HIGH COURT OF AUSTRALIA

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IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY

BETWEEN: CSL AUSTRALIA PTY LTD ACN 080 378 614
Appellant

and

TASMANIAN PORTS CORPORATION PTY LTD ACN 114 161 938
First Respondent

INCITEC PIVOT LTD ACN 004 080 264
Second Respondent

INCITEC FERTILIZERS PTY LTD ACN 103 709 155
Third Respondent

VIVA ENERGY AUSTRALIA LTD ACN 004 610 459
Fourth Respondent

PERSONS WHO MAY HAVE A CLAIM WITHIN THE MEANING OF ARTICLE 2 OF CONVENTION ON LIMITATION OF LIABILITY FOR MARITIME CLAIMS 1976 (AS AMENDED BY THE 1996 PROTOCOL TO AMEND CONVENTION ON LIMITATION OF LIABILITY FOR MARITIME CLAIMS 1976)
Fifth Respondent

FIRST RESPONDENT'S SUBMISSIONS

Part I: Certification

1. These submissions are in a form suitable for publication on the internet.

Part II: Concise statement of the issue

2. The issue is whether the first respondent's (**TasPorts**) wreck removal claims - as particularised in [22(e)] of its Amended Statement of Claim in proceeding No. NSD 363 of 2022 (set out in full at AJ [9]) (**Wreck Removal Claims**) - are limitable under Article 2(1)(a) of the *Convention on Limitation of Liability for Maritime Claims, 1976* as amended by both the *Protocol of 1996 to amend the Convention on the Limitation of Liability for Maritime Claims, 1976* and *Resolution LEG.5(99) (2012) of the Legal Committee of the International Maritime Organisation* (collectively, **1976 Convention**). The issue arises in circumstances where the Wreck Removal Claims are covered by Article 2(1)(d) and Australia has, under s 6 of the *Limitation of Liability for Maritime Claims Act 1989* (Cth) **(LLMC Act)**, lawfully exercised the reservation power under Article 18(1) such that Article 2(1)(d) does not have the force of law in Australia.

Part III: Section 78B of the *Judiciary Act 1903* (Cth)

3. No notices under s 78B of the *Judiciary Act 1903* (Cth) are required.

Part IV: Contested facts

4. In the "Background" in Part V of its written submissions (**AS**), the Appellant mischaracterises the Full Court's judgment in at least one and potentially two respects.

5. First, the Appellant incorrectly asserts at AS [15] that the Full Court adopted an approach which "diverged" from the UK Supreme Court's decision in ***MSC Flaminia***[1]. No such divergence arises. As the Full Court noted at AJ [42], the UK Supreme Court *"was not required to, and did not consider the precise question"* before the Full Court. Further, as seen below, there is important commonality of approach between the two judgments.

6. Secondly, the Appellant asserts at AS [14] that the Full Court held that *"Art 2(1)(d) exclusively encompassed all claims for wreck removal..."* (citing AJ [86]). If by *'exclusively encompassed'* the Appellant attributes to the Full Court a finding that Article 2(1) precludes

[1] *MSC Mediterranean Shipping Company SA v Conti 11 Container Schiffahrts-GmbH & Co KG MS "MSC Flaminia"* [2025] UKSC 14

the possibility of dual characterisation of claims, the Full Court made no such finding at AJ [86] and indeed expressly stated to the contrary at AJ [42].

Part V: Argument

V.1 Introduction

7. **The issue:** There is a potential for overlap between the categories of claims subject to limitation of liability in the subparagraphs of Article 2(1) of the 1976 Convention. Article 18(1) reserves to a State a once only right, to be exercised or not at the time of ratification, fully or not at all, to exclude the application of Articles 2(1)(d) and (e). Where the right of reservation is duly exercised, how does one deal with any overlap on the facts of a particular case that may arise between, on the one hand, Article 2(1)(d) and, on the other, Articles 2(1)(a) and 2(1)(c)?

8. **Domestic law implementation of international convention:** The issue as just stated is one of the proper construction of an international convention as brought into Australian statute law but with a permissible reservation. Strictly, the issue is one of domestic statutory interpretation: did Parliament, by bringing the 1976 Convention into domestic law but excluding Article 2(1)(d), as it was permitted to do under international law, intend: (A) that all claims described in that Article would not be limitable or (B) that claims within that Article would not be limitable, only if they did not also fall within Article 2(1)(a) or (c)? However, as the domestic law implementation of the 1976 Convention, with reservation, is in the exact terms of the 1976 Convention, the issue defaults to the proper construction of the 1976 Convention under international law principles.

9. **The Full Court:** The Full Court, following similar international decisions, held that the plain meaning of the provisions of the 1976 Convention and the exercise of the reservation in Australia effected the removal of all claims described in Article 2(1)(d) from limitation. This was so, regardless of whether some such claims were also described in Articles 2(1)(a) and (c). TasPorts submits that the reasoning and conclusion of the Full Court are correct.

10. **The Appellant's case:** The Appellant seeks to argue that a valid reservation does not remove all claims described in Article 2(1)(d) from limitation. It says that wreck removal claims which are also described by Articles 2(1)(a) and (c) remain unaffected by the reservation. This interpretation produces incoherence in failing to give the broad language of Articles 2(1)(d) and 18 their ordinary meaning. It is not supported by the *travaux* nor by foreign

decisions of apex courts. Finally, if this interpretation were correct, it would mean that the odd and eccentric claims (if any) that fall solely within Article 2(1)(d) are excluded from limitation – there is no support for this.

