

# HIGH COURT OF AUSTRALIA

GAGELER CJ,  
GORDON, EDELMAN, GLEESON AND JAGOT JJ

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CSL AUSTRALIA PTY LTD

APPELLANT

AND

TASMANIAN PORTS CORPORATION PTY LTD  
& ORS

RESPONDENTS

*CSL Australia Pty Ltd v Tasmanian Ports Corporation Pty Ltd*  
[2026] HCA 15  
*Date of Hearing: 5 February 2026*  
*Date of Judgment: 13 May 2026*  
S137/2025

## ORDER

*Appeal dismissed with costs.*

On appeal from the Federal Court of Australia

### **Representation**

G J Nell SC with M R Scott KC and N J Wallwork for the appellant  
(instructed by HFW Australia)

J T Gleeson SC with M N C Harvey KC and C L W Street for the first  
respondent (instructed by MinterEllison)

Submitting appearance for the fourth respondent

No appearance for the second, third and fifth respondents

Notice: This copy of the Court's Reasons for Judgment is subject to formal revision prior to publication in the Commonwealth Law Reports.



## CATCHWORDS

### **CSL Australia Pty Ltd v Tasmanian Ports Corporation Pty Ltd**

Admiralty – International law – Treaty – Interpretation – Limitation of liability for maritime claims – Where Art 2(1) of Convention on Limitation of Liability for Maritime Claims (1976) (as amended) ("Convention") lists claims subject to limitation – Where Australia exercised power under Art 18(1) of Convention to exclude Art 2(1)(d) and (e) of Convention from application – Where Convention otherwise has force of law in Australia by s 6 of *Limitation of Liability for Maritime Claims Act 1989* (Cth) – Where first respondent's claim against appellant within scope of Art 2(1)(a) and (d) of Convention – Whether claim limitable under Art 2(1)(a) of Convention notwithstanding claim also within scope of disappplied Art 2(1)(d).

Words and phrases – "claims", "comity", "convention", "disapplication", "exclude the application of", "force of law", "generalia specialibus non derogant", "limitation of liability", "limiting ship", "loss and damage", "ordinary and common sense meaning", "principles of treaty interpretation", "raising, removal, destruction or the rendering harmless", "reservation", "right of reservation", "scope", "shipowner", "State Parties", "subject to limitation", "wreck removal".

*Limitation of Liability for Maritime Claims Act 1989* (Cth), s 6.

Convention on Limitation of Liability for Maritime Claims (1976), Arts 1(1), 2(1), 3, 15(1), 18(1).

Vienna Convention on the Law of Treaties (1969), Arts 2(1)(d), 21, 31(1)-(2).



## The appeal

1 A bulk cement carrier, the *MV Goliath*, crashed into two tugs and the wharf at which the tugs were moored in the Port of Devonport, Tasmania, in 2022. The tugs sank causing diesel fuel and other hydrocarbons to escape into the Mersey River. The first respondent, Tasmanian Ports Corporation Pty Ltd ("TasPorts"), the owner and operator of the tugs and the wharf, incurred loss and damage including by removal of the wrecked tugs from and remediation of the marine environment. TasPorts sued the owner and operator of the *Goliath*, the appellant, CSL Australia Pty Ltd ("CSL"), for damages.

2 One of TasPorts' claims, referred to in the Courts below as the "para 22(e) claims", was for about \$17,245,743 for "costs of and associated with the containment, removal and disposal of hydrocarbons, and the removal and disposal of the [t]ugs". CSL claimed that it was entitled to limit its liability including in respect of the para 22(e) claims in accordance with the provisions of the Convention on Limitation of Liability for Maritime Claims (1976)<sup>1</sup> ("the 1976 Convention") as referred to in s 6 of the *Limitation of Liability for Maritime Claims Act 1989* (Cth) ("the Limitation of Liability Act"). Section 6 provides that "[s]ubject to this Act, the provisions of the [1976 Convention], other than paragraphs 1(d) and (e) of Article 2, have the force of law in Australia". TasPorts contended that CSL could not limit its liability in respect of the para 22(e) claims because those claims were within the scope of Art 2(1)(d) of the 1976 Convention which, as reflected in s 6 of the Limitation of Liability Act, Australia had excluded from application in accordance with the right given to State Parties by Art 18(1) (now Art 18(1)(a)) of the 1976 Convention. CSL contended in response that it did not matter if the para 22(e) claims were within the scope of the disapplied Art 2(1)(d) of the 1976 Convention because those claims were also within Art 2(1)(a) of the 1976 Convention which meant that they were limitable.

3 The primary judge in the Federal Court of Australia (Stewart J) held that the para 22(e) claims, being claims within the scope of Art 2(1)(a) of the 1976 Convention, were limitable irrespective of the fact that those claims were

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1 As amended by the Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims, 1976, done at London on 2 May 1996, as amended by resolution LEG.5(99) adopted by the Legal Committee of the International Maritime Organization at London on 19 April 2012.

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also within the scope of the disapplied Art 2(1)(d) of the 1976 Convention.<sup>2</sup> The Full Court of the Federal Court of Australia (Burley, Sarah C Derrington and O'Sullivan JJ) allowed TasPorts' appeal against the primary judge's orders and held that the para 22(e) claims, being claims within the scope of the disapplied Art 2(1)(d) of the 1976 Convention, were not limitable irrespective of the fact that those claims were also within the scope of Art 2(1)(a) of the 1976 Convention.<sup>3</sup> The Full Court made a declaration reflecting this holding.

4 This appeal from the orders of the Full Court accordingly concerns the relationship between Art 2(1)(a) and (d) of the 1976 Convention in circumstances where a State, in this case Australia, in accordance with Art 18(1) of the 1976 Convention at that time, "reserve[d] the right to exclude the application of Article 2 paragraph 1 (d) and (e)".<sup>4</sup> To understand the dispute between the parties it is necessary to begin with the text of the 1976 Convention (as made and as amended). When that text is construed in accordance with the applicable principles of treaty interpretation as recently summarised by this Court in *Kingdom of Spain v Infrastructure Services Luxembourg Sàrl*<sup>5</sup> and consistently with its interpretation by both the Supreme Court of the United Kingdom in *MSC Mediterranean Shipping Co SA v Conti II Container Schiffahrts-GmbH & Co KG MS ("The Flamini")*<sup>6</sup> and the Hong Kong Court of Final Appeal in *Perusahaan Perseroan (Persero) PT Pertamina v Trevaskis Ltd ("The Star Centurion")*,<sup>7</sup> the conclusion for which CSL contended, that TasPorts' para 22(e) claims are limitable under the 1976 Convention, becomes untenable. Accordingly, the Full Court did not err in allowing TasPorts' appeal and making the declaration.

### The 1976 Convention

5 The preamble to the 1976 Convention records that the State Parties to the Convention, having recognised "the desirability of determining by agreement

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2 *CSL Australia Pty Ltd v Tasmanian Ports Corporation Pty Ltd (The Goliath)* [2024] FCA 824.

3 *Tasmanian Ports Corporation Pty Ltd v CSL Australia Pty Ltd (The Goliath)* (2025) 310 FCR 64.

4 Australia acceded to the 1976 Convention subject to the exclusion of the application of Art 2(1)(d) and (e) on 20 February 1991.

5 (2023) 275 CLR 292 at 316-317 [38]-[39].

6 [2025] 1 WLR 1835; [2025] 3 All ER 703.

7 (2023) 26 HKCFAR 297.

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certain uniform rules relating to the limitation of liability for maritime claims", have decided "to conclude a Convention for this purpose and have thereto agreed as follows".

6 Chapter I, "The Right of Limitation", contains five Articles. Article 1, "Persons entitled to limit liability", contains, amongst other provisions, paras 1 and 6 in these terms:

"1. Shipowners and salvors, as hereinafter defined, may limit their liability in accordance with the rules of this Convention for claims set out in Article 2.

...

6. An insurer of liability for claims subject to limitation in accordance with the rules of this Convention shall be entitled to the benefits of this Convention to the same extent as the assured himself."

7 Article 2, "Claims subject to limitation", contains, amongst other provisions, para 1 as follows:

"1. Subject to Articles 3 and 4 the following claims, whatever the basis of liability may be, shall be subject to limitation of liability:

- (a) claims in respect of loss of life or personal injury or loss of or damage to property (including damage to harbour works, basins and waterways and aids to navigation), occurring on board or in direct connexion with the operation of the ship or with salvage operations, and consequential loss resulting therefrom;
- (b) claims in respect of loss resulting from delay in the carriage by sea of cargo, passengers or their luggage;
- (c) claims in respect of other loss resulting from infringement of rights other than contractual rights, occurring in direct connexion with the operation of the ship or salvage operations;
- (d) claims in respect of 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;
- (e) claims in respect of the removal, destruction or the rendering harmless of the cargo of the ship;

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- (f) claims of a person other than the person liable in respect of measures taken in order to avert or minimize loss for which the person liable may limit his liability in accordance with this Convention, and further loss caused by such measures."

8 Article 3, "Claims excepted from limitation", provides that:

"The rules of this Convention shall not apply to:

- (a) claims for salvage, including, if applicable, any claim for special compensation under Article 14 of the International Convention on Salvage 1989, as amended, or contribution in general average;
- (b) claims for oil pollution damage within the meaning of the International Convention on Civil Liability for Oil Pollution Damage, dated 29 November 1969 or of any amendment or Protocol thereto which is in force;
- (c) claims subject to any international convention or national legislation governing or prohibiting limitation of liability for nuclear damage;
- (d) claims against the shipowner of a nuclear ship for nuclear damage;
- (e) claims by servants of the shipowner or salvor whose duties are connected with the ship or the salvage operations, including claims of their heirs, dependants or other persons entitled to make such claims, if under the law governing the contract of service between the shipowner or salvor and such servants the shipowner or salvor is not entitled to limit his liability in respect of such claims, or if he is by such law only permitted to limit his liability to an amount greater than that provided for in Article 6."

9 Article 4, "Conduct barring limitation", provides that a "person liable shall not be entitled to limit his liability if it is proved that the loss resulted from his personal act or omission, committed with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result".

10 Article 5 concerns counterclaims and provides for setoff of counterclaims "arising out of the same occurrence".

11 Chapter II sets out the limits of liability including those in Art 6. Article 6(3) provides in part that "a State Party may provide in its national law that claims in respect of damage to harbour works, basins and waterways and aids to navigation shall have such priority over other claims under paragraph 1 (b) as is

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provided by that law". Article 6(1)(b), as so referred to, concerns claims other than "for loss of life or personal injury" which are dealt with in Art 6(1)(a).

