IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY

No. S285 of 2019

BETWEEN:

DAVID MOORE
Appellant

and

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SCENIC TOURS PTY LTD
Respondent

APPELLANT'S SUBMISSIONS

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Part I: Internet publication

1. This submission is in a form suitable for publication on the internet.

Part II: Concise statement of issues

2. The appellant (**Moore**) booked a holiday on a luxury European river cruise run by the respondent (**Scenic**). The cruise did not go as planned. There were substantial disruptions. Hours were spent on buses. The passengers experienced only 3 days of cruising instead of a promised 10 days. Moore felt disappointed and distressed, and sought damages for that loss under s 267(4) of the *Australian Consumer Law* (**ACL**). The primary judge awarded him $2,000 for the claim. The Court of Appeal overturned that award, holding that s 16 of the *Civil Liability Act 2002* (NSW) (**CLA**) applied in the proceedings by virtue of s 275 of the ACL and prevented Moore from receiving any damages of that kind. It was wrong to do so.
3. This appeal raises three issues. Each corresponds with a ground of appeal. Each provides an alternative basis for overturning the decision below.
4. *First*: for the purposes of s 275 ACL, is s 16 CLA – a provision that directs a court as to how it must assess and quantify an award of personal injury damages for non-economic loss – a law limiting "liability" and "recovery of any liability" for breach of contract? The answer is no. Section 16 is not concerned with "liability" at all.
5. *Second*: does s 16 CLA contain within it one of the following implicit geographic limitations: (i) the wrongful conduct the subject of the damages award, viewed as a tort claim, must be governed by NSW law; or alternatively (ii) the death or personal injury the subject of the damages award must be suffered in NSW? The answer is yes. Properly construed, s 16 does not apply unless the relevant claim is governed by NSW law, or alternatively has a territorial connection to NSW of this kind.
6. *Third*: are damages for disappointment and distress, neither consequential upon physical injury nor amounting to a recognised psychiatric illness, damages to which s 16 CLA applies? The answer is no. Such damages are neither "personal injury damages" nor an award for "non-economic loss" within Pt 2 CLA.
7. For any one of these reasons, s 16 CLA has no application to Moore's claim. The damages award he received at trial under s 267(4) ACL should be restored.

Part III: Section 78B of the *Judiciary Act 1903* (Cth)

8. Moore has served notices under s 78B of the *Judiciary Act 1903* (Cth) (**Judiciary Act**).

Part IV: Reasons for judgment of primary and intermediate court

9. The judgments below are *Moore v Scenic Tours Pty Ltd (No 2)* [2017] NSWSC 733 (**PJ**) (**1/CAB 5**) and *Scenic Tours Pty Ltd v Moore* [2018] NSWCA 238 (**CA**) (**2/CAB 261**).

Part V: Facts

10. In June 2013, Moore and his wife commenced a holiday on a tour provided by Scenic (**PJ[79]**). The tour included a river cruise from Amsterdam to Budapest on the *Scenic Jewel*, travelling along the Rhine, Main and Danube Rivers (**CA[4]**). The tour brochure invited Moore and other guests to join Scenic for "a once in a lifetime cruise along the grand waterways of Europe" during which, whilst on board a Scenic ship, they would be "immersed in all inclusive luxury" (**PJ[3]**). Moore and his wife were attracted to a cruise because they liked the idea of unpacking their belongings once only whilst still being able to see numerous European locations by cruising along the waterways (**PJ[78]**). The ability to travel without the restriction of confined spaces was of significance to Moore, who had previously undergone spinal surgery and found it difficult to spend extended periods sitting down (**PJ[78], [813]**). He paid in full for the tour 12 months before departure (**PJ[2]**) with his life savings (**PJ[813]**).

11. Due to high water levels on the Rhine and Main Rivers, Scenic started Moore's cruise (described in the judgments below as **Cruise 8**: **PJ[79]**) on a different vessel (**CA [5]**). Moore and his fellow passengers experienced substantial disruptions to the scheduled itinerary. They changed ships twice, travelling on 3 different ships in total; they were required to spend many hours on buses; and they cruised for only 3 days instead of 10 days (**PJ[644]; CA [5]**).

12. In representative proceedings commenced on behalf of himself and other travellers (**PJ[7]**), Moore alleged that Scenic had contravened the statutory guarantees to consumers contained in ss 60-61 ACL (collectively, **consumer guarantees**) in relation to Cruise 8 and 12 other cruises taken by group members (**CA[8]**). He claimed that Scenic supplied services to him and group members: (i) without due care and skill, contrary to s 60 (**care guarantee**); (ii) that were not fit for the purpose for which they were acquired, contrary to s 61(1) (**purpose guarantee**); and (iii) that were not of a nature and quality as could reasonably be expected to achieve the result that they wished the services to achieve, contrary to s 61(2) (**result guarantee**) (**CA[8]**).

13. Relevantly, Moore sought damages under s 267(4) ACL, and contended that he had suffered loss consisting of disappointment and distress because of Scenic's failure to comply with the consumer guarantees (**PJ[27], [843]-[845]; CA[11]**). He made no claim that he had suffered

any physical injury or recognised psychiatric illness by reason of his experience, and thus did not allege that his feelings of disappointment and distress were consequent upon any such injury or illness (see **PJ[39] [854]**). Scenic did not dispute that disappointment and distress was "reasonably foreseeable" under s 267(4) in the context of Scenic's supply of services to Moore and group members, but relevantly contended that damages for that kind of loss were unavailable by application of s 275 ACL (**PJ[847]-[848]**). It submitted that Pt 2 CLA was "the applicable damages regime for the assessment of claims pursuant to s 267(4) where personal injury damages would be awarded" (**PJ[851]**).

Decision of Garling J (1/CAB 5)

14. The primary judge determined Moore's claim and various common issues affecting all group members' claims (**CA[13]**).[1] In Moore's case, his Honour found that Scenic had failed to comply with the consumer guarantees (**PJ[939]; CA[16]**). As to Moore's action under s 267(4) ACL, his Honour accepted that, if the provisions of Pt 2 CLA were engaged in the proceedings, s 16 CLA would preclude the Court from awarding any damages because the evidence did not establish that the extent of Moore's disappointment and distress could reach the minimum threshold fixed by that provision (**PJ[873]**). His Honour also noted that he was bound by *Insight Vacations Pty Ltd v Young* (2010) 241 FLR 125[2] (***Insight CA***) to hold that a claim for damages for disappointment and distress was caught by Pt 2 CLA (**PJ[854]**). However, Garling J held that Pt 2 did not apply to Moore's claim, as it had no application where the events giving rise to the entitlement to damages happened outside NSW (**PJ[908]-[911]; [943]**). The factual findings underpinning that conclusion were that Scenic's failure to comply with the guarantees had occurred overseas and Moore had suffered his feelings of disappointment and distress overseas (**PJ[910], [943]; [120], [128], [133]**). After identifying the principles and facts relevant to the assessment of damages in Moore's case, his Honour awarded Moore $2,000 in damages for disappointment and distress plus interest from the date the cruise ended (**PJ[912]-[920]**).

