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High Court of Australia decides: No limitation for wreck removal claims

Last week, the High Court of Australia delivered its judgment in *CSL Australia Pty Ltd v Tasmanian Ports Corporation Pty Ltd* [2026] HCA 15.

The Court unanimously held that a claim for wreck removal costs is not limitable in Australia even though the claim may be in the nature of consequential loss and would otherwise come within Art 2(1)(a) of the 1976 Limitation Convention.

Key points

- In Australia, liability for wreck removal claims against the ship that occasioned the casualty giving rise to the removal is not limitable under the *Limitation of Liability for Maritime Claims Act 1989* (Cth).

- This is because Australian law does not give effect to Art 2(1)(d) of the Convention, and thereby excludes such claims from limitation under the Convention.

- It is no matter that such claims may also fall within other sub-paragraphs of Art 2(1) of the Convention, particularly Art 2(1)(a).

Background

In January 2022, the cement carrier, GOLIATH, was maneuvering to its berth in the Port of Devonport, Tasmania, when it came into contact with two unmanned tugs that had been moored alongside the wharf. Both tugs sank.

The tugowners subsequently claimed against the owners of the GOLIATH (the ***owners***) in relation to several heads of loss, including the cost of removing hydrocarbons from the tugs and subsequently refloating and disposing of them. That head of loss – the ***removal costs*** – exceeded A$17 million.

The total claim by the tugowners amounted to nearly A$22 million. There are other claimants, with less substantial claims. The owners sought to limit their liability in respect of the claims made against them. The applicable limitation amount was 7,401,416 SDRs – which amounts to just under A$16 million on recent rates.

The tugowners challenged the owners' right to limit in relation to the claim for removal costs.

If that claim was capable of being limited, then the totality of owners' potential liability in respect of all the claims against them would likely be capped at the limitation amount. Each of the claimants would have to suffer a pro rata reduction of their proved claims. If the

removal costs claim was not limitable, then the owners' potential liability would likely be for the full value of the claims. For the owners, the difference between the two outcomes was around A$10 million.

Statutory framework

Art 2(1) of the 1976 Limitation Convention (as amended by the 1996 Protocol with 2012 amendments) (the ***Convention***) describes the various claims that '*whatever the basis of liability may be, shall be subject to limitation of liability*'. Of those:

- Art 2(1)(a) relevantly provides for claims '*in respect of … loss of or damage to property … occurring on board or in direct connexion with the operation of the ship … and consequential loss resulting therefrom*'.
- Art 2(1)(d) provides for '*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 18(1) of the Convention provides that any contracting State may, at the time of signature, ratification, acceptance, approval or accession, reserve the right to exclude the application of Art 2(1)(d) and (e).

The *Limitation of Liability for Maritime Claims Act 1989* (Cth) gives legal effect to the Convention in Australia. Consistently with the exercise of the reservation under Art 18(1), s 6 of the Act provides that the Convention, other than Arts 2(1)(d) and (e), have force of law in Australia.

Parties' positions

The parties accepted that the removal claims were claims in respect of consequential loss resulting from loss of damage to the tugs. Accordingly, they fell within Art 2(1)(a).

However, the parties differed as to how Art 2(1)(d) operated in this context.

Ultimately the question was whether the claim for removal costs was limitable in circumstances where (i) that claim came within the plain meaning of both Art 2(1)(a) and Art 2(1)(d), and (ii) Australia had exercised a right reserved under Art 18(1) to exclude Art 2(1)(d) from Australian law.

The owners said that the claim was limitable because it came within Art 2(1)(a) and there was no good reason to limit the scope of Art 2(1)(a) by reference to the provisions of Art 2(1)(d) which did not have legal effect in Australia.

The tugowners argued that the Convention should be construed to reflect the intention to exclude from limitation any claims meeting the description in Art 2(1)(d). As the claim met that description, it was not limitable.

Lower decisions

At first instance, the Federal Court held that the claim for removal costs was limitable.[1] At the core of the Court's reasoning was that an important purpose of the Convention was to make limitation available to all claims that came reasonably within the language of the Convention. On that basis, where the claim for the removal costs came within the ordinary meaning of Art 2(1)(a), it should not be excluded from limitation by reference to the excluded Art 2(1)(d). The Court also held that properly understood, Art 2(1)(d) had a non-overlapping sphere of operation with Art 2(1)(a), encompassing claims such as statutory strict liability claims for wreck removal brought by harbour authorities, which were different from the claim at hand.

On appeal, the Full Court of the Federal Court reversed the first instance decision.[2] The Full Court held that Art 2(1)(d) captured any claim falling within the ordinary meaning of its terms. Following the exercise of the right reserved under Art 18(1) to exclude Art 2(1)(d), any claim that met the description of claims in Art 2(1)(d) was excluded from limitation even if it also fell within any other sub-paragraph of Art 2(1) that had legal effect in Australia.

