

**LIMITATION OF LIABILITY FOR WRECK REMOVAL CLAIMS IN AUSTRALIA – TASMANIAN
PORTS CORPORATION PTY LTD V CSL AUSTRALIA PTY LTD (THE GOLIATH) [2025]
FCAFC 53**

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1. Introduction

*‘In maritime law, the concept of comity is of especial importance.
That is because it is not the law of any one nation, but is developed separately from, and independently of,
national laws’.*¹

The concept of shipowners limiting liability for maritime claims is a rule of public policy which has its origin in history and its justification in convenience.² The underlying policy of limitation is to protect the shipowner engaged in the maritime carrying trade from financial ruin where its vessel causes damage.³

Whether a shipowner could limit liability for wreck removal claims was at the core of the dispute in *The Goliath*.⁴ The Full Federal Court (‘**Full Court**’) considered the proper construction of Arts 2(1) and 2(1)(d) of the *Convention on Limitation of Liability for Maritime Claims 1976* as amended by the *Protocol of 1996* to amend the *Convention on Limitation of Liability for Maritime Claims 1996*, and further amended by *Resolution LEG.5(99)* (2012) of the Legal Committee of the International Maritime Organisation (‘**1976 Convention**’).⁵

Article 2(1) allows a shipowner to limit liability for certain heads of loss. Article 2(1)(d) includes claims in respect of a ship which is wrecked. Relevantly, Australia has exercised its right of reservation under Art 18(1) to *exclude* the application of Art 2(1)(d) (and Art 2(1)(e)).

The appeal concerned whether the respondent, CSL Australia Pty Ltd (‘**CSL**’), can limit the appellant’s, Tasmanian Ports Corporation (‘**TasPorts**’), wreck removal claims.

The Primary Judge, Stewart J held that the proper characterisation of TasPorts’ wreck removal claims fell under limitation in Art 2(1)(a) of the 1976 Convention. That was because the claim was in respect of loss of or damage to property (being the tugs, wharf and hydrocarbons), that occurred in direct connection with the operation of the ship that seeks limitation (the *Goliath*) and includes consequential loss resulting therefrom (clean-up, removal and disposal costs).⁶

The Full Court however found that CSL is *not* entitled to limit its liability for claims in respect of the raising, removal, destruction or the rendering harmless of the tugs which were sunk and wrecked, including anything that has been on board the tugs.⁷ On the proper construction of Art 2(1) and the scope of Art 2(1)(d), TasPorts’ wreck removal claims fell within Art 2(1)(d) to the exclusion of Art 2(1)(a). The Full Court held Art 2(1)(d) includes *all* claims for wreck removal not just some.

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¹ *Tasmanian Ports Corporation Pty Ltd v CSL Australia Pty Ltd (The Goliath)* [2025] FCAFC 53, [114] (‘*The Goliath*’).

² *The Bramley Moore* [1963] 2 Lloyd’s Rep 429, 437 (Lord Denning).

³ *China Ocean Shipping Company v South Australia* [1979] 145 CLR 172, 185 (Barwick CJ); see also *Strong Wise Ltd v Esso Australia Resources Pty Ltd (The APL Sydney)* [2010] 185 FCR 149, [31] (Rares J).

⁴ [2025] FCAFC 53.

⁵ *Convention on Limitation of Liability for Maritime Claims of 19 November 1976 of 1996*, adopted 2 May 1996, 35 ILM 1433, [2004] ATS 16 (entered into force 13 May 2004). The Convention is given effect in the *Limitation of Liability for Maritime Claims Act 1989* (Cth), as amended by the *International Maritime Conventions Legislation Amendment Act 2001* (Cth) and the *Limitation of Liability for Maritime Claims Amendment Act 2015* (Cth).

⁶ *CSL Australia Pty Ltd v Tasmanian Ports Corporation Pty Ltd* [2024] FCA 824, [99] (Stewart J) (‘*The First Instance Decision*’).