The appeal to the Court of Appeal (2/CAB 261)

15. In Moore's case, the Court of Appeal upheld Garling J's findings that Scenic breached the purpose and result guarantees, but overturned his Honour's finding concerning breach of the

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[1] His Honour's answers to the common questions are contained in the subsequent judgment at **1/CAB 224.**
[2] This report contains the Court's full judgments; certain passages are omitted from (2010) 78 NSWLR 641.

care guarantee (**CA[396](i)-(ii)**). The Court also set aside the damages award under s 267(4) ACL, holding that: (i) s 275 ACL "pick[ed] up and applie[d] s 16(1) CLA "as a surrogate federal law"; and (ii) s 16(1) on its proper construction precluded Moore from "claiming damages for distress and disappointment by reason of Scenic's breaches of" the guarantees "notwithstanding that Scenic's breaches occurred outside Australia" (**CA[391]**).

16. As to (i): whilst recognising that s 16 CLA could not be picked up and applied under s 79 of the Judiciary Act as the State law was "irreconcilable" with s 267(4) ACL (**CA[359]**), the Court held that, for the purposes of s 275 ACL, s 16 was a "law which would limit or preclude Scenic's liability to … Moore for breach" of the contract between the parties (**CA[375], [381]**), and the "proper law of the contract" was NSW law (**CA[361]**). Accordingly, s 16 "applie[d] to limit or preclude Scenic's liability for its failure to comply with" the purpose and result guarantees (**CA[381]**). As to (ii), the Court rejected Moore's argument that a limitation inherent in s 16 (specifically, the provision's confined territorial operation) prevented the provision from applying to Moore's claim (**CA[348]-[349], [388]**). Applying s 12(1)(b) of the *Interpretation Act 1987* (NSW) (**Interpretation Act**), their Honours held that s 16 applied only in respect of an award of damages by a *NSW* court or tribunal, but that the provision was not subject to "any other geographical limitation" (**CA[388]**). In doing so, the Court adopted one of the "unstated assumptions" suggested by this Court in obiter in *Insight Vacations Pty Ltd v Young* (2011) 243 CLR 149 (***Insight HCA***) at [16], [33]. The Court also observed that Moore did not challenge its decision in *Insight CA* concerning damages for disappointment and distress, but had reserved his position in respect of any High Court appeal (**CA[347]**).

17. The parties agreed on reformulated common questions and answers to reflect the Court of Appeal's conclusions, which the Court incorporated into orders made on 7 December 2018 (**2/CAB 448**).

Part VI: Argument

<u>Ground 1: Section 275 ACL does not pick up and apply s 16 CLA</u>

Section 275 ACL

18. *Text*: Where a supplier has failed to comply with a statutory guarantee under ss 60-62 ACL, s 275 relevantly provides that a State or Territory law of a specified kind "applies to limit or preclude liability for the failure, and recovery of that liability (if any), in the same way as it applies to limit or preclude liability, and recovery of any liability, for a breach of the term of

the contract for the supply of the services". Section 275's central concept, which is determinative of the provision's purpose, scope and operation, is that of "liability". Absent from the provision is any reference to "damages", or to "amounts" of compensation. In legal contexts, "liability" typically signifies "legal responsibility" or the state of "being legally obligated or accountable".[3] The term is not defined in the *Competition and Consumer Act 2010* (Cth) (**CCA**) or ACL. Properly construed, including by reference to its use elsewhere in the statute,[4] "liability" within s 275 means *legal responsibility for a wrong and the concomitant entitlement to a remedy*. Section 275 alters the criteria for liability attaching to breach of the substantive right conferred by ss 60-62 to mirror liability rules existing under certain State and Territory laws of contract.

19. It is "sometimes difficult to disentangle" the two questions of the "*existence* of a liability", and the "*extent and the measurement* of a liability once established"[5] (in the sense of the extent and measurement of the plaintiff's recoverable losses flowing from the liability[6]). But those questions point to a long-established distinction in the law of civil wrongs which "reflects the difference between two major tasks of legal science": to "prescribe the quality of conduct necessary to make a man or an enterprise answerable for injuries caused", and to "determine ... the extent of the injured party's redress, the types of loss which may properly be made the subject of an award, and the general level of compensation".[7] Within Ogus's framework, whether the defendant breached a contract and whether that breach inflicted an injury ("damage") are issues of *liability*. Conversely, the extent and legal recoverability of the plaintiff's losses, and the amount of money to be paid as compensation for those legally recoverable losses, are issues of *damages*.[8] The former category concerns a defendant's legal responsibility to a plaintiff for a wrong. The latter category concerns the nature and quantification of the plaintiff's remedy attaching to that legal responsibility.

20. In the contractual context, it is useful to approach this distinction against the backdrop of the "primary" and "secondary" obligations arising out of a contractual bargain. If a party fails to

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[3] *Black's Law Dictionary* (11th ed, 2019), "liability", meaning 1; 8th ed 2004 is materially identical. See also *Macquarie Dictionary* (revised 3rd ed, 2002), "liability", meaning 1 ("an obligation, especially for payment").
[4] See, e.g. ACL, ss 64A, 77, 133, 139, 140, 141, 276A; CCA, s 137.
[5] Edelman, *McGregor on Damages* (20th ed, 2018) at [1-020] (emphasis added).
[6] Ogus, *The Law of Damages* (1973) (**Ogus**) at p1.
[7] Ogus at p2. See also *Chappel v Hart* (1998) 195 CLR 232 at [71], [82]-[83], [93](4).
[8] Ogus at pp1, 61.

perform primary legal obligations as promised under a contract, that breach gives rise to "substituted or secondary obligations" on the part of the defaulter, arising by operation of the common law or codifying statutes, to provide a remedy in the form of damages for breach of contract.[9] The law of contract creates a right to a remedy in damages as soon as breach is established, to recognise that there has been an "infraction of a legal right",[10] and thus "damage" in the sense described by Ogus. However, contractual clauses may operate to exclude or limit the primary or secondary obligation that would otherwise exist in these circumstances.[11] Where liability has not been so excluded or limited, the further question of the *extent* of the plaintiff's remedy is determined (subject to statutory modification) by other common law doctrines, including the "normative principles which govern the quantification of damages".[12]