V.2 Principles of Interpretation of International Conventions

11. **General principles:** National courts should construe international conventions by reference to broad and generally accepted principles of construction, not by technical rules of domestic law or legal precedent.[2]

12. The generally accepted principles of convention interpretation are found in the Vienna Convention on the Law of Treaties (**Vienna Convention**), which provides that:

(a) a convention must be interpreted in good faith in accordance with the ordinary meaning of the terms in their context and in the light of its object and purpose (Article 31(1)); and

(b) there shall be taken into account, together with context, any relevant and applicable rules of international law (Article 31(3)(c));

(c) recourse may be had to supplementary means of interpretation (including the *travaux*) to confirm the meaning derived from Article 31 or to determine the meaning when it is otherwise unclear after the application of Article 31 (Article 32).[3]

13. **Uniformity:** As far as possible, international conventions should be interpreted uniformly by Convention States. The 1976 Convention is intended to achieve uniformity and certainty across the member states' treatment of limitations on claims. The ultimate questions are, and must remain: what does the relevant convention provide, and how is that international obligation carried into effect in Australian municipal law.[4] That said, the Court should be slow to depart from ***Star Centurion***.[5]

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[2] *Evans v Air Canada* [2025] HCA 22; 99 ALJR 941; 423 ALR 155 at [6]-[8].
[3] *Great China Metal Industries Co Ltd v Malaysian International Shipping Corporation Berhad* (1998) 196 CLR 161; [1988] HCA 65 at [70] (per McHugh J), [137]– [138] (per Kirby J); *Povey v Qantas Airways Ltd* (2005) 223 CLR 189; [2005] HCA 33 at [24] (per Gleeson CJ, Gummow, Hayne and Heydon JJ).
[4] *Povey v Qantas Airways* at [25], *Siemens Ltd v Schenker International (Australia) Pty Ltd* (2004) 216 CLR 418; [2004] HCA 11 at [153]-[154] (per Kirby J).
[5] *The **"Star Centurion"***: *Perusahaan Perseroan (Persero) PT Pertamina v Trevaskis Ltd* (2023) 26 HKCFAR 297; [2023] HKCFA 20.

14. **Coherence:** An instrument should be given effect as a coherent whole. As Keane NPJ explained in *Star Centurion*[6] (citations omitted and emphasis added):

> *The Generalia Maxim*[7] *is a particular expression of a more general principle of statutory interpretation. That principle is that, as a matter of "simple common sense and ordinary usage", an instrument should be given effect as a coherent whole. ...* ***As a matter of principle, common sense and ordinary usage must apply to give effect to the instrument as a whole whether or not the provisions in question can be said to bear a strict relationship of general rule and specific exception.***

15. **The *Generalia Maxim*:** This is not just a technical rule of English based law. This Court has described it as *"based on sound common sense and appeals to everyone, layman or lawyer"*.[8] In the context of statutory construction, this Court has explained its operation as:

> *[w]here there is a general provision which, if applied in its entirety, would neutralize a special provision dealing with the same subject matter, the special provision must be read as a proviso to the general provision, and the general provision, in so far as it is inconsistent with the special provision, must be deemed not to apply.*[9]

Therefore, as the Court of Final Appeal held in *Star Centurion*, the *Generalia Maxim* is applicable in interpreting international conventions: see Article 31(3)(c).[10]

16. **Reservations:** Finally, the issue confronting the Court concerns the effect of the reservation under Article 18(1) of the 1976 Convention. Under the Vienna Convention, "reservation" means a unilateral statement made by a Convention State whereby it purports to exclude or modify the legal effect of certain provisions of the convention in their application to that State: Article 2(1)(d). The Vienna Convention provides that a reservation modifies for the reserving State the provisions of the convention to which the reservation relates to the extent of the reservation: Article 21(1)(a).

V.3 The textual operation of the 1976 Convention and the LLMC Act – the Vienna Convention

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[6] *The "Star Centurion"* at [29].
[7] *Generalia specialibus non derogant.*
[8] *Hume Steel Ltd v Attorney General (Victoria)* (1927) 39 CLR 455, 466 (per Higgins J with Gavan Duffy J agreeing).
[9] *Goodwin v Phillips* (1908) 7 CLR 1, 14 (per O'Conner J).
[10] The *Generalia Maxim*, as well as "*lex specialis derogat legi generali*" are principles of coherent interpretation of legal instruments, including international conventions. In *Day v Governor of Cayman Islands* [2022] UKPC 6 at [38], the Privy Council observed that the "*lex specialis*" approach to interpretation, like the Generalia Maxim, is "not a technical rule of treaty interpretation" but is the "consequence of the principle that an instrument should be interpreted as a coherent whole and 'represents simple common sense and ordinary usage'".

Article 31 exercise

17. **TasPort's affirmative argument:** Section s 6 of the LLMC Act provides "*Subject to this Act, the provisions of the Convention, other than paragraphs 1(d) and (e) of Article 2, have the force of law in Australia.*"

18. Schedule 1 of the LLMC Act sets out the provisions of the 1976 Convention. Article 2(1) describes the kinds of claims that are subject to limitation under the 1976 Convention. It is set out in full in AJ [15].

19. The chapeau to Article 2(1) makes it clear that the claims listed in subparagraphs (a)-(f) are determined by the facts which characterise the loss the subject of the claims (not the legal basis of liability). This is confirmed by the language of Article 2(2) (see AJ [15]).

20. The 1976 Convention specifies one such category of claims, in Article 2(1)(d), as being claims "in respect of" wreck removal costs and expenses. The language is specific and comprehensive in respect of any and all wreck removal claims, and unqualified in its application.

