IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY

No. S285 of 2019

BETWEEN:

DAVID MOORE
Appellant

and

SCENIC TOURS PTY LTD
Respondent

RESPONDENT'S SUBMISSIONS

Filed for the Respondent by: SWS Lawyers
Level 1, 47 Darby Street
Newcastle NSW 2300
Attn: Susan Moran
s.moran@swslawyers.com.au
T: 02 4040 9670

Part I: INTERNET PUBLICATION

1. This submission is in a form suitable for publication on the internet.

Part II: CONCISE STATEMENT OF ISSUES

2. This appeal raises three issues, each of which correspond to a ground of appeal.

3. As to ground 1, the issue is whether s 16 of the *Civil Liability Act 2002* (NSW) (**CLA**) is a law that "applies to limit or preclude liability" or "recovery of that liability" for the purposes of, and is thus picked up by, s 275 of the *Australian Consumer Law* (**ACL**).

4. As to ground 2, the Appellant does not challenge the NSWCA's conclusion (at [388] of its judgment at 2/CAB 261 (**CA**)) that, when s 16(1) CLA is read with s 11A and the definition of "court" in s 3, the relevant matter or thing in and of NSW for the purposes of s 12(1)(b) of the *Interpretation Act 1987* (NSW) (**IA**) is the award of damages in NSW by a court or tribunal. The question for this Court is whether, in those circumstances, s 16 CLA should be construed as containing an "additional geographic limitation" in addition to that nexus, being either a "*lex loci delicti* limitation" or "death or injury" limitation.

5. As to ground 3, the question is whether a claim under s 267(4) ACL for damages for disappointment and distress of the kind recognised in *Baltic Shipping Company v Dillon* (1993) 176 CLR 344 (***Baltic Shipping***) is subject to the limitations in s 16 CLA by reason of being (a) "personal injury damages", being for "personal injury" as that term is generally understood or within the inclusive definition in s 11 CLA; and (b) "damages for non-economic loss", being either damages for "pain and suffering" or "loss of amenities of life" within the meaning of s 3 CLA.

Part III: JUDICIARY ACT, SECTION 78B

6. The Appellant has served notices under s 78B of the *Judiciary Act 1903* (Cth) (**JA**).

Part IV: MATERIAL FACTS

7. In relation to the material facts, including as set out in Pt V of the Appellant's Submissions (**AS**) and the Appellant's Chronology, the Respondent makes two points.

8. As to AS [10], the contract between the Appellant and Respondent was made in NSW (judgment of Garling J, 1/CAB 5 (**J**) [886]), the proper law of the contract was NSW (J [883], [886]; CA [140], [347], [361]), the Appellant lives in NSW (J [74], [75], [85], [386]; CA [92]) and the Respondent operates from offices in NSW (J [17]; CA [90]).

9. As to AS [13], although the Appellant did not allege physical injury or a recognised psychiatric illness, he did make a claim for personal injury damages pursuant to Pt VI B of

the *Competition and Consumer Act 2010* (Cth) (**CCA**) in his final pleading[1] and all earlier iterations of that pleading, though that claim was ultimately not pursued (J [27]).

Part V: ARGUMENT

Ground 1: Section 275 ACL does not pick up and apply s 16 CLA

Section 275 ACL

10. Section 275 of the ACL operates in respect of State laws that limit or preclude liability for the failure to comply with a consumer guarantee and/or recovery of that liability. The NSWCA was correct to find that s 16 CLA is such a provision.

11. The word "liability" is a protean term, capable of a number of meanings. The text of the section and particularly its reference to "recovery" tell against the narrow construction for which the Appellant contends. Further, the context, purpose and legislative history of the CCA and ACL, including this Court's decision in *Wallis v Downard-Pickford (North Queensland) Pty Ltd* (1994) 179 CLR 388 (***Wallis***), support an interpretation of s 275 ACL which would operate to incorporate the preclusions and limitations on liability for damages and/or recovery of that liability which s 16 CLA provides.[2]

12. The Appellant seeks to construe s 275 ACL as if there is a clear dichotomy between liability and liability for damages, with the provision applying to the former but not the latter. Such a dichotomy is not supported by the text or context. The dictionary definitions on which the Appellant relies at AS [18] and footnote 3 provide no such support. The concept of a "legal responsibility" and the state of "being legally liable or accountable" immediately give rise to the question, "for what?" The Macquarie Dictionary meaning 1 quoted in footnote 3 ("an obligation, especially for payment") captures the issue neatly. The liability to which s 275 ACL speaks is necessarily *for* something. It is for the recovery of damages or compensation for the failure to comply with the guarantee.

13. The use in s 275 ACL of the expressions "recovery of that liability" and "recovery of any liability" in addition to "liability for the failure" and "liability for that failure" make it clear that the section extends to recovery of damages or compensation. The Appellant's attempt at AS [21] to explain away those expressions is unpersuasive. The concept of "recovery" speaks in terms of remedy, most obviously damages or compensation. It is the damages or

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[1] See Third Further Amended Statement of Claim, prayer 2.

[2] The role of context and purpose in statutory interpretation and several of this Court's decisions in that respect are summarised by French CJ and Hayne J in *Certain Lloyd's Underwriters v Cross* (2012) 248 CLR 328 at [23]-[32]: see e.g. *Project Blue Sky Inc v Australia Broadcasting Authority* (1998) 194 CLR 355 at [69]-[71].

compensation that are "recovered", not a finding of liability. The "recovery" to which s 275 refers is that in the remedy sections for breaches of the consumer guarantees. Each of ss 267(3) and (4) specifically permit the consumer to "recover" compensation (sub-s (3)) or damages (sub-s (4)). If a provision of a State law applies to limit or preclude the recovery of that for which ss 267(3) or (4) provide, it is a provision caught by s 275.

14. This interpretation of s 275 is supported by context. There are a number of "limitation of liability" provisions in the ACL and CCA which make it clear that such provisions do not operate in the restricted way that the Appellant contends. One is s 64A ACL, headed "Limitation of liability for failures to comply with guarantees".[3] Section 64A qualifies the operation of s 64 ACL,[4] which renders void a term of a contract to the extent that it purports to exclude, restrict or modify, or has the effect of excluding, restricting or modifying any liability of the person for failure to comply with a consumer guarantee.

