that Ms Gamble was ever supplied with a manual which contained illustrations of how pegs should be inserted into the ground. Further the 13 page operating manual which did contain some illustrations, albeit not illustrations which showed how the pegs were to be installed, was not available to be downloaded prior to 16 December 2021. None of the manufacturer's instructions, including the one page manual, the two page manual or the 13 page operating manual, stated the requirements of the retention pegs, nor was Mr Chen able to provide any cogent or compelling evidence in that regard. There is no evidence that a different peg installation would have made any difference. In any event the evidence with respect to the four pegs which were installed is they were installed correctly; i.e. at closer to 90^{o} rather than 45^{o}.[780]

CONCLUSION

471. This tragic incident occurred, on the evidence, due to an unprecedented weather system, namely a dust devil. The dust devil was impossible to predict. As the DPP properly conceded[781] the dust devil was unforeseen and unforeseeable. I am satisfied Ms Gamble had a health and safety duty under s32(a) of the Act and in some respects she failed to comply with that duty under s32(b). However I am not satisfied, pursuant to s32(c), those failures were a substantial or significant cause of the children being exposed to the risk of serious injury or death. This is because I am not satisfied beyond reasonable doubt the failure of the anchorage system occurred in the manner suggested by Mr McDonald. The evidence does not permit me to exclude, as a reasonable hypothesis, the possibility that Professor Eager's opinion is correct. I am therefore required to find a reasonable doubt as to the guilt of Ms Gamble.[782] It is more likely the failure of the

[780] See paragraph 259.
[781] DPP's written submissions dated 10 February 2025 at paragraph 76.
[782] *Velevski v R* (2002) 187 ALR 233; [2002] HCA 4 at [114].

anchorage system occurred in the manner suggested by Professor Eager. In those circumstances the failures to comply with the duty, which I have identified, would not have prevented the failure of the anchorage system. Ms Gamble could have done more or taken further steps however given the effects of the unforeseen and unforeseeable dust devil, had she done so, that would sadly have made no difference to the ultimate outcome.

472. Accordingly, I am not satisfied beyond reasonable doubt of Ms Gamble's guilt to the charge in the Complaint which has been filed against her. In those circumstances I find the charge is not proved. It is therefore dismissed.

ANNEXURE "A"

DPP v ROSEMARY ANNE GAMBLE T/A Taz-Zorb (Complaint No: 23/91520)

Exhibit List

Description of Exhibit		**Exhibit No.**	**Date**
Agreed Facts P1		P1	5/11/2024
Aerial (photoshopped) photograph of jumping castle position before Incident		P2	5/11/2024
Video of set up on morning of Incident Date		P3	5/11/2024
Aerial plan showing approx. positions of children		P4	5/11/2024
Forensic Pathology Report	Peter Anthony Dodt	P5	5/11/2024
Forensic Pathology Report	Jalailah Jayne-Maree Jones	P6	5/11/2024
Forensic Pathology Report	Zane Timothy John Mellor	P7	5/11/2024
Forensic Pathology Report	Jye Max Sheehan	P8	5/11/2024
Forensic Pathology Report	Chace Craig Harrison	P9	5/11/2024
Forensic Pathology Report	Addison Tabitha May Stewart	P10	5/11/2024
Statutory Declaration	Jerome Pape 16/12/21	P11	5/11/2024
Supplemental Proof	Jerome Pape – 17/10/24	P12	5/11/2024
Affidavit	Jamie-Lee Ackerley (nee Duff) 17/12/21	P13	5/11/2024
Affidavit	Lisa Maree Willett 16/12/21	P14	5/11/2024
Affidavit	Lisa Anne Shepherd 16/12/21	P15	5/11/2024
Affidavit	Gaye Maree Kelly 16/12/21	P16	5/11/2024
Affidavit	DK	P17	5/11/2024
Affidavit	Stephen James Fenn 16/12/21	P18	5/11/2024
Affidavit	Jeff George McCormack 16/12/21	P19	5/11/2024
Affidavit	Zoe Kaye Hingston 21/12/21	P20	5/11/2024
Affidavit	Nigel Benjamin Williams 21/12/21	P21	5/11/2024
Affidavit	David William Shepherdson 22/12/21	P22	5/11/2024
Affidavit	Andrew Phillip Turner 20/12/21	P23	5/11/2024
Affidavit	Dean Clifton Bramich 20/12/21	P24	5/11/2024
Affidavit	Janelle Margaret Hays 20/12/21	P25	5/11/2024
Affidavit	Robert Douglas Boutcher 17/12/21	P26	5/11/2024
Transcript of Recording	DB	P27	5/11/2024
Affidavit	Amy Louise Dettmer 10/05/22	P28	5/11/2024
Affidavit	Darren Robert Purton 20/12/21	P29	5/11/2024
Affidavit	Kylie Heather Brown 17/12/21	P30	5/11/2024
Affidavit	Steven Wayne Brownrigg 25/03/22	P31	5/11/2024
Affidavit	Melissa Sue Keygan 12/05/22	P32	5/11/2024
Affidavit	Colin Thomas Wilcox 11/01/22	P33	5/11/2024
Affidavit	Melissa Jane Ellen Bonney (undated)	P34	5/11/2024

