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Case Comment

LIMITATION OF LIABILITY FOR WRECK REMOVAL IN AUSTRALIA, HONG KONG AND SINGAPORE

Tasmanian Ports Corp Pty Ltd v CSL Australia Pty Ltd (The "Goliath") [2025] FCAFC 53 and
Perusahaan Perseroan (Persero) PT Pertamina v Trevaskis Ltd (The "Star Centurion" and The "Antea") [2023] HKCFA 20

[2025] SAL Prac 17

Australia, Hong Kong and Singapore exclude the application of Art 2(1)(*d*) of the Convention on Limitation of Liability for Maritime Claims 1976 (19 November 1976) (entered into force 1 December 1986) which allows shipowners to limit their liability for claims in respect of wreck removal. This article considers the court decisions in Australia and Hong Kong on the scope of claims excluded from limitation under Art 2(1)(*d*) and the position in Singapore where there has yet to be a court decision.

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I. Introduction

1 Australia, Hong Kong and Singapore each give effect to the Convention on Limitation of Liability for Maritime Claims 1976[1] ("LLMC 1976") as amended by the 1996 Protocol to Amend the 1976 Convention on Limitation of Liability for Maritime Claims[2] ("1996 Protocol") (collectively, "Convention"). Article 2(1)(*d*)

1 19 November 1976 (entered into force 1 December 1986).
2 2 May 1996 (entered into force 13 May 2004).

of the Convention allows shipowners to limit their liability for claims in respect of wreck removal.

2 Australia's domestic legislation giving effect to the Convention provides that the provisions of the Convention, other than Arts 2(1)(*d*) and 2(1)(*e*), have the force of law. In *Tasmanian Ports Corp Pty Ltd v CSL Australia Pty Ltd (The "Goliath")*[3] ("*TasPorts v CSL*"), the Full Court of the Federal Court of Australia ("FCAFC") overturned the first instance decision in *CSL Australia Pty Ltd v Tasmanian Ports Corp Pty Ltd (The "Goliath")*[4] ("*CSL v TasPorts*") and held that a shipowner is not entitled to limit its liability for claims for wreck removal expenses under Australian law.

3 Hong Kong's domestic ordinance giving effect to the Convention requires an order to be made by Hong Kong's Chief Executive, without which Art 2(1)(*d*) shall not apply. As no such order had been made, the Hong Kong Court of Final Appeal in *Perusahaan Perseroan (Persero) PT Pertamina v Trevaskis Ltd (The "Star Centurion" and The "Antea")*[5] ("*Pertamina v Trevaskis*") confirmed that all claims for wreck removal expenses were not limitable under Hong Kong law.

4 Singapore's domestic implementation is similar to Australia's in providing that Arts 2(1)(*d*) and 2(1)(*e*) of the Convention do not have the force of law. At the time of writing, there has been no reported Singapore decision on whether a shipowner can limit its liability under the Convention for all claims for wreck removal expenses. This article submits that, when the opportunity arises, *TasPorts v CSL* and *Pertamina v Trevaskis* should be followed by the Singapore courts. Singapore's domestic legislation is unambiguous that all claims for wreck removal expenses are excluded from limitation in Singapore, with only one exception for claims for wreck removal expenses incurred by the Director of Marine of the Maritime and Port Authority of Singapore ("MPA") under the Merchant Shipping (Wreck Removal) Act 2017.[6]

3 [2025] FCAFC 53.
4 [2024] FCA 824.
5 [2023] HKCFA 20.
6 2020 Rev Ed.

II. Articles 2(1)(*a*), 2(1)(*c*), 2(1)(*d*) and 2(1)(*e*) of Convention

5 It is expedient to first set out the provisions of Art 2 of the Convention that are relevant to this article:

> 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 connection with the operation of the ship or with salvage operations, and consequential loss resulting therefrom;
>
> …
>
> (*c*) claims in respect of other loss resulting from infringement of rights other than contractual rights, occurring in direct connection 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;
>
> …
>
> 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.

6 It is also important to note that Art 18(1) of the Convention allows a contracting state to reserve the right to exclude the application of Arts 2(1)(*d*) and 2(1)(*e*) of the Convention.

III. Implementation of Convention in Australia, Hong Kong and Singapore

A. Accession to Convention

7 Australia acceded to the LLMC 1976 and 1996 Protocol on 20 February 1991 and 8 October 2002 respectively. Singapore acceded to the LLMC 1976 and 1996 Protocol on 24 January 2005 and 30 September 2019 respectively.

8 Australia's instrument of accession to the LLMC 1976 stated the reservation that "Australia will not be bound by article 2, paragraph 1(d) and (e)".[7] Further, pursuant to Art 7 of the 1996 Protocol, Australia's Minister for Foreign Affairs of Australia reiterated to the Secretary-General of the International Maritime Organisation the Australian Government's "reservation, made on depositing its instrument of accession to the Convention on Limitation of Liability for Maritime Claims, 1976, to exclude the application of Article 2, paragraphs 1(d) and (e)".[8]

9 Singapore's instrument of accession to the LLMC 1976 only "reserves the right … to exclude the application of article 2, paragraph 1(d) and (e) of the Convention".[9] Singapore's instrument of accession to the 1996 Convention also only reserved the right to exclude "the application of article 2, paragraphs 1(d) and (e), of the Convention".[10]

10 As for Hong Kong, the LLMC 1976 applied pursuant to the UK's ratification on 31 January 1980. After Hong Kong was handed over to the People's Republic of China on 1 July 1997, Hong Kong

7 *Status of IMO Treaties*, (International Maritime Organization, 18 February 2025)<https://wwwcdn.imo.org/localresources/en/About/Conventions/StatusOfConventions/Status%202025.pdf> (accessed 17 April 2025) at 409.

