

## NOTICE OF PROPOSED SETTLEMENT

### SUPREME COURT OF NEW SOUTH WALES 2011 QUEENSLAND FLOODS CLASS ACTION

**Rodriguez & Sons Pty Ltd (ACN 108 770 681) v Queensland Bulk Water Supply  
Authority trading as Seqwater & Ors  
2014/200854**

#### PLEASE READ THIS NOTICE CAREFULLY

This notice contains important information about the proposed partial settlement of the 2011 Queensland Floods Class Action. It has been distributed and published in accordance with orders made by the Supreme Court of New South Wales (**the Court**) on 9 March 2021. Please read this notice carefully, as your legal rights may be affected by the proposed settlement.

You are receiving this notice because you and/or your insurer signed a litigation funding agreement in the 2011 Queensland Floods Class Action.

If you do not understand this notice or if you have any questions, please contact Omni Bridgeway or Maurice Blackburn Lawyers whose contact details are at the end of this notice. Please note that the Court is not able to answer questions about the proposed settlement.

#### BACKGROUND

On 8 July 2014, the plaintiff (Rodriguez & Sons Pty Ltd) filed a representative proceeding, commonly known as a class action, in the Court against the Queensland Bulk Water Supply Authority trading as Seqwater (**Seqwater**), SunWater Limited (**SunWater**) and the State of Queensland (**the State**). The class action arises out of claims by the plaintiff that the three defendants were responsible for the operation of Somerset Dam and Wivenhoe Dam during the 2011 floods in South East Queensland and that those dam operations were conducted negligently by flood engineers employed by the defendants, thereby causing greater flooding to land downstream of the dams than would have otherwise occurred. The claims were defended by the three defendants on various grounds.

In December 2016 protective proceedings were filed on behalf of group members individually to protect their position in relation to a potential risk arising from the operation of limitations laws. Those proceedings have been referred to as the **Lynch Proceedings**. The Lynch Proceedings were stayed and ultimately it was not necessary to rely on them.

In 2019, the Court held that all three defendants were liable for the negligent operation of the Wivenhoe and Somerset dams during the 2011 floods in South East Queensland, and apportioned liability between the defendants such that SunWater is 30% liable, the State is 20% liable and Seqwater is 50% liable.

Seqwater, Sunwater and Rodriguez have since filed appeals and the hearing of those appeals is listed to commence on 17 May 2021 with an estimate of 12 days.

#### SUMMARY OF PROPOSED SETTLEMENT

On 26 February 2021, the plaintiff, on its own behalf and on behalf of group members in the class action, reached a settlement with two of the three defendants, SunWater and the State. This settlement does not include the third defendant Seqwater.

The settlement is subject to approval by the Court and agreement to the terms of a settlement deed.

If approved, SunWater and the State would pay **\$440 million** to settle the claims against them in the class action, including for costs and interest. The State will pay its share of the settlement sum 14 days after the deed of settlement is finalised, which is expected to be prior to Court approval, and Sunwater will pay its share within 12 months of the settlement being approved.

The Lynch Proceedings, so far as they are against Sunwater and the State, will be disposed of in the context of the settlement.

The plaintiff gave instructions to Maurice Blackburn Lawyers approving the settlement, together with the other two members of the Litigation Committee being the Class Advocate appointed under the funding agreement, former Justice of the High Court of Australia Ian Callinan AC QC and Ari Abrahams, partner at Lander & Rogers.

Maurice Blackburn Lawyers and senior counsel for the plaintiff and group members recommended the settlement and regard it as a fair and reasonable settlement. The settlement sum represents approximately 80% of the estimated losses for which Sunwater and the State are liable (being 50% of total losses), after deduction of 50% of estimated legal costs. It does not include anything for interest. Funding costs and commission will also need to be deducted.

A settlement is a compromised resolution which in this case reflects the risks of continuing the litigation against Sunwater and the State. The most significant of these risks are the potential for the litigation to continue for some years before group members are paid, the risks of losing on appeal and group members recovering nothing, the risk of winning on appeal but getting less and the benefit of not having to incur further legal costs to recover compensation which would erode the compensation available to group members.

One benefit of the settlement will be to avoid the costs and risks of the appeals brought by Sunwater.

The claims against Seqwater are not being settled and will continue. This means that the appeal proceedings between the plaintiff and Seqwater will continue, as will the assessment by referees in Queensland of the losses suffered by 264 loss sample group members. In the future, it is possible that the plaintiff and Seqwater could agree to separately settle the claims against Seqwater or that the Court could order Seqwater to pay money to group members as a whole or individual group members.