12 Chapter III concerns limitation funds.

13 Chapter IV concerns the "Scope of Application" of the 1976 Convention, with Art 15(1) providing in part that "[t]his Convention shall apply whenever any person referred to in Article 1 seeks to limit his liability before the Court of a State Party".

14 Chapter V contains the "Final Clauses" of the 1976 Convention including Art 18(1) which provides that:

"1. Any State may, at the time of signature, ratification, acceptance, approval or accession, or at any time thereafter, reserve the right:

(a) to exclude the application of Article 2, paragraphs 1(d) and (e);

(b) to exclude claims for damage within the meaning of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 [(the 1996 Hazardous and Noxious Substances Convention')] or of any amendment or protocol thereto.

No other reservations shall be admissible to the substantive provisions of this Convention."

15 It is relevant to the arguments of the parties in the appeal that, when the 1976 Convention first entered into force and was acceded to by Australia, Art 18(1) appeared in these terms:

"1. 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."

### **Competing approaches of the parties**

#### *CSL's approach*

16 CSL contended that, in accordance with Art 1(1) of the 1976 Convention, CSL, as a shipowner, may "limit [its] liability in accordance with the rules of this Convention for claims set out in Article 2". As Australia exercised the right under

Art 18(1) of the 1976 Convention to exclude the application of Art 2(1)(d) and (e), the 1976 Convention, as given the force of law in Australia by s 6 of the Limitation of Liability Act, is the 1976 Convention without Art 2(1)(d) and (e). Therefore, in Art 1(1) referring to shipowners being able to "limit their liability in accordance with the rules of this Convention for claims set out in Article 2", the applicable "rules of this Convention" are Art 2(1)(a), (b), (c) and (f). The question then is whether TasPorts' para 22(e) claims are within the scope of Art 2(1)(a), (b), (c) and (f). There being no dispute that, as the primary judge found,<sup>8</sup> TasPorts' para 22(e) claims are within the scope of Art 2(1)(a), CSL's liability "shall be subject to limitation of liability" as provided for in Art 2 of the 1976 Convention.

17 According to CSL, it does not matter that, as the primary judge found,<sup>9</sup> TasPorts' para 22(e) claims are also within the scope of Art 2(1)(d). Effect is given to a State Party exercising the right under Art 18(1) to disapply Art 2(1)(d) (as relevant to this case) in respect of all claims exclusively within Art 2(1)(d) but not claims within both Art 2(1)(d) and, for example, Art 2(1)(a). If construed otherwise, Art 18(1) would be giving a State Party the right to disapply, for example, Art 2(1)(a), contrary to Art 18(1) which provides that "[n]o other reservations shall be admissible to the substantive provisions of this Convention".

*TasPorts' approach*

18 TasPorts accepted that claims may fall within more than one sub-paragraph of Art 2(1) of the 1976 Convention. TasPorts also accepted that, as the primary judge found, its para 22(e) claims are within the scope of both Art 2(1)(a) and (d). TasPorts contended, however, that insofar as a claim is within both Art 2(1)(a) and (d), as in this case, the consequence of an exclusion of the application of Art 2(1)(d) by the exercise of the right under Art 18(1) is that the claim is also excluded from Art 2 altogether. According to TasPorts, this does not mean that Art 2(1)(a) is being "read down" or subjected to a "gloss" not apparent from the text of the Article. Nor is this conclusion inconsistent with the terms of Art 18(1) that "[n]o other reservations shall be admissible to the substantive provisions of this Convention". Rather, effect is thereby given to the applicable terms of Art 18(1) vesting in each State Party the right to "exclude the application of Article 2, paragraphs 1(d) and (e)", meaning Art 2(1)(d) and (e) in their entirety and not, as CSL would have it, in part only (by excluding a claim within Art 2(1)(d) and (e) provided that the claim is not also within any other sub-paragraph of

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8 *The Goliath* [2024] FCA 824 at [120].

9 *The Goliath* [2024] FCA 824 at [120].

Art 2(1)), there being no textual or other support for reading such a limitation into Art 18(1).

19 TasPorts submitted therefore that the "rules of this Convention for claims set out in Article 2" as referred to in Art 1(1) are as set out in Art 2(1)(a)-(f) as a whole (including Art 2(1)(d) and (e)). That fact is not altered by Australia having excluded Art 2(1)(d) and (e) from application under Art 18(1). Nor do the terms of s 6 of the Limitation of Liability Act, by which Art 2(1)(d) and (e) do not have the force of law in Australia, mean that Art 2(1)(d) and (e) are not part of Art 2. Accordingly, the effect of an exercise of the right under Art 18(1) is to be construed in the context of Arts 1 and 2(1)(a)-(f) as a whole (including Art 2(1)(d) and (e)). Once this is done it is apparent that Australia's exercise of the right under Art 18(1) has the effect of excluding the application of Art 2(1)(d) and (e) in their entirety and not merely Art 2(1)(d) and (e) to the extent that a claim within their scope is not also within the scope of another sub-paragraph of Art 2(1).

20 We consider TasPorts' approach to be correct and, contrary to the arguments for CSL, to be consistent with the reasoning in both *The Flaminia*<sup>10</sup> and *The Star Centurion*.<sup>11</sup>

### **The Flaminia**

#### *Reasoning in The Flaminia*

21 CSL and TasPorts both called in aid the reasoning of the Supreme Court of the United Kingdom in *The Flaminia*<sup>12</sup> to support their positions. Because both parties placed heavy reliance on the reasoning in *The Flaminia* to support their competing cases it is necessary to identify the reasoning in that case in detail.

22 In *The Flaminia*, Lord Hamblen (with whom Lords Hodge, Briggs, Leggatt and Burrows agreed) quoted with approval the observations of Longmore LJ in *CMA CGM SA v Classica Shipping Co Ltd ("The CMA Djakarta")*<sup>13</sup> that no object or purpose of the 1976 Convention could be ascertained with certainty beyond, relevantly: "(a) that the general purpose of owners, charterers, managers and operators being able to limit their liability was to encourage the provision of international trade by way of sea-carriage"; and "(b) that the main object and

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10 [2025] 1 WLR 1835; [2025] 3 All ER 703.

11 (2023) 26 HKCFAR 297.

12 [2025] 1 WLR 1835; [2025] 3 All ER 703.

13 [2004] 1 Lloyd's Rep 460.

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purpose of the 1976 Convention was to provide for limits which were higher than those previously available in return for making it more difficult to 'break' the limit".<sup>14</sup> Lord Hamblen further observed that "it is no doubt true that originally limitation was concerned with the protection of shipowners and investment by shipowners" which the 1976 Convention had extended beyond previous treaties to include not only "the charterer, manager and operator of the ship" but also "salvors", reflecting the integral role of each to maritime trade.<sup>15</sup>

23 Lord Hamblen quoted with approval the statement of Tettenborn and Rose in *Admiralty Claims* that "[a]sserted historical justifications for limitation may provide guidance on the desirability and/or availability of limitation but not necessarily on matters of detail, which depend on the proper construction of currently applicable legislation, which has evolved to take account of a variety of factors".<sup>16</sup> His Lordship also referred to two cases which expressed the view that limitation provisions in such maritime treaties as in the 1976 Convention should be construed to apply to "all cases which can reasonably be brought within their language"<sup>17</sup> and two cases which expressed a broader interpretative principle to the effect that such limitation provisions should be "broadly and liberally construed in order to achieve [their] purpose" and that the 1976 Convention's "principal purpose", to which effect must be given, is to "expand upon and to protect the rights of limitation", the latter being a statement of the primary judge in the Court below in the present case.<sup>18</sup>

24 Lord Hamblen put in response that while "[t]here can be no objection to applying the provisions of the Convention 'to all cases which can reasonably be brought within their language' ... that does not involve any presumptive rule of interpretation". Further, there is "no reason why the provisions of the

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14 [2025] 1 WLR 1835 at 1855-1856 [100]; [2025] 3 All ER 703 at 722-723, quoting *The CMA Djakarta* [2004] 1 Lloyd's Rep 460 at 464 [11].

15 [2025] 1 WLR 1835 at 1856 [104]-[105]; [2025] 3 All ER 703 at 723.

16 [2025] 1 WLR 1835 at 1857 [106]; [2025] 3 All ER 703 at 724, quoting Tettenborn and Rose, *Admiralty Claims*, 2nd ed (2024) at 222-223 [7-014].

17 [2025] 1 WLR 1835 at 1861-1862 [129]; [2025] 3 All ER 703 at 728, quoting *The Owners of the Motor Vessel Tojo Maru v N V Bureau Wijsmuller (The Tojo Maru)* [1972] AC 242 at 269, and referring to *Aegean Sea Traders Corporation v Repsol Petroleo SA (The "Aegean Sea")* [1998] 2 Lloyd's Rep 39 at 46.

18 [2025] 1 WLR 1835 at 1862 [129]; [2025] 3 All ER 703 at 728-729, quoting *Just v Chambers* (1941) 312 US 383 at 385 and *The Goliath* [2024] FCA 824 at [145].

1976 Convention in general or [Art 2] in particular should be applied either narrowly or widely" as the Convention, being a result of negotiation between State Parties, "is what it is" and should be applied according to the "ordinary meaning of the words used" as required by Art 31(1) of the Vienna Convention on the Law of Treaties (1969) ("the Vienna Convention").<sup>19</sup>

25 In dealing with an argument about Art 2(1)(e) of the 1976 Convention ("claims in respect of the removal, destruction or the rendering harmless of the cargo of the ship"), Lord Hamblen rejected the proposition that Art 2(1)(e) applies only to "claims by a party not involved in the operation of the ship, such as a harbour authority".<sup>20</sup> In respect of the relationship between Art 2(1)(a) and (e), Lord Hamblen recorded the uncontroversial proposition applicable to Art 2(1)(a) that "[a]s a matter of English law it is well established (and common ground on the appeal) that there is no right to limit ... liability in respect of claims by a shipowner for loss of or damage to the vessel", meaning loss of or damage to the limiting ship itself,<sup>21</sup> which follows from the subject of Art 2(1)(a) being "property" construed to mean "property" other than the limiting ship itself, and said that the fact that a claim is one for damage to the limiting ship so that Art 2(1)(a) does not apply does not mean that Art 2(1)(e) does not apply.<sup>22</sup>

26 To understand the balance of Lord Hamblen's reasoning in support of this conclusion, and why it is of no assistance to CSL's case, it is necessary to note that Art 2(1)(d) does not have the force of law in the United Kingdom by reason of the United Kingdom having exercised the right of exclusion of application only of Art 2(1)(d) and not Art 2(1)(e) under Art 18(1). As such, Art 2(1)(e) applies in the United Kingdom.