8 *Status of IMO Treaties*, (International Maritime Organization, 18 February 2025)<https://wwwcdn.imo.org/localresources/en/About/Conventions/StatusOfConventions/Status%202025.pdf> (accessed 17 April 2025) at 420.

9 *Status of IMO Treaties*, (International Maritime Organization, 18 February 2025)<https://wwwcdn.imo.org/localresources/en/About/Conventions/StatusOfConventions/Status%202025.pdf> (accessed 17 April 2025) at 411.

10 See the International Maritime Organization's circular LLMC.3/Circ.56 for Singapore's instrument of accession.

continued to give effect to the LLMC 1976. On 2 February 2015, China acceded to the 1996 Protocol in respect of Hong Kong only.

11 China's notification dated 5 June 1997 in respect of the LLMC 1976 similarly stated that, in respect of Hong Kong, "it reserves the right … to exclude the application of the Article 2(1)(d)".[11] In its instrument of accession to the 1996 Protocol, China declared that Hong Kong "shall not be bound by article 2, paragraph 1(d) of the Convention on Limitation of Liability for Maritime Claims, 1976, as amended by the Protocol".[12]

B. Domestic implementation of Convention

12 In Australia, the Convention is given domestic effect by the Limitation of Liability for Maritime Claims Act 1989 (Cth) ("Australia LLMC Act"). Section 6 of the Australia LLMC Act provides that "[s]ubject 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".

13 In Singapore, Pt 8 of the Merchant Shipping Act 1995[13] ("Singapore MSA") implements the Convention. Similar to the Australia LLMC Act, s 136(1) of the Singapore MSA provides that "[s]ubject to this Part, the provisions of the Convention, other than paragraph 1(*d*) and (*e*) of Article 2 of the Convention, have the force of law in Singapore".

14 Section 136(2) then goes further to provide that:

> In paragraph 2 of Article 2 of the Convention —
>
> > (a) the reference to paragraph 1 is a reference to paragraph 1(*a*), (*b*), (*c*) and (*f*) of that Article; and

11 *Status of IMO Treaties*, (International Maritime Organization, 18 February 2025)<https://wwwcdn.imo.org/localresources/en/About/Conventions/StatusOfConventions/Status%202025.pdf> (accessed 17 April 2025) at 409.

12 *Status of IMO Treaties*, (International Maritime Organization, 18 February 2025)<https://wwwcdn.imo.org/localresources/en/About/Conventions/StatusOfConventions/Status%202025.pdf> (accessed 17 April 2025) at 421.

13 2020 Rev Ed.

(b) the reference to paragraph 1(*d*), (*e*) and (*f*) is a reference to paragraph 1(*f*) of that Article.

15 In Hong Kong, the Convention is implemented by Pt III of the Merchant Shipping (Limitation of Shipowners Liability) Ordinance[14] ("HK LLMC Ordinance"). The statutory wording giving effect to the Convention in Hong Kong differs from that in Australia and Singapore:

(a) Section 12 of the HK LLMC Ordinance provides that:

> Subject to this Part, the provisions of the Convention on Limitation of Liability for Maritime Claims, 1976 set out in Schedule 2 (in this Part and in that Schedule referred to as the Convention (公約)) have the force of law in Hong Kong.

(b) Section 15(3) of the HK LLMC Ordinance further provides that "[p]aragraph 1(d) of Article 2 of the Convention shall not apply unless an order has been made" by Hong Kong's Chief Executive under s 15(1) of the HK LLMC Ordinance. At the time of writing, no such order has been made.

IV. Hong Kong: *Pertamina v Trevaskis*

16 This article first considers *Pertamina v Trevaskis*, which was decided by the Hong Kong Court of Final Appeal ("HKCFA") before the first instance decision in *CSL v TasPorts* and which was considered in *CSL v TasPorts* and on appeal in *TasPorts v CSL*.

