

Stark picture painted as 2011 Queensland floods class action filed

Repeated failures led to avoidable Queensland floods in 2011

Brisbane and Ipswich would not have flooded in January 2011 if engineers operating Wivenhoe and Somerset Dams had not repeatedly failed over many weeks to ensure the proper operation of both dams, a class action filed today by Maurice Blackburn Lawyers has alleged.

The claim, funded by Bentham IMF, was filed today in the New South Wales Supreme Court on behalf of more than 4000 flood-affected residents and businesses. It alleges that the flood engineers failed repeatedly as far back as early December 2010 to properly operate Wivenhoe and Somerset Dams, leading to huge volumes of water having to be released in mid-January as a last resort to protect the structural integrity of Wivenhoe Dam.

The claim has been filed against Seqwater, Sunwater and the State of Queensland.

Maurice Blackburn Principal Damian Scattini said the January 2011 flood was preventable.

"Many people have been led to assume that the January 2011 flood was caused by unprecedented heavy rainfall in early January, and that as a result the flood that occurred could not be avoided – when that is simply wrong," Mr Scattini said.

"The claim filed today paints a much starker picture, going back to as far as 1 December 2010, and outlining that for every day in December 2010 through until mid-January 2011 there was a flood emergency – where both dams were full, substantial heavy rain had already fallen and more rain was predicted.

"Despite this, at every opportunity from 1 December 2010 onwards the flood engineers failed again and again to undertake proper release strategies for both dams, irrespective of the continuing weather warnings that made it clear more heavy rain was expected.

"This continued until the engineers were left with no other option but to dump huge volumes of water at once in mid-January, leading to a flood event that should have been avoided," he Mr Scattini said.

Bentham IMF Director John Walker said the floods class action was an important and major step in helping to right the wrongs that led to the January 2011 flood for residents and businesses in Brisbane and Ipswich.

"Building this case over the past three years has taken considerable resources and a lot of hard work. We now have a strong claim that outlines clearly the many failings in the operation of both dams that led to the unnecessary inundation of thousands of homes and business premises along the Brisbane River," Mr Walker said.

"We are pleased to be funding such an important case and in helping to right the wrongs for the many thousands of people affected by a flood that should never have happened," he said.

"Major cases like the floods class action play a critical role in providing access to justice for past damage but also help to ensure better standards of behaviour going forward to avoid future events.

"We remain hopeful that in this case, it will help to make sure people of Brisbane and Ipswich do not have to endure another avoidable flood event," Mr Walker said.

Statement of claims filed in the NSW Supreme Court can only be obtained via the court:

http://www.supremecourt.lawlink.nsw.gov.au/supremecourt/SCO2_contactus.html

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Overview

Maurice Blackburn funded by Bentham IMF Limited has filed a class action against the operators of the Wivenhoe and Somerset dams over the January 2011 flood in South East Queensland. The class action is brought on behalf of over 4000 individuals and businesses who allegedly suffered loss and damage as a result of the negligent operation of the dams in the lead up to and during the flood.

This is a summary of the allegations in the statement of claim filed in the Supreme Court of New South Wales on 8 July 2014.

The Defendants

The action alleges negligence and nuisance against the operators of the dams - Seqwater, Sunwater and the State of Queensland (collectively referred to as the **"Defendants"**).

The four flood engineers responsible for dam operations in the lead up to and during the flood were employed by the Defendants. They owed a duty to people living and operating businesses downstream of Wivenhoe Dam to take reasonable care to avoid the risk that a failure to properly operate the dams would cause greater flooding to areas downstream.

The action alleges that the flood engineers failed in their duty, and the alleged breaches by them, give rise to vicarious liability on the part of the Defendants.

It is alleged that Seqwater, as the owner and occupier of the dams and as the only entity licensed to conduct flood operations at the dams, had a duty to take reasonable care in conducting flood operations.

Further, Sunwater was engaged by Seqwater under a contractual arrangement, to conduct flood operations at Wivenhoe and Somerset dams. Given Sunwater's practical control over flood operations at the dams, it also had a duty to take reasonable care in conducting flood operations.

It is alleged that both Seqwater and Sunwater failed to properly discharge their duties.

Breaches

Wivenhoe Dam has a hazard category rating of "extreme". This is because a dam breach or failure of the dam carries with it a risk of harm to approximately 244,000 people downstream of the dam.

According to the manual outlining operating procedures for Wivenhoe and Somerset dams, a "flood event" occurs when the water level in Wivenhoe Dam or Somerset Dam is expected to exceed its maximum water supply level. In the case of Wivenhoe Dam, this occurs when the lake level in the reservoir exceeds EL 67.0 m AHD. For Somerset Dam, this occurs when the lake level exceeds EL 99.0 m AHD.

There was a "flood event" occurring all throughout December 2010 leading into January 2011 as both dams were above their maximum water supply level during this period.

Given the ongoing flood event, the manual required the flood engineers to select appropriate strategies for operating the dams taking into account actual and forecast rainfall and stream flow conditions.

Despite this requirement, the flood engineers repeatedly failed to take into account forecasts issued by the Bureau of Meteorology which predicted heavy and prolonged rainfall.

The flood engineers ceased flood operations altogether at a number of critical moments during the flood event – twice in December and once in early January. This was despite the fact that the flood event was ongoing and further rainfall was predicted for the Wivenhoe catchment area.

At all times when flood operations were discontinued, flood inflows into Wivenhoe and Somerset dams were continuing thus increasing the water level in both dams while further rainfall was predicted for the catchment area of the dams.

On 24 December 2010, the dam operators received authorisation allowing them to draw down both dams to 95% of their combined maximum water supply level. The flood engineers failed to act on this authorisation leaving the dams in a state where they were above their maximum water supply level leading into January 2011.

In early January 2011, when heavy rainfall was predicted over the dam catchment area, the flood engineers remained focused on the lower priority objective under the manual of keeping rural bridges passable. They allegedly failed to make adequate releases of water from the dams in the days leading up to 9 January 2011 despite the imminent flood risk to more heavily populated areas around Ipswich and Brisbane.

By the evening of 9 January 2011, the lake levels in both dams were critical. The lack of available flood storage capacity at Somerset and Wivenhoe dams necessitated the flood engineers to release large volumes of water from Wivenhoe dam causing substantial flooding to urban areas downstream.

The claim contends that in periods of heavy and prolonged rainfall, such as was the case throughout December 2010 and early January 2011, prudent dam operations would have required that precautionary releases be made from the dams to preserve sufficient capacity in the dams' flood storage compartment to safely store further inflows.

It is alleged that because of the repeated failures to competently operate the dams in the period leading up to and during the January 2011 flood, the defendants are liable in negligence and nuisance for causing extensive loss and damage to the people and businesses in the areas around Brisbane and Ipswich.