⁷ *The Goliath* n(1) [86] and [123].

2. Facts

The *MV Goliath*, a self-loading bulk cement carrier (owned and operated by CSL), allided with the wharf at the Port of Devonport, causing two tugs to sink and emit diesel fuel and other hydrocarbons.⁸ The wharf and tugs were owned and operated by TasPorts.

CSL commenced a limitation proceeding to seek a declaration that it was entitled to limit its liability for all claims arising out of the allision.

TasPorts pleaded that its claims approximating \$17.2 million were not subject to limitation. This included the costs of the containment, removal and disposal of hydrocarbons, and the removal of the tugs.⁹

3. Relevant Provisions

There was no dispute that CSL is a shipowner within Art 1.¹⁰

Claims are subject to limitation where it is listed in Art 2(1), provided that the basis for the claim is not excluded by Art 3 and that the claim is not the result of conduct barring limitation within Art 4. Article 2 provides:

- (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;
 - (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.
- (2) Claims set out in paragraph 1 shall be subject to limitation of liability even if brought by way of recourse or for indemnity under a contract or otherwise. However, claims set out under paragraph 1(d), (e) and (f) shall not be subject to limitation of liability to the extent that they relate to remuneration under a contract with the person liable.

Australia has exercised a right of reservation under Art 18(1) to exclude the application of Art 2(1)(d). The effect of the reservation is that shipowners cannot limit liability for claims falling within Art 2(1)(d) of the 1976 Convention. Article 2(1)(d) has no operation in Australia.

4. Primary Judge's Construction

4.1 Relevant Principles

The Primary Judge approached the interpretation of the 1976 Convention consistently with the principles of interpretation in Arts 31 and 32 of the *Vienna Convention on the Law of Treaties 1969*¹¹ and the principles discussed by the Australian High Court in *Kingdom of Spain v Infrastructure Services Luxembourg S.à.r.l.*¹²

⁸ *The Goliath* n(1) [8].

⁹ The particulars of the claim are set out at [9] of *The Goliath* n(1).

¹⁰ *The Goliath* n(1) [13].

¹¹ opened for signature 23 May 1969, 1155 UNTS 3322, [1974] ATS 2 (entered into force 27 January 1980).

¹² [2023] 275 CLR 292 at [38]-[39] ('*Kingdom of Spain*').

The relevant principles were not contested by either of the parties. In summary, these principles were:¹³

- a treaty must be interpreted to give full effect to the ordinary meaning of the words used in their context and in light of the evident object and purpose;
- the text is not to be interpreted according to domestic rules of interpretation;¹⁴ and
- a court may have regard to extrinsic sources, including the travaux préparatoires, as a supplementary means of interpretation to confirm the meaning (or determine the meaning) where it is ambiguous or obscure or leads to a manifestly absurd or unreasonable result.¹⁵

4.2 Construction

The Primary Judge concluded that TasPorts' wreck removal claims fell within Art 2(1)(a) and were therefore limitable. His Honour held that TasPorts' claims fell within Art 2(1)(a) because it is claims for expenses consequential upon loss of or damage to property that occurred in direct connection with the operation of the wrongdoing ship (the *Goliath*).¹⁶ His Honour reasoned that there is overlap between paragraphs (a) and (c) taken together and (d) but, that (d) has a non-overlapping sphere of operation. That non-overlapping sphere includes statutory strict liability claims of public authorities for costs and expenses of wreck removal against the owners of the sunken ship.¹⁷ His Honour provided:¹⁸

'...Art 2(1)(d) of the 1976 Convention was conceived of and intended to include claims within the heads of limitable claims that were not otherwise regarded as being included, and the principal objective in allowing for a reservation from that paragraph was to enable States Parties to exclude the claims of harbour authorities from being limitable. Neither Art 2(1)(d) nor Art 18(1) were expressed in that way, but that was clearly their underlying rationale. The construction that I have come to honours that rationale within the confines of the ordinary meaning of the text, and it gives effect to the object and purpose of the Convention otherwise supporting and strengthening shipowners' right to limit liability'.