17 *Pertamina v Trevaskis* arose out of the total loss of the *Star Centurion* after a collision between her and the vessel *Antea* in Indonesian waters. Following the collision, the Indonesian Ministry of Transportation issued a wreck removal order requiring the owners of the *Star Centurion* to remove the wreck.[15]

18 After the owners of the *Star Centurion* commenced proceedings in Hong Kong for damages arising out of the loss of

14 Cap 434.
15 *Perusahaan Perseroan (Persero) PT Pertamina v Trevaskis Ltd (The "Star Centurion" and The "Antea")* [2023] HKCFA 20 at [5].

the *Star Centurion* and an indemnity for wreck removal expenses incurred, the owners of the *Antea* constituted a limitation fund in Hong Kong.[16] The owners of the *Antea* also later accepted 100% liability for the collision.[17]

19 As wreck removal expenses incurred by the owners of the *Star Centurion* were likely to exceed the limitation fund, the owners of the *Star Centurion* sought a declaration that the owners of the *Antea* were not entitled to limit its liability for the wreck removal expenses incurred by the owners of the *Star Centurion*.[18]

20 The owners of the *Star Centurion* argued that their claims against the owners of the *Antea* for wreck removal expenses were not subject to limitation as Art 2(1)(*d*) of the Convention was not applied in Hong Kong pursuant to s 15 of the HK LLMC Ordinance.[19]

21 The owners of the *Antea* countered that it was entitled to limit its liability under Art 2(1)(*a*) of the Convention as the claims for wreck removal expenses were consequential losses resulting from the loss of the *Star Centurion*.[20] As a fall-back, the owners of the *Antea* also argued that the recourse claim for wreck removal expenses by the owners of the *Star Centurion* fell exclusively within Art 2(1)(*a*) as Art 2(1)(*d*) refers only to claims by harbour authorities.[21]

22 The Hong Kong Court of First Instance granted the declaration sought by the owners of the *Star Centurion*.[22] The

16 *Perusahaan Perseroan (Persero) PT Pertamina v Trevaskis Ltd (The "Star Centurion" and The "Antea")* [2023] HKCFA 20 at [6]–[7].
17 *Perusahaan Perseroan (Persero) PT Pertamina v Trevaskis Ltd (The "Star Centurion" and The "Antea")* [2023] HKCFA 20 at [5].
18 *Perusahaan Perseroan (Persero) PT Pertamina v Trevaskis Ltd (The "Star Centurion" and The "Antea")* [2023] HKCFA 20 at [8].
19 *Perusahaan Perseroan (Persero) PT Pertamina v Trevaskis Ltd (The "Star Centurion" and The "Antea")* [2023] HKCFA 20 at [8].
20 *Perusahaan Perseroan (Persero) PT Pertamina v Trevaskis Ltd (The "Star Centurion" and The "Antea")* [2023] HKCFA 20 at [9].
21 *Perusahaan Perseroan (Persero) PT Pertamina v Trevaskis Ltd (The "Star Centurion" and The "Antea")* [2023] HKCFA 20 at [23].
22 *Perusahaan Perseroan (Persero) PT Pertamina v Trevaskis Ltd (The "Star Centurion" and The "Antea")* [2023] HKCFA 20 at [10].

appeals by the owners of the *Antea* to the Hong Kong Court of Appeal and the HKCFA were both dismissed.[23]

23 The reasons for the HKCFA's dismissal are summarised below:

(a) Article 2(1)(*d*) of the Convention, which concerns wreck removal claims specifically and without qualification, comprehensively covers any claim in respect of wreck removal.[24]

(b) In allowing for claims falling under Art 2(1)(*d*) to be excluded from limitation, a contracting state would be disapplying any and all claims in respect of wreck removal pursuant to Art 18(1) of the Convention "even if it is also possible to describe it as a claim for loss consequential upon damage to property".[25]

(c) Article 2(1) of the Convention expressly provides that the claims thereunder are subject to limitation "whatever the basis of liability may be".[26] The Convention would be incoherent if a contracting state could exclude claims under Art 2(1)(*d*) "whatever the basis of liability may be" from being subject to limitation, only to have some claims for wreck removal expenses remain limitable under other provisions of Art 2(1).[27]

(d) There is no basis or support for the distinction that Art 2(1)(*d*) is only in respect of claims by harbour authorities and not all claims for wreck removal expenses.[28] Without this distinction, it cannot be that disapplying Art 2(1)(*d*) only excludes claims by harbour authorities

23 *Perusahaan Perseroan (Persero) PT Pertamina v Trevaskis Ltd (The "Star Centurion" and The "Antea")* [2023] HKCFA 20 at [12] and [62].
24 *Perusahaan Perseroan (Persero) PT Pertamina v Trevaskis Ltd (The "Star Centurion" and The "Antea")* [2023] HKCFA 20 at [30]–[31].
25 *Perusahaan Perseroan (Persero) PT Pertamina v Trevaskis Ltd (The "Star Centurion" and The "Antea")* [2023] HKCFA 20 at [31].
26 *Perusahaan Perseroan (Persero) PT Pertamina v Trevaskis Ltd (The "Star Centurion" and The "Antea")* [2023] HKCFA 20 at [33].
27 *Perusahaan Perseroan (Persero) PT Pertamina v Trevaskis Ltd (The "Star Centurion" and The "Antea")* [2023] HKCFA 20 at [34].
28 *Perusahaan Perseroan (Persero) PT Pertamina v Trevaskis Ltd (The "Star Centurion" and The "Antea")* [2023] HKCFA 20 at [35]–[60].

from being subject to limitation and still allows recourse claims falling under Art 2(1)(*a*) to be limitable.[29]

V. Australia: *TasPorts v CSL*

24 Turning to the decision of the Full Court of the Federal Court of Australia in *TasPorts v CSL*, the case arose from the allision by the bulk cement carrier *Goliath* with two tugs which were moored side-by-side alongside a wharf while the *Goliath* was manoeuvring to berth in Devonport, Tasmania. After the allision, the two tugs sunk and emitted hydrocarbons into the nearby Mersey River.