21. Article 18(1) provides "*Any State may, at the time of signature, ratification, acceptance, approval or accession, reserve the right to exclude the application of Article 2 paragraph 1 (d) and (e). No other reservations shall be admissible to the substantive provisions of this Convention.*" That is a specific, unqualified and comprehensive right of reservation.

22. The coherent interaction between Articles 2 and 18 is at the heart of this appeal. The breadth of what Convention States may by reservation exclude from limitation is no less than the breadth of what is included in Article 2(1)(d). Article 18(1) is not expressed in terms that permit a partial or qualified exclusion, as is expressly contemplated by other provisions of the 1976 Convention.[11] Rather, Article 18(1) affords each Convention State a single indivisible opportunity, exercisable only upon ratification, to *exclude* claims that fall within Article 2(1)(d) (and/or (e)) from the Convention's scheme of limitation.

[11] Article 15(1) allows parties to "exclude *wholly or partially*" the Convention's application to particular persons.

23. As a matter of common sense and ordinary usage, an instrument should be given effect as a coherent whole.[12] The 1976 Convention, construed as a coherent whole, provides a scheme for the limitation of liability for ship owners which:

(a) identifies limitable claims by reference to heads of loss rather than conceptions of legal liability;

(b) specifies one such head of loss in Article 2(1)(d) as being "*the raising, removal, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned, including anything that is or has been on board such ship*";

(c) affords each Convention State a single, indivisible opportunity to exclude from the operation of the Convention (and accordingly from the scope of limitable claims) the whole of those claims within Article 2(1)(d). That is what Australia did under s 6 of the LLMC Act.

24. **Response to the Appellant:** The interpretation advanced by the Appellant would limit the scope of the right of reservation in Article 18(1) such that the only wreck removal claims that a Convention State is permitted to exclude are those which, in addition to falling with Article 2(1)(d), do not fall within any paragraph of Article 2(1), specifically Articles 2(1)(a) and (c). That is a misconstruction of the 1976 Convention.

25. It is irrelevant to enquire whether a head of loss described in a particular claim in a given case would textually fall within Article 2(1)(a) or (c) as well as falling within the reserved and excluded Article 2(1)(d). Even if it does so fall, it would be incoherent to permit limitability via Article 2(1)(a) or (c) when the State has already lawfully decided that the very same claim should not be limitable via its exclusion of Article 2(1)(d). The essential insight about coherence of Keane NPJ and the full bench of the highest court in Hong Kong in *Star Centurion* is powerful and correct; the Appellant has done little to shake it.

26. The Appellant's attempt to get around the coherence reasoning is to put a slant upon the work done by Article 2(1)(d), and in doing so to marginalise the important work of Article 18. According to the Appellant, Article 2(1)(d) was included in the 1976 Convention solely as an "extension" of the claims otherwise limitable under Articles 2(1)(a) to (c). With Article 2(1)(d) having this limited, supplemental work, the Appellant then contracts the scope of

[12] ***Star Centurion*** at [29] per Keane NPJ, citing *Effort Shipping Co Ltd v Linden Management SA (The Giannis NK)* [1998] AC 605 at 627 per Lord Cooke.

Article 18 – it becomes no more than an entitlement not to implement that limited extension effected by Article 2(1)(d): AS at [32]-[33].

27. That is a grave misconception of the effect of including Article 2(1)(d) as a head of limitation. What it did was to effect a separate head of limitation, referable to all claims in respect of wreck removal. There is nothing in the text (nor in the supplementary material considered below) to marginalise its effect to those claims not within the literal scope of Article 2(1)(a) or (c). When applying Article 2(1)(d), whether in a case where it applies or where it has been excluded, the textual command is whether the head of loss is accurately described by the language used in the Article. The Tribunal does not contort itself into a different, unexpressed question: *"would I find this case to fall within the language before me if I have gone through a different anterior exercise and concluded that it does not fall within a different paragraph, such as Article 2(1)(a) or (c)?"*

28. **The Appellant's examples:** The Appellant (at AS [32]) seeks to hypothesise different examples of claims for heads of loss. All of them, the Appellant accepts, fall within the description in Article 2(1)(d). Some of them, the Appellant says, also fall within Article 2(1)(a). Others, the Appellant says, fall only within Article 2(1)(d). But that is an entire, convoluted exercise that the Convention did not instantiate in its text. If the intent of the Convention had been to capture in Article 2(1)(d) the example hypothesised as falling within Article 2(1)(d) but not within Article 2(1)(a) – a direct claim by an authority for removal of a third party's ship – it could easily have said so.

29. What other examples the Appellant has in mind as falling within Article 2(1)(d) but not within Article 2(1)(a) or (c) is left unexplored. It is an unsafe approach to construction to depart from the plain words used in Article 2(1)(d) in favour of conjuring up some more limited scope of operation that it has, without being able even to identify the metes and bounds of more limited operation.

30. The departure from the plain words has an additional aspect. The words chosen for Article 2(1)(d) identify a field by reference to a kind of claim in respect of a head of loss. The Appellant's suggested example at AS [32] of what might be within the "expansion" effected by Article 2(1)(d) and capable of contraction under Article 18 depends now upon the specific identity of the claimant (as an "authority") and the domestic law basis of the claim (a "direct" claim). In taking this step, the Appellant is offering a construction of an international Convention that becomes dependent upon the peculiar provisions of the domestic law of an

individual Convention State as to whether it allows waterway authority claims other than of the kinds captured by Articles 2(1)(a) to (c). If a State does not, then the *"extension"* work contemplated by the Appellant has wholly collapsed. If a State does, then there may be some, limited work, for Article 2(1)(d) and the reservation power to do; but producing disparate results for different Convention States. The language of the chapeau to Article 2(1) is wholly against this being relevant to the proper construction of Article 2(1).