On His Honour's approach, by construing the 1976 Convention according to its purpose, there is no reason to read down the meaning in paragraphs (a) and (c) with reference to (d). To do so, according to His Honour, would frustrate the purpose of the 1976 Convention by excluding from paragraphs (a) and (c) claims which fall within its language where those claims also fall within the language of (d).¹⁹

His Honour departed from the reasoning of the Hong Kong Court of Final Appeal in *The Star Centurion* which considered a similar scenario.²⁰ His Honour accepted in principle that a treaty should have the same meaning for all States which are party to it.²¹ Indeed His Honour went on to provide:²²

'... I am alive to the importance of developing a uniform international jurisprudence on the Convention, but I am also alive to the importance of giving effect to its principal purpose, namely to expand upon and to protect the rights of limitation'.

His Honour provided the Court's reasoning in *Star Centurion* was based on a misconception that unless what is within Art 2(1)(d) is carved out from Arts 2(1)(a) and (c), Art 2(1)(d) would have no work to do.²³ Further, His Honour outlined the purpose of the inclusion of Art 2(1)(d) was to *extend* the right to limit to claims that were not covered by Arts 2(1)(a) and (c).²⁴ According to His Honour, the purpose of allowing a reservation to exclude Art 2(1)(d) was to allow Contracting States not to adopt *'that extension'*.²⁵ The effect being to exclude, from limitation,

¹³ The Full Court summarised the principles in *The Goliath* n(1) at [20].

¹⁴ *Kingdom of Spain* n(12) [38].

¹⁵ *Ibid* [39].

¹⁶ *First Instance Decision* n(6) [99].

¹⁷ *Ibid* [115] and [153].

¹⁸ *Ibid* [190].

¹⁹ *Ibid* [153].

²⁰ See *Perusahaan Perseroan (Persero) PT Pertamina v Trevaskis Ltd (The Star Centurion and The Antea)* [2023] HKCFA 20; [2024] 2 Lloyd's Rep 435 ('*Star Centurion*').

²¹ *The First Instance Decision* n(6) [89] citing *Kingdom of Spain* n(12) at [38].

²² *The First Instance Decision* n(6), [145].

²³ *Ibid* [143].

²⁴ *Ibid* [144].

²⁵ *Ibid*.

claims from public authorities against the owners of the wrecked ship for wreck removal expenses.²⁶ This narrower reading of Art 2(1)(d), according to His Honour, supports the purpose of the 1976 Convention.²⁷

5. Appeal

The Full Court addressed three questions raised in the appeal:

- How is the 1976 Convention to be construed?
- Is there, in fact, complete overlap between Arts 2(1)(a), (b) or (c), and (d) and (e)?
- Does ‘a ship’ in Art 2(1)(d) mean a ship able to limit under Art 2(1)(a)?

5.1 How is the 1976 Convention to be construed?

Regardless of whether a State Party has exercised a reservation, the proper construction of Art 2(1) must be the same in every Contracting State.²⁸ The exercise of a reservation in respect of Arts 2(1)(d) and (e) does not change the construction of Art 2(1).²⁹ Four points can be distilled from the Full Court’s reasons with respect to the construction of Arts 2(1) and 2(1)(d).

First, in principle, Art 21(2) of the *VC LT* provides a ‘*reservation does not modify the provisions of the treaty for the other parties to the treaty inter se*’. It is because the 1976 Convention applies to different legal systems that the basis of liability (arising within a particular law of a domestic legal system) for any claim is irrelevant.³⁰

Second, this is supported by the words ‘*whatever the basis of liability may be*’ in Art 2(1).³¹ The Full Court outlined that one looks to the *factual* question which has given rise to liability, not how such liability may arise in any particular domestic legal system.³²