15. Both ss 64A(1) and (2) demonstrate the point. Pursuant to sub-s (1), a term of a contract for the supply by a person of goods is not void under s 64 merely because the term "limits the person's liability for failure to comply with a guarantee" to one or more of (a) the replacement of the goods or supply of equivalent goods; (b) the repair of the goods; (c) the payment of the cost of replacing the goods or of acquiring equivalent goods; and (d) the payment of the cost of having the goods repaired. Section 64A(1) carves out certain terms which s 64 would otherwise declare void for a limited class of goods (household goods). Certain contractual terms are protected in the event that they limit the person's liability for failure to comply with a guarantee *in monetary terms* to the costs of replacing the goods or having them repaired. Sub-section (2) contains a similar provision in relation to the provision of services. These provisions provide powerful contextual support for construing similar language in s 275 in the same way. Both sets of provisions deal with the consequences of limitations on a person's liability for failure to comply with a guarantee. They both speak of the same consumer guarantees. They should be given a consistent meaning.[5] Section 64A makes clear that the liability for failure extends to liability for particular amounts in respect of that failure.

16. There are other limitation of liability provisions in the ACL that operate in a similar manner. Sections 281 (amount of liability of linked credit providers) and 285(2) (liability

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[3] By reason of s 35 IA, headings to divisions may be used as an aid for interpretation.
[4] The predecessor provisions to ss 64 and 64A were, respectively, TPA ss 68 and 68A.
[5] See, e.g. *Commissioner of Taxation v Australian Building Systems Pty Ltd (in liq)* (2015) 257 CLR 544 at [27] per French CJ and Kiefel J.

of suppliers to linked credit providers, and of linked credit providers to suppliers) operate consistently with s 275. The provisions limit the liability of a linked credit provider to a consumer (or a supplier thereto or a provider to the supplier) to an amount that does not exceed the sum of the three components of s 281. As in s 275, the concept of liability being limited extends to monetary amounts. Further, s 276A(1) (limitation in certain circumstances of liability of manufacturer to seller) provides for a similar limitation of liability operating by reference to a monetary amount.[6]

17. The expression "liability" is also used in the CCA in a similar way in limitation of liability provisions for occupational liability. Section 137 (limit on occupational liability) incorporates limitations on occupational liability under State law into the ACL. It was introduced to the ACL at the same time as s 275.[7] Professional standard legislation in NSW at the time permitted limitations of liability by the devices in ss 21-25 of the *Professional Standards Act 1994* (NSW) (**PSA**). A number of schemes approved under the PSA limited liability at the time s 137 CCA and s 275 ACL were introduced.[8] A number of those utilised monetary caps. The fact that the CCA contemplated State laws that "limit occupational liability" by reference to monetary amounts strongly supports an interpretation of s 275 ACL that "limits... failure to comply with a guarantee" in the same or similar ways.

18. The legislative history also supports this interpretation. The predecessor to s 275 ACL was s 74(2A) of the *Trade Practices Act 1974* (Cth) (**TPA**) which was enacted in 2004[9] by the *Treasury Legislation Amendment (Professional Standards) Act 2004* (Cth), Sch 1 Item 8A (**TLA (PS)**). The TLA (PS) also introduced the then s 87AB, which picked up State professional standards laws which "limit[ed] occupational liability" for misleading or deceptive conduct). The TLA (PS) Act plainly treated limitations of liability as including limitations on the amount of the liability.[10]

19. The legislative history recounted by Spigelman CJ in *Insight Vacations Pty Ltd v Young* (***Insight CA***)[11] demonstrates s 74(2A) TPA was specifically introduced to support State

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[6] Section 276A appeared in substantially the same form in the TPA as s 74L.
[7] *Trade Practices Amendment (Australian Consumer Law) Act (No 2) 2010* (Cth).
[8] For example, the Law Society of NSW Scheme (2006-2011) (cl 3.2); the NSW Bar Association Schemes (2005-2010 and 2010-2015) (cl 3.1); and the Institute of Chartered Accountants in Australia (NSW) Scheme (2007-2012) (cl 3.1) provided for limitations of liability which contained monetary ceilings.
[9] The legislative history is recorded by Spiegelman CJ in *Insight CA* at [39]-[45] and by Sackville AJA at [142]-[143]; see also CA [351]-[357], [374] per Sackville AJA.
[10] See s 1A (and Note) inserting s 12GF(1A) into *Australian Securities and Investments Act 2001* (Cth); s 5 (and Note) inserting s1044B(1A) into *Corporations Act 2001* (Cth); s 9 (and Note) inserting s 82(1AA) into TPA.
[11] (2010) 241 FLR 125 at [33]-[45]. See also, *Insight CA* at [42] per Sackville AJA.

reforms to the law of negligence which culminated in the Ipp Report[12] and enactment of the CLA. The CLA, and s 16 in particular, were the types of State laws which the legislature had in mind when it introduced s 74(2A). The Appellant fails to grapple properly with this legislative history and how s 74(2A) was introduced to address concerns as to the effect of *Wallis*. The decision in *Wallis* and the legislative changes which followed from it support the NSWCA's decision that s 16 CLA is picked up and applied by s 275 ACL.

20. The Queensland legislation at issue in *Wallis* provided that a carrier was not liable under a contract for loss of or injury to goods entrusted to the carrier in an amount greater than $20 per package, unless disclosure of true value was made in advance. The legislation therefore took effect once the carrier was liable for loss and limited that liability to a fixed dollar amount. Toohey and Gaudron JJ described that feature as a "limitation of liability" and said that the Queensland Act "purports to limit that liability".[13] Since that Act purported to limit the liability of the carrier for breach of the contractual warranty implied by statute, there was direct inconsistency between it and s 74(1) TPA, in the sense that it detracted from the full operation of a right granted by the TPA (at 396.9). The limitation of liability in the Queensland legislation was therefore invalid by reason of s 109 of the Constitution.

21. As Sackville AJA noted in *Insight CA* at [145] (emphasis added):

> "it is true that section 74(2A) applies to State laws that go further than the Queensland legislation considered in *Wallis*. That legislation did not preclude all liability of the carrier for breach, but merely limited the carrier liability to a specified amount per package. Section 74(2A) applies a law of a State that not only limits a liability but **precludes** liability and recovery of liability for breach of the implied warranty."

22. Thus, it may be seen in the statutory predecessor to s 275 ACL that the limitation of liability was, consistently with *Wallis*, intended to capture a limitation as to the amount of liability that could be recovered. Further, to the extent that s 74(2A) TPA was intended to overcome the decision in *Wallis*, it was to make the claim generated from the s 74 implied terms subject to State limitations on liability in the sense used in *Wallis*.