21. Returning, then, to the language of s 275 ACL: on a natural reading, the provision singles out State and Territory laws that "limit or preclude liability, and recovery of any liability" for breach of contract, in two interrelated senses: (i) by restricting the level of, or denying altogether, the defendant's legal responsibility for the wrong (the primary obligation); and (ii) by denying a remedy for liability contrary to what would ordinarily flow as a matter of law (the secondary obligation). The language "and *recovery* of any liability" does not describe a concept or category that is substantively different from a law operating to "limit or preclude liability". Rather, it reflects the reality that these characteristics are two sides of the same coin (in that a law limiting or precluding liability will necessarily prevent recovery, and a law preventing recovery will have the effect of undercutting the liability itself), but allows for the possibility that a law may in form be directed towards denial of the liability or alternatively denial of a remedy. The provision's references to the proper law of the "contract" and "breach of a term of" a contract further indicate that the laws picked up are those working a modification to the law of contract.

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[9] See *Photo Production Ltd v Securicor Transport Ltd* [1980] AC 827 (***Photo Production***) at 848-850; *Mann v Paterson Constructions Pty Ltd* [2019] HCA 32 (***Mann***) at [12], [83], [195], [197]; *ASIC v Drake (No 2)* (2016) 340 ALR 75 (***Drake***) at [279]-[280].

[10] *New South Wales v Stevens* (2012) 82 NSWLR 106 at [18], [20], [26]; Heydon, *Heydon on Contract* (2019) at [26.30] (discussing nominal damages).

[11] *Photo Production* at 850; *Drake* at [279]; see also *Darlington Futures Ltd v Delco Australia Pty Ltd* (1986) 161 CLR 500 at 507-511.

[12] *Mann* at [195].

22. Once a State or Territory law of that character is identified, then s 275 applies the law "to limit or preclude liability for the failure" to comply with the statutory guarantees in ss 60-62 ACL, "and recovery of that liability (if any)". In other words, s 275 takes State and Territory laws that alter the substantive criteria for contractual liability – whether by excluding that liability, narrowing its scope or denying the right to a remedy that would otherwise flow from liability – and applies them to modify the liability rules attaching to the legal rights and obligations sourced in ss 60-62 ACL.

23. ***Legislative history***: This analysis is supported by the legislative history. The statutory antecedent to s 275, s 74(2A) of the *Trade Practices Act 1974* (Cth) (**TPA**), was enacted in 2004 to address a mischief that was revealed in *Wallis v Downard-Pickford (North Queensland) Pty Ltd*[13] and came sharply into focus upon the introduction of State and Territory professional standards schemes.[14] In *Wallis*, this Court held that a Queensland provision, relevantly providing that a carrier was not liable for loss of or injury to goods in any amount greater than $20 per package, was inconsistent with the statutory creation in s 74(1) of the TPA of an implied contractual obligation to take due care and skill, and invalid to that extent under s 109 of the Constitution (at 397). In the words of Toohey and Gaudron JJ (Deane, Dawson and McHugh JJ agreeing), direct inconsistency arose because "the warranty created by s 74 carrie[d] with it full contractual liability for breach", whereas the Queensland provision "purport[ed] to limit that liability", thereby "detract[ing] from the full operation of a right granted by the [TPA]" (at 396-397).

24. The "full contractual liability" contemplated by their Honours was the "secondary obligation to provide compensation for breach" which arose by operation of law from s 74's "primary obligation to take due care and skill".[15] If the Queensland provision operated to cap the secondary obligation, that obligation would no longer afford an entitlement that correlated with the full extent of the primary obligation. The result would be to confine the carrier's *liability*, or *legal responsibility*, for the wrong.

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[13] (1994) 179 CLR 388 (*Wallis*).
[14] See *Insight CA* at [44]-[45], [98], [142]-[143]; Supplementary Explanatory Memorandum to the *Treasury Legislation Amendment (Professional Standards) Bill 2003* (Cth) at [1.2]-[1.5]; and s 87AB of the TPA (now largely reflected in s 137 of the CCA), enacted at the same time as new s 74(2A).
[15] *Wallis* at 396, describing the appellant's submissions (which their Honours ultimately accepted).

25. Similarly to the provision impugned in *Wallis*, the broad effect of the professional standards legislation progressively enacted by the States and Territories was to limit the civil liability, arising in tort, contract or otherwise, of members of a profession (acting in performance of that profession) to the limitation specified in a scheme authorised by the Minister.[16]

26. Applying *Wallis*, a defendant could not have invoked State professional standards legislation in answer to an action for breach of the implied warranty in s 74(1) of the TPA, as that State limitation on liability would have detracted from the full contractual liability guaranteed by s 74(1) and triggered the operation of s 109 of the Constitution. New s 74(2A) of the TPA avoided that result by taking the implied warranty and attaching to it the liability rules forming part of State contract law. However, s 74(2A) had nothing to say about State laws fixing the nature and amount of *damages* that a court could award for conduct admittedly giving rise to full liability in contract – laws which could not apply of their own force in federal jurisdiction, and thus were incapable of giving rise to a s 109 inconsistency in any Australian court determining a TPA claim.[17] Indeed, shortly before s 74(2A) was passed, Parliament enacted detailed amendments to the TPA that capped awards for personal injury damages in proceedings under provisions not including s 74(1)[18] – indicating that, where it intended to restrict the measure of damages for breaches of the TPA, it did so expressly and comprehensively.

27. Section 275 ACL was introduced in 2010 as part of the new ACL. It is structured upon the former s 74(2A), aside from amendments reflecting that the implied warranties under the TPA had become statutory guarantees under the new scheme. The 2010 amendments also relevantly introduced s 267(4), which created a right to bring an action against a supplier for breach of the new statutory guarantees in ss 60-62 and (as explained further below) specified the scope and measure of damages to which a claimant was entitled by way of remedy. The Explanatory Memorandum confirmed s 275's focus on liability-related laws by stating that s 275 would give effect to State and Territory laws that "exclude liability in respect of consumer guarantees", and would do so by "provid[ing] for such laws to have effect to limit the

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[16] See, e.g. *Professional Standards Act 1994* (NSW), historical version for 15/9/00-14/11/04, ss 4 (definition of "occupational liability"), 14, 21, 28.
[17] See *Rizeq v Western Australia* (2017) 262 CLR 1 (*Rizeq*) at [92].
[18] *Trade Practices Amendment (Personal Injuries and Death) Act (No 2) 2004* (Cth), Sch 1 item 9 (introducing Pt VIB).

guarantees".[19] Further, CCA Pt VIB continued to make comprehensive provision for the quantum of personal injury damages in proceedings taken under other provisions of the new ACL.