Third, and agreeing with Keane NPJ in *Star Centurion*, Art 2(1)(d) encompasses *all* wreck removal expense claims such that, whatever the basis of liability be, a reservation under Art 18(1) would be effective to exclude those claims from limitation. The Full Court acknowledged Art 2(1) does not preclude the dual characterisation of claims.³³ However, in interpreting Art 2(1)(d) on its plain and ordinary meaning, there is two textual features which demonstrate all wreck removal expenses are covered within that head. First, Art 2(1)(d) “*occurs in an immediate context of factual categories of loss or expense, and is expressly and specifically concerned with claims for wreck removal expenses*”.³⁴ Second, Art 2(1)(d) is specific, unqualified in scope and makes no difference between (or reference to) claims by harbour authorities and other shipowners.³⁵

This reading of the text leads to coherence. The Full Court assessed their construction against the Primary Judge’s construction (whose construction they found demonstrated difficulties and created ‘*considerable uncertainty*’).³⁶ The Full Court observed the consequences of the Primary Judge’s construction:³⁷

- a wrongdoing ship is entitled to limit liability pursuant to Art 2(1)(a) in respect of wreck removal expenses directly incurred where the wrecks were owned by an innocent shipowner and are thus claims in respect of loss of or damage to property, and consequential loss, occurring in direct connexion with the operation of the wrongdoing ship (as is the case with the *Goliath* and Tasports’ tugs);
- a wrongdoing ship that is sunk, wrecked, standard or abandoned because of its own fault or which caused another innocent ship to be wrecked, against which a claim is made for wreck removal by a party other than a harbour authority, would be entitled to limit under Art 2(1)(c). However, an identical claim made by a harbour authority would not be limited;

²⁶ Ibid.

²⁷ Ibid.

²⁸ *The Goliath* n(1) [36].

²⁹ Ibid.

³⁰ Ibid.

³¹ Ibid [37].

³² Ibid [40].

³³ Ibid [42]; *MSC Mediterranean Shipping Company SA v Conti I Container Schiffarts-GmbH & Co KG MS* [2025] UKSC 14, [130] and [156] (Lord Hamblen with whom Lord Hodge, Lord Briggs, Lord Leggatt and Lord Burrows agreed) (*MSC Flaminia*).

³⁴ *The Goliath* n(1) [47].

³⁵ Ibid [48]; *Star Centurion* n(20) [30]-[31] (Keane NPJ).

³⁶ *The Goliath* n(1) [51].

³⁷ Ibid [50].

- say the tugs were owned by some other entity and TasPorts incurred the same expenses in its claims, then the claims against that innocent shipowner would be a claim pursuant to Art 2(1)(d) and therefore not limitable under Australian law;
- were that innocent shipowner to bring a recourse claim against the wrongdoing ship to recover the amounts paid to TasPorts, that claim would be limited under Art 2(1)(a); and
- where a Contracting State exercises its right of reservation to exclude the application of Art 2(1)(d), the scope of limitation in Art 2(1)(a) will differ from that which applies in the case of a Contracting State that does not exercise its right of reservation.

Furthermore, the Full Court did not derive assistance from cases which did not specifically consider Art 2(1)(d).³⁸ For instance, *The Tiruna*³⁹ was distinguished on the basis that it considered the 1957 Convention (which included different wording to the 1976 Convention). The Full Court provided that Macrossan J approached the construction of the text by reference to the legal basis of liability, contrary to the terms of Arts 2(1) and 2(2).⁴⁰

Article 2(1)(d), on its ordinary language, encompasses all wreck removal expenses.⁴¹ The provision does not speak of claims for wreck removal rather, the broad language expresses ‘in respect of’ wreck claims.⁴² The Full Court provided:⁴³

‘To the extent that such language has been held to include consequential loss in the nature of a recourse claim for a head of claim that is otherwise excluded, the making of a reservation in relation to Art 2(1)(d) is a rejection by States Parties of the rules of the 1976 Convention when the factual basis of the occurrence which gives rise to loss or expense is a (as opposed to “the”) sunk, wrecked, stranded or abandoned ship.’ (The Full Court’s emphasis).