23. As Sackville AJA explained in the NSWCA's decision in this case at CA [356]-[357], s 74(2A) was clearly intended to enable professionals to invoke the State legislation as a surrogate federal law in order to limit their liability to clients. Section 275 of the ACL followed closely the language of s 74(2A) of the TPA. The Explanatory Memorandum to

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[12] Commonwealth of Australia, *Review of the Law of Negligence: Final Report*, September 2002.
[13] *Wallis* at 394.7 and 396.9, respectively.

the *Trade Practices Amendment (Australian Consumer Law) Bill (No 2) 2010* (Cth) focused on legislation limiting the liability of providers of recreational services. The Explanatory Memorandum stated at 7.137 that, "The ACL provides for such laws to have effect to limit the guarantees provided for in Chapter 3, Part 3-2 Division 1 Subdivision B of the ACL." It may be seen that s 275 ACL uses the same language as s 74(2A) to achieve this effect. Section 275(1)(b) is materially the same as s 74(2A)(b).[14]

24. Given the above textual and legislative history the Appellant's attempts to confine the scope and operation of both s 275 ACL and s 16 CLA are unpersuasive.

Section 16 CLA

25. The Appellant argues that s 16 CLA is not a law limiting or precluding liability for the reasons set out in AS [28]. The Appellant's first and third points in that paragraph are dealt with by the legislative history above and this Court's decision in *Wallis*. It could equally be said of *Wallis* that the relevant Queensland provision "applied where liability and loss ha[d] already been established". That does not mean that, if constitutionally effective, the Queensland legislation would not have limited the liability of the carrier. That was the whole purport of the decision. The Appellant's second point is neutral as to this ground of appeal (though tells against the Appellant in relation to Ground 2: see at [38], below). Section 16 applies where the claim is brought inter alia in statute, as here.

26. The Appellant's fourth point (repeated in AS [33]) is that the limitation on recovery of loss is achieved by a legislative command of the court. This does not affect the characterisation of s 16 CLA as a law caught by s 275 ACL. Both s 275 and its predecessor (s 74(2A) TPA) pick up a State law that "applies to limit or preclude liability... and recovery of that liability." The CLA applies to limit liability for personal injury claims by means of the regime in Pt 2. Division 2 does this by fixing damages for economic loss and Div 3 by fixing damages for non-economic loss. Section 16 CLA applies to limit liability and recovery by precluding or limiting recovery where the loss exceeds 15% of the most extreme case and limiting the sums otherwise recoverable by fixing the sums recoverable by various formula where the 15% threshold is exceeded. Section 11A(3) then prohibits the Court from awarding damages contrary to inter alia, s 16. The fact that the limitation on liability imposed by s 16 CLA is imposed by means of a direction to a court does not change the fact that it is such a limitation, and *applies to* limit such liability.

[14] Minor linguistic differences largely reflect the change in focus from implied terms to consumer guarantees.

27. Finally, the submissions at AS [29]-[33] go nowhere. The submissions concerning the operation of s 79 JA and the reasons underpinning them are a distraction, more helpful in attracting a grant of special leave than in seeking to demonstrate why the NSWCA's construction of s 275 was in error. AS [33] confirms what the Appellant claims are the "critical concerns". The argument is ultimately that s 16 CLA is not a law limiting or precluding liability or recovery of liability but rather a command to courts as to how to assess and calculate damages. When so revealed it is apparent that notwithstanding the constitutional features to the argument, the question is one of statutory construction. For the reasons set out above, the text, context and legislative history tell against the Appellant's construction. The NSWCA was correct to hold at CA [381][15] that s 16 CLA was a law which would limit or preclude the Respondent's liability to the Appellant for breach of the Terms and Conditions of the contract between them.

Ground 2: "Additional geographic limitation" of s 16 CLA

28. The Appellant does not challenge the NSWCA's conclusions (at CA [388]) that (1) the relevant matter or thing in and of NSW for the purposes of s 12(1)(b) IA may be a claim in a NSW court; and (2) when s 16(1) CLA is read with s 11A and the definition of "court" in s 3, the relevant matter or thing in and of NSW for the purposes of s 12(1)(b) IA is the awarding of damages in NSW by a court or tribunal. The Appellant also accepts (at AS [34]) that s 12(1)(b) IA does not require every aspect of a provision to be territorially limited. That concession is appropriate. The intention behind s 12(1)(b) and its predecessor (s 17 of the *Interpretation Act 1897* (NSW)) is to provide "the natural limit to legislation so that it applies in its subject matter to those situations which have a nexus with New South Wales. However, it is not every aspect of every sentence or clause of legislation which can be given the New South Wales connotation".[16] Despite these concessions, the Appellant submits (at AS [34]-[35]) the Court should hold that s 16(1) CLA is subject to an "additional geographic limitation", either a "*lex causae* limitation" or "death or injury limitation". The Court should reject those submissions for the following reasons.

29. At the outset, it is important that the territorial application of a statute not be confused with the question of whether or not a State is able to legislate territorially.[17] That power exists so long as there is a connection between the enacting State and the extraterritorial subject-matter on which it operates, which requirement is "liberally applied" such that "even a

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[15] Per Sackville AJA; Payne J agreeing at [1]; Barrett AJA agreeing at [410].
[16] *O'Connor v Healey* (1961) 69 SR (NSW) 111 at 114 per Jacobs JA, Wallace P and Holmes JA agreeing.
[17] See, e.g. Pearce & Geddes, *Statutory Interpretation in Australia* (8th ed, 2014) (**Pearce & Geddes**) at [5.9].

remote and general connexion... will suffice".[18] There is no doubt, then, that the NSW legislature has a power to enact a law with the scope of s 16 CLA as found by the NSWCA[19] and the Appellant does not dispute this.[20] The question before the Court is therefore one of statutory construction of s 16 CLA, aided by relevant provisions and the context of the CLA, and relevant provisions of the IA.

30. As to that question of construction, the Appellant's contention that s 16 CLA is subject to an additional geographic limitation runs against the established approach of Australian courts to construing the territorial scope of statutes. As explained by the NSWCA in *Chubb Insurance Company of Australia Ltd v Moore* (***Chubb***),[21] to date, the approach of the courts, including this Court, in such cases has been to construe the relevant legislation to identify "the central concern" on which it is "said to hinge" and use that to identify a territorial nexus. Once that nexus is found, there is no need to, and the courts have not, sought to apply any further territorial "limitation" to the statute. For example, in *Old UGC Inc v The Industrial Relations Commission of NSW* (***Old UGC***), this Court held that s 106 of the *Industrial Relations Act 1996* (NSW) hinged upon the performance of work in any industry[22] and rejected any other territorial limitation. The plurality said:[23]

> "Nor is there any basis for concluding, as the Old UGC parties contended, that an agreement whose proper law is not the law of New South Wales but is an agreement whereby work is performed in an industry in New South Wales is not, on the true construction of s 106, within its reach. As Dixon J pointed out in *Wanganui-Rangitikei Electric Power Board v Australian Mutual Provident Society*,[24] there is a presumption that, unless a contrary intention appears, statutory provisions are understood as having no application to matters governed by foreign law. But that is a presumption about statutory construction and where, as here, the central conception upon which the relevant provisions fasten is the performance of work in an industry and the work in question was performed within the jurisdiction, no question of reading down the operation of the section according to territorial limitations arises."