## **WHAT GROUP MEMBERS MUST DO**

The proposed settlement must be approved by the Court as being fair and reasonable, and in the interests of group members, before it can be implemented. If approved, the settlement will be binding on all group members. The Court will be asked to approve the proposed settlement at a hearing commencing on 3 May 2021 which is listed for 1 – 2 days at the Supreme Court of New South Wales, Queens Square Sydney.

If you wish to **object** to the proposed settlement, then you must send written notice explaining why you are objecting to the proposed settlement to: [queenslandfloodobjections@mauriceblackburn.com.au](mailto:queenslandfloodobjections@mauriceblackburn.com.au) by 12 April 2021. You or a representative may also attend the hearing in the Supreme Court of New South Wales to give oral reasons why you think the proposed settlement should not be approved.

If you do **not** wish to object to the proposed settlement, then there is nothing you need to do at the present time.

## Who are group members?

You are a group member in the class action if:

1. you held an interest in land (whether in the nature of freehold title, lease or otherwise) and:
  - a. you suffered loss or damage (whenever occurring) by reason of the inundation of that land by flood water from the Brisbane River or Bremer River (and their tributaries) in the period 9 January 2011 to 24 January 2011; and/or
  - b. your use or enjoyment of that interest was interfered with by reason of the inundation of that land by flood water from the Brisbane River or Bremer River (and their tributaries) in the period 9 January 2011 to 24 January 2011 such that you suffered loss or damage; and/or
2. you owned personal property in the period 9 January 2011 to 24 January 2011 which was damaged or destroyed by reason of the inundation of land on which that property was located by flood water from the Brisbane River or Bremer River (and their tributaries) in the period 9 January 2011 to 24 January 2011;

AND

3. either:
  - a. you entered into a litigation funding agreement with Omni Bridgeway:
    - i. as at the date of commencement of this proceeding (8 July 2014); or
    - ii. after the commencement of this proceeding, but on or before 31 December 2016in respect of any claim for loss or damage (excluding any claim for personal injury) arising out of the factual matters pleaded in the class action; or
  - b. you have been indemnified by one or more insurers or some other person in respect of any loss or damage (excluding any claim for personal injury) that those persons have suffered arising out of the factual matters pleaded in the class action, where one or more of those persons have entered into a litigation funding agreement with Omni Bridgeway:
    - i. as at the date of commencement of this proceeding (8 July 2014); or
    - ii. after the commencement of this proceeding, but on or before 31 December 2016

## PROPOSED SETTLEMENT: FURTHER INFORMATION

Before the proposed settlement can take effect, it must be approved by the Court as being fair and reasonable, and in the interests of group members. If the proposed settlement is approved, SunWater and the State will together pay **\$440 million** (inclusive of costs and interest), the settlement will bind the plaintiff and group members and the money will be available for distribution.

The distribution of the settlement sum will be in accordance with a "Settlement Scheme" that is being developed by Maurice Blackburn Lawyers and which will also need to be approved by the Court as being fair and reasonable in the context of the proposed settlement. The Settlement Scheme will set out the process for group members' claims for compensation to be assessed, quantified and paid. If the Settlement Scheme is approved, the Court will appoint an "Administrator" to implement and execute the Settlement Scheme. This may be Maurice Blackburn Lawyers.

The settlement sum will be distributed as follows:

*Reimbursement payments to plaintiff and others*

1. First, and if approved by the Court, reimbursement payments will be deducted from the settlement sum and paid to the plaintiff and the 4 sample group members whose claims were considered by the Court, all of whom undertook a significant role in advancing the claim on behalf of group members as a whole. These payments will be for modest amounts and are intended as reimbursement for time and expenses involved in prosecuting the class action in the interests of group members and on their behalf.

*Legal costs and litigation funding obligations other than commission*

2. Secondly, the plaintiff's legal costs including the costs of administering the settlement and some of the contractual entitlements of the litigation funder, Omni Bridgeway Limited, will be deducted from the settlement sum.

Under the litigation funding agreements entered into by group members and/or their insurers, they are obliged to pay Project Costs (which includes the plaintiff's legal costs and other costs expended by the funder), a Project Management Fee (which is 20% of the Project Costs paid or payable by the funder) and commission on the amount recovered. At this second stage the Project Costs and Project Management Fee would be deducted from the settlement sum. Commission will be deducted at the next stage.

