

**FIRST CROSS-CLAIM**  
**STATEMENT OF CROSS-CLAIM**

**COURT DETAILS**

Court	Supreme Court of New South Wales
Division	Common Law Division
List	not applicable
Registry	Sydney
Case number	No 200854 of 2014

**TITLE OF PROCEEDINGS**

Plaintiff	<b><u>Rodriguez &amp; Sons Pty Limited (ACN 108 770 681)</u></b>
First defendant	<b><u>Queensland Bulk Water Supply Authority, trading as Seqwater</u></b>
Number of defendants	<b><u>3</u></b>

**TITLE OF THIS CROSS CLAIM**

Cross-claimant	<b><u>Queensland Bulk Water Supply Authority, trading as Seqwater</u></b>
First cross-defendant	<b><u>SunWater Limited ACN 131 034 985</u></b>
Second cross-defendant	<b><u>State of Queensland</u></b>

**FILING DETAILS**

Filed for	Queensland Bulk Water Supply Authority, trading as Seqwater, the First Defendant
Filed in relation to	the First Defendant's cross-claim
Legal representative	Justin McDonnell
Legal representative reference	JAM/NC 0455057758
Contact name and telephone	Justin McDonnell (07) 3244 8099
Contact email	justin.mcdonnell@au.kwm.com

## RELIEF CLAIMED

- 1 Damages.
- 2 Further or alternatively to paragraph 1, contribution under section 6 of the *Law Reform Act 1995* (Qld).
- 3 Interest in accordance with s 100 of the *Civil Procedure Act 2005* (NSW).
- 4 Costs.

## PLEADINGS AND PARTICULARS

### A Parties

- 1 At all material times the Queensland Bulk Water Supply Authority trading as Seqwater (**Seqwater**):
  - (a) was an entity established under section 6 of the South East Queensland Water (Restructuring) Act 2007 (Qld);
  - (b) was not a body corporate; and
  - (c) was capable of suing and being sued.
- 2 At all material times SunWater Limited ACN 131 034 985 (**SunWater**):
  - (a) was a government owned corporation within the meaning of section 5 of the *Government Owned Corporations Act 1993* (Qld);
  - (b) was a registered public company limited by shares; and
  - (c) was capable of being sued.
- 3 At all material times the State of Queensland was capable of being sued in accordance with section 8 of the *Crown Proceedings Act 1980* (Qld).

### B Flood Management Services Agreement

- 4 At all material times:
  - (a) Seqwater owned Somerset Dam, Wivenhoe Dam and North Pine Dam;
  - (b) Seqwater held a resource operations licence granted under section 107 of the *Water Act 2000* (Qld) to operate Somerset Dam, Wivenhoe Dam and North Pine Dam.

- 5 On or about 13 October 2009 Seqwater and SunWater entered into a contract for the provision of flood management services by SunWater to Seqwater (**Flood Management Services Agreement**).

#### Particulars

The contract is written and is entitled Service Level Agreement – Flood Management Services [SEQ.001.022.8933].

- 6 The Flood Management Services Agreement provided:
- (a) by clause 2, that the term of the Flood Management Services Agreement was from 1 July 2009 to 30 June 2010;
  - (b) by clause 3.1, that during the term of the Flood Management Services Agreement SunWater must provide to Seqwater the services described in the Service Schedule;
  - (c) by clause 3.2(a), that SunWater must provide the services in accordance with the Service Schedule;
  - (d) by clause 3.3, that SunWater must provide the services:
    - (i) in a diligent manner;
    - (ii) to a standard which was, at a minimum, the standard of skill and care expected of a contractor experienced in the provision of the service;
  - (e) by clause 1 of the Service Schedule:
    - (i) on page 3, SunWater shall provide flood management services for Wivenhoe, Somerset and North Pine Dams in accordance with the provisions of the Service Schedule, the Emergency Action Plans, Standing Operating Procedures and the Flood Operations Manuals;
    - (ii) on page 4, during a flood event SunWater must comply with the requirements of the Flood Operations Manuals;
  - (f) by clause 6 of the Service Schedule, SunWater shall perform flood operations during flood events in accordance with the Emergency Action Plans, Standing Operating Procedures, which refer to the Flood Operations Manuals.
- 7 The term of the Flood Management Services Agreement was extended by agreement so that it continued until 28 February 2011.

