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Giving a Dam - Corporate Liability and the Wivenhoe Class Action



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Acknowledgement of Country

Engineers Australia acknowledges the traditional custodians of the country throughout Australia and recognises their continuing connection to land, waters and community.

We pay our respects to them and their cultures; and to elders past and present and emerging.



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Melissa Kirby

Legal Director
Sharpe & Abel



Agenda for today

- A summary of *Rodriguez & Sons Pty Ltd v Queensland Bulk Water Supply Authority trading as Seqwater (No. 22)* [2019] NSWSC 1657.
- How technical issues become legal issues
- Legal and reputation risks for water and utility companies: how to manage and prevent them.

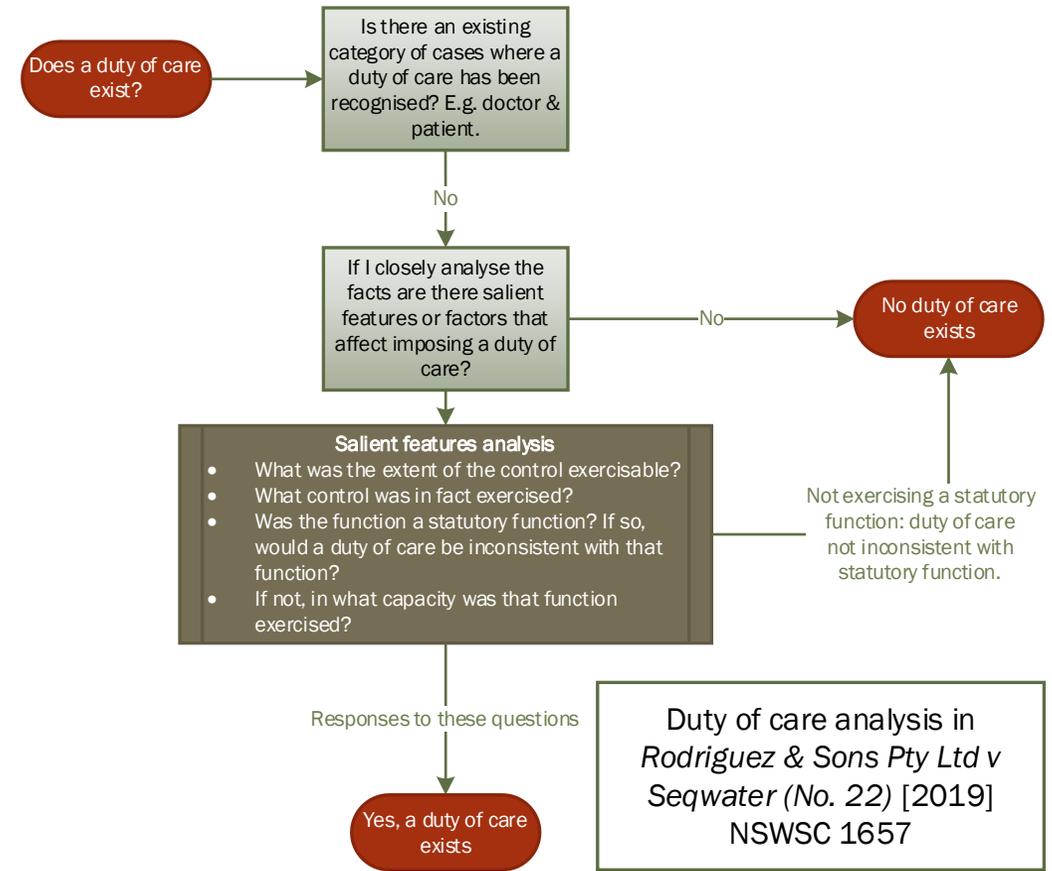
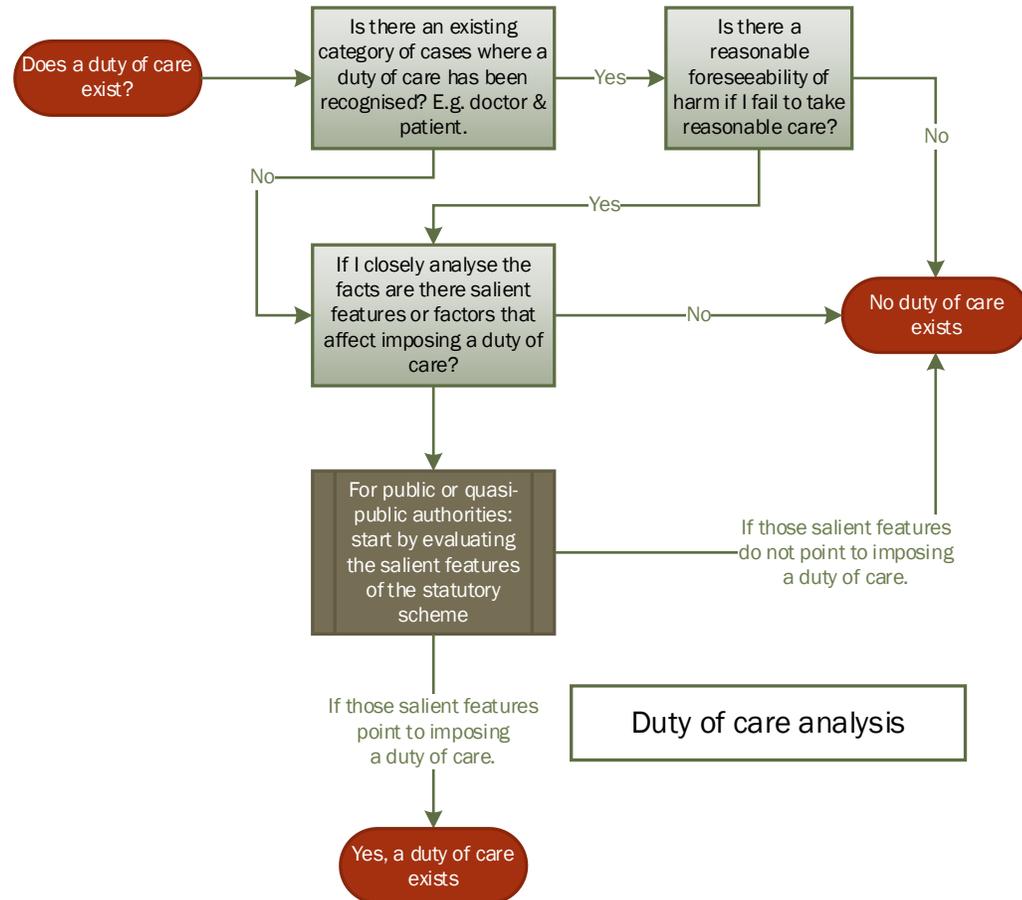


