



Principal Registrar &
Chief Executive Officer



AMENDED POINTS OF CLAIM

COURT DETAILS

Court	Supreme Court of New South Wales
Division	Common Law
Registry	Sydney
Case number	2019/00150651

TITLE OF PROCEEDINGS

First Plaintiff	Doyle's Farm Produce Pty Ltd (ACN 119 734 539) as trustee for Claredale Family Trust
Second Plaintiff	John Gerard Doyle
Number of Plaintiffs	5
First Defendant	Murray Darling Basin Authority
Second Defendant	The Commonwealth of Australia

FILING DETAILS

Filed for	Plaintiffs
Legal representative	Amanda Banton, Banton Group
Legal representative reference	2453
Contact name and telephone	Amanda Banton, 02 8076 8090
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TYPE OF CLAIM

Tort - Negligence

AMENDED POINTS OF CLAIM

1. At all material times, RyanAG Pty Ltd (ACN 006 376 414) (**RyanAG**):
 - a. Was a duly incorporated company, capable of suing;
 - b. Carried on business of irrigated agricultural production in the Goulburn-Murray irrigation region, on land known as 473 Katamatite-Yarrawonga Road, Yarrawonga VIC 3730 consisting of the following parcels:
 - i. Volume 11321 Folio 838
CA 112C Parish of Burramine
 - ii. Volume 11321 Folio 841
CA 46 Parish of Yarrawonga
 - iii. Volume 11321 Folio 841
CA 47 Parish of Yarrawonga
 - iv. Volume 11321 Folio 839
CA 81 Parish of Yarrawonga
 - v. Volume 11321 Folio 839
CA 82 Parish of Yarrawonga
 - vi. Volume 11321 Folio 839
CA 83 Parish of Yarrawonga
 - vii. Volume 11321 Folio 714
CA 84B Parish of Yarrawonga
 - viii. Volume 11321 Folio 663
Lot 1 of Plan TP818037D
 - ix. Volume 11321 Folio 663
Lot 2 of Plan TP818037D
 - x. Volume 11321 Folio 663
Lot 3 of Plan TP818037D

xi. Volume 11321 Folio 663
Lot 4 of Plan TP818037D

xii. Volume 11321 Folio 663
Lot 5 of Plan TP818037D

xiii. Volume 11321 Folio 663
Lot 6 of Plan TP818037D

xiv. Volume 11321 Folio 663
Lot 7 of Plan TP818037D

(together, **the Yarrawonga Land**)

c. For the purpose described in (b) above, used the Ryansfield/Cananea Water Access Entitlements (as defined at paragraph [2] below).

2. At all material times, Ryansfield Pty Ltd (ACN 006133697) (**Ryansfield**):

a. Was a duly incorporated company, capable of suing;

b. Jointly owned (with Cananea Pty Ltd (ACN077 626 398) (**Cananea**)) the following high-reliability water entitlements:

i. A high-reliability water share of 10.0 ML issued under the *Water Act 1989* (Vic) (**Water Act**) for the Victorian Murray declared water system;

Particulars

Registered water share WEE027483

ii. A high-reliability water share of 363.8 ML issued under the *Water Act* for the Victorian Murray declared water system (together, the **Ryansfield/Cananea Water Access Entitlements**).

Particulars

Registered water share WEE064127

3. At all material times, Cananea:

a. Was a duly incorporated company, capable of suing;

- b. Jointly owned (with Ryansfield) the Ryansfield/Cananea Water Access Entitlements).
- 4. At all material times, the directors and shareholders of Ryansfield and Cananea were the directors and shareholders of RyanAG.
- 5. At all material times, RyanAG carried on the business of irrigated agricultural production referred to at paragraph [0] above using the Ryansfield/Cananea Water Access Entitlements.
- 6. At all material times, Ryansfield and Cananea jointly held a water use licence issued under the Water Act for the use of water for the purpose of irrigation, domestic and stock use, dairy use, and general non-irrigation farm use, on the Yarrawonga Land.

Particulars

Registered water use licence WUL017047

- 7. The Authority appointed pursuant to s 64GA of the Water Act for the Victorian Murray is Goulburn Murray Water.
- 8. At all material times, the volume of water available to RyanAG under the Ryansfield/Cananea Water Access Entitlements, as a proportion of the volume of the full entitlement, was fixed according to seasonal determinations made by Goulburn Murray Water pursuant s 64GB of the Water Act, which determined how much water was available for holders of high reliability water shares in the Victorian Murray, expressed as a percentage of their full entitlements.
- 9. At all material times, Goulburn Murray Water made seasonal determinations in accordance with the *Bulk Entitlement (River Murray – Goulburn-Murray Water) Conversion Order 1999* and Bulk Entitlement (River Murray – Lower Murray Urban and Rural Water – Irrigation) Conversion Order 1999 (**Conversion Order**) as amended from time to time.
- 10. At all material times, Goulburn Murray Water was obliged to supply high reliability water share holders with the amounts of water allocated against their maximum entitlements pursuant to seasonal determinations.

Particulars

Conversion Order clause 15

11. At all material times, seasonal determinations made by Goulburn Murray Water according to the Conversion Order depended upon determinations made by the MDBA or alternatively the Delegates pursuant to clause 102 of the Agreement of:
- a. the minimum amount of water estimated to be under the control of the MDBA;
 - b. the allowance to be made until the end of the following May for:
 - i. losses by evaporation and other means in the upper River Murray; and
 - ii. South Australia's monthly entitlement;
 - c. the allowance to be made for deferred water;
 - d. having regard to the matters in subparagraphs (a)-(c) above, the water available
 - i. for distribution (inter alia) to New South Wales before the end of the following May; and
 - ii. for holding in reserve at the end of the following May.