### Particulars

The agreements were written and entitled Deed of Variation and Extension No 1 [SEQ.001.010.7254], Deed of Variation and Extension No 2 [SEQ.001.010.7259] and Deed of Variation and Extension No 3 [SEQ.001.010.7265].

- 8 At all times during December 2010 and January 2011, the Manual for Operational Procedures for Flood Mitigation for Wivenhoe and Somerset Dam, Revision 7 (**the Flood Mitigation Manual**) was a Flood Operations Manual for the purposes of Flood Management Services Agreement.

### C The Claims

- 9 In proceedings 2014/200854 in the Supreme Court of New South Wales the plaintiff, on its own behalf and on behalf of others, claims from Seqwater, from SunWater and from the State of Queensland damages for negligence, nuisance and trespass arising out of flood operations undertaken at Wivenhoe and Somerset Dams in December 2010 and in January 2011, together with interest and costs (**Claims**).

### Particulars

The Claims are as pleaded in the statement of claim as amended from time to time.

- 10 The flood operations that are the subject of the Claims were flood operations performed by SunWater under the Flood Management Services Agreement.
- 11 Seqwater, SunWater and the State of Queensland have each defended the Claims.

### Particulars

The defences are as pleaded in the defences as amended from time to time.

### D Breach of the Flood Management Services Agreement

- 12 If the Claims against Seqwater succeed (which Claims are denied by Seqwater), then in the premises pleaded in support of the Claims:
- (a) in breach of clause 3.3 of the Flood Management Services Agreement, SunWater did not provide services:
- (i) in a diligent manner; further or in the alternative;
- (ii) to a standard which was, at a minimum, the standard of skill and care expected of a contractor experienced in the provision of the Service;
- (b) in breach of clause 3.2(a) of the Flood Management Services Agreement, SunWater did not provide services in accordance with clauses 1 and 6 of the Service Schedule in that:

- (i) SunWater did not comply with the requirements of the Flood Mitigation Manual; further or in the alternative
  - (ii) SunWater did not perform flood operations during a flood event in accordance with the Flood Mitigation Manual; and
- (c) the breaches of the Flood Management Services Agreement have caused Seqwater to suffer loss or damage.

#### **Particulars**

- (i) The amount of any judgment awarded against Seqwater in proceedings 2014/200854 in the Supreme Court of New South Wales.
- (ii) The legal costs incurred by Seqwater in defending the Claims.

#### **E Contribution**

13 In addition, or in the alternative, if the Claims against Seqwater succeed (which Claims are denied by Seqwater), in the premises pleaded in support of the Claims:

- (a) Seqwater claims from SunWater contribution under section 6 of the *Law Reform Act 1995* (Qld) in such amount as the Court finds to be just and equitable having regard to the extent of SunWater's responsibility for any damage found to have been suffered; and
- (b) Seqwater claims from the State of Queensland contribution under section 6 of the *Law Reform Act 1995* (Qld) in such amount as the Court finds to be just and equitable having regard to the extent of the State of Queensland's responsibility for any damage found to have been suffered.

#### **F Relief**

14 Seqwater claims relief from SunWater as follows:

- (a) damages for breach of the Flood Management Services Agreement;
- (b) in addition, or in the alternative, contribution under section 6 of the *Law Reform Act 1995* (Qld);
- (c) interest in accordance with section 100 of the *Civil Procedure Act 2005* (NSW);
- (d) costs.

15 Seqwater claims relief from the State of Queensland as follows:

- (a) contribution under section 6 of the *Law Reform Act 1995* (Qld);

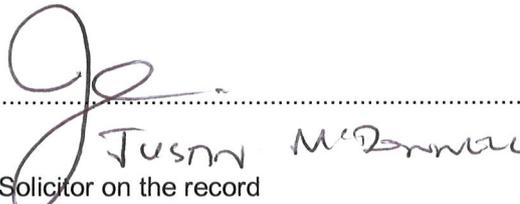
- (b) interest in accordance with section 100 of the *Civil Procedure Act 2005* (NSW);
- (c) costs.