27 Lord Hamblen's reasoning included that: (i) "the language of [Art 2(1)(e)], like many of the categories of claim which are limitable, focuses on the nature of the claim being made";<sup>23</sup> (ii) accordingly, if a claim is for the "removal, destruction or the rendering harmless of the cargo" (as referred to in Art 2(1)(e)) then "there is

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19 [2025] 1 WLR 1835 at 1862 [130]-[131]; [2025] 3 All ER 703 at 729.

20 [2025] 1 WLR 1835 at 1866 [153]; [2025] 3 All ER 703 at 733.

21 [2025] 1 WLR 1835 at 1838 [3]; [2025] 3 All ER 703 at 706, referring to *The CMA Djakarta* [2004] 1 Lloyd's Rep 460 which was approved (in obiter) by the Supreme Court of the United Kingdom in *Gard Marine and Energy Ltd v China National Chartering Co Ltd* [2017] 1 WLR 1793; [2018] 1 All ER 832.

22 [2025] 1 WLR 1835 at 1866 [154]; [2025] 3 All ER 703 at 733.

23 [2025] 1 WLR 1835 at 1866 [155]; [2025] 3 All ER 703 at 733.

no reason to introduce an additional requirement that it must not also be a claim in respect of damage to the [limiting] ship"<sup>24</sup> (as is the case for Art 2(1)(a)); (iii) Art 2(1) "does not preclude the dual characterisation of claims" so that the "fact that a claim may be the consequence of damage to the [limiting] ship [as excluded from the scope of Art 2(1)(a)] should not therefore preclude its characterisation as a claim falling within a sub-paragraph other than [Art 2(1)(a)]";<sup>25</sup> (iv) "considering the issue more broadly, if a claim which is consequential on damage to the [limiting] ship is never limitable then that would exclude many claims which would otherwise fall within the terms of [Art 2(1)]";<sup>26</sup> (v) "[Art 2(1)] specifically contemplates there being limitable claims which result from damage to the [limiting] ship. This is made clear by [Art 2(1)(d)] which makes wreck removal claims subject to limitation. If the wreck is the limiting ship then that claim will be a direct consequence of the damage to the [limiting] ship. The fact that [Art 2(1)(d)] does not have the force of law in this jurisdiction does not detract from the significance of this to the drafting of [Art 2(1)] as a whole";<sup>27</sup> (vi) "to conclude otherwise would effectively elevate the fact that loss or damage to the [limiting] ship is not within [Art 2(1)(a)] into a general but unstated exception to the whole of [Art 2(1)]. But it is not even an exception in the context of [Art 2(1)(a)]. It is simply a type of claim which does not fall within the terms of [Art 2(1)(a)]";<sup>28</sup> (vii) "the 1976 Convention expressly addresses what claims are to be excepted from limitation in [Art 3] which sets out five categories of excepted claims. If a further general exception had been intended then it would be expected to be specified in this article. [The contrary] case involves the creation of a sixth, unstated category of excepted claims";<sup>29</sup> and (viii) "an important purpose of the 1976 Convention was to provide a limit of liability which was effectively unbreakable. For there to be exceptions to the right to limit not set out in the Convention itself undermines that purpose."<sup>30</sup>

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24 [2025] 1 WLR 1835 at 1867 [155]; [2025] 3 All ER 703 at 733, quoting Males LJ in *MSC Mediterranean Shipping Co SA v Stolt Tank Containers BV (The "MSC Flaminia")* [No 2] [2024] 1 Lloyd's Rep 535 at 551 [87].

25 [2025] 1 WLR 1835 at 1867 [156]; [2025] 3 All ER 703 at 733.

26 [2025] 1 WLR 1835 at 1867 [157]; [2025] 3 All ER 703 at 733.

27 [2025] 1 WLR 1835 at 1867 [158]; [2025] 3 All ER 703 at 734.

28 [2025] 1 WLR 1835 at 1867 [159]; [2025] 3 All ER 703 at 734.

29 [2025] 1 WLR 1835 at 1867 [160]; [2025] 3 All ER 703 at 734.

30 [2025] 1 WLR 1835 at 1867 [161]; [2025] 3 All ER 703 at 734.

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28 Lord Hamblen thereby concluded that:<sup>31</sup>

"the Court of Appeal was correct to conclude that the claim for the costs of discharging sound and damaged cargo, and of decontaminating the cargo, was limitable under [Art 2(1)(e)]. The fact that the claim may be consequential upon damage to the Vessel does not preclude reliance on the right to limit in respect of claims which fall within the terms of any of the sub-paragraphs of [Art 2] other than [Art 2(1)(a)].

This conclusion also means that the fact that the claim can be characterised as a single claim for damage to the Vessel does not preclude parts of that claim being subject to limitation because they fall within one or more of the [Art 2] paragraphs other than [Art 2(1)(a)]."

#### *Consideration of The Flaminia*

29 While both parties stressed those parts of the reasoning in *The Flaminia* on which they particularly wished to rely, the importance of the reasoning in that case is that it properly distinguishes between the orthodoxy that limitation provisions in maritime treaties such as the 1976 Convention should be construed to apply to "all cases which can reasonably be brought within their language"<sup>32</sup> and the unorthodoxy that effect must be given to the text of the 1976 Convention so as to give effect to its purported purpose to "expand upon and protect the rights of limitation".<sup>33</sup> In other words, interpretative orthodoxy insists that the extent to which the 1976 Convention expanded upon and protected rights of limitation is embodied in its text, in respect of which, first, the text "is what it is"<sup>34</sup> and, second, the text as it is must be given its ordinary meaning in context.

30 The reasoning in *The Flaminia* is otherwise important because it confirms that a claim may fall within one or more sub-paragraphs of Art 2(1). *The Flaminia* also decided that to the extent that a claim may be outside of the scope of Art 2(1)(a) because the claim is consequential on damage to the limiting ship, that does not mean that the claim for the costs of discharging sound and damaged cargo,

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31 [2025] 1 WLR 1835 at 1868 [164]-[165]; [2025] 3 All ER 703 at 734.

32 [2025] 1 WLR 1835 at 1861-1862 [129]; [2025] 3 All ER 703 at 728, quoting *The Tojo Maru* [1972] AC 242 at 269 and referring to *The Aegean Sea* [1998] 2 Lloyd's Rep 39 at 46.

33 [2025] 1 WLR 1835 at 1862 [129]; [2025] 3 All ER 703 at 729, quoting *The Goliath* [2024] FCA 824 at [145].

34 [2025] 1 WLR 1835 at 1862 [130]; [2025] 3 All ER 703 at 729.

and of decontaminating the cargo, is not within the scope of Art 2(1)(e) as applicable in the United Kingdom which refers to "claims in respect of the removal, destruction or the rendering harmless of the cargo of the ship", including the limiting ship.

31 Lord Hamblen's observation that "[Art 2(1)(d)] ... makes wreck removal claims subject to limitation. If the wreck is the limiting ship then that claim will be a direct consequence of the damage to the ship"<sup>35</sup> exposes that if the claim is for wreck removal of the limiting ship it will be within the scope of Art 2(1)(d). This is because Art 2(1)(d) refers simply to "a ship which is sunk", the meaning of which must include the limiting ship, despite that claim being outside the scope of Art 2(1)(a) (on the basis that Art 2(1)(a) is concerned with loss of or damage to "property" other than the limiting ship itself). Within the context of the issues in dispute in *The Flaminia*, the point is that if (as is the case) a claim can be within the scope of both Art 2(1)(a) and (d), a claim must also be able to be within the scope of Art 2(1)(a) and (e). Plainly, Lord Hamblen was not addressing any question about a claim within Art 2(1)(a) and (d) in circumstances where the relevant State Party had exercised the right to exclude the application of Art 2(1)(d) as provided for in Art 18(1)(a).

32 Lord Hamblen's observations about the function of Art 3 within the 1976 Convention must also be understood in the context of the issues to be decided in *The Flaminia*. His Lordship was correct to say that if a claim not being within Art 2(1)(a) (because the claim related to loss of or damage to the limiting ship) meant that the claim was also thereby (that is, by reason of Art 2(1)(a) itself) excluded from every other sub-paragraph of Art 2(1), it would create an unstated "general exception" to the right of limitation which, if it had been intended, would have been included in Art 3. The subject of this observation is only the effect of the exclusion of damage to a limiting ship in Art 2(1)(a). Lord Hamblen was not addressing the effect of an exclusion of the application of Art 2(1)(d) and (e) under Art 18(1) because in *The Flaminia* the claim was within Art 2(1)(e) which had not been excluded from application in the United Kingdom. Equally important to the reasoning in *The Flaminia* was that the claim was not within Art 2(1)(a) because it concerned damage to the cargo consequential on damage to the limiting ship, the issue being the effect of the claim not being within Art 2(1)(a).

33 Properly understood, therefore, *The Flaminia* is the inverse of this appeal. In *The Flaminia* the claim was for damage consequential on damage to the limiting ship and therefore was not a claim within Art 2(1)(a). The argument was to the effect that because the claim was outside of Art 2(1)(a) as a claim for damage consequential on damage to the limiting ship, it must also be outside of Art 2(1)(e)

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35 [2025] 1 WLR 1835 at 1867 [158]; [2025] 3 All ER 703 at 734.

in respect of which the United Kingdom had not exercised the right of reservation under Art 18(1). In this appeal, in contrast, the para 22(e) claims are within both Art 2(1)(a) and (d) in circumstances where Australia has exercised the right under Art 18(1) to exclude the application of both Art 2(1)(d) and (e) of the 1976 Convention. *The Flaminia* therefore does not answer the question to which this appeal gives rise. Nonetheless, the focus it demands on the ordinary meaning of the text of the 1976 Convention is salutary.