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[18] See e.g. *Union Steamship Company of Australia Proprietary Limited v King* (1988) 166 CLR 1 at 14, applying the comments of Gibbs J in *Pearce v Florenca* (1976) 135 CLR 507 at 518.
[19] See also, *Insight HCA* at [16].
[20] Section 118 issues aside, which, at AS [42] are raised in the context of the statutory construction question.
[21] (2013) 302 ALR 101 at [144]-[146] per Emmett JA and Ball J, Beazley P and Macfarlan JA agreeing.
[22] In this, the Court followed its twin decision in *Fish v Solution 6 Holdings Ltd* (2006) 225 CLR 180.
[23] (2006) 225 CLR 274 at [23] per Gummow, Hayne, Callinan and Crennan J, Gleeson CJ agreeing at [1], Kirby J agreeing at [55]-[56]. See also at [22].
[24] (1934) 50 CLR 581 at 601.

31. In keeping with this approach, it is clear that this Court in *Insight Vacations Pty Ltd (t/as Insight Vacations) v Young* (2011) 243 CLR 149 (***Insight HCA***) considered the three potential geographical connections or "unstated assumptions" in [16] to be *alternatives* rather than cumulative requirements. In relation to s 5N(1) CLA, the Court followed the established approach of identifying a single territorial hinge and not imposing further "limitations" on the territorial scope of that provision: "[r]eading s 5N(1) as hinging on the place of performance of the contract best gives effect to the purposes and text of the provision when it is read in its statutory context".[25] Intermediate appellate courts have taken the same approach; as noted, that was the approach of the NSWCA in *Chubb* and *O'Connor v Healey*, the latter of which has been quoted at [30] above.

32. This approach has due regard for the sovereignty of the NSW parliament. State parliaments have plenary authority to make laws for the peace, welfare and good government of the State.[26] As noted, this includes the power to legislate extraterritorially so long as there is a connection to their State which may be remote and general. It is not the intention of s 12(1)(b) to unnecessarily constrict this power and it should not be so interpreted. As Pearce & Geddes state, provisions such as s 12(1) are "intended to make it unnecessary to identify places, jurisdictions and so on each time that they are mentioned but should not be used... to limit the scope of an Act".[27] This is reinforced by s 31 IA, which directs that NSW Acts "shall be construed as operating to the full extent of... the legislative power of Parliament". The Court held in *Insight HCA* at [28] that s 31 "require[s] consideration" in this context. These are powerful considerations against using s 12(1)(b) to limit the reach of s 16 CLA in the way suggested by the Appellant. The importance of not unduly limiting the scope of statutes using such provisions becomes even more acute when one considers that the Commonwealth has an equivalent provision to s 12(1)(b), being s 21(1) of the *Acts Interpretation Act 1901* (Cth), which may be limited by any restriction applied to s 12(1).

33. The established approach is also supported by common sense. It would not be workable if, in construing an Act, a court had to ask itself, first, whether this was a case where it was sufficient to have only one connecting factor or whether more were required and, next, how many factors and what those factors may be. By what criteria would a court assess whether one or more factor is necessary? Or select two or three among a raft of potential connecting factors for legislation that may cover multiple subject matters? How would the potential

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[25] *Insight HCA* at [36]. See also at [16], [29], [30], [36].
[26] See *Constitution Act 1902* (NSW), s 5.
[27] Pearce & Geddes at [6.37].

subjects of that legislation make a reasonable assessment as to whether their conduct is within its scope? The NSW legislature cannot be presumed to have intended such a result. The difficulties with that approach are illustrated by the facts of this case, in which there are a number of potential "additional" limitations, including those raised by the Appellant, as well as the proper law of the contract or the place of operation of the defendant.

34. Further, the Applicant says at AS [30]-[31] that s 16 CLA read with s 11A(3) constitutes a direction to a court, which must be a direction to courts and tribunals in NSW. If this is the case, the obvious and natural nexus between s 16 and NSW is the award of personal injury damages by a court or tribunal in NSW. There is no need for any "additional limitation".

35. For these reasons, as the Appellant does not dispute the NSWCA's conclusions set out above, his attempt to posit additional territorial limitations ought to be rejected. Moreover, even if the need for an additional territorial limitation is not be rejected as a matter of principle for the reasons above, it is not appropriate to apply to s 16 CLA either of the additional territorial limitations proposed by the Appellant for the following reasons.

36. *First*, the text, context and legislative history of Pt 2 CLA demonstrate that the Appellant is wrong to proceed in AS [36]-[37] on the assumptions that (1) all Parts of the CLA are directed at the same concern, and (2) that concern is negligence. In fact, considerations of text, context and history point against the limitations proposed by the Appellant.

37. As to the text, s 16 CLA is concerned with "damages for non-economic loss". It does not contain any reference to tort or negligence or a failure to exercise reasonable care.

38. As to context, s 16 is contained in Pt 2 CLA, which is entitled "Personal Injury Damages". Section 11A states that the Part applies, per sub-s (1), "to and in respect of an award of personal injury damages", and per sub-s (2), "regardless of whether the claim for the damages is brought in tort, in contract, under statute or otherwise". Further, the title of the Division in which s 16 is found is "Fixing damages for non-economic loss (general damages)". Thus, none of the relevant headings, nor s 11A, contain any reference to negligence or a failure to exercise reasonable care, and no special status is accorded to torts over any other kind of claim; Pt 2 may apply to personal injury damages that have nothing to do with any of those things. On the other hand, Pt 1A is entitled "Negligence" and applies, per s 5A(1) to "any claim for damages for harm *resulting from negligence*, regardless of whether the claim is brought in tort, in contract, under statute or otherwise" (emphasis added). Part 3 entitled "Mental harm" is similarly limited in its operation: s 28.