The high level summary

Chapter 1	Summary of the case and findings: read this if you want the short version.
Chapter 2	Background facts: the statutory framework, description of the physical and climatic conditions, how modelling works and the available rainfall products at the time.
Chapter 3	The flood operations manual and the flood procedure manual
Chapter 4	Flood procedures, policies and operations until the end of 2010
Chapter 5	Full supply level
Chapter 6	The January 2011 Flood Event to 7 January 2011
Chapter 7	The January 2011 Flood Event from 8 January 2011
Chapter 8	Dr Christensen's evidence and methodology (key witness for Rodriguez and the plaintiffs)
Chapter 9	Dr Christensen's methodology- defendant's criticisms
Chapter 10	Dr Christensen's simulations
Chapter 11	Duty of care, standard of care, vicarious liability and nuisance
Chapter 12	Breach of duty
Chapter 13	Causation
Chapter 14	Quantum, cross-claims and the limitation period
Chapter 15	Common questions and future disposition



Duty of care





Section 9 of the *Civil Liability Act 2003* (Qld)

(1) A person does not breach a duty to take precautions against a risk of harm unless—

(a) the risk was foreseeable (that is, it is a risk of which the person knew or ought reasonably to have known); and

(b) the risk was not insignificant; and

(c) in the circumstances, a reasonable person in the position of the person would have taken the precautions.

(2) In deciding whether a reasonable person would have taken precautions against a risk of harm, the court is to consider the following (among other relevant things)—

(a) the probability that the harm would occur if care were not taken;

(b) the likely seriousness of the harm;

(c) the burden of taking precautions to avoid the risk of harm;

(d) the social utility of the activity that creates the risk of harm.

Q&A