25 The *Goliath* was owned and operated by CSL Australia Pty Ltd ("CSL"). The two tugs and wharf were owned and operated by Tasmanian Ports Corp Pty Ltd ("TasPorts").

26 After TasPorts commenced proceedings in the Federal Court of Australia to recover losses arising out of the allision, including the "costs of and associated with the containment, removal and disposal of hydrocarbons, and the removal and disposal of the Tugs"[30] ("Removal Claims"), CSL commenced limitation proceedings in the same court to limit its liability for all claims arising out of the allision and to establish a limitation fund pursuant to the Convention.

27 Against the limitation sought by CSL, TasPorts argued that the Removal Claims were not limitable as they fell within Art 2(1)(*d*) of the Convention. TasPorts' argument was that,

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29 *Perusahaan Perseroan (Persero) PT Pertamina v Trevaskis Ltd (The "Star Centurion" and The "Antea")* [2023] HKCFA 20 at [35].

30 *CSL Australia Pty Ltd v Tasmanian Ports Corp Pty Ltd (The "Goliath")* [2024] FCA 824 at [3]–[4]. The costs particularised by Tasmanian Ports Corporation Pty Ltd in its statement of claim included the following:

(a) the costs of managing and coordinating the containment, removal and disposal of hydrocarbons and subsequent removal of the tugs;

(b) fees paid or payable to (i) recover and dispose of the hydrocarbons that were released from the tugs and to contain, remove and dispose of the hydrocarbons that remained in the tugs following the allision; and (ii) remove the tugs from the port and deliver them to a disposal contractor in the Port of Brisbane; and

(c) fees paid or payable to deconstruct and lawfully dispose of the tugs.

claims falling within Art 2(1)(*d*) were excluded from claims falling within other paragraphs of Art 2(1) of the Convention by necessary implication as Art 2(1)(*d*) of the Convention did not have force of law in Australia.[31] Otherwise, Australia's exclusion of Art 2(1)(*d*) would not have any meaning or effect.[32] This argument was based on the maxim that general provisions do not overrule specific provisions.[33] In support of its argument, TasPorts relied on, among other cases, *Pertamina v Trevaskis*.[34]

28 Against TasPorts, CSL argued that the Removal Claims came within Art 2(1)(*a*) of the Convention (which does have the force of law in Australia) and were subject to limitation as consequential losses claims arising from the damage to or loss of the tugs, wharf and hydrocarbons.[35] CSL also argued that the Removal Claims were subject to limitation under Art 2(1)(*a*) regardless of whether they overlap with Art 2(1)(*d*).[36]

29 At first instance in the Federal Court of Australia in *CSL v TasPorts*, Stewart J decided that CSL could limit their liability to TasPorts as the Removal Claims come "within Art 2(1)(a) of the 1976 Convention and they are not excluded from being subject to limitation by Australia's exercise of its right of reservation not to implement Art 2(1)(d)".[37] Stewart J's reasons are summarised below:

> (a) As the Removal Claims come within both Arts 2(1)(*a*) and 2(1)(*d*) of the Convention, they are not excluded from being limitable "simply because they also

31 *CSL Australia Pty Ltd v Tasmanian Ports Corp Pty Ltd (The "Goliath")* [2024] FCA 824 at [88].
32 *CSL Australia Pty Ltd v Tasmanian Ports Corp Pty Ltd (The "Goliath")* [2024] FCA 824 at [88] and [102].
33 *CSL Australia Pty Ltd v Tasmanian Ports Corp Pty Ltd (The "Goliath")* [2024] FCA 824 at [102].
34 *CSL Australia Pty Ltd v Tasmanian Ports Corp Pty Ltd (The "Goliath")* [2024] FCA 824 at [103].
35 *CSL Australia Pty Ltd v Tasmanian Ports Corp Pty Ltd (The "Goliath")* [2024] FCA 824 at [88].
36 *CSL Australia Pty Ltd v Tasmanian Ports Corp Pty Ltd (The "Goliath")* [2024] FCA 824 at [88].
37 *CSL Australia Pty Ltd v Tasmanian Ports Corp Pty Ltd (The "Goliath")* [2024] FCA 824 at [191].

come within the language of para (d) which has not been implemented in Australia".[38]

(b) This is because historical analysis showed that the inclusion of Art 2(1)(*d*) is to extend the right to limit claims that are not otherwise covered by Arts 2(1)(*a*) and 2(1)(*c*).[39] In other words, Art 2(1)(*d*) has "its own non-overlapping sphere of operation"[40] under which other claims that do not overlap with Art 2(1)(*a*) could fall.[41]

(c) The purpose of allowing contracting states to make reservations to exclude the application of Art 2(1)(*d*) is only to exclude such extended claims from being subject to limitation.[42]

(d) As the only claims not covered by Arts 2(1)(*a*) and 2(1)(*c*), and falling only within Art 2(1)(*d*), are those by public or harbour authorities against the owners of a wrecked ship for wreck removal expenses, "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".[43]