## The Star Centurion

### *Reasoning in The Star Centurion*

34 In *The Star Centurion*,<sup>36</sup> a decision of the Hong Kong Court of Final Appeal, the limiting ship ("the ANTEA") collided with another ship ("the Star Centurion") causing the Star Centurion to sink. The owner of the Star Centurion and other persons claiming or entitled to claim damages arising from the collision (the respondents) incurred expenses in removing the wreck of the Star Centurion from the water. The owner of the ANTEA (the appellant), which accepted sole responsibility for the collision, commenced proceedings in Hong Kong claiming a right to limit its liability under the 1976 Convention. Hong Kong had acceded to the 1976 Convention subject to exercising its right under Art 18(1) to exclude the application of Art 2(1)(d) ("claims in respect of the raising, removal, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned ..."). Art 2(1)(d) was therefore disapplied in the Hong Kong legislation giving legal effect to the 1976 Convention. The respondents contended that "[Art 2(1)(d)] having been disapplied, their claims in respect of wreck removal were not subject to limitation".<sup>37</sup> The appellant contended that it "was entitled to limit its liability to the respondents in respect of wreck removal expenses pursuant to [Art 2(1)(a)] of the Convention" as "the respondents' claim for wreck removal is a claim in respect of 'consequential loss' resulting from loss of property, namely [the Star Centurion]".<sup>38</sup>

35 The Hong Kong Court of Final Appeal held that, in the circumstances of disapplication of Art 2(1)(d) of the 1976 Convention by Hong Kong's exercise of the right under Art 18(1), the appellant was not entitled to limit its liability under

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36 (2023) 26 HKCFAR 297.

37 (2023) 26 HKCFAR 297 at 306 [8].

38 (2023) 26 HKCFAR 297 at 305-306 [5]-[9].

Art 2(1)(a). It will be apparent that these facts are relevantly equivalent to those of the present case before this Court.

36 The reasons for judgment of Keane NPJ (with whom Cheung CJ, Ribeiro, Fok and Lam PJJ agreed<sup>39</sup>) disclose that the Hong Kong law giving legal effect to the 1976 Convention disappplied Art 2(1)(d) in terms different from s 6 of the Limitation of Liability Act. The Hong Kong law was to the effect that Art 2(1)(d) "shall not apply" unless an order had been made that it did apply.<sup>40</sup> As no such order had been made, Art 2(1)(d) did "not apply under the law of Hong Kong".<sup>41</sup>

37 The parties before the Hong Kong Court of Final Appeal relied on competing approaches to the principle of interpretation referred to as *generalia specialibus non derogant* (meaning the general does not derogate from the specific): the respondents arguing that Art 2(1)(a), said to be the general provision, could not derogate from the disapplication of Art 2(1)(d), said to be the specific provision; and the appellant arguing that the principle only applies if a specific provision is an exception to a general provision and that Art 2(1)(d) is not an exception to Art 2(1)(a). Keane NPJ deprecated this approach on the basis that the applicable interpretative principle is that, "as a matter of 'simple common sense and ordinary usage', an instrument should be given effect as a coherent whole".<sup>42</sup> There can be no doubt as to the orthodoxy of this proposition.

38 Applying that broader interpretative principle, Keane NPJ reasoned on several bases that Art 2(1)(a) did not apply to enable the appellant to limit liability for wreck removal expenses given that Hong Kong had disappplied Art 2(1)(d) under Art 18(1)(a). The first basis for rejecting the appellant's case was that Art 2(1)(d) "is comprehensive of any claim in respect of wreck removal and all such claims".<sup>43</sup> In referring to Art 2(1)(d) as "comprehensive" of all wreck removal claims Keane NPJ should not be understood as meaning that Art 2(1)(d) is an exclusive code for such claims, which would be contrary to the subsequent reasoning in *The Flaminia* that Art 2(1) "does not preclude the dual

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39 (2023) 26 HKCFAR 297 at 304-305 [1]-[4].

40 (2023) 26 HKCFAR 297 at 310 [19].

41 (2023) 26 HKCFAR 297 at 310 [20].

42 (2023) 26 HKCFAR 297 at 312-313 [28]-[29], quoting *Effort Shipping Co Ltd v Linden Management SA* [1998] AC 605 at 627.

43 (2023) 26 HKCFAR 297 at 313 [30].

characterisation of claims",<sup>44</sup> and contrary to the common position of the parties in this case. That common position is well-founded. While it is obvious that Art 2(1)(d) deals specifically with wreck removal claims and Art 2(1)(a) deals more generally with damage to property claims (other than for the limiting ship), that does not mean that Art 2(1)(d) is an exclusive code for wreck removal claims excluding any potential application of Art 2(1)(a). Nor does describing a provision as "comprehensive" of claims mean that the provision operates to the exclusion of any other potentially applicable provision. The point Keane NPJ was making in *The Star Centurion* is different. The point is that, because Art 2(1)(d) deals "comprehensively" with wreck removal claims, if Art 2(1)(d) is excluded from application under Art 18(1), that exclusion must be equally comprehensive and not an exclusion only of such claims within Art 2(1)(d) that are not also within Art 2(1)(a) (or any other sub-paragraph of Art 2(1)).

39 It is apparent therefore that the conclusion reached in *The Star Centurion* did not depend on a proposition that Art 2(1)(d) is an exclusive code for wreck removal claims.<sup>45</sup> So much appears clear from Keane NPJ's subsequent observation that "a claim in respect of wreck removal" (within Art 2(1)(d)) may also be "describe[d] ... as a claim for loss consequential upon damage to property" (that is, a claim within Art 2(1)(a)).<sup>46</sup> The indispensable aspect of Keane NPJ's reasoning follows. As Keane NPJ put it, "Article 18(1) assumes that a claim of the kind set out in [Art 2(1)(d)] is identifiable as such so that it is able to be disapplied by the legislature of a Contracting State. Article 18(1) contemplates that any claim in respect of wreck removal expenses may be excluded from the Convention's scheme for the limitation of liability of shipowners."<sup>47</sup> Keane NPJ reasoned further that:<sup>48</sup>

"It cannot be supposed that [Art 18(1)] contemplates that the legislature of a Contracting State would act in vain in disapplying [Art 2(1)(d)]. The evident purpose of [Art 18(1)] can be achieved only if reservation by a Contracting State is effective in disapplying [Art 2(1)(d)] even though the expenses of wreck removal might also fall within the language in which other kinds of claims are described in [Art 2(1)]."

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44 [2025] 1 WLR 1835 at 1867 [156]; [2025] 3 All ER 703 at 733.

45 See also *The Goliath* (2025) 310 FCR 64 at 82 [59].

46 (2023) 26 HKCFAR 297 at 313 [31].

47 (2023) 26 HKCFAR 297 at 313 [31].

48 (2023) 26 HKCFAR 297 at 314 [31].

40 In other words, the reasoning of the Hong Kong Court of Final Appeal was not that Art 2(1)(d) is to be construed as an exclusive code for wreck removal claims. Rather, the Hong Kong Court of Final Appeal recognised that Art 18(1) is as much a part of the 1976 Convention as Art 2(1) and that for Art 18(1) to mean what it unequivocally says, an exercise of the right to disapply Art 2(1)(d) must have the effect of taking all claims within the disappplied Art 2(1)(d) outside of the scope of the "rules of this Convention for claims set out in Article 2" for the reserving State Party as provided for in Art 1(1). This is reflected in Keane NPJ's subsequent conclusion that:<sup>49</sup>

"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".

41 The Hong Kong Court of Final Appeal also rejected the appellant's argument that Art 2(1)(d) was confined to claims for wreck removal expenses by harbour authorities. In so concluding, the Hong Kong Court of Final Appeal rightly: (i) rejected the possibility of construing Art 2(1)(d) as if it referred to "claims by harbour authorities in respect of wreck removal";<sup>50</sup> (ii) confirmed the "evident indifference of [Art 2(1)] to the identity of the claimant as well as to the legal basis on which any claimant may assert a liability against a shipowner";<sup>51</sup> (iii) characterised the reasoning to the contrary in the Norwegian case of *Twitt Navigation Ltd v The State represented by the Defence Department* ("*Twitt Navigation*")<sup>52</sup> as unpersuasive because it resulted in the very incoherence which the reasoning in *The Star Centurion* avoided;<sup>53</sup> and (iv) rejected the minority reasoning of Macrossan J in the Full Court of the Supreme Court of Queensland in *Barameda Enterprises Pty Ltd v O'Connor*<sup>54</sup> in respect of the International Convention relating to the Limitation of the Liability of Owners of Sea-going

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49 (2023) 26 HKCFAR 297 at 314-315 [34].

50 (2023) 26 HKCFAR 297 at 315 [36].

51 (2023) 26 HKCFAR 297 at 315 [37].

52 Hordaland District Court, 21-058354TVI-THOD/TBER, 16 November 2021.

53 (2023) 26 HKCFAR 297 at 316 [39].

54 [1988] 1 Qd R 359.

Ships (1957) ("the 1957 Convention") as "out of place in interpreting the terms of [Art 2(1)] of the [1976] Convention having regard both to the chapeau of [Art 2(1)] and the terms of [Art 2(2)]".<sup>55</sup>

*Consideration of The Star Centurion*

42 Keane NPJ's reasoning is relevant to the resolution of the present appeal for several reasons.

43 First, it is a corollary of the principle that as an international instrument a treaty "should have the same meaning for all of the States which are party to it"<sup>56</sup> that an interpretation of a treaty by the highest court of one State Party should be accorded the greatest respect in the highest court of another State Party. As the Full Court rightly said in the judgment under appeal, comity is "of especial importance" in maritime law because "it is not the law of any one nation, but is developed separately from, and independently of, national laws".<sup>57</sup> As the Full Court also rightly said, its conclusion rejecting CSL's approach "has the benefit of avoiding the incoherence adverted to in *The Star Centurion* ... , with the added important benefit of bringing the law of Australia into line with that decision and two unanimous decisions of the Supreme Court of the Netherlands".<sup>58</sup>

44 Second, the conclusion of the Final Court of Appeal of Hong Kong did not depend on Art 2(1)(d) being an exclusive code for wreck removal claims and did not "rest[] on the fundamental misconception that unless what is within Art 2(1)(d) is carved out of [Art] 2(1)(a) and (c), Art 2(1)(d) would have no work to do".<sup>59</sup> The indispensable conceptual foundation of the conclusion in *The Star Centurion* is that the effect of the exercise of the right in Art 18(1) is to exclude all claims within Art 2(1)(d) (and (e)). That is because the very terms of Art 18(1) involve a right to

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55 (2023) 26 HKCFAR 297 at 320 [48]-[50].