39. It is clear from the above that Pt 1A and Pt 2 of the CLA have distinct spheres of operation and are directed at different concerns. The central concern of Pt 1A is negligence, whereas the central concern of Pt 2, including s 16, is the award of personal injury damages, howsoever arising. As such, it is unsafe to apply to Pt 2 the Court's reasoning in *Insight HCA*, which the Court made clear applied only to Pt 1A.[28] Rather, applying the Court's *approach* in *Insight HCA* to s 16 supports the NSWCA's conclusion that the appropriate geographical nexus is the award of damages by a NSW court or tribunal. That is because s 16 is concerned with the activities of courts, namely, their awards of damages, indeed the Appellant says it constitutes a direction to courts and tribunals in NSW. It is not concerned with any particular type of claim, let alone negligence; it may apply to cases where there is no connection to negligence or even tort. As such, there is no warrant for reading s 16 CLA as limited by a *lex loci delicti* limitation or a "death or injury" limitation.

40. This construction of the CLA is supported by its legislative history (contra. AS [38]-[39]). The CLA was enacted in two stages. Stage one was the Civil Liability Bill 2002 (**CL Bill**). The CL Bill, and the CLA as originally enacted, only included Pts 1 and 2. As Basten JA said in *State of New South Wales v Ibbett* (***Ibbett***),[29] the CL Bill was "largely restricted to making provision with respect to awards of personal injury damages". Those provisions were drawn from the *Health Care Liability Act 2001* (NSW),[30] as explained at [63] below. The CL Bill did not include Pt 1A. It did not mention negligence or a failure to exercise reasonable care, except that s 20 (now repealed) provided that courts were entitled to take into account contributory negligence in compensation to relatives claims and s 21 prohibited exemplary or aggravated damages in cases of negligence.

41. Part 1A was introduced into the CLA five months later by "Stage two" of the reforms, being the Civil Liability Amendment (Personal Responsibility) Bill 2002. The Personal Responsibility Bill also introduced Pts 3-10 into the CLA which were concerned with a "diverse" range of subjects and not solely directed to negligence.[31] For example, Pt 3 is concerned with "mental harm" and applies only to mental harm resulting from negligence (s 28), whereas Pt 5 deals with the liability of public or other authorities in tort generally (s 40) and Pt 6 deals with intoxication and applies to civil liability of any kind for personal injury or damages to property (s 47). This shows that each Part of the CLA has a different

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[28] See, e.g. *Insight HCA* at [33].
[29] (2005) 65 NSWLR 168 at [207]; see also at [209].
[30] See Second Reading Speech, NSW Legislative Assembly Hansard, 28 May 2002, pp. 2085-2088.
[31] See *New South Wales v Williamson* (2012) 248 CLR 417 at [12] per French CJ and Hayne J.

concern and different sphere of operation, so each must be construed in its particular context. To construe all Parts in the same way as Pt 1A would be to ignore the differences the legislature saw fit to make in relation to their operation.

42. The Second Reading Speech for CL Bill[32] indicates that the CLA was driven by a concern about the "public liability crisis" in NSW, being the increase in insurance premiums caused by the large personal injury damages awards made by NSW courts, and the effect that was having on the State's "sporting and cultural activities, small businesses and tourism operators, and... local communities" – that is, NSW-based defendants. To ease this crisis, the NSW legislature passed the CL Bill to change "the approach of the courts" in relation to all awards of personal injury damages.

43. In light of this legislative history, it is clear that the NSWCA's approach "best gives effect to the purposes and text of the provision when it is read in its statutory context".[33] Paraphrasing the NSWCA in *Chubb* at [171], "[t]here does not appear to be any reason why the New South Wales Parliament would have been concerned with the question of where the event occurred, when the focus of [s 16 CLA] is on protecting [defendants]". If the NSWCA's approach is followed, then that aim is achieved. On the other hand, restricting the reach of Pt 2 of the CLA to where NSW law was the *lex loci delicti* or where the injury occurred in NSW would cause the legislation to only partially achieve its objective and leave defendants in NSW courts partially exposed.

44. *Secondly*, it would not be "strange" if Pt 2 of the CLA applied even if the *lex loci delicti* was the law of some other State or country or "merely" because the claim was brought in a NSW court (contra. AS [40]). For the reasons explained above, there are weighty reasons of text, context and legislative history which explain why the NSW Parliament would have intended s 16 CLA to apply in proceedings such as these. Further, it cannot lie in the mouth of a plaintiff who has deliberately chosen to commence an action against a defendant in a NSW court, and therefore presumably considers NSW to be the proper forum for the dispute and/or has commenced in NSW courts for perceived procedural or substantive advantages, to say the application of NSW law to the proceeding is "strange".[34] This is especially the case for a NSW-based plaintiff against a NSW-based defendant in the context of a contract made in NSW and whose proper law is NSW (see [8] above).

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[32] NSW Legislative Assembly Hansard, 28 May 2002, pp. 2085-2088.
[33] *Insight HCA* at [36].
[34] See similarly, *Chubb* at [165].

45. In any case, the application of local law to cases with a foreign element occurs frequently in courts in the common law world, pursuant to established choice of law principles, where the applicable foreign law is not adequately pleaded or proved, or where a "mandatory forum law" applies.[35] Accordingly, this result cannot be described as "strange", particularly where the Appellant has not pleaded or proved that a foreign law applies.

46. It is the Appellant's approach that has "strange" results. It would make the application of s 16 CLA dependent on the entirely fortuitous fact that the injury occurred overseas, when all other connecting factors are to NSW, and when an applicable foreign law is not even asserted let alone proved. It would result in plaintiffs who suffered injury overseas being in a better position in NSW courts than those who suffered injury in NSW, for no reason other than that the injury occurred overseas. In the words of the NSWCA in *Chubb* at [172], "[s]uch arbitrariness could not be supposed to have been the intention of the parliament".

47. *Thirdly*, the Appellant asserts (at AS [41]) that the NSWCA's approach would lead to forum shopping and that NSW would become a "beacon" to parties litigating in respect of wrongs that occurred outside NSW. That is not so. The civil liability legislation in each State takes a different approach to the calculation of non-economic loss; each has different thresholds, caps, and formulae for calculating the ultimate award. Given these differences, it is very difficult, if not impossible, to ascertain which is the most "plaintiff friendly". It is clear, however, that it is not NSW, as the Northern Territory only excludes damages for non-economic loss in the least severe 5% of cases, compared to 15% under s 16 CLA, and Victoria does not have any such threshold.[36] And this is only one aspect of the civil liability legislation – there are many other aspects which differ between States, compounding the difficulty of assessing which is the most plaintiff-friendly. In light of this, it is stretching credulity to assert that a decision that Pt 2 CLA applies to damages for non-economic loss suffered overseas will materially impact future plaintiffs' selection of forum. What *is* likely to make NSW a "beacon" for litigation is if plaintiffs who suffer injury overseas know they can bring a claim in federal jurisdiction in NSW and the courts will ignore the local statutory caps and instead apply the law that made NSW what the Premier introducing the Personal Responsibility Bill called "the most litigious [community] in Australia".[37]

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[35] As to the former, see generally Davies et al, *Night's Conflict of Laws in Australia* (9th ed, 2014) at [17.34]-[17.40]. As to the latter, see, e.g. *Old UGC Inc*, discussed at [30] above.
[36] *Personal Injuries (Liabilities and Damages) Act 2003* (NT), s 23; *Wrongs Act 1958* (Vic), s 28G; AS fn 34.
[37] NSW Legislative Assembly Hansard, 23 October 2002, p. 5765.