31. **Uncertainty on the Appellant's case:** The Appellant's approach invites uncertainty in the application of Article 2(1)(d) and of the Article 18 reservation (where made) and thereby undermines one of the 1976 Convention's objects. On TasPorts' construction, a State at the time of ratifying has a clear and understandable choice: either I reserve, in which event any and every claim for a head of loss described in the words of Article 2(1)(d) before me is not limitable; or I do not reserve in which event any and every claim for a head of loss described in the words of Article 2(1)(d) is limitable; I make my choice against a single set of words in the Convention in front of me.

32. By contrast, on the Appellant's construction, the State has to go through a convoluted thought experiment to which no clear answers are likely: the effect of my choice to reserve or not will now depend on what types of claims for heads of loss which might be brought in the future will fall within a sub-set of the language I see in Article 2(1)(d); the sub-set identified only after I have worked out what claims might also fall within the language of Article 2(1)(a) or (c).

33. When the Appellant's submissions, after this matter has now progressed through 3 tiers of courts, are unable to offer any clear guidance on what claims fall within the supposed sub-set, one can see that the case for contorting the text of Article 2(1)(d), as it does, is exceedingly thin.

34. The comprehensive right contained in Article 18 to *exclude the application* of Article 2(1)(d) is misdescribed by the Appellant (AS at [33]) as an entitlement "*to not implement or introduce into domestic law*" the Appellant's perceived *"extension"* of the right of limitation. This watering-down of Article 18 is not supported by the text, the *travaux* or any authority; and it is contrary to the meaning of Article 18 explained in *Star Centurion* at [30]-[34].

35. **Summary on coherence:** The coherent construction in *Star Centurion* to which the Full Court referred is one which takes account of these features and gives effect to all parts of the 1976 Convention including Article 18. The terms of the 1976 Convention used cannot be

reconciled with a construction that has the effect that Article 18 confers only the right to exclude the application of some limited aspect of Article 2(1)(d).

36. **Uniformity of interpretation:** The Appellant's construction would put Australia out of step in the interpretation of an international Convention designed to bring uniformity to international maritime commerce, without a cogent reason to do so.

37. The Convention States whose apex courts have considered the operation of the scheme within Article 2(1)(d) and Article 18[13] have adopted the interpretation for which TasPorts contends. The Full Court was cognisant of the desire for comity between Convention States and to ensure that "a treaty should have the same meaning for all of the States Parties": AJ [20].[14]

38. In addition to the Hong Kong Court of Final Appeal in *Star Centurion*,[15] at AJ [64]-[68], the construction adopted by the Full Court in this case had also been accepted by the Supreme Court of the Netherlands in *The Wisdom*. In that case, the Supreme Court of the Netherlands accepted there was scope for overlap between the operation of Articles 2(1)(a) and (d), but held that the reservation in Article 18(1) precluded limitation under Article 2(1)(a): [3.6.8]-[3.6.9]. The Netherlands Supreme Court approved the Court of Appeal's view that "if … there is an overlap between Article 2, paragraph 1, under a … and Article 2, paragraph 1, under d … the latter provision shall prevail, by reason of the possibility of a reservation under Article 18, paragraph 1": at [3.5(vi)] and [3.6.9]. The same construction was adopted in another decision of the Supreme Court of the Netherlands, *The Sichem Anne and The Margreta*: AJ [69]. These were all cases involving wreck removal claims.

39. The uniform position amongst Convention States internationally is that wreck removal claims are not limitable under the 1976 Convention where a reservation against Article 2(1)(d) has been exercised, even if the same claim is capable of coming within Article

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[13] The Hong Kong Court of Final Appeal in ***Star Centurion*** per Keane NPJ; the Supreme Court of the Netherlands in *Scheepvaartbedrijf MS Amasus BV v ELG Haniel Trading GmbH (**The Wisdom**)* (ECLI:NL:HR:2018:140, 2 February 2018, per EJ Numann VP, G Snijders, MV Polak, TH Tanja-van den Broek, CH Sieburgh JJ; *Eitzen Chemical (Singapore) Pte Ltd v VOF G Idzenga Scheepvaartbedrijf* (***The Sichem Anne and The Margreta***) (ECLI:NL:HR:2018:142, 2 February 2018, per EJ Numann VP, G Snijders, MV Polak, TH Tanja-van den Broek, CH Sieburgh JJ).

[14] Citing, inter alia, *Kingdom of Spain v Infrastructure Services Luxembourg S.à.r.l.* [2023] HCA 11; 275 CLR 292 at [38]-[39].

[15] And the Hong Kong Court of Appeal and Court of First Instance below, which had both also found in favour of the successful respondent in the Court of Final Appeal: see *Perusahaan Perseroan (Persero) PT Pertamina v Trevaskis Limited (The Star Centurion and The Antea)* [2022] HKCA 1089; [2023] 1 Lloyd's Rep 493 and *Perusahaan Perseroan (Persero) Pt Pertamina v Trevaskis Ltd* [2021] HKFCI 396; [2021] 2 Lloyd's Rep. 638, respectively.

2(1)(a).