56 *Kingdom of Spain v Infrastructure Services Luxembourg Sàrl* (2023) 275 CLR 292 at 316 [38].

57 *The Goliath* (2025) 310 FCR 64 at 93 [114].

58 *The Goliath* (2025) 310 FCR 64 at 93 [112], referring to *Scheepvaartbedrijf MS Amasus BV v ELG Haniel Trading GmbH*, ECLI:NL:HR:2018:140, Supreme Court of the Netherlands, 2 February 2018 and *Eitzen Chemical (Singapore) Pte Ltd v VOF G Idzenga Scheepvaartbedrijf* ECLI:NL:HR:2018:142, Supreme Court of the Netherlands, 2 February 2018.

59 *The Goliath* [2024] FCA 824 at [143].

exclude from application Art 2(1)(d) (and (e)) as a whole and not merely in part, whether or not those claims also fall within Art 2(1)(a).

45 Third, the facts of *The Star Centurion* disclose the obvious point that an exercise of the right under Art 18(1) of the 1976 Convention must be the same for each State Party exercising the right, irrespective of the terms of the domestic law which give effect to the 1976 Convention on the basis of the exercise of the right under Art 18(1). It is Art 18(1) which provides the relevant right. Whatever the terms of the domestic law, the relevant right reserved under Art 18(1) (irrespective of when the reservation was made) is "(a) to exclude the application of Article 2, paragraphs 1(d) and (e)". No matter what words domestic law uses, the effect of such domestic laws for each State Party exercising the right of reservation must be in accordance with the terms of Art 18(1) itself. The relevance of this, as explained further below, is that it is not to the point that s 6 of the Limitation of Liability Act does not give Art 2(1)(d) and (e) "the force of law" in Australia. In exercising the right under Art 18(1), Australia has "exclude[d] the application of" Art 2(1)(d) and (e). Australia has not re-written Art 2(1) so that Art 2(1)(d) and (e) simply do not exist. So much is clear from the text of Art 18(1) which concerns the exclusion of the "application of" Art 2(1)(d) and (e), meaning the application of those subparagraphs to "claims" within their respective scopes.

### **Travaux préparatoires for the 1976 Convention as made**

46 The *travaux préparatoires* for the 1976 Convention, properly understood, manifestly support TasPorts' case.

47 The *Official Records of the International Conference on the Limitation of Liability for Maritime Claims, 1976* expose that the principal focus of the State Parties in the negotiation of the 1976 Convention was the limitation amounts in proposed Art 6. The *Summary Record of the First Meeting* records the Chairman saying that:<sup>60</sup>

"the draft Convention was global in character in two respects: in the first place, it provided for a global limitation of liability, and secondly it concerned all States either because they had a shipping industry or because they were possible claimants. That being so, there were necessarily a number of divergent interests, and differing views were therefore to be expected. The object of all, however, should be to reach a consensus of

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60 UN Doc LEG/CONF.5/C.1/SR.1 (1 November 1976), in *Official Records of the International Conference on the Limitation of Liability for Maritime Claims, 1976* (1983) at 209.

opinion and a common position. The resulting Convention must gain wider acceptance than that of 1957".

48 The Chairman was referring to the perceived need for compromise between State Parties to ensure that more State Parties would accede to the proposed Convention than had acceded to the 1957 Convention, which contained limitation of liability provisions.

49 The *travaux préparatoires* disclose that, early in the course of negotiations, various State Parties raised questions concerning whether draft Art 2(1)(d) and (e) for claims in respect of harbour works and removal of wrecks and cargo should be: (i) included or not included in whole or part in Art 2(1);<sup>61</sup> (ii) moved from draft Art 2(1)(d) and (e) into Art 3 so as to be excluded from limitation;<sup>62</sup> or (iii) subject to an additional Article reserving to State Parties the right by reservation to exclude the application of draft Art 2(1)(d) and (e).<sup>63</sup>

50 It is apparent from the *travaux préparatoires* that: (i) the position of some State Parties regarding the inclusion of claims for harbour works and wreck removal in draft Art 2(1)(d) would be related to the amounts of limitation the subject of draft Art 6; (ii) some State Parties opposed in principle the exclusion of or, by reservation, the potential for exclusion of claims within draft Art 2(1)(d) and (e); and (iii) other State Parties demanded the exclusion of or, by reservation,

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61 eg, *Consideration of Draft International Convention on Limitation of Liability for Maritime Claims*, UN Doc LEG/CONF.5/4 (27 September 1976) and *Consideration of Draft International Convention on Limitation of Liability for Maritime Claims*, UN Doc LEG/CONF.5/4/Add.3 (27 October 1976), in *Official Records of the International Conference on the Limitation of Liability for Maritime Claims, 1976* (1983) at 68, 108.

62 *Consideration of Draft International Convention on Limitation of Liability for Maritime Claims*, UN Doc LEG/CONF.5/C.1/WP.11 (2 November 1976) and *Consideration of Draft International Convention on Limitation of Liability for Maritime Claims*, UN Doc LEG/CONF.5/C.1/WP.12 (2 November 1976), in *Official Records of the International Conference on the Limitation of Liability for Maritime Claims, 1976* (1983) at 147, 148.

63 *Consideration of Draft International Convention on Limitation of Liability for Maritime Claims*, UN Doc LEG/CONF.5/C.1/WP.16 (2 November 1976), in *Official Records of the International Conference on the Limitation of Liability for Maritime Claims, 1976* (1983) at 150-151.

the potential for exclusion of claims within draft Art 2(1)(d) and (e).<sup>64</sup> Subsequently, the Chairman summarised the status of the negotiations as reflecting that while "[m]ost of the representatives appeared" to prefer that claims involving damage to harbour works and wreck removal should be included in the draft Convention, some representatives "considered that [those claims] should be excluded or made the subject of a reservation".<sup>65</sup>

51 It is apparent from the *travaux préparatoires* that intensive negotiations ensued about numerous issues including the status within the draft Convention of claims involving damage to harbour works and wreck removal. Lord Diplock, representing the United Kingdom, observed that in the discussions intended to reach an acceptable compromise "it had been proposed that claims in respect of damage to harbour works should be included in the Convention, because such damage was readily insurable, but that claims regarding wreck removal should be excluded, because damage of that type was almost uninsurable".<sup>66</sup> The Committee of the Whole, however, thereafter voted on a "compromise". The majority vote included Annex I "Proposals on Limitation Figures" and para 3 of the footnote to Annex I that "[c]laims in respect of harbour works etc, and wreck removal should be included among claims subject to limitations. States should be entitled to make a reservation in respect of wreck removal. Whether a reservation should be allowed in respect of damage to harbour works etc is an open question".<sup>67</sup>

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64 eg, *Summary Record of the Fourth Meeting*, UN Doc LEG/CONF.5/C.1/SR.4 (3 November 1976), in *Official Records of the International Conference on the Limitation of Liability for Maritime Claims, 1976* (1983) at 231-236.

65 *Summary Record of the Eleventh Meeting*, UN Doc LEG/CONF.5/C.1/SR.11 (8 November 1976), in *Official Records of the International Conference on the Limitation of Liability for Maritime Claims, 1976* (1983) at 289. See also *Summary Record of the Nineteenth Meeting*, UN Doc LEG/CONF.5/C.1/SR.19 (12 November 1976), in *Official Records of the International Conference on the Limitation of Liability for Maritime Claims, 1976* (1983) at 367.

66 *Summary Record of the Twenty-First Meeting*, UN Doc LEG/CONF.5/C.1/SR.21 (15 November 1976), in *Official Records of the International Conference on the Limitation of Liability for Maritime Claims, 1976* (1983) at 380.

67 *Summary Record of the Twenty-Second Meeting*, UN Doc LEG/CONF.5/C.1/SR.22 (16 November 1976), referring to *Consideration of Draft International Convention on Limitation of Liability for Maritime Claims*, UN Doc LEG/CONF.5/C.1/WP.82 (15 November 1976), in *Official Records of the International Conference on the Limitation of Liability for Maritime Claims, 1976* (1983) at 384, 203-204.

52 The day after that vote the *Summary Record of the Twenty-Fifth Meeting of the Committee of the Whole* included the following:<sup>68</sup>

"In response to a request for clarification from Mr Tanikawa (Japan), the CHAIRMAN confirmed that she understood the assumption concerning wreck removal in paragraph 3 of the footnote to Annex I ... as covering both sub-paragraphs (d) and (e) of Article 2(1). Subject to the Committee's agreement, she would so inform the Chairman of the Drafting Committee.

*It was so decided.*"

53 The *Report of the Drafting Committee* considered by the Twenty-Sixth Meeting of the Committee of the Whole included the text of draft Arts 3 ("Claims excepted from limitation"), 6 ("The general limits"), and 18 ("Reservations"), amongst others. Draft Art 18(1) provided that "[a]ny 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."<sup>69</sup>

54 By a vote at the Fifth Plenary Meeting on 19 November 1976 Art 18 as a whole was adopted.<sup>70</sup>

55 As TasPorts submitted, the *travaux préparatoires* disclose an underlying common assumption by State Parties of relevant functional equivalence for State Parties between: (i) entitling State Parties to disapply Art 2(1)(d) and (e) of what was to become the 1976 Convention by exercise of a right given under Art 18(1); and (ii) excluding claims within Art 2(1)(d) and (e) by relocating those provisions to Art 3 ("[t]he rules of this Convention shall not apply to ..."). That is, for an individual State Party who chose to exercise the right of reservation under Art 18(1), the effect would be the same as if Art 2(1)(d) and (e) had been relocated

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68 UN Doc LEG/CONF.5/C.1/SR.25 (17 November 1976), in *Official Records of the International Conference on the Limitation of Liability for Maritime Claims, 1976* (1983) at 405.

69 *Summary Record of the Twenty-Sixth Meeting*, UN Doc LEG/CONF.5/C.1/SR.26 (18 November 1976), referring to UN Doc LEG/CONF.5/C.3/1/Add.1 (17 November 1976), in *Official Records of the International Conference on the Limitation of Liability for Maritime Claims, 1976* (1983) at 405, 458-463.