48. *Fourthly*, the supposed conflict with s 118 of the Constitution raised in AS [42] does not exist. This is not a case requiring analysis of choice of law rules in tort as between various States. This is a case where the Appellant sues on a federal statutory cause of action, given extraterritorial application by s 5 ACL such that it extends to events occurring outside Australia. Thus, the only other laws (potentially) competing for application are foreign, and even those have not been pleaded or proved by the Appellant. Thus, there is not even any conflict with foreign law; there is, rather, a lacuna which it is appropriate to fill with the laws of the forum. Nor is not a tort case. For these reasons, the analysis of choice of law rules in *John Pfeiffer Pty Ltd v Rogerson* (***John Pfeiffer***), including its consideration of s 118, is not applicable at least in any direct way. *John Pfeiffer* involved a reformulation of choice of law principles in tort claims for intranational torts. It put issues that might arise in an international context "entirely to one side".[38] It confined its analysis to the action in tort although on appeal the respondent had sought to also frame its case in contract.[39]

49. In any case, even if there was an interstate element, this is not a case of two State statutes competing for application; the question is whether a Commonwealth law picks up a State law. The Commonwealth is not restricted by s 118 and instead, per s 109, is able to legislate in direct contradiction to State law, in which case Commonwealth law will prevail. Further, even if there was some prospect of contravention of s 118 on the basis that s 16 CLA is a "mandatory forum law", the Appellant's approach does not avoid this result. On his approach, s 16 CLA would still override the application of the law that would otherwise apply pursuant to the choice of law rules in some cases. For example, it would apply where the plaintiff brought a claim under a contract governed by Queensland law for injuries suffered in NSW, even though the choice of law rules would point to the application of Queensland law as the proper law of the contract. Therefore, if there is something wrong with s 16 CLA applying as a mandatory forum law (which, in itself, is a contestable interpretation of *John Pfeiffer*),[40] it occurs on the Appellant's approach in any case.

50. *Finally*, the Appellant has not demonstrated why, even if he is right that s 16 CLA needs an "additional geographic connection", that should not be the proper law of the contract, objectively determined. The Respondent does not contend that there *should* be such a connection, but rather raises the possibility to illustrate the problems with the Appellant's approach. The possibility that the CLA applies where NSW is the proper law of the contract

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[38] (2000) 203 CLR 503 at [2] per the plurality.
[39] *John Pfeiffer* at [5] per the plurality.
[40] See *John Pfeiffer* at [63]-[64] per the plurality, and the cases cited there.

was raised as another possibility by the Court in *Insight HCA* at [16]. If there was to be a second geographical connection, then that would seem to be the most appropriate, given that the Appellant's claims are for breaches of statutory warranties which are in the nature of contractual warranties (and, indeed, in the TPA took the form of implied contractual terms).[41] Indeed the contractual analogy is much stronger than that of tort given the terms of the statutory guarantees in s 60 and 61 ACL, the legislative history and the language of s 275. This approach reinforced by the fact that the Appellant has not asserted that any other legal system should govern the claim and where, apart from the alleged location of the conduct causing the distress, all other material links are to NSW.

51. For the avoidance of doubt, the submissions above apply to *both* the Appellant's proffered additional geographic limitations. It is not necessary to separately address AS [44]-[46], except to note that the fact that the matter or thing for the purposes of s 12(1) of the Interpretation Act can *theoretically* be death or injury says nothing about whether the Court *should* construe that as being the relevant matter or thing in a particular case. For the reasons above, the Respondent submits the Court should *not* so construe s 16 CLA.

Ground 3: *Baltic Shipping* damages fall outside Pt 2 CLA

52. The NSWCA correctly held that s 275 ACL, read with s 16 CLA, precludes an award of damages[42] for distress and disappointment under s 267(4) ACL. In doing so, the NSWCA applied a series of intermediate appellate court decisions[43] to the effect that damages for distress and disappointment were both personal injury damages and damages for non-economic loss. Each of those propositions is correct for the reasons given in those intermediate appellate court decisions. They have been further applied in a number of first instance decisions.[44]

53. The Appellant seeks to undermine those authorities by reference to two matters: (1) he says the authorities are distinguishable on the basis that many concern *Baltic Shipping* type damages in circumstances where the damage was consequent upon personal injury: AS [48]-[51]; and (2) he says that disappointment and distress is a healthy reaction of a natural mind to the expectation that was not fulfilled: AS [52]-[58].

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[41] See *Trade Practices Act 1974* (Cth), ss 71 (quality or fitness), 74 (care and skill).
[42] Section 3 CLA defines "damages" to include any form of monetary compensation (with certain presently irrelevant exceptions).
[43] *Insight CA*; *State of NSW v Corby* (2010) 76 NSWLR 439; *State of NSW v Ibbett* (2005) 65 NSWLR 168.
[44] Some are in AS footnote 38. To those should be added *Thomas v Powercor Australia Ltd* [2011] VSC 586.

Personal injury damages

54. Section 11A(1) CLA provides that Pt 2 (containing s 16) "applies to and in respect of an award of personal injury damages". "Personal injury damages" are defined in s 11 as damages that relate to the death of or injury to a person. Section 11 also defines "injury" as meaning "personal injury" and including "(b) impairment of a person's physical or mental condition". As the definition is inclusive, an injury will satisfy the definition if it falls within the description "impairment of a person's... mental condition" or is otherwise within the concept of "personal injury".

55. The notion of "impairment" is the condition of having become worse or diminished in value[45] or "deterioration" or "injurious lessening or weakening".[46] As the case law below demonstrates, the language of "impairment" of "mental condition" is apt to capture mental anguish, distress and disappointment,[47] as is the ordinary meaning of the word "injury" which includes "wrongful treatment" and "hurt".[48]

56. In *Ibbett*,[49] Ipp JA held that anxiety and distress constitute an "impairment" of a person's mental condition in accordance with the ordinary meaning of "impairment" as the word is used in s 11 CLA and the word "injury" is wide enough to encompass anxiety and stress (at [124]-[125]). Basten JA took a similar view at [212] and [216]. The reasoning of their Honours was approved by Spigelman CJ in *Insight CA* at [78].