Section 16 CLA

28. Section 16 CLA is entitled "Determination of damages for non-economic loss". Reading the provision in its statutory context, four important features should be noted. *First*, s 16 applies "to and in respect of an award of personal injury damages" (s 11A(1)). As such, it operates where a claimant has satisfied the elements of some other law entitling him or her to recover a remedy for the "death of or injury to a person" (see s 11, definition of "personal injury damages"), and has proven that he or she suffered certain types of "loss" (s 16(1)). In other words, the provision applies where liability, and loss, has already been established (see [19]-[20] above). *Second*, s 16 applies "regardless of whether the claim for the damages is brought in tort, in contract, under statute or otherwise" (s 11A(2)). *Third*, s 16 regulates the quantification in particular circumstances of one of the available heads of damages. Specifically, it identifies a category of loss ("non-economic loss" as defined in s 3) and provides that damages are unavailable for that loss "unless the severity" of the loss is "at least 15% of a most extreme case" (s 16(1)); it caps the damages that may be awarded for non-economic loss to $350,000 (s 16(2)); and it imposes a formula for calculating those damages that hinges on the severity of the loss and a prescribed percentage of the maximum damages amount (s 16(3)). *Fourth*, s 16 achieves this by commanding the court (see **CA[387]**) to measure and award damages consistently with these formulae (ss 11A(3), 16(1)-(3)).

Application to Moore's claim

29. The Court of Appeal held that s 16 CLA could not apply in Moore's case unless it was picked up by s 275 ACL, as it was "irreconcilable" with Commonwealth law and thus incapable of being picked up under s 79 of the Judiciary Act (**CA[359]**). Those conclusions, but not the reasons underpinning them, were correct.

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[19] Explanatory Memorandum to the *Trade Practices Amendment (Australian Consumer Law) Bill (No 2) 2010* (Cth) (**EM**) at [7.136]-[7.137]. The EM suggested that the States and Territories would model those laws on their existing laws that "allow providers of recreational services to exclude or limit their liabilities in respect of implied conditions and warranties in consumer contracts" ([7.136]). This appears to have been a reference to laws similar to s 5N of the CLA, which relevantly provided that contracts may "exclude, restrict or modify" certain "liabilit[ies] ... result[ing] from breach of an express or implied warranty". The year after the ACL's introduction, in *Insight HCA*, this Court held that s 5N was "not a law of a kind picked up and applied by [former] s 74(2A)" because it did not in itself work any "exclusion, restriction or modification of liability" (at [8]).

30. *First*, the proceedings below were in federal jurisdiction. As this Court explained in *Rizeq*, Ch III of the Constitution renders State Parliaments constitutionally incapable of legislating to "add or detract from federal jurisdiction" (at [60]), in the sense of governing the powers of a court exercising federal jurisdiction or the circumstances in which those powers are to be exercised (at [28], [87], [103]). Consistent with provisions in the form of s 31 of the Interpretation Act, a State law purporting to bind a State court must be read down so as to apply only to a State court exercising State jurisdiction (see at [104]). Section 79 of the Judiciary Act may then operate to pick up the text of that provision and apply it as a *Commonwealth* law regulating the manner of exercise of federal jurisdiction (at [63]) – but only (relevantly) if Commonwealth law does not "otherwise provide" within s 79(1).

31. *Second*, s 16 CLA, read with s 11A(3), directs a court as to the quantum of damages that may be awarded for non-economic loss and the manner of assessing those damages. It purports to govern the court's powers in the sense described in *Rizeq*. It cannot apply of its own force "independently of anything done by a court".[20] Applying s 31 of the Interpretation Act, s 16 must be read down as a command only to courts exercising State jurisdiction. Section 79 then determines whether the provision's text applies as Commonwealth law in federal jurisdiction.

32. *Third*, s 16 CLA is "irreconcilable" with Commonwealth law because s 267(4) ACL prescribes the *scope and measure of damages* that may be awarded in an action under that provision to enforce a liability originating in (relevantly) ss 60 and 61. When those statutory guarantees are breached, the extent of the remedy is calculated by reference to the heads (loss or damage suffered "because of the failure to comply with the guarantee" if such loss or damage was "reasonably foreseeable") and measure (damages for "*any* loss or damage suffered", emphasis added) provided for in s 267(4). Section 267(4) "leaves no room" for a separate law requiring one head of damages (damages for non-economic loss) to be quantified according to a detailed formula – which is what s 16 CLA does. The analysis at **CA[359]** conflates the concepts of *liability* and *assessment and quantification of damages*, in a manner that obscures the nature of the inconsistency between the provisions and ultimately grounds the erroneous conclusion on the meaning of s 275 ACL (**CA[381]**).[21] Further, in assessing whether Commonwealth law otherwise provided, the Court of Appeal should have considered the *whole* scheme of the ACL,

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[20] *Rizeq* at [105].

[21] To similarly erroneous effect, see the Court of Appeal's analysis of *Wallis*, and former s 74(1) TPA, in obiter at *Perisher Blue Pty Ltd v Nair-Smith* (2015) 90 NSWLR 1 at [188]-[194].

including s 275 itself (cf **CA[359]**). It should have held that s 275 does not alter the effect of s 267(4) in prescribing a self-contained regime for the assessment and quantification of damages, because s 275 is not directed towards those matters (see [18]-[27] above).

33. This leads to the critical conclusions demonstrating why Ground 1 of this appeal should be upheld. Contrary to **CA[381]**, s 16 CLA is *not* a law of a kind that can be picked up by s 275 ACL. Instead of limiting or precluding "liability" and "recovery of any liability" for a breach of contract, it commands courts on how to assess and calculate damages for an established violation of legal rights and a concomitant right to a remedy, and does so whether the underlying claims were "brought in tort, in contract, under statute or otherwise" (s 11A(2)). The end result becomes the same under both s 79 of the Judiciary Act and s 275 ACL. Section 16 CLA was not picked up in the proceedings below because the ACL, taking account of the limited effect of s 275 itself, "otherwise provides", *and* because s 275 did not separately apply that law to modify liability under the statutory guarantees relied upon by Moore.