Particulars

Conversion Order clauses 6, 8, 12

12. In the events and circumstances alleged at paragraphs [77] to [85] of the ~~2FASOG~~ 3FASOC and paragraphs [1] to [11] above, the MDBA owed a duty to RyanAG, Ryansfield and Cananea to take reasonable care or alternatively to ensure that reasonable care was taken in:
- a. exercising the River Operations Functions; further or alternatively
 - b. exercising the Environmental Water Functions; further or alternatively
 - c. exercising the Release Power,

to avoid the Risks of Harm that a failure to take care would cause loss to persons in the position of RyanAG, Ryansfield and Cananea (**MDBA Duty of Care**).

13. In the events and circumstances alleged at paragraphs [186] to [187] (~~2016-17 Breaches~~), [189] to [192] (**2017-18 Breaches**) and [194] to [197] (**2018-19 Breaches**) of the ~~2FASOC~~3FASOC, the MDBA breached the MDBA Duty of Care.

14. In the alternative to paragraph [81] of the ~~2FASOC~~3FASOC, if (which is not admitted) the relevant exercises of or failures to exercise:

- a. the River Operations Functions;
- b. the Release Power; and
- c. the Environmental Water Functions;

were acts of the Delegates of the MDBA but not acts of the MDBA, then:

- d. in light of the facts and matters in paragraphs [77]-[85] of the ~~2FASOC~~3FASOC, the Delegates owed a duty to RyanAG, Ryansfield and Cananea to take reasonable care or alternatively to ensure that reasonable care was taken in:
 - i. exercising the River Operations Functions; further or alternatively
 - ii. exercising the Environmental Water Functions; further or alternatively
 - iii. exercising the Release Power,

to avoid the Risks of Harm that a failure to take care would cause loss to persons in the position of RyanAG, Ryansfield and Cananea (**Delegates' Duty of Care**);

- e. in light of the facts and matters in paragraphs [186] to [197] of the ~~2FASOC~~3FASOC, the delegates breached the Delegate's Duty of Care (**Delegates' Breaches**);
- f. in light of the facts and matters in paragraphs [16B], [59B] or [74B] of the ~~2FASOC~~3FASOC:
 - i. the MDBA is vicariously liable for the Delegates' Breaches;
 - ii. further or alternatively, the Commonwealth is vicariously liable for the Delegates' Breaches.

15. By reason of the ~~2016-17 Breaches; further or alternatively the 2017-18 Breaches; further or alternatively the 2018-19 Breaches:~~

- a. the allocation of water under the Ryansfield/Cananea Water Access Entitlements in the 2019-20 water year was lower both across the water year, and in each month of the water year than it would otherwise have been;
- b. further or alternatively, the price of water available for purchase by RyanAG in the allocation trade in the 2017-18, 2018-19 and 2019-20 water years was higher than it would otherwise have been.
- ~~c. further or alternatively, whilst the allocation by the end of water years 2016-17, 2017-18 and 2018-19 reached 100% of entitlements, the timing throughout the water years 2016-17, 2017-18, 2018-19 and 2019-20 of allocations had the effect that RyanAG, Ryansfield and Cananea could not maximise the income-generating potential of the Ryansfield/Cananea Water Access Entitlements.~~

Particulars

RyanAG, Ryansfield and Cananea refer to and repeat the particulars to paragraphs [202], [203] and [204] of the 2FASOC 3FASOC and say further that:

- a. *a higher volume of water would have been available to Goulburn-Murray Water pursuant to clauses 6 and 12 of the Conversion Order;*
- b. *seasonal determinations for high reliability water share holders in the Victorian Murray would have been higher;*
- ~~c. further or alternatively, allocations for high reliability water share holders in the Victorian Murray would have reached higher allocations earlier the water years 2016-17, 2017-18, 2018-19 and 2019-20;~~
- d. *Ryansfield and Cananea would have received higher allocations of water under the Ryansfield/Cananea Water Access Entitlements;*
- ~~e. Ryansfield and Cananea would have received higher allocations of water under the Ryansfield/Cananea Water Access Entitlements earlier in the water years 2016-17, 2017-18, 2018-19 and 2019-20;~~
- f. *the price of water available for purchase in the allocation trade would have been lower;*

g. RyanAG would have had higher volumes of water available to it under the Ryansfield/Cananea Water Access Entitlements to conduct the business of irrigated agriculture referred to at paragraph [0] above.

~~*h. RyanAG would have had higher volumes of water available to it under the Ryansfield/Cananea Water Access Entitlements earlier in the water years 2016-17, 2017-18, 2018-19 and 2019-20 to conduct the business of irrigated agriculture referred to at paragraph [0] above;*~~

i. RyanAG would have been able to purchase water in the allocation trade at lower prices.

16. By reason of the:

~~*a. 2016 / 2017 Breaches; further or alternatively;*~~

b. 2017 / 2018 Breaches; further or alternatively

c. 2018 / 2019 Breaches,

RyanAG, Ryansfield and Cananea have suffered loss and damage.

Particulars of loss and damage

RyanAG, Ryansfield and Cananea has suffered loss or damage in the following categories:

a. reduction in goodwill, including their ability to retain existing supply contracts;

b. increased costs of business;

c. lost profits;

d. loss of opportunity to make a profit.

e. loss of the market value of the water which it would have received through the Ryansfield and Cananea Water Entitlements;

f. increase costs of water on the temporary market.

g. ~~reduction in the value of the Ryansfield and Cananea Water Entitlements;~~

h. ~~reduction in the value of the Yarrawonga Land;~~

i. ~~reduction in goodwill, including their ability to retain existing supply contracts;~~

j. ~~increased costs of business;~~

k. ~~lost profits;~~

l. ~~loss of opportunity to make a profit.~~

Further particulars will be provided before trial.