

SECOND DEFENDANT'S CROSS-CLAIM STATEMENT OF CROSS-CLAIM

COURT DETAILS

Court	Supreme Court of New South Wales
Division	Common Law
Registry	Sydney
Case number	2014/200854

TITLE OF PROCEEDINGS

Plaintiff	Rodriguez & Sons Pty Ltd (ACN 108 770 681)
First defendant	Queensland Bulk Water Supply Authority trading as Seqwater
Number of defendants (if more than two)	3

TITLE OF THIS CROSS-CLAIM

Cross-claimant	SunWater Limited (ACN 131 034 985)
First cross-defendant	Queensland Bulk Water Supply Authority trading as Seqwater
Second cross-defendant	State of Queensland

FILING DETAILS

Filed for	SunWater Limited (ACN 131 034 985) Cross-claimant
Legal representative	Tricia Marguerite Hobson, Norton Rose Fulbright Australia
Legal representative reference	TMH: 2782377
Contact name and telephone	Tricia Hobson 02 9330 8000
Contact email	tricia.hobson@nortonrosefulbright.com

RELIEF CLAIMED

- 1 Contribution under section 6 of the *Law Reform Act 1995* (Qld) (**LRA Qld**).
- 2 In the alternative to paragraph 1 above, contribution under section 5 of the *Law Reform (Miscellaneous Provisions) Act 1946* (NSW) (**LRA NSW**).
- 3 In the alternative to paragraphs 1 and 2 above, equitable contribution.
- 4 Interest in accordance with s 100 of the *Civil Procedure Act 2005* (NSW).
- 5 Costs.

PLEADINGS AND PARTICULARS

A Parties

- 1 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;
 - (c) was capable of suing and being sued.
- 2 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 being sued.
- 3 At all material times the State of Queensland was capable of being sued in accordance with s 8 of the *Crown Proceedings Act 1980* (Qld).

B The Claims

- 4 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 SunWater,

Seqwater 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

(A) The Claims are as pleaded in the statement of claim as amended from time to time

5 SunWater, Seqwater, and the State of Queensland have each defended the Claims.

PARTICULARS

(A) The defences are as pleaded in the defences as amended from time to time

C Contribution

6 If the Claims against SunWater succeed (which Claims are denied by SunWater) then:

(a) SunWater claims from Seqwater contribution under s 6 of the LRA Qld in such amount as the Court finds to be just and equitable having regard to the extent of Seqwater's responsibility for any damage found to have been suffered; and

(b) SunWater claims from the State of Queensland contribution under s 6 of the LRA 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.

7 In the alternative to the matter pleaded in paragraph 6 above, if the Claims against SunWater succeed (which Claims are denied by SunWater) then:

(a) SunWater claims from Seqwater contribution under s 5 of the LRA NSW in such amount as the Court finds to be just and equitable having regard to the extent of Seqwater's responsibility for any damage found to have been suffered; and

- (b) SunWater claims from the State of Queensland contribution under s 6 of the LRA NSW 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.

8 In the alternative to the matters pleaded in paragraphs 6 and 7 above, if the Claims against SunWater succeed (which Claims are denied by SunWater) then:


- (a) the liabilities of SunWater the subject of the Claims are of the same nature, and to the same extent as, the liabilities of Seqwater the subject of the Claims;
- (b) further and in the alternative to sub-paragraph (a) above, the liabilities of SunWater the subject of the Claims are of the same nature, and to the same extent as, the liabilities of the State of Queensland the subject of the Claims;
- (c) by reason of the matter pleaded in sub-paragraph (a) above, SunWater is entitled to, and claims, compensation from Seqwater in such amount as the Court finds to be equitable;
- (d) further and in the alternative to sub-paragraph (c) above, by reason of the matter pleaded in subparagraph (b) above, SunWater is entitled to, and claims, compensation from the State of Queensland in such amount as the Court finds to be equitable;
- (e) further and in the alternative to sub-paragraphs (c) and (d) above, by reason of the matters pleaded in sub-paragraphs (a) and (b) above, SunWater is entitled to, and claims, compensation from Seqwater and the State of Queensland in such amount as the Court finds to be equitable.

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



Capacity

Tricia Hobson, Solicitor on 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.
- 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 or at any NSW court registry.

REGISTRY ADDRESS

Street address	Supreme Court of NSW Law Courts Building 184 Phillip Street SYDNEY NSW 2000
Postal address	GPO Box 3 SYDNEY NSW 2001
Telephone	02 9230 8111

AFFIDAVIT VERIFYING

Name	Brad Watkins
Address	179 Turbot Street, Brisbane Queensland 4000
Occupation	Corporate Counsel and Manager Legal Services
Date	7 September 2015

I say on oath:

- 1 I am employed by the second defendant in this proceeding as Corporate Counsel and Manager Legal Services.
- 2 I believe that the allegations of fact contained in the defence are true.
- 3 I believe that the allegations of fact that are denied in the defence are untrue.
- 4 After reasonable inquiry, I do not know whether or not the allegations of fact that are not admitted in the defence are true.

SWORN at	Brisbane
Signature of deponent	
Name of witness	Gavin Davies
Address of witness	Level 21, One One One, 111 Eagle Street, Brisbane Queensland 4000
Capacity of witness	Solicitor

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