40. The decisions in *Star Centurion*, in *The Wisdom* and in *The Sichem Anne and The Margreta* are "compelling" and "persuasive": AJ [115]. No apex court of a Convention State has adopted the Appellant's construction, entailing as it would the very incoherence adverted to by Keane NPJ in the ***Star Centurion***.[16] Acceptance of the Appellant's construction would have the effect of making Australia an outlier in the interpretation of an international Convention designed to bring uniformity to international maritime commerce.

41. **Absurd results:** The Appellant's construction would also lead to absurd and unintended results for what is a paradigm situation giving rise to a wreck removal claim (a ship collides with and sinks another ship giving rise to a claim by the owners of the latter for costs of its wreck removal, with the colliding ship owners seeking to invoke limitation under the 1976 Convention).[17] On the Appellant's construction, the Convention State's exercise of the right of reservation would make no difference to the availability of limitation in such a case. That is, in both a Convention State that excludes the application of Article 2(1)(d) and a State that does not, claims in respect of wreck removal expenses arising from the wrongful sinking of the wrecked ship would be limitable under Article 2(1)(a). There is no indication in the text of the Convention or any relevant extrinsic material that the Convention States intended the exercise of the reservation for claims in respect of wreck removal to have no impact on the availability of limitation arising from the paradigm instance of wreck removal claims.

42. **Does the Appellant have a fall-back argument?** It seems that, to escape the incoherence obstacle, the Appellant is wedded to the argument that Article 2(1)(d) does not mean what it says; it means only to describe a sub-set of cases falling within Article 2(1)(d) but outside Article 2(1)(a) or (c): see AS [35]. Lest there be any doubt, if the Appellant is pressing in the alternative that Article 2(1)(d) means what it says and it captures all wreck removal claims within its terms, then there can be no escape from the *Star Centurion* logic of incoherence. The power of reservation under Article 18 is a reservation in respect to the <u>whole</u> of what is covered by Article 2(1)(d) or (e). A State has no power to make a reservation which says: *"I will exclude from my implementation of the Convention only a sub-set of the claims within*

[16] at [34].

[17] It is noteworthy that each of the present case, *Star Centurion*, *The Wisdom*, and the additional authorities which the Appellant relied on to support its construction before the Full Court (viz, *Twitt Navigation Ltd v The State represented by the Defence Department* (Hordaland District Court of Norway, 21-058354TVI-THOD/TBER, 16 November 2021) and *Partenreederei MS Alexandria v China Shipping Development Co Ltd (The Alexandria)* (Supreme Court of South Korea, 99Da9646, 9653, 9660, 9677, 22 August 2000), involved a ship being sunk and wrecked as a result of a ship-to-ship collision.

the Article, those which happen on inspection after they have arisen not to fall also within Article 2(1)(a) or (c)".

43. **Object and purpose:** TasPorts' coherence argument, based upon *Star Centurion,* advances a sensible object and purpose of the Convention (cf Vienna Convention Article 31(1)). Conversely, the Appellants can postulate no sensible object or purpose that would justify reading Article 2(1)(d) down to its uncertain and variable "extension effect" or marginalising the effective work of an important reservation power in Article 18 as the Appellants do. If the Appellants are submitting the object and purpose can be reduced to a simplistic "more limitation is always better than less", no such object and purpose can be deduced from the text or any of the permissible materials under the Vienna Convention.

V.4 The Travaux – Vienna Convention Article 32

44. The *travaux* for the 1976 Convention is either equivocal or supportive of TasPorts' construction of the 1976 Convention, as the Full Court found (AJ [112]).

45. Fatal to the Appellant's case is that there is no statement in the *travaux* which suggests that a reservation under Article 18 would take only some of the wreck removal claims described in Article 2(1)(d) outside limitation, leaving other wreck removal claims, those described in what became Article 2(1)(a) or (c) as within limitation.

46. The *travaux* shows that, while wreck removal claims - and likewise harbour works claims - received a lot of attention in the 1976 negotiations at the Diplomatic Conference, the discussion was never squarely about what was comprised within the proposed wording for each category; even as that wording remained constant throughout the negotiations. Delegates from time to time expressed views, that might carry differing assumptions about what the words would comprise or include (for example see First Respondent's Chronology (**FRC**) at [8]), but such assumptions were never teased out as a separate matter for discussion, let alone agreement.

47. Conversely, what did occupy the attention of the representatives in 1976 for the words chosen to capture wreck removal claims (and likewise harbour works claims) was a choice between four main options:

(i) exclude such claims from limitation altogether (e.g. take an Article 3 route);

(ii) include such claims within limitation but allow for the option of reservation (under what became Article 18);

(iii) include such claims, not allow reservation, but allow some form of priority as against the limitation fund (under what became Article 6(3)); or

(iv) include them but with no reservation and no priority (FRC at [21], pp 33; [22] p 34).

48. The end result reached on 15 November 1976 (FRC at [28] p 41-42) for wreck removal claims was option (ii); whereas on 16 November 1976 (FRC at [29]), harbour works claims were accorded option (iii) (FRC [29] at pp 42-45).

49. All of the discussion between the four options in each case proceeded on the basis that whatever was comprised by the description of wreck removal claims or harbour works claims – which was not of itself a matter for debate - would receive the full benefit of the option being chosen.

50. Had option (i) been chosen for wreck removal claims (as the US and Japan were arguing: FRC at [18]), all such claims would have been moved to Article 3 and, clearly enough, that would have created a special regime for such claims which could not have been circumvented by such claims, if they fell textually within paragraph (a), being limitable under that paragraph.