30 Stewart J also held that *Pertamina v Trevaskis* was "incorrectly decided and should not be followed".[44] Justice Stewart's reasons for this are summarised below:

38 *CSL Australia Pty Ltd v Tasmanian Ports Corp Pty Ltd (The "Goliath")* [2024] FCA 824 at [120] and [153].
39 *CSL Australia Pty Ltd v Tasmanian Ports Corp Pty Ltd (The "Goliath")* [2024] FCA 824 at [144], [154] and [190].
40 *CSL Australia Pty Ltd v Tasmanian Ports Corp Pty Ltd (The "Goliath")* [2024] FCA 824 at [153].
41 *CSL Australia Pty Ltd v Tasmanian Ports Corp Pty Ltd (The "Goliath")* [2024] FCA 824 at [120] and [153].
42 *CSL Australia Pty Ltd v Tasmanian Ports Corp Pty Ltd (The "Goliath")* [2024] FCA 824 at [144], [154] and [190].
43 *CSL Australia Pty Ltd v Tasmanian Ports Corp Pty Ltd (The "Goliath")* [2024] FCA 824 at [144] and [190].
44 *CSL Australia Pty Ltd v Tasmanian Ports Corp Pty Ltd (The "Goliath")* [2024] FCA 824 at [145].

(a) The HKCFA:[45]

> … seems to have assumed or understood that [a direct claim for wreck removal expenses by a harbour authority against the owners of a wrecked ship] would come within the language of para (a) because that was the premise to its conclusion of 'incoherence'.

(b) As a result, the HKCFA's decision that Art 2(1) of the Convention would be incoherent if the disapplication of Art 2(1)(*d*) did not exclude claims for wreck removal expenses from falling within other claims described in Art 2(1) rested on "the fundamental misconception that unless what is within Art 2(1)(*d*) is carved out of Arts 2(1)(*a*) and (*c*), Art 2(1)(*d*) would have no work to do".[46]

(c) The HKCFA's decision that disapplying Art 2(1)(*d*) is to exclude all claims relating to wreck removal from being limitable goes further than what the historical analysis reveals about the claims falling within Art 2(1)(*d*).[47] This would "drive a coach and horses through the international limitation regime and substantially undermine its intended uniformity".[48]

31 On appeal in *TasPorts v CSL*, the FCAFC overturned Stewart J's decision and held that "claims in respect of wreck 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 a ship, whatever the basis of liability for those claims, cannot be the subject of limitation in Australia".[49] Accordingly, CSL is not entitled to limit its liability for the Removal Claims.

45 *CSL Australia Pty Ltd v Tasmanian Ports Corp Pty Ltd (The "Goliath")* [2024] FCA 824 at [142].
46 *CSL Australia Pty Ltd v Tasmanian Ports Corp Pty Ltd (The "Goliath")* [2024] FCA 824 at [143].
47 *CSL Australia Pty Ltd v Tasmanian Ports Corp Pty Ltd (The "Goliath")* [2024] FCA 824 at [144].
48 *CSL Australia Pty Ltd v Tasmanian Ports Corp Pty Ltd (The "Goliath")* [2024] FCA 824 at [144].
49 *Tasmanian Ports Corp Pty Ltd v CSL Australia Pty Ltd (The "Goliath")* [2025] FCAFC 53 at [123].

32 The reasons for the FCAFC's decision are summarised below:

(a) The provisions of the Convention should be applied according to its terms, instead of either narrowly or widely.[50]

(b) The meaning of the words "whatever the basis of liability may be" in the chapeau to Art 2(1) of the Convention, must be given effect.[51] These words were deliberately added to the Convention because of a perceived deficiency in the language of the 1957 International Convention Relating to the Limitation of Liability of Owners of Sea-going Ships ("1957 Convention") which applied to the Convention only to claims arising from a list of specified "occurrences".[52]

(c) By placing liability relating to wreck "whatever the basis of liability may be" into its own sub-paragraph under Art 2(1)(*d*) of the Convention, limitation was extended to "*all claims* in respect of wreck liability, not simply those that were not otherwise not within the literal scope of Art 2(1)(a) or (c)" [emphasis in original].[53]

(d) Unlike claims for salvage and oil pollution damage which may be brought by way of recourse under Arts 2(1)(*a*) or 2(1)(*c*) of the Convention even though they are excluded by Arts 3(*a*) and 3(*b*), claims falling within Arts 2(1)(*d*) and 2(1)(*e*) of the Convention:[54]

> … may be removed *entirely* from the scope of the Convention by the reservation of a State Party. In that event, claims in respect of 'wreck' are not within the rules of the Convention at all. [emphasis in original]

50 *Tasmanian Ports Corp Pty Ltd v CSL Australia Pty Ltd (The "Goliath")* [2025] FCAFC 53 at [24]–[25].

51 *Tasmanian Ports Corp Pty Ltd v CSL Australia Pty Ltd (The "Goliath")* [2025] FCAFC 53 at [37].