Fourth, considering the broader context, Art 18(1) is no less comprehensive in scope.⁴⁴ There can be no partial reservation under Art 18(1).⁴⁵ As Keane NPJ observed in *The Star Centurion*:⁴⁶

‘...it would reduce Article 2(1) to incoherence to read the Convention as providing that a Contracting State may disapply Article 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’.

The Full Court endorsed His Honour’s statement 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)’.⁴⁷ The Full Court’s construction gives effect to the 1976 Convention as a coherent whole. As was reasoned in *The Wisdom*,⁴⁸ an instrument should be interpreted as a coherent whole, not simply relying on a literal textual analysis.⁴⁹

The Full Court rejected the Primary Judge’s construction of Art 2(1)(d). In particular, the Full Court disagreed with His Honour’s finding that the provision’s principal objective in allowing for a reservation of Art 2(1)(d) was to enable State Parties to exclude the claims of harbour authorities from being limitable.⁵⁰ The Full Court rejected this contention for 3 reasons. First, the text of the 1976 Convention does not reflect that purpose.⁵¹ The text of the

³⁸ Ibid [42].

³⁹ *Barameda Enterprises Pty Ltd v O’Connor* [1988] 1 Qd R 359; [1987] 2 Lloyd’s Rep 666 (*The Tiruna*).

⁴⁰ *The Goliath* n(1) [53] and [54]. The Full Court found cases which did not consider the text of the 1976 Convention were of little to no assistance (see [76] referring to *Twitt Navigation Ltd v The State represented by the Defence Department* (21-058354TVI-THOD/TBER, 16 November 2021), and [79] *Partenreederei MS Alexandria v China Shipping Development Co Ltd (The Alexandria)* (99Da9646, 9653, 9660, 9677, 2 August 2000)).

⁴¹ *The Goliath* n(1) [57].

⁴² Ibid [58].

⁴³ Ibid [58].

⁴⁴ Ibid, [59]. See also *Scheepvaartbedrijf MS Amasus BV v ELG Haniel Trading GmbH* (ECLINL:HR:2018:140, 2 February 2018, [3.7.2] (per EJ Numann VP, GSnijders, MV Polak, TH Tanja-van den Broek, CH Sieburgh J) (*The Wisdom*)).

⁴⁵ *Goliath* n(1) [60].

⁴⁶ *The Star Centurion* n(20) [34].

⁴⁷ Ibid [31].

⁴⁸ *Scheepvaartbedrijf MS Amasus BV v ELG Haniel Trading GmbH* (ECLINL:HR:2018:140, 2 February 2018, [3.7.2] (per EJ Numann VP, GSnijders, MV Polak, TH Tanja-van den Broek, CH Sieburgh J).

⁴⁹ *The Goliath* n(1) [68]. See also *Eitzen Chemical (Singapore) Pte Ltd v VOF G Idzenga Scheepvaartbedrijf (The Sichem Anne and The Margreta)* (ECLINL:HR:2018:142, 2 February 2018).

⁵⁰ *The First Instance Decision* n(6) [190].

⁵¹ *The Goliath* n(1) [84].

1976 Convention is silent as to harbour authorities.⁵² Second, a reservation in respect of Art 2(1)(d) is a reservation in respect of *all* claims that fall within its scope.⁵³ This is reflected in a textual change between the 1957 Convention and the 1976 Convention, that being the chapeau to Art 2(1) stipulating claims therein are subject to limitation ‘*whatever the basis of liability may be*’.⁵⁴ The Full Court provided ‘*if a recourse claim within Art (2)(1)(d) were able to be limited pursuant to Arts 2(1)(a) or (c), that would be allowing in by the backdoor a claim that has, on the face of the instrument itself, been excluded*’.⁵⁵ Third, the Full Court was unable to find that the object and purpose of Art 2(1)(d) was to extend the right to limit to wreck removal undertaken only by a harbour authority.⁵⁶ Additionally, the Full Court found nothing in the history of the 1976 Convention or in the travaux préparatoires to support the proposition that Art 2(1)(d) was intended to extend limitation to wreck claims that would otherwise not fall within Arts 2(1)(a) or (c), being claims by harbour authorities.⁵⁷

