



ENGINEERS  
AUSTRALIA

CPD  online

# Giving a Dam - Corporate Liability and the Wivenhoe Class Action



ENGINEERS  
AUSTRALIA

# Tony Ladson

---

FIEAust  
Chair  
Victorian Water Panel  
[tony.ladson@moroka.com.au](mailto:tony.ladson@moroka.com.au)



## **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.



ENGINEERS  
AUSTRALIA

# 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.

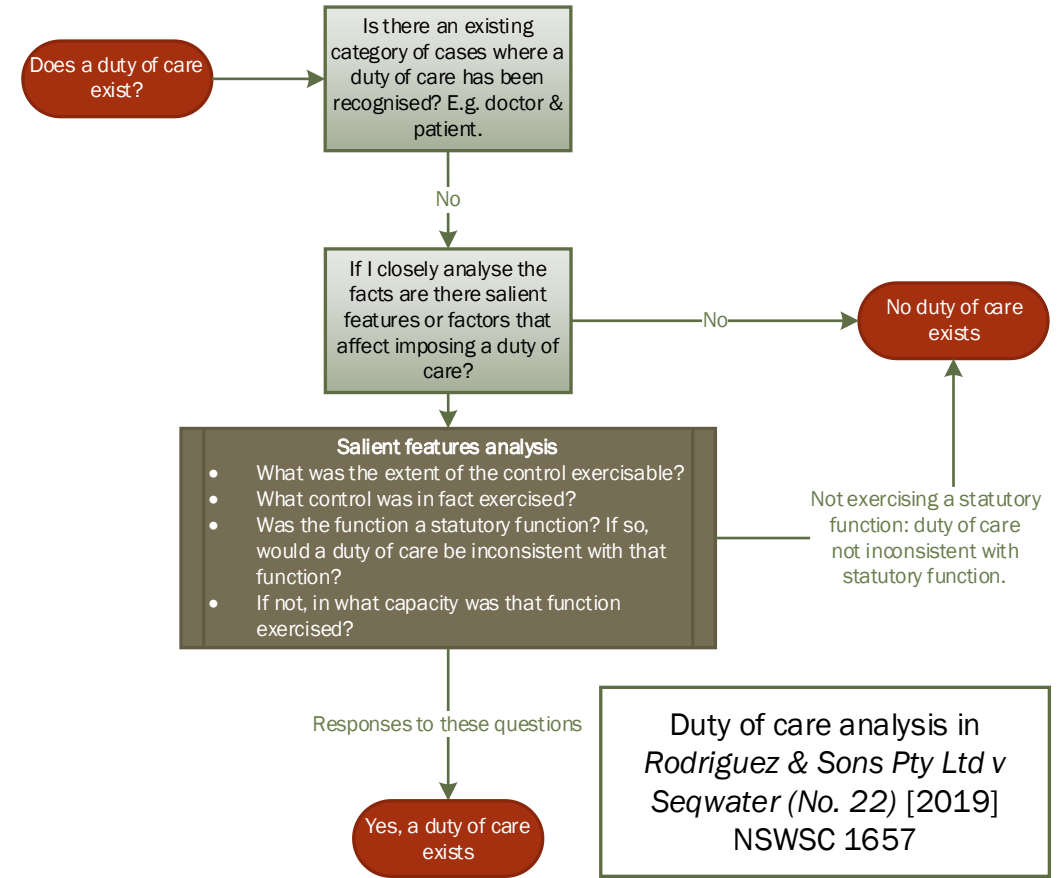
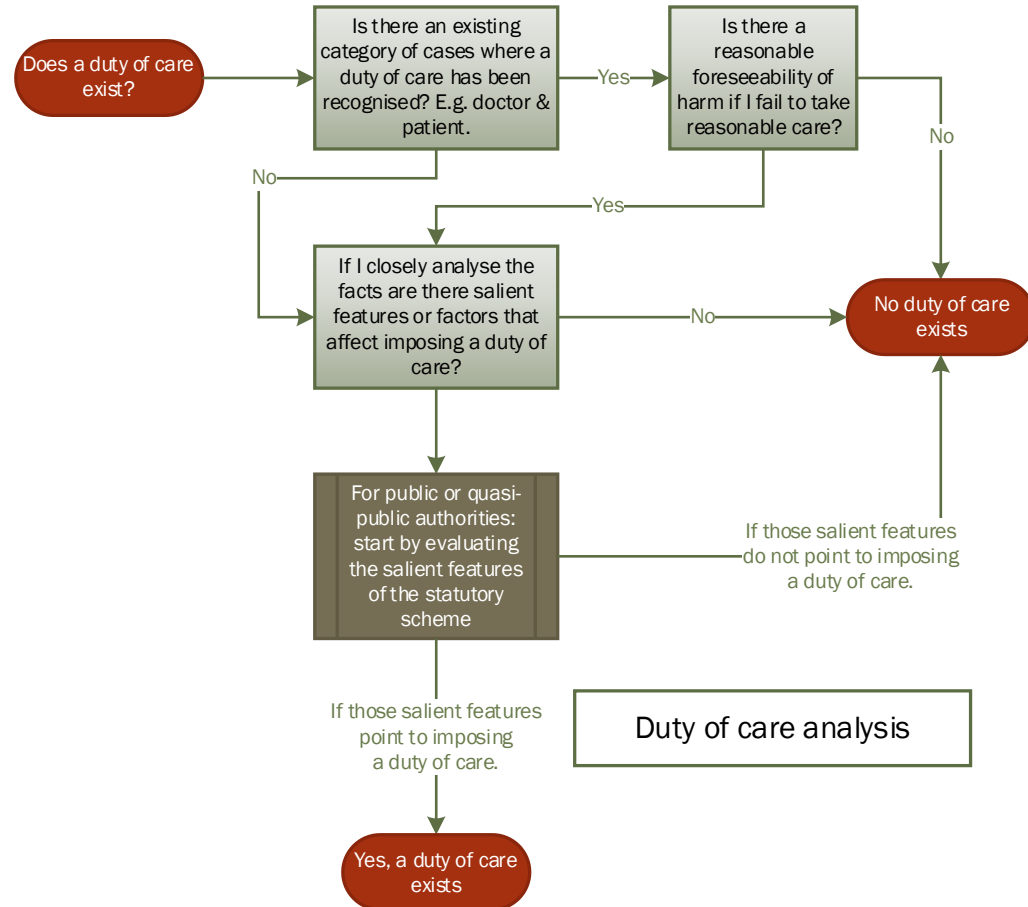


# The high level summary

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



- Salient features analysis**
- What was the extent of the control exercisable?
  - What control was in fact exercised?
  - Was the function a statutory function? If so, would a duty of care be inconsistent with that function?
  - If not, in what capacity was that function exercised?



## 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