52 *Tasmanian Ports Corp Pty Ltd v CSL Australia Pty Ltd (The "Goliath")* [2025] FCAFC 53 at [37]–[38].

53 *Tasmanian Ports Corp Pty Ltd v CSL Australia Pty Ltd (The "Goliath")* [2025] FCAFC 53 at [102]–[103].

54 *Tasmanian Ports Corp Pty Ltd v CSL Australia Pty Ltd (The "Goliath")* [2025] FCAFC 53 at [56].

(e) Comity is of especial importance in maritime law.[55] It would therefore be contrary to comity to adopt an alternative construction of the Convention (which has been widely acceded to) unless convinced that decisions of other superior courts on the same issue were plainly wrong in the context of the enactment of the Convention in Australia.[56]

(f) The HKCFA in *Pertamina v Trevaskis* and The Supreme Court of The Netherlands in *Scheepvaartbedrijf MS Amasus BV v ELG Haniel Trading GmbH (The Wisdom)*[57] and *Eitzen Chemical (Singapore) Pte Ltd v VOF G Idzenga Scheepvaartbedrijf (The Sichem Anne and The Margreta)*[58] had held that wreck and/or cargo removal expenses were not limitable under Art 2(1) of the Convention where reservations to exclude the application of Arts 2(1)(*d*) and/or 2(1)(*e*) were made and applied domestically.[59] These decisions were persuasive.[60]

33 The FCAFC's decision in *TasPorts v CSL* may be appealed to the High Court of Australia if special leave to appeal is granted by the High Court of Australia.[61] At the time of writing, CSL has not applied for special leave to appeal.

VI. What about Singapore?

A. Court decisions

34 There has been no reported Singapore court decision considering whether, under Art 2(1)(*d*) of the Convention, all

55 *Tasmanian Ports Corp Pty Ltd v CSL Australia Pty Ltd (The "Goliath")* [2025] FCAFC 53 at [114].
56 *Tasmanian Ports Corp Pty Ltd v CSL Australia Pty Ltd (The "Goliath")* [2025] FCAFC 53 at [115].
57 ECLI:NL:HR:2018:140.
58 ECLI:NL:HR:2018:142.
59 *Tasmanian Ports Corp Pty Ltd v CSL Australia Pty Ltd (The "Goliath")* [2025] FCAFC 53 at [59] and [64]–[69].
60 *Tasmanian Ports Corp Pty Ltd v CSL Australia Pty Ltd (The "Goliath")* [2025] FCAFC 53 at [115].
61 The High Court of Australia is the ultimate appellate court in Australia.

claims for wreck removal expenses or only claims by public authorities are excluded from limitation.

35 In the General Division of the High Court's judgment in *COSCO Shipping Specialized Carriers Co, Ltd v PT OKI Pulp & Paper Mills*,[62] the court had remarked that:[63]

> … a claim for wreck removal (which is a limitable claim under Art 2(1)(*d*) of the LLMC 1976) does not have the force of law in Singapore by virtue of the language of s 136(1) of the [Merchant Shipping Act 1995 (2020 Rev Ed)].

36 While the court's remarks suggest that all claims for wreck removal expenses are not limitable in Singapore, the court's above remarks are strictly *obiter dicta* and must be read with caution as the case was actually not concerned with the question of whether all claims for wreck removal expenses are limitable in Singapore.

37 English court decisions are traditionally of persuasive value where there are no Singapore decisions on particular issues. Unfortunately, although Art 2(1)(*d*) of the Convention also does not apply in the UK,[64] there is no reported English court decision specifically on whether Art 2(1)(*d*) covers all claims for wreck removal expenses.

38 Therefore, other materials will have to be considered to identify Singapore's position on the scope of claims not limitable under Art 2(1)(*d*) of the Convention.

B. Travaux préparatoires *of Convention*

39 As discussed above, the HKCFA in *Pertamina v Trevaskis* and the FCAFC in *TasPorts v CSL* found that the *travaux préparatoires* of the Convention show that claims under Art 2(1) of the Convention "whatever the basis of liability may be" are limitable, subject to any reservation made under Art 18(1).

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62 [2024] 3 SLR 807.
63 *COSCO Shipping Specialized Carriers Co, Ltd v PT OKI Pulp & Paper Mills* [2024] 3 SLR 807 at [51].
64 Merchant Shipping Act 1995 (c 21) (UK) Sch 7, Pt II, para 3(1).

40 The HKCFA and FCAFC also found that the *travaux préparatoires* of the Convention were silent on any restriction of Art 2(1)(*d*) to only claims resulting from exercises of statutory powers or by harbour authorities.[65]

41 The *travaux préparatoires* of the Convention contain further commentary against Art 2(1)(*d*) of the Convention being limited to claims for wreck removal pursuant to statutory powers or by harbour authorities.

42 The following commentary is recorded for the inclusion of Arts 2(1)(*d*) and 2(1)(*e*) in the Draft International Convention on the Limitation of Liability for Maritime Claims ("Draft Convention") to replace the 1957 Convention:[66]

> Sub-paragraphs (d) and (e), equivalent to Article 1, 1°, c) of the 1957 Convention, are necessary in addition to the previous sub-paragraphs in order to make claims for wreck removal and removal of cargo subject to limitation.