The Full Court agreed with the Primary Judge’s outline of the general object and purpose of the 1976 Convention.⁵⁸ In summary, these observations by the Full Court included:

- the policy underlying the concept of limitation ‘*is the protection of the owner engaged in the maritime carrying trade from financial ruin where his vessel causes damage of the described kind*’;⁵⁹
- the general purpose of being able to limit liability was to encourage the provision of international trade by way of sea-carriage;⁶⁰
- the main object and purpose of the 1976 Convention was to provide limits higher than those previously available, in return for making it more difficult to ‘*break the limit*’;⁶¹
- to enable salvors to claim that their liability could be limited in the same way as owners and charterers;⁶² and
- the provisions of the 1976 Convention should be applied, where possible, to all cases which reasonably could be brought within its language.⁶³

Interestingly, the UK Supreme Court in *MSC Flaminia* reasoned that there is no reason in principle why the provisions of the 1976 Convention or Article 2 should be applied either narrowly or widely.⁶⁴ The Full Court concurred with the statement provided by their Lordships.⁶⁵ That statement provided:⁶⁶

‘Although the Convention recognises that limitation is desirable, the circumstances in which there was to be a right to limit under article 2 was a matter of discussion and negotiation between the participating state representatives. The resulting agreement is set out in the Convention which should be applied according to its terms. It is what it is. That is also consistent with the approach to interpretation set out in the Vienna Convention and the importance attached to the ordinary meaning of the words used.’

The Full Court outlined that by deliberately moving claims for damage to harbour works into Art 2(1)(a), it was ‘*not contemplated that any claims for wreck or cargo removal would fall within (a), hence the need to add (d) and (e) “in order to make claims for wreck removal and removal of cargo subject to limitation”*’.⁶⁷ The Full Court agreed with the Primary Judge that the inclusion of wreck liability within the claims subject to limitation was intended to extend limitation. However, the Full Court differed by observing that the intended extension was to *all* claims in respect of wreck liability, not simply those that were otherwise not within the literal scope of Art 2(1)(a) or (c).⁶⁸ The Full Court ultimately drew limited assistance from the drafting history of the 1976

⁵² Ibid [85].

⁵³ Ibid [86].

⁵⁴ Ibid [86].

⁵⁵ Ibid [87].

⁵⁶ Ibid [88].

⁵⁷ Ibid [89].

⁵⁸ Ibid [21].

⁵⁹ *China Ocean Shipping Company v South Australia* [1979] 145 CLR 172 at 185 (Barwick CJ); see *The Goliath* n(1) [21].

⁶⁰ *CMA CGM SA v Classica Shipping Co Ltd (The CMA Djakarta)* [2004] EWCA Civ 114; [2004] 1 Lloyd’s Rep 460, [11] (Longmore LJ with whom Neuberger LJ and Waller LJ agreed).

⁶¹ *The Goliath* n(1) [21].

⁶² Ibid.

⁶³ *Aegean Sea Traders Corporation v Repsol Petroleo SA (The Aegean Sea)* [1998] 2 Lloyd’s Rep 39 (Thomas J); see *The Goliath* n(1) [22].

⁶⁴ *MSC Flaminia* n(33) [130] (Lord Hamblen with whom Lord Hodge, Lord Briggs, Lord Leggatt and Lord Burrows agreed); see *The Goliath* n(1) [24].

⁶⁵ *The Goliath* n(1) [24]–[25].

⁶⁶ *MSC Flaminia* n(33) [130].

⁶⁷ *The Goliath* n(1) [101].

⁶⁸ Ibid [103].