70 *Summary Record of the Fifth Plenary Meeting*, UN Doc LEG/CONF.5/SR.5 (19 November 1976), in *Official Records of the International Conference on the Limitation of Liability for Maritime Claims, 1976* (1983) at 489.

to Art 3. There is no hint in the *travaux préparatoires* that, for a State Party exercising the right given under Art 18(1), the effect for that State Party would be any different from those provisions having been relocated to Art 3. The only difference recognised in the *travaux préparatoires* between the options of including Art 18(1) and relocating Art 2(1)(d) and (e) to Art 3 was that the former option involved a choice by State Parties to exclude claims within Art 2(1)(d) and (e) from limitation whereas the latter option would apply to all State Parties. No doubt, had relevant functional equivalence for State Parties not been the common assumption underlying the adoption of Art 18(1), the *travaux préparatoires* could be expected to have disclosed material consideration of the appropriateness of any such functional difference. The lack of any such consideration confirms that this common assumption of functional equivalence underlies the adoption of Art 18(1).

### **Travaux préparatoires for replacement of Article 18(1)**

56 That Art 18(1) was removed and replaced by the Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims, 1976, done at London on 2 May 1996 ("the 1996 Protocol"), where the replacement Art 18(1)(a) provides a right "to exclude the application of Article 2, paragraphs 1(d) and (e)" and Art 18(1)(b) provides a right "to exclude claims for damage within the meaning of the [1996 Hazardous and Noxious Substances Convention]" does not support CSL's case. To the contrary, Art 2(1)(d) and (e), as able to be excluded by exercise of the right under Art 18(1)(a), concern "claims" in respect of the nominated subjects. As the subject of Art 2 is "claims", Art 18(1)(a) did not need to refer to "claims" being excluded, the same effect being achieved by exercise of the right to exclude the application of Art 2(1)(d) and (e). In contrast, it would make no sense for Art 18(1)(b) to purport to give State Parties a "right" to disapply another international instrument as opposed to a right to "exclude claims for damage" within the meaning of that other international instrument from the limitation of liability in Art 2.

57 Far from the introduction of Art 18(1)(b) supporting CSL's approach, that Art 18(1)(b) must be understood as enabling a State Party to exclude from limitation any "claim" for damage within the 1996 Hazardous and Noxious Substances Convention whether or not any such claim might be within the scope of Art 2(1) indicates that Art 18(1)(a) must have the equivalent operation. To give Art 18(1)(a) and (b) different operations, as CSL's case would require, is inconsistent with the fact that both sub-paragraphs concern the giving to each State Party the same capacity to "reserve the right" in each sub-paragraph "to exclude" the application of the specified provisions. The effect of the right to so exclude the specified matter must be the same in each case to reflect the ordinary and common sense meaning of the text.

58 Finally, the *travaux préparatoires* in respect of the 1996 Protocol concerning the replacement of Art 18(1) confirm the continuation of the common assumption of functional equivalence for State Parties as between an exclusion under Art 3 and the exercise of the right of reservation under Art 18(1).<sup>71</sup>

### CSL's other arguments

#### *Twitt Navigation*

59 CSL submitted that this Court should follow the reasoning in *Twitt Navigation*.<sup>72</sup> We decline to do so. *Twitt Navigation* is a decision of a single judge in the Hordaland District Court, Bergen. The decision pre-dates both *The Star Centurion* and *The Flaminia* and therefore does not confront the reasoning in either of those cases.

#### *Article 21 of the Vienna Convention*

60 Article 21 of the Vienna Convention does not assist CSL's case. Article 21(1) provides that a reservation to a treaty "(a) modifies for the reserving State in its relations with that other party the provisions of the treaty to which the reservation relates to the extent of the reservation" and "(b) modifies those provisions to the same extent for that other party in its relations with the reserving State". Article 21(2), on which CSL relied, provides that a "reservation does not modify the provisions of the treaty for the other parties to the treaty inter se". CSL's real point was that Art 2(1)(a) of the 1976 Convention must be construed to have a consistent meaning as between all parties to the 1976 Convention unaffected by the exercise of the right of reservation under Art 18(1).

61 CSL's point wrongly assumes that TasPorts' approach alters the meaning of Art 2(1)(a). To the contrary, TasPorts' approach accepts that Art 2(1)(a) always means what it says but accepts also that if a State Party has exercised the right under Art 18(1) to exclude the application of Art 2(1)(d) then, to give effect to that right as exercised, a claim within Art 2(1)(d) is excluded from Art 2 altogether. This is not because Art 2(1)(a) has a shifting meaning but because effect must be given to the interaction between Arts 1(1), 2(1) and 18(1) where the right of

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71 Comité Maritime International and Berlingieri, *The Travaux Préparatoires of the LLMC Convention, 1976 and of the Protocol of 1996* (2000) at 504-505.

72 See (2023) 26 HKCFAR 297 at 316 [39], referring to *Twitt Navigation*, Hordaland District Court, 21-058354TVI-THOD/TBER, 16 November 2021.

reservation in Art 18(1) has been exercised. This interaction requires further explanation.

62 Article 1(1), in providing that shipowners and salvors "may limit their liability in accordance with the rules of this Convention for claims set out in Article 2", must be construed as contemplating that the "the rules of this Convention for claims" may include the disapplication of Art 2(1)(d) (and (e)) under Art 18(1) (the current right of reservation, in terms, being the right to "exclude the application of Article 2, paragraphs 1(d) and (e)"). The effect of such disapplication by exercise of the Art 18(1) right is not that Art 2(1)(d) and (e) are to be taken not to exist as part of the 1976 Convention. The effect is only one of exclusion of the application of Art 2(1)(d) and (e). It necessarily follows, as a matter of the ordinary and common sense meaning of Arts 18(1) and 1(1), that if the right in Art 18(1) is exercised, Art 1(1) means that shipowners and salvors may limit their liability in accordance with the rules of the 1976 Convention for claims set out in Art 2 on the basis that Art 2(1)(d) and (e) have been disappplied in their entirety (and not on the basis that those sub-paragraphs of Art 2(1) do not exist or that Art 18(1) only partially disappplies those sub-paragraphs to the extent that a claim is not also within the scope of another sub-paragraph of Art 2(1)). So understood, claims within Art 2(1)(d) (and (e)) which are also within the scope of, in this case, Art 2(1)(a) are not claims "in accordance with the rules of this Convention for claims set out in Article 2" as applicable in, relevantly, Australia.

*Article 2(1)(d) broader than Art 2(1)(a) for wreck removal claims*

63 That the scope of Art 2(1)(d) for "claims in respect of the raising, removal, destruction or the rendering harmless of a ship which is sunk, wrecked, stranded or abandoned" is broader than Art 2(1)(a) in its application to claims for wreck removal, so that Art 2(1)(d) and (a) are not co-extensive within that sphere of operation, may be accepted but is immaterial. The relevant question in this appeal is confined to a case in which the claim is within the scope of both Art 2(1)(a) and (d). No cogent textual, contextual or purposive considerations support CSL's case that the right of reservation in Art 18(1) applies only to those claims within Art 2(1)(d) which are not also within Art 2(1)(a). As explained, all textual, contextual and purposive considerations support giving Arts 1(1), 2(1) and 18(1) their ordinary and common sense meaning as TasPorts' proposes.

*Perverse outcome?*

64 CSL contended that it would provide a "perverse" incentive if in a case where a ship is struck by a limiting ship and sinks, the limiting ship cannot limit its liability, but in a case where a ship is struck by a limiting ship and does not sink, the limiting ship can limit its liability. This would be so, CSL submitted, because the owner of the struck ship would then be in a better position to allow its ship to

sink than to prevent it from sinking. One answer to this supposed perverse incentive is that the State Parties, in negotiating the 1976 Convention, provided for the inclusion of Art 18(1). Effect must be given to the terms of the exercise of the right in accordance with the text of that Article. Another answer is that the real perversity would be for State Parties to have included Art 18(1) in the 1976 Convention only for its operation to be limited by an unspoken gloss that the right it provides is for State Parties to exclude the application of Art 2(1)(d) and (e) only to the extent that a claim within those sub-paragraphs is not also within another sub-paragraph of Art 2(1). Yet another answer is that the example has embedded within it a questionable assumption that the loss arising from the damage caused to the struck ship will be greater if the ship does not sink than if the ship sinks.

*Academic commentary*

65 CSL also relied on certain academic commentary in support of its case. The observations on which CSL relied are that Art 2(1)(d) and (e) "were designed to deal with direct claims by the person who actually suffered loss or expense as a result of the wreck, and the reservation power in Art 18 was designed to ensure that States had a cause of action against the wrecked ship that was not subject to limitation"<sup>73</sup> and that "the purpose of Article 2(1)(d) and (e) was to prevent public entities footing the bill for the removal of wrecks".<sup>74</sup> As the Full Court said, however, "[n]o canon of interpretation" would permit the words "claims by harbour authorities" to be read into Art 2(1)(d).<sup>75</sup>

**Conclusion**

66 The Full Court did not err in allowing TasPorts' appeal against the orders of the primary judge and making the declaration. The appeal must be dismissed with costs.

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73 Gaskell and Forrest, *The Law of Wreck* (2019) at 105.

74 Martínez Gutiérrez, *Limitation of Liability in International Maritime Conventions* (2011) at 101.

75 *The Goliath* (2025) 310 FCR 64 at 87 [85].

67 GORDON AND EDELMAN JJ. This appeal concerns "an established feature of international maritime law" – the principle of limited liability for maritime claims that relevantly entitles a shipowner to limit their liability for claims arising out of a maritime incident to a particular sum.<sup>76</sup> In Australia, that principle is governed by the Convention on Limitation of Liability for Maritime Claims (1976)<sup>77</sup> ("the 1976 Convention"), to the extent that the 1976 Convention is given the force of law in Australia by the *Limitation of Liability for Maritime Claims Act 1989* (Cth) ("the LLMC Act"). In the 1976 Convention, the right to limit liability for maritime claims is given in respect of certain types of claims in Art 2, including claims in respect of damage to property occurring on board or in direct connexion with the operation of the ship, and consequential loss resulting therefrom (Art 2(1)(a)), and claims in respect of 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 (Art 2(1)(d)). By Australia's exercise of its right of reservation under Art 18(1)(a) of the 1976 Convention to exclude the application of Art 2(1)(d),<sup>78</sup> Art 2(1)(d) does not have the force of law in Australia.