Decision of the High Court

On further (and final) appeal, the High Court of Australia agreed with the Full Court.

This was ultimately a question of how the Convention was to be interpreted according to Australian law. The Court observed that it should be interpreted in good faith and in accordance with the ordinary meaning of its terms in their context and in light of its object and purpose. The proper approach required that the Convention not be interpreted according to particular domestic interpretive rules, and that its terms have the same meaning as given by other contracting States. Regard to extrinsic sources like the *travaux preparatoires* was permissible to confirm the meaning or to determine meaning in case of ambiguity or where the ordinary meaning may lead to manifestly absurd or unreasonable results.[3]

Both parties had relied on the decision of the UK Supreme Court in *The Flaminia*[4] to support their respective interpretations. However, the High Court observed that in *The Flaminia*, the

[1] *CSL Australia Pty Ltd v Tasmanian Ports Corporation Pty Ltd* [2024] FCA 824.
[2] *Tasmanian Ports Corporation Pty Ltd v CSL Australia Pty Ltd* [2025] FCAFC 53.
[3] At [4], pointing to its summary in *Kingdom of Spain v Infrastructure Services Luxembourg Sarl* (2023) 275 CLR 292, [38]-[39].
[4] [2025] UKSC 14.

claim in question fell within both Art 2(1)(a) and Art 2(1)(e), *both* of which had force of law in English law. There, the issue was whether the breadth of Art 2(1)(e) was constrained by reference to limits implicit within Art 2(1)(a). That is distinguishable from the issue in *The Goliath*, where the scope of Art 2(1)(a) was being considered by reference to the excluded head of limitation in Art 2(1)(d). Nevertheless, the High Court endorsed the UKSC's emphasis on the ordinary meaning of the Convention's words.

The Court followed the approach taken by the Hong Kong Court of Final Appeal in *The Star Centurion*,[5] which had very similar facts. There, following a collision, the wrongdoing ship sought to limit its liability under Hong Kong law for the wreck removal claim of the innocent ship, which had sunk. Like Australian law, Hong Kong law gives effect to the Convention but excludes the application of Arts 2(1)(d) and 2(1)(e). The HKCFA held that the provisions of the Convention should be given their ordinary meaning and given effect as a coherent whole. In that analysis, Art 2(1)(d) comprehensively (but not exclusively) deals with claims for wreck removal. A claim could fall within both Art 2(1)(a) and Art 2(1)(d), but in circumstances where a State party has exercised a right reserved under Art 18(1) to exclude the application of Art 2(1)(d), any claim that would meet the description in Art 2(1)(d) would not be limitable even if it could otherwise be captured within the words of another sub-paragraph of Art 2(1).

The *Star Centurion* was particularly persuasive because (i) it is a decision of the apex court in Hong Kong and involved an identical issue arising from similar facts, and (ii) in the interests of comity and promoting the harmonious interpretation of an international convention, the High Court considered that it '*should be accorded the greatest respect*'.[6]

The High Court also examined the *travaux preparatoires* for the 1976 Convention and concluded that they supported the tugowners' position that the exercise of a right reserved under Art 18(1) was intended to remove from limitation any claim that fell within the meaning of the text of Art 2(1)(d) and/or 2(1)(e), even if such claim could be tolerably encompassed by other sub-paragraphs of Art 2(1). Excluding Art 2(1)(d) and/or 2(1)(e) in that case was to have '*functional equivalence*' to moving those sub-paragraphs within Art 3, which specifically excludes certain claims from limitation.[7]

Comment

The High Court's decision establishes finally that in Australia, liability for wreck removal claims against the ship that occasioned the casualty giving rise to the removal is not limitable.

[5] [2023] HKCFA 20.
[6] At [43].
[7] At [55].

It confirms that the exclusion of Art 2(1)(d) – in the exercise of a right reserved under Art 18(1) – has the effect of preventing a limitation claimant from limiting liability for wreck removal claims even if such claims are in respect of consequential loss following third party property loss or damage and therefore within the meaning of Art 2(1)(a).

Wreck removals in Australia are typically very expensive affairs because of the remote locations at which (usually smaller, domestically-trading) vessels operate, the generally high-cost environment, strict regulatory requirements, and the typically restricted availability of suitable salvage/removal assets.

The first instance decision in *The Goliath* had left the door ajar to a limiting ship seeking limitation in response to a claim for wreck removal occasioned by a vessel's stranding or sinking caused by the limiting ship.

That door has now been shut. Liability for such claims is not limitable.

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