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# The Allision

ATSB Video



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# The Allision

Crisis Management



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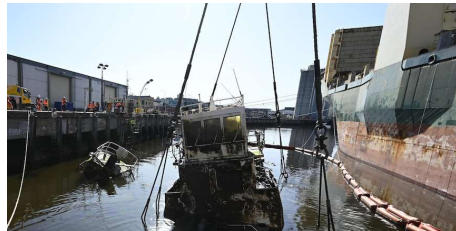
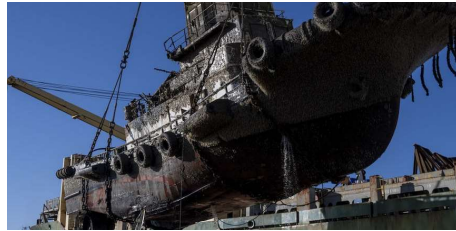
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# The Allision

Salvage & wreck removal



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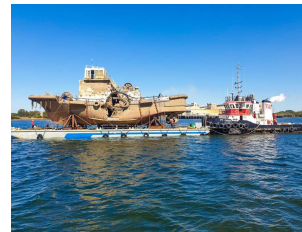
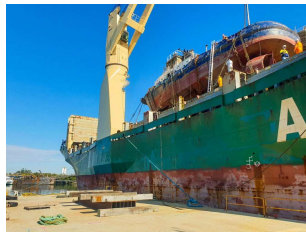
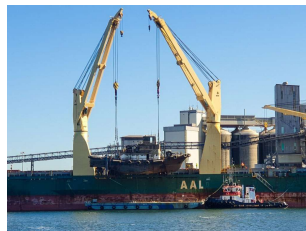
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# The Allision

Salvage & wreck removal



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## The Proceedings

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## The Proceedings

**Substantive proceedings**

- **TasPorts -v- CSL (NSD363/2022)**
  - TasPorts - T/B YORK COVE and T/B CAMPELL COVE (Tugs)
  - CSL - MV GOLIATH
- **Claims:**
  - breach of the contract
  - negligence
  - public nuisance

- **Loss:**
  - Loss of Tugs \$2,170,000
  - Hire \$2,958,595
  - Loss of hydrocarbons \$114,869
  - Wharf damage \$117,152
  - **\$17,245,743** for costs of and associated with the containment, removal and disposal of hydrocarbons, and the removal and disposal of the Tugs (**"wreck removal claims"**)

**SUB-TOTAL approx. \$22M (AU\$21,991,171)**

- Viva Energy Australia Pty Ltd (the fourth defendant) - BI losses \$2,458,043

**TOTAL approx. **AU\$24.5M** (\$24,449,214)**

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## The Proceedings

### Limitation proceedings

- CSL -v- TasPorts & Ors (NSD789/2022)
- **Article 2 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, 1976* (1996) and further amended by *Resolution LEG.5(99)* (2012) of the Legal Committee of the International Maritime Organization (collectively, the **Convention**)
- **Limitation of Liability for Maritime Claims Act 1989** (Cth) (**Act**)

- Limitation **fund** - Art 11 1976 Convention **7,401,416 SDRs**

- Standard Club UK Ltd Letter of Undertaking (**LOU**) **AU\$16M** (\$15,704,201)\*

### \*TasPorts' **cross-claim**

- CSL is not entitled to limit wreck removal claims;
- alternatively, by reason of STCs, no limitation *at all*

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

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## Issues for determination

- Did CSL contractually excluded or waived its right to limit:
  - Was the agreement pursuant to which the GOLIATH entered the Port subject to TasPorts' STCs?
  - If so, does Clause 26.2 exclude the right to limit?
- Are TasPorts' wreck removal claims limitable under Art 2(1) of the Convention?

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## The Goliath [2024] FCA 824

Stewart J - STCs argument

- *The Cape Bari* [2016] 2 Lloyd's Rep 469 consistent with Australia
- *Mount Bruce Mining Pty Ltd v Wright Prospecting Pty Ltd* [2015] 256 CLR 104
- *Codelfa Construction Pty Ltd v State Rail Authority (NSW)* [1982] 149 CLR 337
- *Sun Wai Wah Transportation Ltd v Cheung Kee Marine Services Co Ltd* [2010] 1 HKLRD 833

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**// 26.2 To the fullest extent permitted by Law, all rights, representations, guarantees, conditions, warranties, undertakings, remedies or other terms that are not set out in these Terms and Conditions are expressly excluded.**

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## Article 2 Convention

### Claims subject to limitation

(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;

....