43 The part of Art 1(1)(*c*) of the 1957 Convention relating to wreck removal provides that claims arising from "any obligation or liability *imposed by any law* relating to the removal of wreck and arising from or in connection with the raising, removal or destruction of any ship which is sunk, stranded or abandoned (including anything which may be on board such ship)" are subject to limitation [emphasis added]. If Art 2(1)(*d*) of the Convention is read as a true equivalent to the above part of Art 1(1)(*c*) of the 1957 Convention, then Art 2(1)(*d*) of the Convention can concern only claims for wreck removal expenses pursuant to statutory powers.

44 However, the drafters of the LLMC 1976 did not include the words "imposed by any law" in Art 2(1)(*d*). If Art 2(1)(*d*) of the Convention was to be a true equivalent to the part of Art 1(1)(*c*) of the 1957 Convention relating to wreck removal, the words "imposed by law" could simply be retained from the

65 *Perusahaan Perseroan (Persero) PT Pertamina v Trevaskis Ltd (The "Star Centurion" and The "Antea")* [2023] HKCFA 20 at [38]; *Tasmanian Ports Corp Pty Ltd v CSL Australia Pty Ltd (The "Goliath")* [2025] FCAFC 53 at [85].

66 *The Travaux Préparatoires of the LLMC Convention, 1976 and of the Protocol of 1996* (Comite Maritime International, 2000) at p 74.

1957 Convention and Art 2(1)(*d*) would read "claims *imposed by any law* 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".

45 In not including and retaining the words "imposed by any law" in Art 2(1)(*d*), the drafters arguably intended to expand the scope of claims falling within Art 2(1)(*d*). Indeed, as the commentary to the Draft Convention also recorded that Arts 2(1)(*d*) and 2(1)(*e*) were "necessary in addition to the previous sub-paragraphs in order to make claims for wreck removal and removal of cargo subject to limitation",[67] the drafters do not appear to have intended for the scope of Art 2(1)(*d*) to be restricted to only claims for wreck removal expenses pursuant to statutory powers.

C. Parliamentary materials

46 Looking at Singapore's implementation of the Convention, the second reading speech and parliamentary debates of (a) the Merchant Shipping (Amendment) Bill[68] and (b) the Merchant Shipping (Miscellaneous Amendments) Bill[69] do not describe or explain the scope of claims excluded under Art 2(1)(*d*) of the Convention.

47 The author suggests that the passing of ss 136(1) and 136(2) of the Singapore MSA[70] to modify Arts 2(1) and 2(2) of the Convention evinces Parliament's intention to comprehensively

67 *The Travaux Préparatoires of the LLMC Convention, 1976 and of the Protocol of 1996* (Comite Maritime International, 2000) at p 74.

68 Bill No 53/2004, which implemented the Convention on Limitation of Liability for Maritime Claims 1976 (19 November 1976) (entered into force 1 December 1986) and introduced the current wording of s 136(1) of the Merchant Shipping Act 1995 (2020 Rev Ed).

69 Bill No 49/2018, which implemented the 1996 Protocol to Amend the 1976 Convention on Limitation of Liability for Maritime Claims (2 May 1996) (entered into force 13 May 2004) and added the current s 136(2) to the Merchant Shipping Act 1995 (2020 Rev Ed).

70 Reproduced in paras 13–14 above.

exclude all claims for wreck removal expenses, whether by public authorities or private entities, from limitation in Singapore.

48 Section 136(1) of the Singapore MSA is similar to s 6 of the Australia LLMC Act.[71] Its effect is also similar to s 12 of the HK LLMC Ordinance.[72]

49 On the other hand, there is no provision equivalent or similar to s 136(2) of the Singapore MSA in the Australia LLMC Act, the HK LLMC Ordinance or the Merchant Shipping Act 1995[73] (which gives effect to the Convention in the UK).

50 Around 14 years after passing the Merchant Shipping (Amendment) Bill[74] which introduced the current s 136(1) of the Singapore MSA, Parliament added s 136(2) of the Singapore MSA "to provide for a modified application of paragraph 2 of Article 2 of the LLMC Convention given that paragraph 1(*d*) and (*e*) of Article 2 of the LLMC Convention does not have the force of law".[75]

51 Given that s 136(1) of the Singapore MSA had already provided that Arts 2(1)(*d*) and 2(1)(*e*) of the Convention do not have force of law in Singapore, there would have been no need for Parliament to modify the application of Art 2(2) any further. Yet, Parliament added s 136(2) to the Singapore MSA.

52 As Parliament cannot be presumed to have legislated in vain, the author suggests that Parliament must have seen it necessary to add s 136(2) to the Singapore MSA to ensure that all claims falling under Arts 2(1)(*d*) and 2(1)(*e*) of the Convention are not subject to limitation, whether such claims are brought by way of recourse or for an indemnity. In doing so, the author suggests that Parliament's intention was for all claims for wreck removal expenses to be excluded from limitation in Singapore.

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71 Reproduced in para 12 above.
72 Reproduced in para 15(a) above.
73 c 21 (UK).
74 Bill No 53/2004.
75 Merchant Shipping (Miscellaneous Amendments) Bill (Bill No 49/2018), Explanatory Statement to cl 6.