Ground 2: Section 16 CLA has within it a further geographic limitation, in addition to the restriction on the courts to which it applies

34. If Ground 1 is rejected, Moore submits that s 16 CLA nonetheless has no application to his case because of geographic limitations inherent in s 16 read with s 12(1)(b) of the Interpretation Act. It is true that s 12(1)(b) does not require every aspect of a legislative provision to be read as territorially limited; the provision must be construed as a whole, having regard to its context and subject matter.[22] Here, however, a proper construction of s 16 CLA supports the limitations for which Moore contends.

35. There are two alternative limbs to this ground. Both proceed from the proposition that the Court of Appeal should have found an additional geographic limitation implicit in s 16 CLA *as well as* the provision's operation as a command to a NSW court or tribunal. *First*, the Court of Appeal should have held that the text, structure and history of the CLA supported a further "unstated assumption", raised as a possibility in *Insight HCA* at [16] and [33]: that the CLA applies where the claim, viewed as a tort, is governed by NSW law as the *lex loci delicti* (and therefore the *lex causae*). *Second*, and alternatively, the Court of Appeal should have interpreted s 16 CLA as applicable only where the death or injury the subject of the claim was suffered in NSW. In most cases, the two alternative approaches would produce the same result.

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[22] *Chubb Insurance Company of Australia Limited v Moore* (2013) 302 ALR 101 at [181].

36. *Lex causae limitation*: The text of Pt 2 CLA and the context of its enactment support the restriction of the application of the Part (and, thus, of s 16) to claims for wrongs which, viewed as a tort, are governed by NSW law. On this view, s 11A directs a court to apply Pt 2 in respect of certain "claims", and, for the purposes of s 12(1)(b) of the Interpretation Act, each "claim" is a "matter or thing in and of" NSW in the sense just described. This "unstated assumption" arises because Pt 2 of the CLA is directed towards (i) regulating the award of damages in tort claims, even if formulated as a claim in contract or under statute such as consumer protection legislation; and (ii) doing so in respect of death or injury suffered *in NSW*, as confirmed by the Parliament's concern to address public liability claims against local councils, community groups and other local bodies. It also coheres with common law choice of law principles, under which questions concerning damages are matters of substantive law; the nature and amount of damages that may be awarded in a tort claim would be governed by the *lex loci delicti*;[23] and the *lex loci delicti* is the law of the place where, in substance, the wrong was committed.[24]

37. *First*, the text and legislative history of s 11A indicates there is a relevant similarity between Pt 1A CLA, considered in *Insight HCA*, and Pt 2. Part 1A concerns "claim[s]" resulting from "negligence" (s 5A(1)). Somewhat more broadly, Pt 2 concerns "claim[s]" (s 11A(2)) in respect of legal wrongs which lead to "personal injury damages" (s 11A(1)), which in the core case would be tort claims. In each case, the Part is then broadened to prevent circumvention of the regime where claims of that character are brought in contract or under statute. In respect of Pt 2, s 11A(2) as originally enacted in s 9(3) reflected an attempt to capture tort actions in respect of personal injuries regardless of the form in which they were litigated, providing that Pt 2 "extends to an award of personal injury damages even if the damages are recovered in an action for breach of contract or in any other action". The later amendment of s 9(3) to its current form of s 11A(2) was described as a "minor amendment" as part of the CLA's restructure on the introduction of new Pt 1A by the *Civil Liability Amendment (Personal Responsibility) Act 2002* (NSW).[25] The focus of original s 9(3) on tort claims reflects the broader legislative history of Pt 2 CLA, which was introduced as the first stage of general tort law reform in NSW: see **PJ[897]-[898]**. It also aligns with the particular heads of damages regulated by Pt 2 CLA (including non-economic loss), which are all derived from tort.

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[23] See *John Pfeiffer Pty Ltd v Rogerson* (2000) 203 CLR 503 (***John Pfeiffer***) at [100], [102].
[24] *Dow Jones & Co Inc v Gutnick* (2002) 210 CLR 575 (***Dow Jones***) at [43], [109], [195].
[25] See Sch 2 item 5; Explanatory Note to the Civil Liability Amendment (Personal Responsibility) Bill, para (n)(i).

38. *Second*, the legislative history also demonstrates that the CLA is concerned with claims for wrongs that would be governed by NSW law. Part 2 was directed at a crisis in the cost of public liability premiums, especially for NSW local councils: see **PJ[897]-[902]**. The wrongs for which insurance was sought by local government and community groups, local tour operators and small businesses (e.g. as occupiers), are all claims typically governed by NSW law. They include the failure to take reasonable care in the construction of a facility, or the failure to inspect and repair or maintain for latent defects, or failure to warn.[26] The cases that Parliament would have had in mind for local councils would have included claims by drivers injured by potholes and other defects in local roads and road structures;[27] by pedestrians falling on council roads and footpaths, drains and car parks;[28] and by users of local council parks, rivers and lakes,[29] sporting, recreational and other facilities.[30] The conduct and injury complained of would in almost all cases occur in NSW.

39. In *Dow Jones*, this Court recognised that, while attempts to apply a single rule of location for where in substance a tort is committed have proved unsatisfactory, in claims such as in "trespass or negligence, where some quality of the defendant's conduct is critical, it will usually be very important to look to where the defendant acted, not to where the consequences of the conduct were felt".[31] For personal injury claims, howsoever framed, the place of the conduct of local councils, community groups, local tourism operators and small businesses will typically be in NSW (as, indeed, will the death or injury). Since the wrong will in substance[32] have been committed in NSW, NSW will be the *lex loci delicti*.

40. *Third*, it would be strange if Pt 2 CLA applied even if the wrong were governed by the laws of some other State or country merely because the claim was brought in a NSW court. Given the history of the CLA, and the lack of any express terms or subject matter indicating any concern with events outside NSW, it is unlikely that the NSW Parliament intended to regulate the consequences of wrongs committed outside NSW, let alone outside Australia.[33]

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[26] *Vairy v Wyong Shire Council* (2005) 223 CLR 422.
[27] *Brodie v Singleton Shire Council* (2001) 206 CLR 512 at [150].
[28] See e.g. *Council of the City of Wagga Wagga v Fuller* [1999] NSWCA 440; *Barbieri v Fairfield City Council* [1999] NSWCA 405; *North Sydney Council v Plater* [2002] NSWCA 225.
[29] See e.g. *Marrickville Municipal Council v Moustafa* [2001] NSWCA 372; *Wyong Shire Council v Shirt* (1980) 146 CLR 40.
[30] See e.g. *Council of the Municipality of Waverley v Bloom* [1999] NSWCA 229; (1999) Aust Torts R 81-517.
[31] *Dow Jones* at [43].
[32] *Dow Jones* at [43], [109], [195].
[33] See *Wanganui-Rangitikei Electric Power Board v Australian Mutual Provident Society* (1934) 50 CLR 581 at 601.