(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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// (a) claims in respect of ...loss of or damage to property (including damage to harbour works, basins and waterways and aids to navigation), occurring ...in direct connexion with the operation of the [limiting] ship .., and consequential loss resulting therefrom;

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## The Goliath [2024] FCA 824

Stewart J - wreck removal argument

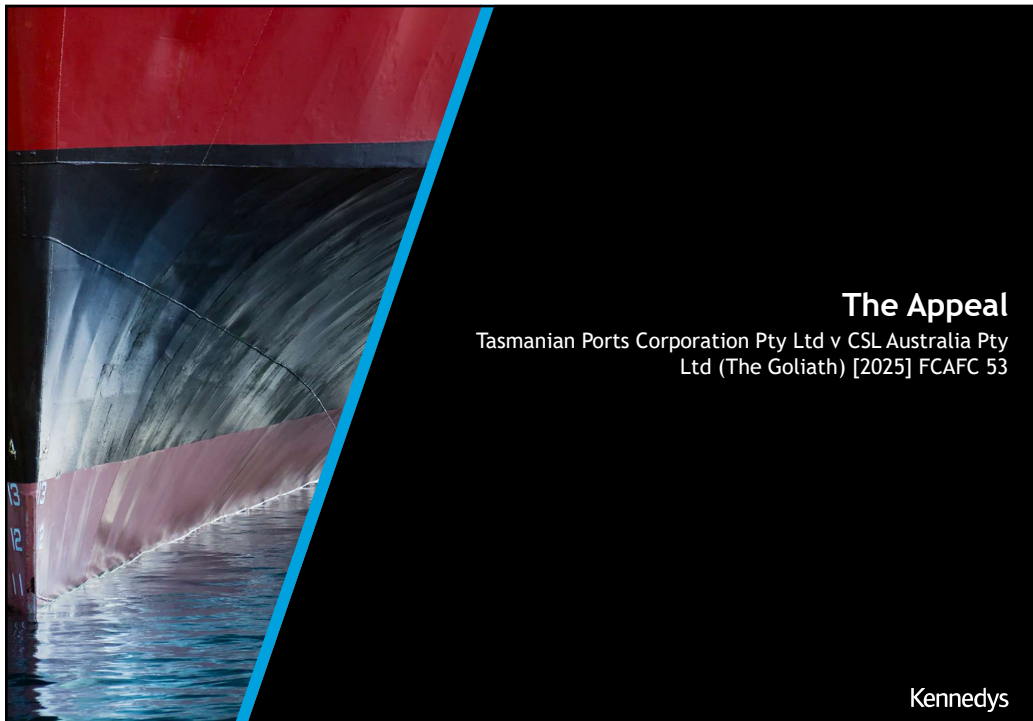
- Treaty interpretation - *Vienna Convention on the Law of Treaties (1969)*, Arts 31 and 32; *Kingdom of Spain v Infrastructure Services Luxembourg S.à.r.l.* [2023] 275 CLR 292
- Context, object and purpose - *Victrawl Pty Ltd v Telstra Corp Ltd* [1995] 183 CLR 595; *China Ocean Shipping Company v South Australia* [1979] 145 CLR 172; *The APL Sydney* [2010] 185 FCR 149; *The CMA Djakarta* [2004] 1 Lloyd's Rep 460; *The MSC Flaminia (No 2)* [2023] EWCA Civ 1007
- Text: *Qenos Pty Ltd v The Ship APL Sydney* [2009] 187 FCR 282; *generalia specialibus non derogant*
- general provisions do not overrule specific provisions - **the generalia maxim**
- *The Star Centurion* (2023) 26 HKCFAR 297; *The Tiruna* [1988] 1 Qd R 359 re *International Convention relating to the Limitation of the Liability of Owners of Sea-Going Ships (1957) (1957 Convention)*; *The Ship Xin Tai Hai* [2012] 215 FCR 265; *Scheepvaartbedrijf MS Amasus BV v ELG Haniel Trading GmbH*, ECLI:NL:HR:2018:140 (2 February 2018) (*The Wisdom*).