D. Policy reasons

53 From a policy perspective, there was and is no reason for Parliament to prevent a shipowner who had incurred wreck removal expenses in accordance with the requirements of the Singapore authorities from seeking recourse or obtaining an indemnity for the full amount of expenses incurred from a wrongdoing party, if there is one. Otherwise, a shipowner would be out of pocket for potentially substantial wreck removal expenses.

54 If this is not the case, Singapore's status and competitiveness as an international maritime hub may be impacted. Shipowners may become wary about sailing their ships to Singapore out of concern that, should their ship become a wreck in or around the port of Singapore through no fault of their own, they may not be able to recover all wreck removal expenses from the blameworthy ship and her owners.

55 The outcomes in *Pertamina v Trevaskis* and *TasPorts v CSL* assure shipowners that all claims for wreck removal expenses will not be limitable in Hong Kong and Australia. To maintain her position as an international maritime hub, Singapore should align herself with other maritime nations which have considered this issue and exclude all claims for wreck removal expenses from limitation under the Convention.

56 Singapore's need to align with other maritime nations is not new. In the second reading speech for the Merchant Shipping (Amendment) Bill[76] which implemented the LLMC 1976, one of the reasons given for implementing the LLMC 1976 was to "align our standards with other maritime nations, such as Hong Kong, Japan and most EU states; and enhance Singapore's position as a global hub port and international maritime centre".[77]

57 Similarly, in the parliamentary debates on the Merchant Shipping (Miscellaneous Amendments) Bill[78] which implemented

76 Bill No 53/2004.
77 Singapore Parl Debates, Vol 78, Sitting No 7; Col 1109 [16 November 2004] (Lim Hwee Hua, Minister of State for Transport).
78 Bill No 49/2018.

the 1996 Protocol, it was explained that "the maritime sector is, and will continue to be a key pillar of Singapore's economy. This Bill will enable Singapore to maintain our competitiveness as an international maritime centre".[79]

VII. The only exception under Merchant Shipping (Wreck Removal) Act 2017

58 If all claims for wreck removal expenses are not limitable in Singapore, the Merchant Shipping (Wreck Removal) Act 2017[80] ("Wreck Removal Act"), which gives effect to the Nairobi International Convention on the Removal of Wrecks 2007[81] ("Wrecks Convention") that Singapore is a party to, contains the only exception that allows certain claims for wreck removal expenses to be subject to limitation in Singapore.

59 Under s 8 of the Wreck Removal Act, the Director of Marine of the MPA may remove a wreck if the wrecked ship's registered owner cannot be found or does not remove the wreck as required under s 7 of the Wreck Removal Act, or if immediate action must be taken to remove the wreck.

60 Sections 10 and 17 of the Wreck Removal Act then allow MPA's Director of Marine to recover expenses incurred in removing the wreck under s 8 of the Wreck Removal Act from the wrecked ship's registered owner and the insurer providing the ship's wreck removal insurance as required by the Wrecks Convention ("Wreck Removal Insurer").

61 The wrecked ship's registered owner and Wreck Removal Insurer may be entitled to limit their liability for such a claim by MPA's Director of Marine as:

(a) s 12 of the Wreck Removal Act allows a wrecked ship's registered owner to limit liability for wreck removal expenses claimed by the Director of Marine of the MPA

79 Singapore Parl Debates, Vol 94, Sitting No 87; [14 January 2019] (Lam Pin Min, Senior Minister of State for Transport).
80 2020 Rev Ed.
81 18 May 2007 (entered into force 14 April 2015).

under s 10 of the Wreck Removal Act in accordance with Pt 8 of the Singapore MSA, as if Arts 2(1)(*d*) and 2(1)(*e*) of the Convention have force of law in Singapore; and

(b) s 17(5) of the Wreck Removal Act extends the right of limitation available to a wrecked ship's registered owner under s 12 of the Wreck Removal Act to a ship's Wreck Removal Insurer.

VIII. Conclusion

62 In Hong Kong, the HKCFA's decision in *Pertamina v Trevaskis* has made clear that claims for wreck removal expenses are not subject to limitation under the Convention until the Chief Executive makes an order under s 15(1) of the HK LLMC Ordinance.

63 As things stand in Australia, the FCAFC's decision in *TasPorts v CSL* means that a shipowner cannot limit liability under the Convention for wreck removal expenses.

64 Singapore's position is not yet settled. Pending jurisprudence or legislative intervention on the issue in Singapore, the author's view is that the available materials support that all claims for wreck removal expenses are not subject to limitation in Singapore, whether it is by a public authority or private entity and whether the claim is by way of recourse or for an indemnity, as Art 2(1)(*d*) of the Convention does not have force of law in Singapore.

65 The one exception in Singapore is under the Wreck Removal Act, where the registered owner of a wrecked ship and her Wreck Removal Insurer are entitled to limit their liability against a claim by the Director of Marine of the MPA for wreck removal expenses incurred under the Wreck Removal Act, as if Arts 2(1)(*d*) and 2(1)(*e*) of the Convention have force of law in Singapore.