41. *Fourth*, and related to the third point: the Court of Appeal's approach to s 16 CLA as a command applicable where the claim is brought in a NSW court, regardless of whether NSW law is the *lex causae*, will invite forum shopping into NSW in State jurisdiction claims by plaintiffs suffering personal injury in interstate jurisdictions whose laws are less favourable than NSW. The equivalents to the CLA in other States and Territories have a wide array of provisions for the minimum severity of injury before which damages may be awarded, including provisions operating by reference to value or a scale or degree of injury, provisions in respect of the types of non-economic loss to which limits are applied, and/or provisions setting the applicable caps on damages (if any).[34] As already explained, it is unlikely that the NSW Parliament intended the damages assessment regime in Pt 2 CLA to operate as a beacon to parties litigating in respect of wrongs committed outside NSW. Similarly, the Court of Appeal's interpretation may create forum shopping by parties choosing forum selection clauses for their contracts (including in contracts of adhesion).

42. *Fifth*, without the *lex causae* limitation, the command to NSW courts in s 16 CLA would override the laws of other States (and Territories) in tort claims brought in State jurisdiction where those laws would otherwise apply as the *lex loci delicti*. That is inimical to the full faith and credit requirement in s 118 of the Constitution. Although not a choice of law rule, s 118 supports a single choice of law rule at common law for intra-Australian torts,[35] and one that respects the "predominantly territorial interest of each [State] in what occurs within its territory".[36] In *John Pfeiffer*, it was rightly suggested, but left open, that s 118 could limit the power of States to abrogate the common law rule to regulate intranational torts, or at least operated to protect that rule from local public policy exceptions to the application of interstate laws: see at [67], [70], [91], [143]. If s 16 CLA operates in the manner determined by the Court of Appeal, it is a mandatory law of the local forum (the NSW court), driven by local public policy concerns. That type of law is of the same kind as the local public policy exceptions discussed in *John Pfeiffer*; each overrides the application of interstate laws by reason of such policy concerns.

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[34] Compare *Civil Liability Act 2003* (Qld) s 61, *Civil Liability Regulation 2014* (Qld), Sch 7; *Civil Liability Act 2002* (Tas) s 27; *Civil Liability Act 1936* (SA) s 52; *Civil Liability Act 2002* (WA) ss 9, 10; *Personal Injuries (Liabilities and Damages) Act 2003* (NT) ss 27-28; *Civil Law (Wrongs) Act 2002* (ACT) ss 98, 99.

[35] *John Pfeiffer* at [62]-[63], [65], [67], [68].

[36] *John Pfeiffer* at [64], [67], [86].

43. Absent express words or a clear justification for such an interpretation, this Court should reject the proposition that s 16 CLA overrides the damages regime imposed by the laws of another State which are the proper law of the cause. There is nothing in the framework of the CLA or its history that evinces an intention to regulate claims for personal injury occasioned in, or suffered in, another State, which would otherwise be governed by the other State's laws.

44. ***Extraterritoriality limitation:*** Alternatively, the additional "matter or thing" confined to NSW is the "death" or "injury" that is the subject of the damages award under s 16 CLA. As noted at [28] above, s 16 only applies in respect of an award of "personal injury damages" (s 11A(1)), defined in s 11 as "damages that relate to the death of or injury to a person". "Injury" means personal injury and includes "impairment of a person's physical or mental condition" (s 11). Noting that the place of the "death", "injury" or "personal injury" is not identified in the CLA, and having regard to s 12(1)(b) of the Interpretation Act, the proper construction of Pt 2 and s 16 CLA is that the death or injury must take place in NSW.

45. *First,* a matter or thing such as "death" or "injury" can be so limited by s 12(1)(b). An analogy may be drawn with *Gifford v Strang Patrick Stevedoring Pty Ltd* (2003) 214 CLR 269, in which this court considered s 4(1) of the *Law Reform (Miscellaneous Provisions) Act 1944* (NSW) and its interaction with s 151P of the *Workers Compensation Act 1987* (NSW). Section 4(1) as it then stood provided for liability for nervous shock claims to extend to nervous shock sustained by parents and spouses of the person "killed, injured or put in peril" even if not within any proximity to the incident (s 4(1)(a)), while other family members had to be within the sight or hearing of the injured or deceased person (s 4(1)(b)) (see at [124]). In the course of considering the section, Gummow and Kirby JJ (with whom Gleeson CJ and Hayne J relevantly agreed: at [24], [96]) held that the reference in s 4(1) to a person being "killed, injured or put in peril" "is taken to be a reference to a 'matter or thing' occurring in New South Wales" for the purposes of s 12(1)(b) (at [70]).

46. *Second,* that Pt 2 CLA should apply in respect of claims for death or injury occurring within NSW, and not in respect of all personal injury claims brought in NSW courts, is supported by the same considerations described at [37]-[43] above concerning the history of Pt 2 and the adverse consequences of failing to read a further geographic limitation into s 11A. In particular, the sorts of claims described at [38]-[39] above are intimately connected with the territory of NSW as they involve the commission of wrongs by conduct occurring and injuries

arising in NSW. Further, this alternative limitation would provide another means of avoiding the forum shopping into NSW described at [41] above, and ensuring a territorial connection between Pt 2 CLA and NSW that would respect the balance envisaged by s 118 of the Constitution (see *John Pfeiffer* at [64]).

Ground 3: *Baltic Shipping* damages for disappointment and distress fall outside Pt 2 CLA

47. If Grounds 1 and 2 are not accepted, Moore submits that the Court of Appeal's conclusion that s 16 CLA precluded his damages award under s 267(4) ACL was wrong for a different reason. Moore formally submitted below that *Insight CA* did not apply to his claim for damages, but otherwise reserved his position should the matter come before this Court: **CA[347], fn222.**[37]

10 The Court of Appeal erred in following *Insight CA* and accepting that the kind of damages sought by Moore under s 267(4) ACL triggered the application of Pt 2 CLA. Specifically, it wrongly held that a claim for damages for distress or disappointment which is not consequent upon physical or psychiatric injury, but instead flows directly from breach of a contract or consumer guarantee – in other words, the kind of damages awarded to Mrs Dillon in *Baltic Shipping Company v Dillon* (1993) 176 CLR 344 (***Baltic Shipping***) – is a claim in respect of "non-economic loss", and a claim for "personal injury damages", within Pt 2 CLA.