68 The first respondent ("TasPorts") brought an action against the appellant ("CSL") in the Federal Court of Australia claiming damages of approximately \$22 million for loss and damage suffered as a result of the allision between the *MV Goliath* (owned and operated by CSL) and two tugs and a wharf. The tugs sank and emitted diesel fuel and other hydrocarbons into the water. The wharf was also damaged. The wharf and both tugs were owned and operated by TasPorts. TasPorts' claim relevantly included (the "para 22(e) claims"): a claim for about \$17,245,743 for the "costs of and associated with the containment, removal and disposal of hydrocarbons, and the removal and disposal of the [t]ugs".

69 CSL commenced a separate proceeding seeking, among other things, a declaration that it was entitled to limit its liability for all claims arising out of the allision within the meaning of Art 2 of the 1976 Convention, as given the force of law by s 6 of the LLMC Act. TasPorts contended that its para 22(e) claims were

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76 *MSC Mediterranean Shipping Co SA v Conti II Container Schiffahrts-GmbH & Co KG MS ("The Flaminia")* [2025] 1 WLR 1835 at 1838 [1]; [2025] 3 All ER 703 at 706.

77 As amended by both the Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims, 1976 and Resolution LEG.5(99) (2012) adopted by the Legal Committee of the International Maritime Organization.

78 LLMC Act, s 6.

not limitable because they are claims within Art 2(1)(d), which does not have the force of law in Australia, and sought a declaration to that effect.

70 The primary judge declined to make the declaration sought by TasPorts, holding that: (a) TasPorts' para 22(e) claims were claims within the text of Art 2(1)(a) and were on that basis prima facie subject to limitation; (b) there is no reason to limit the meaning of Art 2(1)(a) by reference to Art 2(1)(d), which, whilst overlapping with Art 2(1)(a), has its own non-overlapping sphere of operation; and (c) the fact that TasPorts' para 22(e) claims also came within the natural meaning of Art 2(1)(d) (which is not part of Australian law) did not have the effect of excluding those claims from Art 2(1)(a) or from being subject to limitation by Australia's exercise of its right of reservation under Art 18(1)(a) of the 1976 Convention not to implement Art 2(1)(d).

71 The Full Court of the Federal Court of Australia allowed TasPorts' appeal and made the declaration sought by TasPorts. The Full Court held that Art 2(1)(d) exclusively encompassed all claims for wreck removal expense and that a Contracting State's exercise of the Art 18(1)(a) reservation operated in respect of all claims described in Art 2(1)(d) so that such claims cannot be the subject of limitation in Australia, including under Art 2(1)(d) (despite the claims also falling within the express terms of Art 2(1)(a)).

72 CSL's appeal must be dismissed with costs. We agree with Gageler CJ, Gleeson and Jagot JJ that CSL's contention, that TasPorts' para 22(e) claims are limitable, is untenable. Our reasons for reaching that conclusion are set out below.

### **1976 Convention**

73 The starting point of the analysis is the 1976 Convention.<sup>79</sup> The preamble to the 1976 Convention recognises "the desirability of determining by agreement certain uniform rules relating to the limitation of liability for maritime claims". Article 1 provides, among other things, that shipowners may limit their liability in accordance with the rules of the 1976 Convention for claims set out in Art 2.

74 Article 2 lists the claims which may be subject to limitation, provided that the basis for the particular claim is not exempt under Art 3, and provided that the claim has not arisen due to conduct barring limitation within the meaning of Art 4. There is no suggestion that Art 4 is engaged. Article 6 contains the general

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79 See *Evans v Air Canada* (2025) 99 ALJR 941 at 944-945 [6]-[8]; 423 ALR 155 at 157-158. See also Vienna Convention on the Law of Treaties (1969), Arts 31(1)-(2), 32.

limits of liability. The relevant terms of each of those Articles are set out in the reasons of Gageler CJ, Gleeson and Jagot JJ, and we gratefully adopt them.

75 The scope of application of the 1976 Convention is dealt with in Ch IV. Relevantly, Art 15(1) provides:

"This Convention shall apply whenever any person referred to in Article 1 seeks to limit his liability before the Court of a State Party or seeks to procure the release of a ship or other property or the discharge of any security given within the jurisdiction of any such State. Nevertheless, *each State Party may exclude wholly or partially from the application of this Convention any person referred to in Article 1 who at the time when the rules of this Convention are invoked before the Courts of that State does not have his habitual residence in a State Party or does not have his principal place of business in a State Party or any ship in relation to which the right of limitation is invoked or whose release is sought and which does not at the time specified above fly the flag of a State Party.*" (emphasis added)

76 In Ch V, Art 18(1), headed "Reservations", relevantly provides that:

"*Any State may, at the time of signature, ratification, acceptance, approval or accession, or at any time thereafter, reserve the right:*

- (a) *to exclude the application of Article 2, paragraphs 1(d) and (e);*
- (b) *to exclude claims for damage within the meaning of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 or of any amendment or protocol thereto.*

No other reservations shall be admissible to the substantive provisions of this Convention." (emphasis added)

That is what Australia did by s 6 of the LLMC Act, which 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."

77 The issue in this appeal is the interpretation of Art 18(1)(a) of the 1976 Convention, in granting to a State the power to reserve the right to exclude the application of Art 2(1)(d) and (e). The question is whether the result of a State exercising the reservation power in Art 18(1)(a) is: (i) to allow the State to sever Art 2(1)(d) and (e), giving the force of law to the remainder of Art 2(1) as if sub-paras (d) and (e) were not present, such that a claim that falls within the scope of sub-paras (d) and (e) is not limitable under those sub-paragraphs, but the claim otherwise remains limitable if it falls within sub-paras (a)-(c) or (f);

or (ii) to allow the State to exclude from application "on an all or nothing basis" all claims which fall within Art 2(1)(d) or (e), such that any claim that falls within those sub-paragraphs is not limitable at all under the 1976 Convention. By the former answer, Art 18(1)(a) treats each sub-paragraph of Art 2(1) as though it were a separate rule so that severing Art 2(1)(d) and (e) does not affect the application of any other rule. By the latter answer, Art 18(1)(a) treats Art 2(1) as though it were a single rule so that the exclusion of the application of matters within Art 2(1)(d) and (e) removes that application from Art 2(1) generally.

78 The answer is the latter: the result of a State exercising the reservation power under Art 18(1)(a) of the 1976 Convention to exclude the application of Art 2(1)(d) and (e) is to allow a State to exclude "on an all or nothing basis" all claims which fall within Art 2(1)(d) and (e), such that any claim that falls within those sub-paragraphs is not limitable at all under the 1976 Convention.

79 For States that have exercised the reservation power under Art 18(1)(a) and excluded the application of Art 2(1)(d) and (e), no different interpretation of Art 2(1) is produced as compared with those that have not; Art 18(1)(a) identifies the relevant *application* of Art 2(1)(d) and (e) that may be excluded by a State exercising the reservation power. Under the Vienna Convention on the Law of Treaties (1969) ("the Vienna Convention"), "reservation" means a unilateral statement made by a State whereby it purports to exclude or modify the legal effect of certain provisions of a treaty in their application to that State.<sup>80</sup> Indeed, Art 21(2) of the Vienna Convention provides that a State's reservation "does not modify the provisions of the treaty for the other parties to the treaty inter se". In other words, the proper interpretation of Art 2(1) must be the same for each State Party to the 1976 Convention, regardless of whether that State has exercised its right of reservation under Art 18(1)(a).

**Article 18(1)(a) excludes claims within Art 2(1)(d) and (e) from limitation under Art 2(1) generally**

80 In sum, where a State exercises the power in Art 18(1)(a) and excludes the application of Art 2(1)(d) and (e), that State relevantly excludes from limitation under Art 2(1) the application of all claims within the terms of Art 2(1)(d) and (e) under the 1976 Convention irrespective of whether those claims might otherwise be limitable under other sub-paragraphs of Art 2(1). That conclusion is compelled by the text, context and history of Art 18 and aligns with the interpretation adopted in other State Parties.

81 Importantly, the fundamental issue of interpretation concerns Art 18. Submissions about the application of the maxim of *generalia specialibus non*

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<sup>80</sup> Vienna Convention, Art 2(1)(d).

*derogant*, an ordinary language convention that treats general provisions as giving way to more specific provisions,<sup>81</sup> to Art 2(1) miss the point. The issue is not one of identifying which of Art 2(1)(a) or Art 2(1)(d) is a general or a specific provision. The issue is the interaction of Art 18 and Art 2(1).

82 The text of Art 18(1)(a) relevantly provides that a State may reserve the right "to exclude the application of Article 2, paragraphs 1(d) and (e)". In other words, the text provides that the circumstances of paras (1)(d) and (1)(e) can be disapplied from Art 2. Article 18(1)(a) thus provides a right of reservation that is specific, unqualified and comprehensive. It "assumes that a claim of the kind set out in [Art 2(1)(d) or (e)] is identifiable as such so that it is able to be disapplied by the legislature of a Contracting State".<sup>82</sup>

83 CSL's construction would put an impermissible gloss on the power of reservation, such that, if exercised, only claims within the scope of Art 2(1)(d) or (e) that are not within the scope of other sub-paragraphs of Art 2(1) could be excluded. The 1976 Convention should not be interpreted with such a gloss on the text, inconsistent with the ordinary meaning of its words.<sup>83</sup> The ordinary meaning of the text of Art 18(1), as set out above, precludes any partial reservations. This may be contrasted with the text of Art 15(1), which permits a State Party to exclude certain persons or ships "wholly or partially" from the application of the 1976 Convention. To limit the scope of Australia's reservation under Art 18(1) to claims that are not within the scope of other sub-paragraphs of Art 2(1) would effect a partial reservation, contrary to its text. It would also produce uncertainty for a State contemplating reservation, for those involved in the maritime trade, whether as investors or direct participants, and for courts.

84 The construction adopted is supported by the context in Art 18(1)(b). Article 18(1)(b), which permits States to reserve the right to exclude "claims for damage within the meaning of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996", permits those claims to be excluded for all purposes. So much was accepted by CSL. There is no good reason to assume that Art 18(1)(a) is to operate in some radically different fashion.

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81 See, eg, *Smith v The Queen* (1994) 181 CLR 338 at 348.

82 *Perusahaan Perseroan (Persero) PT Pertamina v Trevaskis Ltd* ("*The Star Centurion*") (2023) 26 HKCFAR 297 at 313 [31].

83 *The Flaminia* [2025] 1 WLR 1835 at 1853-1854 [90]-[92], 1866 [153]; [2025] 3 All ER 703 at 721, 733.