57. But even if *Baltic Shipping* type damages did not amount to an impairment of mind, they comfortably satisfied the general concept of "personal injury damages" within the meaning of s 11 CLA. As Ipp JA held in *Ibbett* at [125], "in my opinion, irrespective of whether the ordinary meaning is to be attributed to 'injury' or whether it is given the meaning defined in s 11, the word is wide enough to encompass anxiety and distress". Notwithstanding some initial and tentative doubts expressed in *Ibbett* at [21]-[22], Spigelman CJ subsequently accepted the reasoning of Ipp JA in *Ibbett* (see *Insight CA* at [78]).

58. A broad interpretation of the concept of "injury" and the application of that term to *Baltic Shipping* type damages is supported by the manner in which those types of damages are

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[45] Macquarie Dictionary (2nd revised edition).
[46] Oxford English Dictionary as cited by Basten JA in *Ibbett* at [24].
[47] *Corby* at [24]; *Ibbett* at [212].
[48] *Corby* at [23]-[24] per Basten JA; Beazley JA and Tobias JA agreeing; *Ibbett* at [124]-[126] per Ipp JA, [212]-[214] per Basten JA; *Insight CA* at [78] per Spigelman CJ.
[49] The decision was the subject of a High Court appeal but not in respect of this finding: (2006) 229 CLR 638.

described in the leading cases. They do not support either of the Appellant's two arguments summarised at [53] above.

59. General damages for non-physical injury are well known to the law. Numerous examples are collected in *Baltic Shipping* arising from different causes of action. The discussion of the nature of damages for disappointment and distress in *Baltic Shipping* undermines the Appellant's first argument. Many instances were referred to in that case where damages of the nature being claimed in *Baltic Shipping* had been recovered without any associated bodily injury.[50] The rule which Mason CJ (Toohey and Gaudron J agreeing) preferred to adopt at 365.7 was that damages for disappointment and distress are not recoverable "unless they proceed from physical inconvenience or unless the contract is one the object of which is to provide enjoyment, relaxation or freedom from molestation". The case was decided on a basis in which the connection or otherwise of the inconvenience or distress to physical injury was irrelevant (contra AS [48]-[51]).

60. It is the nature of the damage, rather than what caused it, that requires examination. *Baltic Shipping* type damages are often referred to as damages for "mental distress".[51] Mental distress falls comfortably within the common law understanding of personal injury. In *Baltic Shipping*, Brennan J described "disappointment of mind" as "a mental reaction to a breach of contract" and "severe tension of the mind and depression of the spirit" as well as "mental distress".[52] His Honour also said, "disappointment is not merely a reaction to the breach and resultant damage but is itself the resultant damage".[53] "Disappointment of the mind" was described as "a natural reaction to a breach of contract and damage flowing therefrom".[54] Likewise, in *Jarvis v Swans Tours Ltd*, Lord Denning described damages for distress and disappointment as "mental distress" and Stephenson LJ referred to contracts in which "the parties contemplate inconvenience on breach which may be described as mental frustration, annoyance, disappointment".[55]

61. The Appellant's second argument at AS [52]-[54] misses the point in connection with expectation damages, claiming that disappointment and distress are nothing more than "the healthy reaction of a rational mind to the expectation that was not fulfilled". However, the

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[50] *Baltic Shipping* at 360, 361, 363, 364 per Mason CJ, 368 per Brennan J.
[51] See, e.g. *Baltic Shipping* at 370, 371, 381.
[52] *Baltic Shipping* at 368.9 and 370.4, 371 and 370 and 371, respectively.
[53] *Baltic Shipping* at 369.9-370.1.
[54] *Baltic Shipping* at 368.9; see also at 370.9.
[55] [1973] 1 All ER 71, [1973] QB 233 at 237-238 per Lord Denning, 240-241 per Stephenson LJ.

Appellant ultimately accepts at AS [54] that task for the court involves comparing "the expectations against the reality".

62. In holiday cases (or other cases where the contract provides for pleasure, entertainment or relaxation), the claimant experiences a heightened sense of excitement, anticipation and expectation (of pleasure, entertainment or relaxation) in advance of the event. His or her mental condition is impaired when those expectations are unfulfilled or dashed, and he or she experiences that "mental distress"/"severe tension of the mind"/"depression of the spirits" of which the authorities speak. The common law conception of personal injury damages therefore comfortably accommodates damages for disappointment and distress.

63. A broad interpretation of personal injury and non-economic loss is also supported by the legislative history and context. The legislative history is described at [40]-[42] above. As noted there, Pt 2 CLA, and s 16 in particular, had its genesis in the *Health Care Liability Act 2001* (NSW) (**HCL Act**) assented to on 5 July 2001. The speech says s 16 is drawn from the HCL Act and guidance on that provision can be gained from the Second Reading Speech for that Bill. The Explanatory Note to the HCL Bill stated that its objects included "to keep the costs of medical indemnity premiums sustainable, in particular by limiting the amount of compensation payable for non-economic loss in cases of relatively minor injury, while preserving principles of full compensation for those with severe injuries involving ongoing impairment and disabilities...". Similarly, in the Second Reading Speech to the CLA, the reforms were said to be "vital to the survival of our community". As noted above, the Minister referred to "the damage that the public liability crisis is doing to our sporting and cultural activities, small businesses and tourism operators, and our local communities". The reforms were said to be "about reducing public liability premiums". Clause 16 was said to be the biggest contributor to savings and that "the threshold will exclude smaller claims for general damages and will discourage people from bringing smaller claims".

64. The Ipp Report arose from these concerns and reforms. It was the result of a joint State and Commonwealth Ministerial Meeting on Public Liability (see at [1.1]). It was submitted in October 2002, shortly after the CLA was enacted. In Ch 13, it dealt with the term of reference described as "2. Develop and evaluate principled options to limit liability and quantum of award for damages". Recommendation 47 (at [13.47]) was that "The proposed Act should impose a threshold for general damages based on 15% of a most extreme case". In making that recommendation, the Ipp Report came to a preference for the NSW system already introduced in the CLA as the first stage of the reform package (see [13.39]-[13.47]).

65. As is to be expected, none of the extrinsic materials point to a legislative intention to protect full recoveries for *Baltic Shipping* type damages whilst limiting and capping other forms of general damages. The Appellant's construction would lessen the effectiveness of legislation specifically designed to limit small damages claims, of which *Baltic Shipping* type damages, and the Appellant's claim in particular, are a paradigm example.