48. *Insight CA* is an unsatisfactory authority for dealing with the problems raised by Moore's case once the context of that decision is fully understood. Unlike the present proceeding, it was a case in which the distress and disappointment the subject of the claim was the result of a

20 physical injury (see at [117], [129], [155], [173]). Nevertheless, Basten JA appears to have held at [124]-[125] that *Baltic Shipping* damages for distress and disappointment are treated as personal injury damages, and in particular are damages for a species of "non-economic loss" (s 3 CLA), *even if* unconnected with any physical injury – albeit that his Honour's ultimate ruling narrowed his conclusions back to scenarios involving loss "resulting from" physical injury (at [129]). Taking a more restrained approach, Sackville AJA confined his reasoning to distress and disappointment damages consequent on personal injury, holding that such damages are caught by Pt 2 CLA (see at [164], [166]-[167], [171], [173]-[175]).

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[37] In that footnote, Sackville AJA stated that this Court in *Insight HCA* at [8] and [26] "accepted the conclusions reached in [*Insight CA*] on this issue" (i.e. that damages of the kind sought by Moore were caught by s 16 CLA). However, this Court in *Insight HCA* did not accept that conclusion; it was not even mentioned in those paragraphs.

49. As for Spigelman CJ, his Honour at [78] accepted the reasoning of *both* Basten JA and Sackville AJA, and classified disappointment and distress as "pain and suffering" rather than "loss of amenities" within the definition of "non-economic loss" in s 3 CLA. This represented a retreat from Spigelman CJ's earlier decision in *New South Wales v Ibbett* (2005) 65 NSWLR 168 (***Ibbett***), in which he expressed the view (with respect, correctly) that emotional reactions including distress and disappointment as claimed in *Baltic Shipping* were not "impairment of a person's ... mental condition" for the purposes of the definition of "injury" in s 11 CLA (at [21]-[22]).

50. Although *Insight CA* has these unsatisfactory aspects and is strictly distinguishable, it has been treated as the governing authority in subsequent cases, including the present claim, even where the distress and disappointment was unrelated to any physical injury.[38] Accordingly, the issue raised by Ground 3 is whether Basten JA's reasoning at [124]-[125] is a satisfactory basis for considering that a claim for *Baltic Shipping* damages in respect of losses not consequential upon any physical injury or recognised psychiatric illness should be treated as (i) a claim relating to "impairment" of a person's "mental condition", and thus to an "injury" within s 11 CLA; and (ii) a claim in respect of "non-economic loss" within s 3 CLA. If the answer to either (i) or (ii) is "no", s 16 CLA does not apply to the claim.

51. On an accurate understanding of what is being compensated in actions akin to that brought by Moore under s 267(4) ACL, distress and disappointment flowing directly from breach of the consumer guarantees cannot be treated as a form of personal injury consisting of "impairment of a person's ... mental condition" under s 11 CLA. Nor can that loss be characterised as "non-economic loss" under s 3 CLA – whether "pain and suffering" or "loss of amenity".

52. ***"Injury"***: whilst para (b) of the definition of "injury" in s 11 CLA captures more than just a recognised psychiatric illness, when common law or statute recognises as damage the failure

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[38] The primary judge in the present case also followed (at **PJ[862]-[865]**) the decision of Barr AJ in *Flight Centre v Louw* [2011] NSWSC 132; 78 NSWLR 656. There, Barr AJ purported to apply what the Court of Appeal had said in *Insight CA*, and posited that a claim of damage for disappointment and distress, unaccompanied by physical injury, was non-economic loss within s 3 and "personal injury" for the purpose of s 11 of the CLA. As to s 11, Barr AJ characterised disappointment and distress as amounting to the "impairment of a mental condition". For completeness, the decision in *Insight CA* and Barr AJ's view in *Flight Centre* were applied to another claim for damage for disappointment and distress not consequential on physical harm in *Tralee Technology Holdings v Yun Chen* [2015] NSWSC 1259 at [61]. The view of Barr AJ in *Flight Centre* was thereafter applied at tribunal level to deny recovery for damage for disappointment and distress in *Riddell v My Bentours Viking River Cruises Australia Pty Ltd (Gen)* [2011] NSWCTTT 156. See also *Childs v Scenic Tours Pty Ltd* [2014] NSWCATCD 128 (referred to at **CA[405]**), where a claim for stress and disappointment was similarly denied.

by a person to receive the benefit of a promised or represented state of mind, the compensation afforded for that loss is not properly viewed as compensation for *impairment* of a person's mental condition. Rather, "distress and disappointment" damages are a species of expectation damages. They compensate for the failure to receive a promised benefit that should have been delivered, and for a state of mind that was never achieved because of the breach. Where the damage flows directly from breach, "distress and disappointment" is a composite term for this lost expectation. The "disappointment" or even "distress" felt by the claimant is nothing more than the healthy reaction of a rational mind to the expectation that was not fulfilled.

53. This distinction is made clear in *Baltic Shipping*, in which the respondent claimed both personal injury damages and damages for distress and disappointment not consequential on her injury after the sinking of a cruise ship part way through a holiday. Chief Justice Mason identified five exceptions that had emerged over time to the general rule that damages for distress were not recoverable in actions for breach of contract (at 362-365). The second exception (at 362.7) involves claims for "pain and suffering, including mental suffering and anxiety, where the defendant's breach of contract causes physical injury to the plaintiff". This essentially describes the facts of *Insight CA*. By contrast, the fifth exception (at 363.6) covers cases where there is a promise of enjoyment, relaxation or freedom from molestation and the disappointment and distress, and thus "the damages", "flow directly from the breach" of that promise (at 365.7). As is true of the first exception (breach of promise to marry), third exception (physical inconvenience, including from defects in a property acquired) and fourth exception (mental suffering consequential thereon), no personal injury is involved.

54. Thus, courts hearing claims for damages for distress and disappointment in "holiday cases" seek to award damages for the "expectations [that] have been largely unfulfilled", by awarding compensation for what the plaintiff "should have had".[39] The task for the court in assessing damages for inconvenience, discomfort and mental distress involves comparing "the expectations against the reality".[40]

55. Support for Moore's arguments also emerges from *NSW v Williamson* (2012) 248 CLR 417, in which this Court held that a claim for damages for false imprisonment on account of deprivation of liberty with accompanying (perceived) loss of dignity and harm to reputation

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[39] *Jarvis v Swans Tours Ltd* [1973] 1 QB 233 (*Jarvis*) at 239.
[40] *Milner v Carnival Plc* [2010] 3 All ER 701 (*Milner*) at [47].

was not an impairment of a mental condition or otherwise a form of "injury" within s 11 CLA (at [34]). It was thus not a claim for "personal injury damages". This aligns with the view expressed by Spigelman CJ in *Ibbett* that "the emotional reaction, often called 'injured feelings', arising from the apprehension of physical violence and the accompanying sense of outrage or indignation is not an 'impairment of a mental condition'" (at [22]).