85 Next, the travaux préparatoires, which can be used to confirm a meaning or interpret a provision with an ambiguous meaning,<sup>84</sup> also confirm that the reservation power in Art 18(1), when exercised, was to have the same effect as Art 3, which excludes certain claims from limitation under the 1976 Convention entirely. In relation to Art 2(1)(d), which is the concern of this appeal, it may be observed that its text was settled early on in the drafting of the 1976 Convention. Between 1972 and 1973, the Comité Maritime International (International Maritime Committee or "CMI") prepared draft documents to revise the International Convention relating to the Limitation of the Liability of Owners of Sea-Going Ships (1957), the predecessor to the 1976 Convention. One such document was a proposed new Convention, submitted by CMI to its International Conference in Hamburg in 1974.<sup>85</sup> That draft contained Art 2(1)(d) in almost identical terms to its present form.<sup>86</sup>

86 The ensuing debate was concerned with whether the claims in Art 2(1)(d) were to be excluded under Art 3, or subject to a power of reservation (as was ultimately adopted). For example, during early negotiations, some delegations noted that the existence of a limitation in respect of wreck removal might be conducive to the neglect of wreck removal by shipowners.<sup>87</sup> At the time, it was considered preferable to retain the existing text, and defer the question of a reservation for claims arising out of wreck removal.<sup>88</sup> Having regard to the delegations' concerns, two options were considered: claims within the scope of

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84 *Kingdom of Spain v Infrastructure Services Luxembourg Sàrl* (2023) 275 CLR 292 at 316 [39]; *Evans* (2025) 99 ALJR 941 at 945 [8]; 423 ALR 155 at 158. See also Vienna Convention, Art 32.

85 Comité Maritime International, "Introductory Report to the Intergovernmental Maritime Consultative Organization (IMCO) on the Revision of the International Convention relating to the Limitation of the Liability of Owners of Sea-Going Ships and Protocol of Signature (Brussels, October 10th, 1957)", in *Documentation III* (1974) 380 at 386-388.

86 Comité Maritime International, "Introductory Report to the Intergovernmental Maritime Consultative Organization (IMCO) on the Revision of the International Convention relating to the Limitation of the Liability of Owners of Sea-Going Ships and Protocol of Signature (Brussels, October 10th, 1957)", in *Documentation III* (1974) 380 at 400.

87 Inter-Governmental Maritime Consultative Organization, *Report of the Legal Committee on the Work of Its Twenty-Fifth Session* (1975) at 5 [27].

88 Inter-Governmental Maritime Consultative Organization, *Report of the Legal Committee on the Work of Its Twenty-Fifth Session* (1975) at 6 [29].

Art 2(1)(d) could be excluded for all States (by excluding Art 2(1)(d) and setting out that category of claims in Art 3) *or* excluded for States that made a reservation under Art 18(1)(a).<sup>89</sup> There is no indication that the delegations intended for exclusion of the claims under Art 3 or reservation under Art 18 to bring about different results. To the contrary, delegations expressed that if claims for wreck removal could not be excluded, Contracting States should have, as an alternative, the right of reservation in relation to such claims.<sup>90</sup> The latter approach was ultimately adopted.<sup>91</sup>

87 The travaux préparatoires of the Protocol of 1996 to amend the Convention on Limitation of Liability for Maritime Claims, 1976 also reflected a view on the part of Contracting States that the exclusion of claims under Art 3 and the exercise of a reservation under Art 18 would bring about the same result.<sup>92</sup> Those discussions were concerned with how the 1976 Convention might be amended to deal with claims under the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (1996): in that regard, there was some suggestion by France that reservation might be preferable in view of countries which might accede at a later date to the 1976 Convention.<sup>93</sup>

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89 See, eg, International Maritime Organization, *Official Records of the International Conference on the Limitation of Liability for Maritime Claims, 1976* (1983) at 148, 150-151, 232-234, 289, 367-368. Other delegations considered that wreck removal claims should be subject to limitation, or alternatively given priority, consistently with the position for damage to harbour works, basins and waterways and aids to navigation under Art 6(3) of the 1976 Convention: at 231-232, 240.

90 See comments made by the delegates for India and Singapore in International Maritime Organization, *Official Records of the International Conference on the Limitation of Liability for Maritime Claims, 1976* (1983) at 232, 233.

91 A "compromise solution" – based on the assumption that claims in respect of wreck removal should be included among claims subject to limitations, but States should be entitled to make a reservation in respect of such claims – was approved: International Maritime Organization, *Official Records of the International Conference on the Limitation of Liability for Maritime Claims, 1976* (1983) at 203-204, 383-384.

92 Comité Maritime International and Berlingieri, *The Travaux Préparatoires of the LLMC Convention, 1976 and of the Protocol of 1996* (2000) at 504-505.

93 Comité Maritime International and Berlingieri, *The Travaux Préparatoires of the LLMC Convention, 1976 and of the Protocol of 1996* (2000) at 504.

88 This construction also aligns with the interpretation adopted in the apex courts of other Contracting States that have considered the scheme within which Art 18 and Art 2(1)(d) of the 1976 Convention operate.<sup>94</sup> The uniform position amongst Contracting States is that wreck removal claims are not limitable under the 1976 Convention where a State has exercised the reservation power and excluded claims within Art 2(1)(d), even if the same claims are capable of coming within Art 2(1)(a).

89 The decisions of the apex courts of other Contracting States are addressed in the order in which they were decided. The Supreme Court of the Netherlands in *Scheepvaartbedrijf MS Amasus BV v ELG Haniel Trading GmbH* ("*The Wisdom*") reasoned that a State's reservation under Art 18(1) created "a different regime" (or "special regime") that takes precedence as a "lex specialis", taking the claims subject to reservation out of the category of limitable claims.<sup>95</sup> The Court accepted there was scope for overlap between the operation of Art 2(1)(a) and (d) but held that the reservation in Art 18(1) precluded limitation under Art 2(1)(a).<sup>96</sup> The Court affirmed the decision of the court below that "[i]f ... 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".<sup>97</sup>

90 In *Perusahaan Perseroan (Persero) PT Pertamina v Trevaskis Ltd* ("*The Star Centurion*"), the Hong Kong Court of Final Appeal found that, Hong Kong having exercised its power of reservation under Art 18(1) in relation to Art 2(1)(d), the relevant claims were not limitable under Art 2(1)(a).<sup>98</sup> Keane NPJ correctly observed that Art 2(1)(a) would not apply coherently if a State could disapply Art 2(1)(d) "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" claim could fall within another sub-paragraph of Art 2(1) in respect of which there had been no reservation.<sup>99</sup>

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94 *Povey v Qantas Airways Ltd* (2005) 223 CLR 189 at 202 [25].

95 ECLI:NL:HR:2018:140, Supreme Court of the Netherlands, 2 February 2018 at [3.6.9].

96 *The Wisdom*, ECLI:NL:HR:2018:140, Supreme Court of the Netherlands, 2 February 2018 at [3.6.8]-[3.6.9].

97 *The Wisdom*, ECLI:NL:HR:2018:140, Supreme Court of the Netherlands, 2 February 2018 at [3.5]; see also [3.6.9].

98 (2023) 26 HKCFAR 297 at 322-323 [60].

99 *The Star Centurion* (2023) 26 HKCFAR 297 at 314-315 [34].

Keane NPJ considered that the "evident purpose of [Art 18(1)] can be achieved only if reservation by a Contracting State is effective in disapplying [Art 2(1)(d)] even though the expenses of wreck removal might also fall within the language in which other kinds of claims are described in [Art 2(1)]".<sup>100</sup>

91 In *MSC Mediterranean Shipping Co SA v Conti II Container Schiffahrts-GmbH & Co KG MS ("The Flaminia")*, the Supreme Court of the United Kingdom was dealing with a different issue.<sup>101</sup> The Court did not need to consider the effect of a reservation because the case did not involve a State's reservation under Art 18(1). In *The Flaminia*, the issue was whether a claim that could not be limited under Art 2(1)(a) because it involved damage to the "limiting ship"<sup>102</sup> could nonetheless be limited under Art 2(1)(e). Or, put in different terms, the question was whether the fact that the claim was not within the scope of Art 2(1)(a) meant it was necessarily excluded from the scope of Art 2(1)(e) and therefore not limitable. Accepting that Art 2(1) permitted the dual characterisation of claims,<sup>103</sup> the Court gave the terms of both Arts 2(1)(a) and 2(1)(e) their full meaning according to the text.<sup>104</sup> The Court did not "carve out" claims from one sub-paragraph by reference to another. As a result, a claim was limitable under Art 2(1)(e) despite not being limitable under Art 2(1)(a).<sup>105</sup>

92 The proper construction of the 1976 Convention, as set out in these reasons, is consistent with the reasoning in *The Flaminia*: it does not require "carving out" claims within Art 2(1)(d) from the scope of Art 2(1)(a). Consistently with *The Flaminia*, Art 2(1) permits the dual characterisation of claims. Where a Contracting State has not exercised the right of reservation under Art 18(1)(a), claims for wreck removal may be capable of being limited under Art 2(1)(d) *or* Art 2(1)(a), if they satisfy the requirements of each

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100 *The Star Centurion* (2023) 26 HKCFAR 297 at 314 [31].

101 [2025] 1 WLR 1835; [2025] 3 All ER 703.

102 Being the ship by reference to whose tonnage the limitation is calculated: see, eg, *The Flaminia* [2025] 1 WLR 1835 at 1852 [79]; [2025] 3 All ER 703 at 719. As a matter of English law, damage to the limiting ship is not limitable under Art 2(1)(a): *The Flaminia* [2025] 1 WLR 1835 at 1846-1852 [58]-[79]; [2025] 3 All ER 703 at 714-719.

103 *The Flaminia* [2025] 1 WLR 1835 at 1867 [156]; [2025] 3 All ER 703 at 733.

104 See, eg, *The Flaminia* [2025] 1 WLR 1835 at 1862 [130], 1866-1867 [153]-[155]; [2025] 3 All ER 703 at 729, 733.

105 *The Flaminia* [2025] 1 WLR 1835 at 1866-1868 [154]-[164]; [2025] 3 All ER 703 at 733-734.

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sub-paragraph. However, if a Contracting State *has* exercised the right of reservation and excluded the application of Art 2(1)(d), claims within Art 2(1)(d) are excluded from Art 2(1) entirely, regardless of whether they might otherwise be limitable under other sub-paragraphs of Art 2(1).