Non-economic loss

66. Division 3 of Pt 2 is entitled "Fixing damages for non-economic loss (general damages)".[56] "Non-economic loss" is defined in s 3 as including relevantly "(a) pain and suffering" and "(b) loss of amenities of life". The reference to "general damages" in the heading of Div 3 suggest the defined term "non-economic loss" ought to be given a broad meaning. There is nothing in the text of the CLA to suggest a different field of operation for that type of loss depending on whether such damages are claimed in contract, tort or under statute. Section 11A(2) provides that Pt 2 applies "regardless" of such matters. Thus, the circumstances in which the injury was caused and the cause of action can (unlike in Pt 1A) be put to one side. The focus is on the nature of the personal injury.

67. While the definition breaks up the general damages definition into sub-categories, the lines between the categorisations are not necessarily distinct. In that regard, Sackville AJA in *Insight CA* (at 172) pointed to Windeyer J's remark in *Teubner v Humble* (1963) 108 CLR 491 at 505 that the amount awarded for general damages is a single amount appropriate in the circumstances and "is not the sum of rigidly separate and independent items".

68. Concepts such as "pain and suffering" and "loss of amenities of life" are illuminated by the common law treatment of those terms. In *Baltic Shipping*, Mason CJ[57] categorised compensation from injured feelings (including anxiety, disappointment and distress) as falling within the rubric of pain and suffering. At 359.8-360.2, his Honour commenced his discussion of the topic by reference to damages for pain and suffering and how this could include anxiety, disappointment and distress. At 362.8, his Honour said that "[i]t is beyond question that a plaintiff can recover damages for pain and suffering, including mental suffering and anxiety, where the defendant's breach of contract causes physical injury to the plaintiff". At footnote 95, he noted that "damages for pain and suffering may include compensation for injured feelings".

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[56] It may be seen that the two divisions are intended to cover general damages and economic loss.
[57] At 359-360, with whom Toohey J agreed at 383, Gaudron J agreeing on this issue at 387.

69. In *Insight CA*, all members of the NSWCA found that matters such as grief, anxiety, distress and disappointment were within the definition of economic loss; Spigelman CJ at [78] and Basten JA at [118], [12] on the ground that damages of that nature fell within the category "pain and suffering"; Sackville AJA at [167]-[173] preferring to include them within the description "loss of amenities of life".[58] In *State of New South Wales v Corby* (2010) 76 NSWLR 439 (***Corby***) all members of the NSWCA held that *Baltic Shipping* type damages fell within the description "pain and suffering".[59]

70. *State of NSW v Williamson* (2012) 248 CLR 417 is distinguishable. The question in that case was whether the deprivation of liberty on account of wrongful imprisonment constitutes a form of "injury" within the meaning of s 11 CLA. This Court held that it was not; that it did not constitute an "impairment of a person's physical or mental condition" or otherwise a form of "injury". As such, the claim for false imprisonment, to the extent it sought damages for deprivation of liberty, was found not to be a claim for "personal injury damages" within t s 11 CLA. The question as to whether a deprivation of liberty is a form of "injury" within the meaning of s 11 CLA says nothing about whether distress and disappointment falls within the ambit of the definition contained in s 11 CLA.

71. It follows that the damages sought by the Appellant for distress and disappointment under s 237(4) ACL is non-economic loss that falls within the inclusive definition of "personal injuries damages" contained in s 11 CLA.

Part VI: NOTICE OF CONTENTION OR CROSS-APPEAL

72. The Respondent has not filed a notice of contention or notice of cross-appeal.

Part VII: ESTIMATED TIME FOR ORAL ARGUMENT

73. The Respondent estimates that it will require 2.25 hours for oral argument.

Dated: 29 November 2019

David L Williams
T: (02) 9232 4811
dlw@ninewentworth.com.au

David Weinberger
T: (02) 8815 9255
david.weinberger@
ninewentworth.com.au

Alicia Lyons
T: (02) 8915 2659
alyons@sixthfloor.com.au

[58] The Respondent relies upon and adopt Sackville AJA's discussion of that issue at [164]-[175].
[59] See Basten JA at [47], Beazley and Tobias JA agreeing.

IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY

No. S285 of 2019

BETWEEN:

DAVID MOORE
Appellant

and

SCENIC TOURS PTY LTD
Respondent

10

ANNEXURE

LIST OF CONSTITUTIONAL PROVISIONS, STATUTES & STATUTORY INSTRUMENTS REFERRED TO IN THE RESPONDENT'S SUBMISSIONS

	Legislation	*Version*
1.	Constitution	-
	Section 109	-
	Section 118	-
	Commonwealth	
2.	Acts Interpretation Act 1901 (Cth)	20 December 2018 (current)
3.	Australian Securities and Investments Commission Act 2001 (Cth)	13/07/2004
4.	Competition and Consumer Act 2010 (Cth)	12/04/2013
5.	Corporations Act 2001 (Cth)	13/07/2004
6.	Judiciary Act 1903 (Cth)	25/08/2018 (current)
7.	Trade Practices Act 1974 (Cth)	13/07/2004
		14/07/2010
8.	Trade Practices Amendment (Australian Consumer Law) Act (No 2) 2010 (Cth)	01/01/2011 (as made)

SWS Lawyers
Level 1, 47 Darby Street
Newcastle NSW 2300

Telephone: 02 4040 9640
Email: s.moran@swslawyers.com.au
Ref: Susan Moran

9.	Treasury Legislation Amendment (Professional Standards) Act 2004 (Cth)	13/07/2004 (as made)
	New South Wales	
10.	Civil Liability Act 2002 (NSW)	18/06/2002 (as made)
		03/06/2013
11.	Civil Liability Amendment (Personal Responsibility) Act 2002 (NSW)	28/11/2002 (as made)
12.	Constitution Act 1902 (NSW)	01/07/2018 (current)
13.	Health Care Liability Act 2001 (NSW)	05/07/2001 (as made)
14.	Industrial Relations Act 1996 (NSW)	17/03/2006
15.	Interpretation Act 1897 (NSW)	23/06/1897 (as made)
16.	Interpretation Act 1987 (NSW)	28/11/2018 (current)
17.	Professional Standards Act 1994 (NSW)	01/01/2011
		15/09/2000
	Other jurisdictions	
18.	Personal Injuries (Liabilities and Damages) Act 2003 (NT)	22 May 2015 (current)
19.	Wrongs Act 1958 (Vic)	3 September 2018 (current)