Description of Exhibit		Exhibit No.	Date
Affidavit	Bianca Pearce 22/12/21	P35	5/11/2024
Affidavit	Jason Adrian Leary 21/12/21	P36	5/11/2024
Affidavit	Alison Tania Jeffrey 20/12/21	P37	5/11/2024
Affidavit	Miriam Beswick (undated)	P38	5/11/2024
Affidavit	Antoinette Maree Belbin (undated)	P39	5/11/2024
Transcript of Recording	LW recorded 21/12/22	P40	5/11/2024
Transcript of Recording	BB recorded 20/12/21	P41	5/11/2024
Transcript of Recording	VB recorded 21/12/21	P42	5/11/2024
Transcript of Recording	AB recorded 20/12/21	P43	5/11/2024
Transcript of Recording	AB recorded 20/12/21	P44	5/11/2024
Transcript of Recording	MB recorded 22/12/21	P45	5/11/2024
Transcript of Recording	JC recorded 21/12/21	P46	5/11/2024
Transcript of Recording	LD recorded 21/12/21	P47	5/11/2024
Transcript of Recording	CD recorded 22/12/21	P48	5/11/2024
Transcript of Recording	MG recorded 21/12/21	P49	5/11/2024
Transcript of Recording	IH recorded 20/12/21	P50	5/11/2024
Transcript of Recording	KJ recorded 22/12/21	P51	5/11/2024
Transcript of Recording	NJ recorded 20/12/21	P52	5/11/2024
Transcript of Recording	CL recorded 21/12/21	P53	5/11/2024
Transcript of Recording	JL recorded 21/12/21	P54	5/11/2024
Transcript of Recording	TM recorded 22/12/21	P55	5/11/2024
Transcript of Recording	LM recorded 21/12/21	P56	5/11/2024
Transcript of Recording	MP recorded 20/12/21	P57	5/11/2024
Transcript of Recording	MP recorded 22/12/21	P58	5/11/2024
Transcript of Recording	AP recorded 20/12/21	P59	5/11/2024
Transcript of Recording	MP recorded 20/12/21	P60	5/11/2024
Transcript of Recording	TS recorded 22/12/21	P61	5/11/2024
Transcript of Recording	WS recorded 21/12/21	P62	5/11/2024
Transcript of Recording	BT recorded 20/12/21	P63	5/11/2024
Transcript of Recording	MW recorded on 20/12/21	P64	5/11/2024
Transcript of Recording	JW recorded on 21/12/21	P65	5/11/2024
Transcript of Recording	KW recorded on 20/12/21	P66	5/11/2024
Transcript of Recording	BM recorded 18/12/21	P67	5/11/2024
Transcript of Recording	BM recorded 16/03/22	P68	5/11/2024
Transcript of Recording	AP recorded 22/12/21	P69	5/11/2024
Photograph of position Ms Shepherd was standing during observation		P70	5/11/2024
Agreed Fact	Videos and Locations	P71	5/11/2024
	Map of Devonport Area	P71A	5/11/2024
USB	• CCTV of 6 Lawrence Drive (front) • CCTV of 6 Lawrence Drive (rear) • CCTV of Airport	P71B	5/11/2024
Court Book 2	Photographs	P72	5/11/2024

Description of Exhibit		Exhibit No.	Date
USB	3D model: scene at Hillcrest Primary School	P73	5/11/2024
	Constable Wotherspoon's Spreadsheet	P74	5/11/2024
	Connor Evidence	P75	6/11/2024
	Report of Doctor Connor dated 6/07/2022	P76	6/11/2024
	Plan prepared by First Class Constable dean Wotherspoon	P77	6/11/2024
	First Class Constable Wotherspoons plan of jumping castle	P78	6/11/2024
Court Book 3	Agreed Fact – S 155 response from Defendant	P79	6/11/2024
Court Book 3	Letter of Bradley Parker pages 2-5	P80	6/11/2024
Court Book 3	Response – pages 6-193	P81	6/11/2024
	Agreed fact S.155 Material from East Inflatables	P82	6/11/2024
Court Book 3	Notice to give information pages 194-196	P83	6/11/2024
Court Book 3	Response from Candy pages 197-231	P84	6/11/2024
	Response from Candy	P85	6/11/2024
Court Book 3	Attachment to James Day further correspondence with East Inflatables pages 232-285	P86	6/11/2024
	Business Record	D1	6/11/2024
	Business Record dated 19/09/2015	D2	6/11/2024
	Business Record dated 9/12/2021	D3	6/11/2024
	Business Record dated 24/03/2022	D4	6/11/2024
	Business Records – emails between Coco and Candy dated 25 January	D5	6/11/2024
	East Inflatable product list	D6	6/11/2024
USB	First Class Dean Wotherspoon 3D model prepared as a result of inspection 19/08/2024	P87	7/11/2024
	Guide for amusement devices published by Safe Work Australia page 1 dated March 2016	MFI A	7/11/2024
Court Book 4	Agreed Fact - FSST (Connor)	P88	8/11/2024
Court Book 4	Annexure BOM data pages 3-35	P89	8/11/2024
Court Book 4	Dr Earl-Jones and Mr Weeding report dated 15/12/2022	P90	8/11/2024
	Supplemental Proof	P91	8/11/2024
Court Book 4	Dr Earl-Jones CV	P92	8/11/2024
Court Book 4	De Earl-Jones google scholar Pages 41-42	P93	8/11/2024
	Article by John Knox and others entitled wind-related Bounce House Incidents in meteorological, Regulatory and outreach contexts	P94	8/11/2024
	Document tilted: Dust Devils a life cycle	P95	8/11/2024
Youtube Clip	Dust Devil Video from 23/24	P96	8/11/2024