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### Issues on Appeal

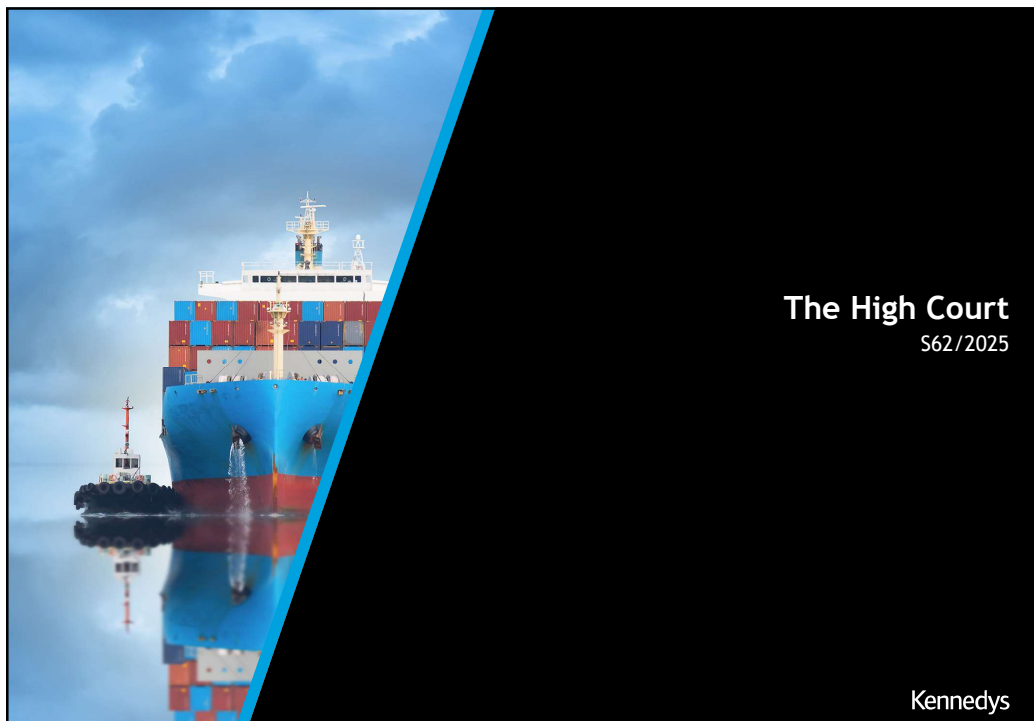
- The coherency question - how is the 1976 Convention to be construed if TasPorts' claims can be said to fall within both Art 2(1)(a) and (d)?
- The redundancy question - whether there is, in fact, complete overlap between Arts 2(1)(a), (b) or (c), and (d) and (e)?
- Notice of contention - does "a ship" in Art 2(1)(d) mean a ship able to limit under Art 2(1)(a)?

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## Textual features

- First - (a) does not mention wrecks, (d) expressly and specifically does, showing (d) was meant to cover all AJ [47]
- Secondly - (d) is specific and unqualified AJ [48]
- Thirdly - (d) does not speak of claims “for” wreck removal; broader language “*in respect of*” wreck claims AJ [58]
- Fourthly - no partial reservation under Art 18; reading (d) as covering *all* wreck claims ensures the reservation has full effect AJ [60]

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## The High Court

- 28 May 2025, Special Leave Application filed
- CSL, Full Court erred:
  - (d) exclusive all wreck removal claims
  - (a) should be applied on its terms
  - sub-paras not mutually exclusive
    - *The Flaminia* [2025] UKSC 14 - (d) has non over-lapping sphere of operation, *beyond* authority claims



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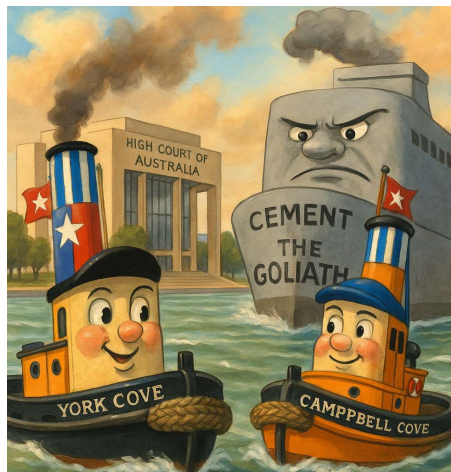
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## The High Court

- TasPorts, Full Court is correct:
  - orthodox treaty construction
  - Art 18(1) is a single indivisible right to exclude, coherence required
  - no finding of mutual exclusivity, linguistic overlap accepted
  - no tension with *The Flaminia*.
- **4 September 2025**, Special Leave **Granted**, [2025] HCADisp 200



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# Thank you






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