Convention (on the materials provided to it).⁶⁹ The Full Court concluded that the materials were either equivocal or supportive of the its construction.⁷⁰

On this basis, CSL was not entitled to limit liability for TasPorts' wreck removal claims because it fell within the scope of Art 2(1)(d) to the exclusion of Art 2(1)(a).⁷¹

5.2 Is there, in fact, complete overlap between Arts 2(1)(a), (b) or (c), and (d) and (e)?

The Full Court found it unnecessary to decide this question in light of the conclusion reached under sub-heading (5.1) on the coherency question.

5.3 Does 'a ship' in Art 2(1)(d) mean a ship able to limit under Art 2(1)(a)?

There is no difficulty arising from a literal reading of Art 2(1)(d) with respect to 'a ship'. It should not be construed to refer to only limitation by reference to the wrecked ship.⁷² Such a construction is not supported by the text of the 1976 Convention.⁷³

6. Comment

The Full Court's construction of Art 2(1)(d) is well considered. Ultimately, there is an unconvincing basis for restricting Art 2(1)(d) to claims made by harbour or public authorities. The Full Court's construction of Art 2(1)(d) is broader than the construction of the Primary Judge. The effect of the Full Court's decision is that a shipowner will not be able to limit liability for wreck removal claims in Australia. It also brings Australia's position on maritime limitation under the 1976 Convention in line with foreign decisions including *Star Centurion*,⁷⁴ *The Sichem Anne and The Margreta*,⁷⁵ and *The Wisdom*.⁷⁶

The Primary Judge's reasoning that the purpose of including Art 2(1)(d) (to extend the right to limit to those wreck removal claims brought by harbour authorities) supports the general purpose of limitation under the 1976 Convention, to the extent that it narrows unlimitable claims made against shipowners. His Honour's construction is compelling. This construction expands upon and protects the right of limitation.⁷⁷ This construction would support the broad policy objectives of maritime limitation including limiting financial ruin of a shipowner and encouraging the provision of international trade by way of sea-carriage.

The Full Court's construction is nonetheless preferred. To say there is a non-overlapping sphere in Art 2(1)(d) consisting of claims made by harbour authorities is to read words into the provision. Additionally, this avoids the incoherence adverted to by Keane NPJ in *Star Centurion*.⁷⁸ The Full Court's construction is consistent with the ordinary meaning of the words and the purpose of the 1976 Convention. Importantly, the Full Court found the historical materials were either equivocal or supportive of their construction. Even if the history of the 1976 Convention were to unequivocally suggest that the purpose of Art 2(1)(d) was to extend the right to limit to claims by harbour authorities, it would be odd that something with such a significant consequence would be left out of the wording of Art 2(1)(d) itself.

⁶⁹ Ibid [112]. See [93] where the Full Court noted the documents were not in original form but rather 'summary records'. The Full Court was cautious in treating these summaries as reflective of *all* discussions that took place.

⁷⁰ Ibid [112].

⁷¹ Ibid [119] and [120].

⁷² Ibid [120].

⁷³ Ibid [120].

⁷⁴ *Perusahaan Perseroan (Persero) PT Pertamina v Trevaskis Ltd (The Star Centurion and The Antea)* [2023] HKCFA 20; [2024] 2 Lloyd's Rep 435.

⁷⁵ *Eitzen Chemical (Singapore) Pte Ltd v VOF G Idzenga Scheepvaartbedrijf (The Sichem Anne and The Margreta)* (Supreme Court of the Netherlands, ECLI:NL:HR:2018:142, 2 February 2018).

⁷⁶ *Scheepvaartbedrijf MS Amasus BV v ELG Haniel Trading GmbH* (ECLINL:HR:2018:140, 2 February 2018, [3.7.2] (per EJ Numann VP, GSnijders, MV Polak, TH Tanja-van den Broek, CH Sieburgh J).

⁷⁷ *First Instance Decision* n(6) [145].

⁷⁸ *Star Centurion* n(20) [34]; *The Goliath* n(1) [112].