Description of Exhibit		Exhibit No.	Date
(will need to download to re view)	(Dust devil caught on camera carrying away bouncey house – youtube video) on mute 30 secs		
Court Book 4	Agreed Fact – Forensic Science Services Tasmania	P97	8/11/2024
Court Book 4	Agreed Fact – Spectrometry Analysis	P98	8/11/2024
Court Book 4	Agreed Fact – Australian Standards	P99	8/11/2024
Court Book 4	Australian Standard – Amusement rides and devices	P100	8/11/2024
Standalone court book	Australian Standards – Amusement rides and devices Part 2: Operation and maintenance	P101	8/11/2024
Court Book 4	Australian Standard – Amusement rides and devices specific requirements Land-Borne inflatable devices	P102	8/11/2024
Court Book 4	Australian Standard – Amusement rides and devices Part 4.1 specific requirements – land-borne inflatable devices pages 257-308	P103	8/11/2024
Court Book 4	Agreed Fact – Continuity of D ring and metal object	P104	8/11/2024
Court Book 4	Scope of work pages 311-313	P105	11/11/24
Court Book 4	Load Test Reports (photographs and Graphs) pages 314-345	P106	11/11/24
Court Book 4	Hardness Reports dated 7.10.2022 and accompanying photos pages 346-349 + 351	P107	11/11/24
	Bundle of 3 photographs taken by Inspector Day	P108	11/11/24
USB	Inspector Day's 2 videos taken 30/12/22	P109	11/11/24
Court Book 4	Mr Shahandeh CV pages 354+355	P110	11/11/24
Court Book 4	Mr Shahandeh Report dated 19/12/2022 pages 356-410	P111	11/11/24
	Mr Shahandeh - 2 Page Pocket guide	MFI B	11/11/24
Court Book 5	Report of Mr McDonald dated 10/01/2023	P 112	12/11/24
Court Book 4	Agreed fact – continuity of pegs and anchors Pages 352-353	P113	12/11/24
Annexed to Court Book 5	Record of interview – Jesse Dean Barrett pages 1-57	P112A	12/11/24
Annexed to Court Book 5	Record of interview – Robert Monte pages 58-103	P112B	12/11/24
	Plan of jumping castle showing area of leading edge of Mr McDonald	P114	12/11/24
	Mr McDonalds second plan of position of Blower	P115	12/11/24
	Photograph of Diagram of Mr McDonald	D 7	13/11/24
	Diagram of Mr McDonald	P116	13/11/24
	Horizontal load diagram of Mr McDonald	P117	13/11/24
Court Book 7	Redacted report of Professor David Eager	D8	14/11/24

Description of Exhibit		Exhibit No.	Date
	Mass X Gravity diagram of Professor Eager	D9	14/11/24
	Second diagram of Professor Eager	D10	14/11/24
	Willy Willy diagram of Professor Eager	D11	14/11/24
	Me Heikkilae Report dated 14/10/2024	D12	15/11/24
	Supplementary Report of Mr Heikkilae of 5/11/2024	D13	15/11/24
	Snapshot of 5/11/2017	D14	15/11/24
	Snapshot of 23/03/2022	D15	15/11/24
	Snapshot of 24/03/2022	D16	18/11/24
	Dr Peiris report dated 10/10/2024	D17	18/11/24
	Dr Peiris calculations of Dr Earl-Jones	D18	18/11/24
	Dr Peiris setting out of Mr McDonalds calculations	D19	18/11/24
	Dr Peiris calculations of Dr Earl-Jones and using star pickets	D20	18/11/24
	Dr Peiris calculations setting out Mr McDonalds figures and using star pickets	D21	18/11/24
	Snapshot of 9/12/2021	D22	18/11/24
	Snapshot of 1/11/2022	D23	18/11/24