51. Likewise, as harbour works ended up under option (iii) (under France's original suggestion (FRC at [21] pp 26-28), later modified by Lord Diplock's compromise proposal (FRC at [27] pp 40-41, [29] at pp 43-44) and ultimately as formulated by Norway (FRC [29] pp 42-45), local State law can give them a priority in the fund. That choice to treat them in a special way, where exercised, creates a special regime in respect of all claims so characterised.

52. The *travaux* produced the same principled result for wreck removal claims. By including wreck removal claims, as defined, in the limitable category, but allowing for reservation, the intent of the parties was that whatever fell within such definition would be subject to a special regime; namely, if a State reserved, then any and every claim falling within that definition would be excluded from limitation, a choice not to be undone by allowing them to be limitable under paragraph (a), whereas if a State did not reserve, then any and every claim falling within that definition would be included in limitation, irrespective of whether it fell within any other paragraph of proposed Article 2.

53. The *travaux* shows that, having reached the solution that wreck claims would be included in limitation but subject to reservation, there was simply no express attention in the negotiations as to whether, or when, a claim falling within the language of a wreck claim might or might not also fall within paragraph (a) or (c); or whether, if it did, it could be limited under that paragraph even if not limited under paragraph (d).

54. As to Article 18 itself, the parties turned to it only on 19 November 1976, after the main decision had been made that wreck removal claims, as defined, would be the subject of reservation (FRC at [33]). There is no particular discussion around Article 18 that bears one way or the other on the central issue in this appeal. The only discussion was around making clear that no reservations would be allowed to substantive provisions other than paragraphs (d) and (e) of Article 2(1).

55. The Full Court correctly found that the *travaux* was either equivocal or supportive of the objective construction adopted (AJ [89], [101], [112]): see also ***Star Centurion*** at [30]-[34]. Although the Appellant claims to rely on the *travaux* in support of its interpretation, it does not meaningfully engage with any of the critical references as discussed above. However, the CMI documents to which the Appellant makes repeated reference in AS [39]-[40] were not part of the debates between the parties at the Diplomatic Conference. Those documents were no more than materials prepared by the Chair of a sub-committee of the Comité Maritime International, an NGO (***CMI***), years prior to the Diplomatic Conference. There is nothing in the *travaux* showing that these documents were adopted by the parties at the Diplomatic Conference[18] (see AJ [98]).

56. At AS [40], the Appellant asserts that "*commercial insurability*" was a "*guiding principle*" for the drafting of the 1976 Convention. The Appellant does not explain what this means nor how it affects the interpretation of the 1976 Convention. In support of its assertion the Appellant relies on two CMI reports (CMI Doc 1974-III and CMI Doc 1974-I), neither of which is shown to have been adopted in debates at the Diplomatic Conference. Further, the appellant refers to Legal Committee reports of the 23rd and 25th sessions. In these reports insurance was referred to but at no stage was "commercial insurability" elevated to a guiding

[18] The first stage of the *travaux* involved the IMO Legal Committee deciding that the CMI should carry out the preparatory work for the presentation of a first draft set of articles during 1972-1973. The preparatory work is where the documents repeatedly relied on by the Appellant exists on the timeline. The second stage was the review and modification by IMO legal committee of the working draft. That process spanned the course of 1974-1976 and resulted in the formulation of a set of draft articles for consideration at the Diplomatic Conference. The final stage was the Diplomatic Conference itself which took place from 1-19 November 1976 and resulted in the adoption what became the 1976 Convention.

principle for the drafters. In any event, "commercial insurability" cannot be elevated to a single guiding principle that somehow overcomes the plain meaning of the words chosen by the parties at the Diplomatic Conference. Clearly, the parties were balancing a range of interests; insurability was only one of them. Were it otherwise, there would not have been such detailed discussion about wreck removal claims and harbour works claims, as referred to above.

V.5 The Star Centurion

57. The approach urged by the Appellant is inconsistent with established authority.

58. The circumstances in *Star Centurion* are materially the same as the present case and directly concerned the scope of Articles 2 and 18 of the 1976 Convention. The primary judgment was given by Keane NPJ with each of the other four members of the Court of Final Appeal agreeing.

59. On the primary case advanced by the owners of the *Antea* (the wrongdoing ship), it was common ground that the claim in issue – which was by the *Star Centurion* (the innocent ship) against the *Antea* for the loss suffered by being sunk – was capable of being captured by both Article 2(1)(a) and Article 2(1)(d) (*Star Centurion* at [22]). The appellant in that case argued that it could bring the claim put against it within Article 2(1)(a) and it did not matter that Article 2(1)(d) was not available to it as a source of limitation.

60. The core propositions which emerge from the decision of Court of Final Appeal are:

(a) Article 2(1) is concerned with claims identified as different categories of loss and expense, rather than with causes of action. Domestic law notions of different countries, including the common law tradition, which focus on different kinds of legal liability, must be disregarded under the 1976 Convention: *Star Centurion* at [18], [26].

(b) Article 2(1)(d) is specific, unqualified in scope, and comprehensive of any and all claims for wreck removal; and the exclusion contemplated by Article 18 is no less comprehensive in its scope: *Star Centurion* at [30].

(c) A Convention State has a binary choice arising from Article 18. If the State chooses not to make a reservation, then all claims falling within the language of Article 2(1)(d) remain limitable, irrespective of whether they also fall within Article 2(1)(a) or (c). On the other hand, if a Convention State does make a reservation under Article 18,

the reservation cannot be partial. It operates in respect to any and every claim which falls within Article 2(1)(d). It follows that, once such a reservation is made, it would be 'incoherent' if the very same claim, assuming that it falls textually within Article 2(1)(a) or (c), could be made limitable: *Star Centurion* at [31]-[34].