#### SIGNATURE OF LEGAL REPRESENTATIVE

I certify under clause 4 of Schedule 2 to the *Legal Profession Uniform Law Application Act 2014* that there are reasonable grounds for believing on the basis of provable facts and a reasonably arguable view of the law that the claim for damages in this statement of cross-claim has reasonable prospects of success.

I have advised the cross-claimant that court fees may be payable during these proceedings. These fees may include a hearing allocation fee.

Signature



Justin McDonald

Capacity

Solicitor on the record

Date of signature

7 September 2015

#### NOTICE TO CROSS-DEFENDANT

If you do not file a defence, you will be bound by any judgment or order in the proceedings so far as it is relevant to this cross-claim.

#### HOW TO RESPOND

**Please read this statement of cross-claim very carefully. If you have any trouble understanding it or require assistance on how to respond to the cross-claim you should get legal advice as soon as possible.**

You can get further information about what you need to do to respond to the claim from:

- A legal practitioner
- LawAccess NSW on 1300 888 529 or at [www.lawaccess.nsw.gov.au](http://www.lawaccess.nsw.gov.au).
- The court registry for limited procedural information.

You can respond in one of the following ways:

- 1 **If you intend to dispute the cross-claim or part of the cross-claim**, by filing a defence and/or making a cross-claim.
- 2 **If money is claimed, and you believe you owe the money claimed**, by:
  - Paying the cross-claimant all of the money and interest claimed.
  - Filing an acknowledgement of the claim.
  - Applying to the court for further time to pay the claim.

3 **If money is claimed, and you believe you owe part of the money claimed, by:**

- Paying the cross-claimant that part of the money that is claimed.
- Filing a defence in relation to the part that you do not believe is owed.

Court forms are available on the UCPR website at [www.lawlink.nsw.gov.au/ucpr](http://www.lawlink.nsw.gov.au/ucpr) or at any NSW court registry.

#### **REGISTRY ADDRESS**

Street address	Supreme Court of NSW Level 5 Law Courts Building, Queens Square 184 Phillip Street Sydney NSW
Postal address	Supreme Court of NSW GPO Box 3 Sydney NSW 2001
Telephone	9230 8111

**AFFIDAVIT VERIFYING**

Name William James Alexander Harpham  
 Address C/ 117 Brisbane Street, Ipswich 4305  
 Occupation Claim Manager  
 Date 7 September 2015

I affirm:

- 1 I am a Claim Manager employed by the First Defendant/Cross-Claimant and am authorised to commence proceedings on behalf of the Cross-Claimant.
- 2 I believe that the allegations of fact contained in the statement of cross-claim are true.

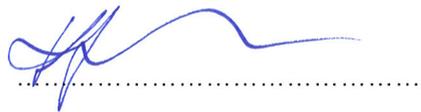
AFFIRMED at Brisbane

Signature of deponent



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Signature of witness



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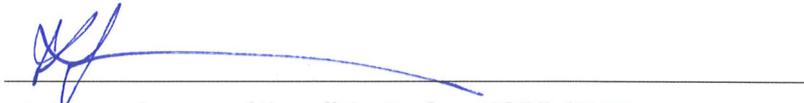
Name of witness Kione Maree Johnson

Address of witness Level 33, Waterfront Place, 1 Eagle Street Brisbane  
 Capacity of witness Solicitor of the Supreme Court of Queensland holding a current practising certificate under the Legal Profession Act 2007 (Qld)

And as a witness, I certify the following matters concerning the person who made this affidavit (the **deponent**):

- 1 I saw the face of the deponent.
- 2 I have known the deponent for at least 12 months.

Signature of witness



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Note: The deponent and witness must sign each page of the affidavit. See UCPR 35.7B.