The legal costs will be assessed by an independent costs expert, and they must be approved by the Court as being reasonable in the context of the proposed settlement before they can be deducted. Maurice Blackburn Lawyers currently estimate that legal costs to date in the class action are \$60 million. The figure reflects over 9 years of legal work in investigating and prosecuting the class action against three defendants on behalf of group members, including a very lengthy hearing that spanned a year and a quarter, complex expert evidence and appeals that have been commenced subsequently. This estimate of legal costs includes the costs of barristers, the cost of obtaining expert evidence, having experts travel to Australia give oral evidence at the hearing and court hearing and technology costs. The costs estimate does not include the future costs such as the cost of administering the settlement. Those costs will also need to be assessed and approved by the Court before they can be paid.

The Project Costs to date, other than legal costs mentioned above, are approximately \$305,000 and the Project Management fee is estimated to be \$10 million. An amount may need to be reserved at this stage for future Project Costs.

*Distribution to group members and payment of litigation funding commission*

3. Thirdly, the balance of the settlement sum will be paid to:

- a. group members and/or their insurers who have signed a funding agreement, whose entitlements will be assessed in accordance with the Settlement Scheme.
- b. the litigation funder to fulfil obligations to pay funding commission on the amounts distributed to group members and/or their insurers, in accordance with the funding agreement.

It is important to keep in mind that the case against Seqwater is not being settled and will continue. It is therefore possible that further money will become available to distribute to group members in the future in addition to the \$440 million to be paid by SunWater and the State under the proposed settlement, whether as a result of a separate settlement or the Court making orders requiring Seqwater to pay damages to group members as a whole or individual group members.

### **Who will be eligible to receive money from the settlement?**

If you are a group member, or an insurer of a group member who has signed a funding agreement, who is assessed under the Settlement Scheme as having suffered loss or damage by reason of the defendants' negligence, you will be entitled to receive money from the settlement.

### **How much money will group members receive from the settlement?**

At this stage, it is not possible to tell you the amount of money you may receive from the settlement. The entitlements of the approximately 6800 group members will first need to be assessed pursuant to the Settlement Scheme that is being developed to be put before the Court for approval.

If Seqwater pays money in the future in relation to the class action, then you may receive an additional payment at a later time.

### **Do group members need to pay costs to receive money from the settlement?**

No. You will not be required to pay any costs out of your own pocket to claim or receive money from the settlement. Legal and other costs will be paid from the settlement sum before it is distributed to group members, including any costs associated with the assessment of claims pursuant to the Settlement Scheme.

### **When will group members receive money from the settlement?**

A number of steps will need to be taken to allow for settlement funds to be distributed to group members.

First, the settlement and the Settlement Scheme will need to be approved by the Court.

Secondly, there will need to be an eligibility check whereby each group member's claim address, being the location where the loss and damage was suffered, will need to be verified to check whether the address is in an area that flooded as a result of the defendants' negligence. All eligible loss addresses will proceed to the next stage.

Thirdly, group members' losses will need to be assessed in accordance with the Settlement Scheme, which in some cases will include adjusting the total sum of their loss to reflect the degree of loss that was caused by the negligence. In some cases, there will be no adjustment of this kind because the property would not have flooded in the absence of the negligence. In

other cases, there will need to be an adjustment because there still would have been some flooding on the property even if the dams had been operated properly.

These steps are complex and there is a very large number of group members. It will take some time and probably no less than 18 months for payments to be made to all eligible group members. Once the Settlement Scheme is finalised and if approved, Maurice Blackburn Lawyers will write to you with an estimate of the timeframes involved.

The settlement sum will be held in an interest-bearing account from the time the portions are received from each of Sunwater and the State until it is distributed to group members and any interest earned on the settlement sum in that time will be added to the total settlement sum available.

### **What do I need to do to receive money from the settlement?**

At this stage, you do not need to do anything. If the settlement is approved by the Court, the Settlement Administrator will contact you about what steps you will need to take. This may take up to a month after the settlement is approved by the Court.

### **Questions and contacts**

If you have any questions regarding the proposed settlement, you can contact Omni Bridgeway on 1800 809 600 or email [401791@omnibridgeway.com](mailto:401791@omnibridgeway.com) or Maurice Blackburn on 1800 713 864 or email [queenslandflood@mauriceblackburn.com.au](mailto:queenslandflood@mauriceblackburn.com.au).

You may also wish to seek independent legal advice.

Please do not contact the Supreme Court of New South Wales as it will not be able to answer your questions about the proposed settlement.