56. ***"Non-economic loss":*** Nor is the loss compensated by such damages a species of "non-economic loss" (s 3 CLA), whether as "pain and suffering" or "loss of amenity". Those are heads of damages that were developed at common law for personal injury claims, and which are left unmodified by the CLA and its interstate analogues save as to the quantification of damages (as in s 16). The damages Moore sought were not for an impairment manifesting in pain and suffering, or in loss of any ability through loss of amenity, as those concepts were understood and compensated for at common law. "Pain and suffering" in this context comprises actual (subjective) pain and suffering from physical hurt occasioned by the accident or its aftermath.[41] It does not extend to consequential anger or indignation, nor distress or grief unless causing a psychiatric injury or exacerbating a physical injury.[42] "Loss of amenity" is similarly inapt; this typically invites comparison between the ability of a person to enjoy life before and after the personal injury.[43] It includes consequential "distress of mind and the feeling of frustration that come from an incapacity to take part in activities", which is not to be compensated separately as "pain and suffering".[44] Properly understood, all of the losses described in the definition of "non-economic loss" in s 3 CLA are consequential forms of non-pecuniary loss following personal injury.

57. In the "holiday cases" referred to at [54] above, the courts have recognised that reducing such claims to monetary terms may involve a similarly difficult task to the assessment of damages for non-economic loss arising from personal injury,[45] and that comparisons with the assessment of general damages in personal injury cases and the awards for psychiatric injury may provide guidance.[46] (An analogous approach is taken in appeals against excessive

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[41] Balkin and Davis, *Law of Torts* (2nd ed, 1996) at pp372-373, (5th ed, 2013) at [11.28], citing *Teubner v Humble* (1963) 108 CLR 491 (*Teubner*) at 507; *Review of the Law of Negligence: Final Report* (2002) at [13.19]-[13.20].
[42] See Fleming, *The Law of Torts* (9th ed 1998) at pp267-268; see also (10th ed 2011) at [10.110].
[43] See *Teubner* at 506; *Review of the Law of Negligence: Final Report* (2002) at [13.20].
[44] See *Teubner* at 508.
[45] *Jarvis* at 238.
[46] *Milner* at [38].

damages awards in defamation actions.[47]) But the courts do not mistake the damages being assessed as a species of personal injury damages for non-economic loss.

58. Accordingly, a claim under s 267(4) ACL seeking damages for disappointment or distress flowing directly from breach of the consumer guarantees falls outside Pt 2 CLA. Such damages, in the nature of the award in issue in *Baltic Shipping*, are not damages for "non-economic loss" within s 3 CLA. Nor are they "personal injury damages" within s 11 CLA.

Part VII: Orders sought

59. If Moore succeeds on any of Grounds 1, 2 or 3, this Court should make proposed orders 1-3 of the Notice of Appeal (**2/CAB 497**). This would restore the primary judge's finding that Moore should be awarded damages under s 267(4) ACL and interest (order 2), and remit to the primary judge the question of whether group members may recover any damages for disappointment and distress (order 3). Moore also seeks the costs orders set out in proposed orders 5 and 6.

60. Proposed order 4 concerns the Court of Appeal's reformulated answers to the common questions. Depending upon the nature of any success on this appeal, Moore submits that the answers to Q15 and Q17 should be varied as follows (with mark-ups showing minor amendments to the orders proposed in the Notice of Appeal, to account for the fact that some group members succeeded against Scenic in establishing a breach of the care guarantee):

    (i) Varying the last paragraph to A15, by deleting the words "however there is no entitlement under that provision to any damages for distress and disappointment" and substituting "which damages may include any proven disappointment and distress suffered because of the defendant's failure to comply with the ~~purpose and result~~ guarantees".

    (ii) Varying A17, by substituting "No". Alternatively, by substituting "In circumstances where the disappointment and distress is not consequential from physical injury, does not amount to a recognised psychiatric illness and where it is occasioned by the defendant's non-compliance with the ~~purpose and/ or result~~ guarantees, no".

Part VIII: Estimated time for oral argument

61. Moore estimates that he will require 2.25 hours for oral argument inclusive of reply.

Dated: 1 November 2019

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[47] *Carson v John Fairfax & Sons Ltd* (1993) 178 CLR 44 at 57-59.

IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY

No. S285 of 2019

BETWEEN:

DAVID MOORE
Appellant

and

SCENIC TOURS PTY LTD
Respondent

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ANNEXURE

LIST OF CONSTITUTIONAL PROVISIONS, STATUTES & STATUTORY INSTRUMENTS REFERRED TO IN THE APPELLANT'S SUBMISSIONS

	Legislation	*Version*
1.	Constitution	–
	Section 118	–
	Commonwealth	
2.	Competition and Consumer Act 2010 (Cth)	12/04/2013
3.	Judiciary Act 1903 (Cth)	25/08/2018 (current)
4.	Trade Practices Act 1974 (Cth)	22/06/2004
		13/07/2004
5.	Trade Practices Amendment (Personal Injuries and Death) Act (No 2) 2004 (Cth)	13/07/2004 (as made)
6.	Treasury Legislation Amendment (Professional Standards) Act 2004 (Cth)	13/07/2004 (as made)
	New South Wales	
7.	Civil Liability Act 2002 (NSW)	18/06/2002 (as made)
		03/06/2013
8.	Civil Liability Amendment (Personal Responsibility) Act 2002 (NSW)	28/11/2002 (as made)
9.	Interpretation Act 1987 (NSW)	28/11/2018 (current)
10.	Law Reform (Miscellaneous Provisions) Act 1944 (NSW)	25/01/1990

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	Legislation	*Version*
11.	Professional Standards Act 1994 (NSW)	15/09/2000
12.	Workers Compensation Act 1987 (NSW)	30/06/1987 (as made)
	Other jurisdictions	
13.	Civil Law (Wrongs) Act 2002 (ACT)	22/11/2018 (current)
14.	Civil Liability Act 1936 (SA)	01/08/2017 (current)
15.	Civil Liability Act 2002 (Tas)	08/10/2019 (current)
16.	Civil Liability Act 2002 (WA)	01/12/2018 (current)
17.	Civil Liability Act 2003 (Qld)	01/07/2016 (current)
18.	Civil Liability Regulation 2014 (Qld)	01/09/2019 (current)
19.	Personal Injuries (Liabilities and Damages) Act 2003 (NT)	22/05/2015 (current)