61. This reasoning in *Star Centurion* (as well as *The Wisdom* and in *The Sichem Anne and The Margreta)* is "compelling" and "persuasive": AJ [115]. The reasoning employed is also consistent with the *obiter* remarks of Rares J in *The Xin Tai Hai*[19] at [139], and (in relation to the predecessor to the 1976 Convention, noting some differences in language) the majority of the Supreme Court of Queensland in *The Tiruna*.[20]

10 62. Contrary to AS [40], the construction adopted internationally and by the Full Court does not introduce an inherent uncertainty concerning the shipowner's insurance exposure with respect to the paradigm wreck removal claim arising from a collision (even if that matters) and the Appellant offers no explanation for why that is so. In any event, if the Appellant's construction is adopted for argument's sake whereby only a narrow class of eccentric wreck removal claims are the only ones excluded from limitation (for example one brought by a local statutory authority on a strict liability basis arising under local law), that construction would not remove the asserted uncertainty on the part of the shipowner and its insurer. It would still be exposed to and need to insure against unlimited liability for wreck removal claims arising out of a collision (the only difference being that the reason for the claim being
20 unlimited is that it is brought by a particular class of claimant on a particular liability arising under local law).

V.6 No error in the Full Court's reasoning

63. The Full Court made no error in concluding that TasPorts' wreck removal claims are not limitable under the Convention as enacted in Australia. The question answered by the Full Court to dispose of the appeal was as follows (AJ [30]):

> *... how is the 1976 Convention to be construed if TasPorts' claims can be said to fall within both Art 2(1)(a) and (d)?*

64. Applying the familiar principles of treaty interpretation outlined above at [11]-[16], the Full

[19] *Atlasnavios Navegacao, LDA v The Ship "Xin Tai Hai" (No 2)* (2012) 215 FCR 265 [2012] FCA 1497.
[20] *Barameda Enterprises Pty Ltd v O'Connor* [1988] 1 Qd R 359 per Kelly SPJ at 368.52 to 369.13 and per McPherson J in the discussion commencing with the second point page 388.5 (especially at 389.13-19).

Court answered this question by concluding that, by reason of Australia's exercise of the right under Article 18(1) to *exclude the application* of Article 2(1)(d), claims that fall within Article 2(1)(d) are not subject to limitation in Australia: AJ [123]. As developed below, the Full Court's approach was entirely orthodox, and its conclusion is plainly correct.

65. The Full Court identified the following features of the text of Article 2(1)(d) that support its construction:

(a) Article 2(1) directs attention to the factual question which has given rise to some liability, regardless of how such liability might arise in any particular domestic legal system: AJ [40];

(b) Article 2(1)(d) occurs in the immediate context of a list of factual categories of loss or expense and is expressly and specifically concerned with claims for wreck removal expenses, unlike Article 2(1)(a) which makes no reference to wreck removal at all: AJ [47];

(c) Article 2(1)(d) is not only specific, but also unqualified in scope in that it makes no difference between claims by harbour authorities and other shipowners: AJ [48]; and

(d) Article 2(1)(d) is expressed in the broad language of being "in respect of" wreck claims, which tends to show that Article 2(1)(d) was intended to encompass all wreck removal claims: AJ [57]-[58].

66. The Full Court correctly identified that Article 18(1) is an important aspect of the context in which Article 2(1) is to be understood, because Article 18(1) contemplates that any claim in respect of wreck removal expenses may be *excluded* from the 1976 Convention's limitation scheme, even if it is also possible to describe the claim as one for loss consequential upon damage to property: AJ [49].[21] A "reservation" refers to a statement made by a Convention State whereby it purports to exclude or modify the legal effect of certain provisions of the treaty in their application to that State: Article 2(1)(d) of the Vienna Convention, see [16], above.

67. The Full Court noted that:

(a) just as the text of Article 2(1)(d) is specific to wreck removal, unqualified in scope, and comprehensive of any and all claims for wreck removal, Article 18(1) "is no less

[21] Quoting *Star Centurion* at [31] per Keane NPJ.

comprehensive in scope": AJ [59];[22] and

(b) "there can be no partial reservation under Art 18(1)": AJ [60].

68. These considerations of text and context led the Full Court to accept the "coherency proposition" at AJ [60], as articulated by Keane NPJ (with the concurrence of all other members of the Court) in *Star Centurion* in the following terms:[23]

> *... it would reduce art. 2(1) to incoherence to read the Convention as providing that a Contracting State may disapply art. 2(1)(d) and thus exclude from limitation of liability a claim for recovery of the expense of removing the wreck of a ship that has sunk, while at the same time providing that limitation of liability remains available to limit the same claim for recovery of the same expense for no reason other than that the expense is a consequence of the sinking of the same ship.*

69. The Appellant argues the Full Court construed Articles 2(1)(a) and (d) as mutually exclusive and that in doing so the Full Court departed from *The MSC Flaminia*. That is not so for the reasons addressed under the next heading.

V.7 MSC Flaminia does not support the Appellant

70. The Appellant contends that *Star Centurion* and the Full Court reasons are "irreconcilable" with *The MSC Flaminia*: AS [48], [50]. This contention should be rejected. There is no such inconsistency.

71. *The MSC Flaminia* at [130] confirms the objective approach to construing Art 2 which is not "applied either narrowly or widely. ... It is what it is*"* as the Full Court pointed out (AJ [24]-[25]). This is against the construction contended for by the Appellant.

72. **The coherent operation of the scheme provided by Articles 2(1)(d) and 18(1) was not at issue and was not considered:** *The MSC Flaminia* concerned an entirely different interpretive issue under the 1976 Convention, being the extent to which the persons identified as entitled to limit liability in Article 1(1) of the Convention can limit *vis-à-vis* each other. In *The MSC Flaminia*, the issues before the Supreme Court were (at [89]):

(a) "Whether a charterer can limit its liability for claims by an owner in respect of losses

[22] Citing *Star Centurion* at [30]-[31] per Keane NPJ.
[23] Quoting *Star Centurion* at [34] per Keane NPJ.

originally suffered by the owner itself."

(b) "Whether any of [the owner's] claims fall within Article 2(1) of the 1976 Convention and, if so, whether the fact that they result from damage to the Vessel means that there is no right to limit."

73. In *The MSC Flaminia*, at [158], it was reasoned that even though not enacted, Article 2(1)(d) was relevant to the construction of the other paragraphs of Article 2(1), and that it indicated that certain claims could be limited for damage to the vessel itself. It was only *that feature* of Article 2(1)(d) which the UK Supreme Court stated was of significance as a matter of construction. As the Full Court recognised, their Lordships were not required to, and did not, consider the proper construction of Article 18(1): AJ [42]. Accordingly, *The MSC Flaminia* has no material bearing on the core issue in the appeal as variously framed by the parties in Part II of their respective submissions.

74. **The Appellant's alleged error is misconceived:** The Appellant says that the Full Court was in error because it construed Articles 2(1)(a) and (d) as "mutually exclusive", and "read down" the scope of Article 2(1)(a): AS [51], [54], [56]. This is said to render the Full Court's approach (and that adopted by Keane NPJ in *Star Centurion*) "irreconcilable" with *The MSC Flaminia* (AS [50]), on the basis that the UK Supreme Court construed the grounds of limitation in Article 2(1) as overlapping.

75. The Full Court did not reason that Articles 2(1)(a) and (d) are mutually exclusive, or that Article 2(1)(d) has some "exclusive meaning": cf AS [14]-[15], [54]. On the contrary, the Full Court expressly agreed with their Lordships' reasoning in *The MSC Flaminia* that Article 2(1) does not preclude the dual characterisation of claims, and plainly contemplated linguistic overlap between Articles 2(1)(a) and (d): AJ [30], [41]-[42], [49], [60]-[62], [103]. The "incoherence" which the Full Court sought to avoid is premised on overlap between Articles 2(1)(a) and (d): AJ [49], [60]-[62].

76. Nor is it correct to submit that the Full Court "read down" Article 2(1)(a). The Full Court focused on the breadth of Article 2(1)(d), as did Keane NPJ in *Star Centurion*, but that is because the clear intention of the Convention States to "exclude the application of" Article 2(1)(d) in Article 18(1) directs attention to the scope of what falls within sub-paragraph (d), not (a).

V.8 Nothing in the primary Judge's reasoning helps the Appellant

77. The primary judge's reasoning proceeded on a misunderstanding of the reasoning in *Star Centurion*. The primary judge concluded that a direct claim for wreck removal expenses by a harbour authority against the owners of the wrecked ship could not come within Article 2(1)(a) but it could come within Article 2(1)(d): PJ [142]. This, the primary judge said, had not been put to the Court of Final Appeal in *Star Centurion*. The primary judge concluded that that Court of Final Appeal's "*reasoning rested on the fundamental misconception that, unless what is within Article 2(1)(d) is carved out of Articles 2(1)(a) and (c), Article 2(1)(d) would have no work to do*": PJ [143].

78. In fact, the Court of Final Appeal's reasoning in *Star Centurion* did not depend on whether there were claims that were solely within Article 2(1)(d). For that Court, the critical reasoning was that the reading down of Article 18(1) to the point of being a partial reservation would reduce Article 2(1) to incoherence: [34].

79. The primary judge misread the *travaux* by reading a report put before Diplomatic Conference and confusing it with the debates of the State representatives: PJ [181]. The primary judge's reliance on that report led him to conclude that Article 2(1)(d) had a sphere of operation separate to and beyond Articles 2(1)(a) and (c). His Honour concluded, in effect, that Article 2(1)(d) was subject to Article 2(1)(a). The primary judge's other errors in reading the *travaux* and understanding the history were correctly pointed out by the Full Court.

Part VII: Time required for the presentation of the respondent's oral argument

80. TasPorts estimates that 3 hours will be required for oral argument.

Dated 20 November 2025

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ANNEXURE TO RESPONDENT'S SUBMISSIONS

No	Description	Version	Provision(s)	Reason for providing this version	Applicable date or dates (to what event(s), if any, does this version apply)
1	*Limitation of Liability for Maritime Claims Act 1989* (Cth)	Compilation No. 4 (8 June 2015)	s 3, s 6 Sch 1, 2, 3	Act in force at the time of the allision	28 January 2022, current
2	*Convention on Limitation of Liability for Maritime Claims*, opened for signature 19 November 1976, 1456 UNTS 221 (entered into force 1 December 1986)	As amended by both the as amended by the *Protocol of 1996*, opened for signature 2 May 1996, and further amended by *Resolution LEG.5(99)* of the Legal Committee of the International Maritime Organization, 19 April 2012.	Arts 1, 2, 3, 11, 15, 18	Convention in force at the time of the allision	28 January 2022, current