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## INVESTIGATION INTO COURT ACTION FOR LOSS FROM OCTOBER 2016 HUME DAM FLOOD

### Background

In August 2016, the Hume Dam was rapidly filling. Its water levels had been consistently rising since the beginning of May and by 2 August it was 68.7% full, a high level for that time of year. It hit 77% one week later, and continued to rise. By 10 August the Murray Darling Basin Authority had warned that the Dam was going to overflow and there would be floods. The Bureau of Meteorology was forecasting rains in the following weeks. On 18 August, the Authority advised a group of landowners that pre spill releases would be made to reduce flooding when the rain came.

Yet the operators failed to release water volumes at channel capacity until well into September.

Instead, they continued to let the dam fill, and were not prepared to sacrifice any water (they are rumoured to claim that 1% of dam water is worth \$30m). Although they publicly stated that a flood was likely, they didn't treat it a certainty and weren't prepared to take the risk of not having a full dam in case the rains didn't come. Specifically, they didn't want to jeopardise having a 99% full dam. 95% full wouldn't have been enough for them. This approach left owners of land downstream exposed to the risk of flooding which they warned was coming. And they knew something could be done about it.

After the authorities didn't release water in mid-August as they had assured they would, they were given the following written warnings by landowner representatives. For example, on 29 August one landowner emailed the Authority saying: "We are getting nervous... 97% and rising! As soon as another rain ...we will be flooded again ... the dam is way too high too early...BOM's forecast is still wetter than average...Any sort of general rain will see Hume fill at 2% per day so we appear to be headed for a disaster".

At the end of the day the flooding of the Hume Dam wasn't a natural disaster. It came from a man-made dam, which didn't have any airspace left because water releases of 25,000 ML/day (or more) had not started until 5 September 2016, which didn't leave enough time for gradual releases at volumes of water low enough to protect landowners.

### Claim investigation so far:

Before commencing or recommending any major action Adley Burstyner conducts a thorough investigation. At the same time, it is critical to know the level of interest in a claim from affected persons. Persons who express interest will be kept up to date and in due course invited to formally confirm participation in a case, if the results of our investigation mean that court action has sufficient chances of success.

This matter is currently in the investigation and expression of interest phase.

Specifically, Adley Burstyner (group claim experts) and Harwood Andrews (the largest and oldest Victorian rural and regional lawfirm) are jointly investigating a claim alleging the authorities responsible for the Hume Dam were negligent and breached a duty of care to landowners by:

- Failing to release water when it was safe to do so, throughout most of August and various dates in September.
- Creating and following a flawed policy of pursuing a 99% full dam even when flooding was likely.

A claim would seek damages for individuals and business who suffered from this man made and avoidable flooding. It could also seek to change the rules for pursuing a 99% full dam.

In its defence the Murray Darling Basin Authority says that in August it didn't have enough confidence it would fill the dam if it released water (despite the fact that by 8 August 2016 – early in the cycle – the

dam was already 76.37% full, and the Authority was warning that a flood was coming). In fact, Adley Burstyner's examination of historical data shows that:

1. The level of water in Hume Dam on 8 August 2016 was in the top 15% of all recorded levels for that time of year since 1969; and
2. Since 1969 there have only been 19 years when the level of fill was 75% or more as at 8 August, and for all but one those years the dam level increased so that it was 90% full two months later, 8 October. In fact, for 16 years the dam reached 95% or more within those two months.

The Authority also says that it shouldn't be blamed because it was following the objectives and outcomes set out by State Governments' Basin Officials Committee, who required not jeopardising a 99% full dam. Shifting the blame is not much of an answer to landowners whose properties and livelihoods have been damaged. Adley Burstyner is prepared to take action for compensation against whichever government agency is liable.

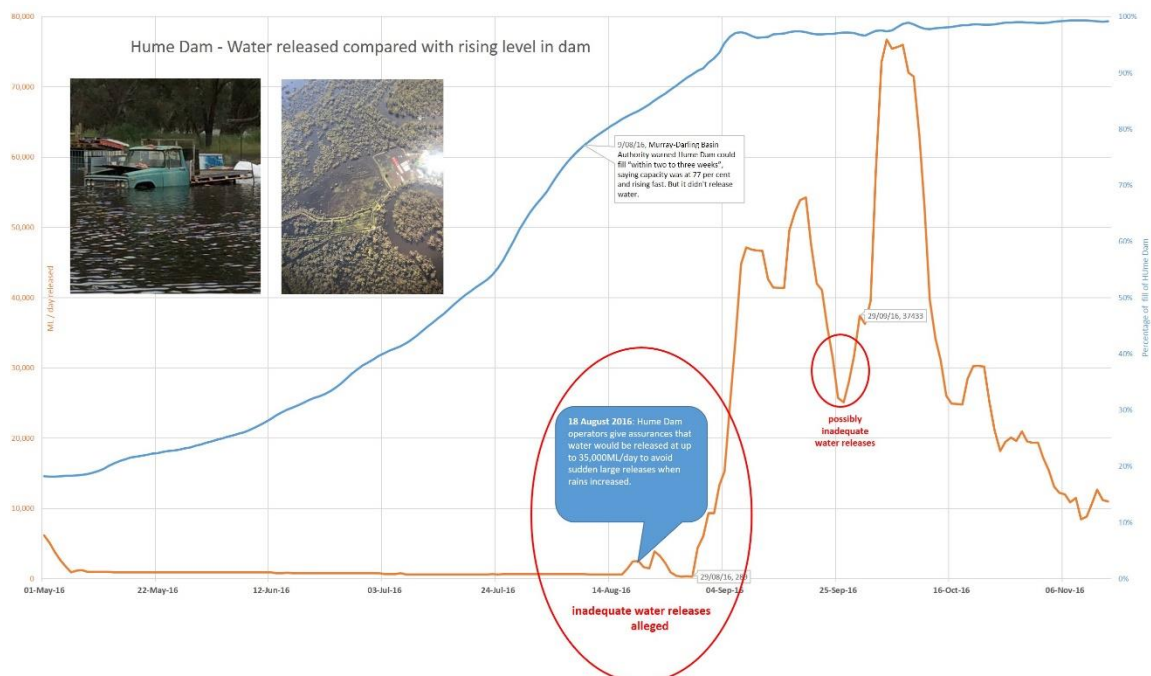
Individuals and businesses who wish to seek compensation from the authorities may be able to join a claim brought by Adley Burstyner and Harwood Andrews. If enough people express interest, a claim may be brought.

What you need to know:

- Claimants will NOT HAVE TO PAY up front. A case will be completely no win – no fee.
- Joining a group claim means being one of many – no need to stand out from the crowd.

NOW IS THE TIME FOR INDIVIDUALS AND BUSINESSES TO ACT – OR THERE WILL BE NO CASE

Pictorial representation of water releases and rising dam levels, and timeline:



*Preparing the legal and factual theories of the case is ongoing, at least until it is formally commenced, so we can not guarantee that any case which is brought will be exactly as described above, or that a case will be brought. But at this stage we genuinely believe that any case will be along the above lines.*

You can express interest using either the form on the reverse of this page or online at [adleyburstyner.com.au](http://adleyburstyner.com.au).

Name\*

First Name

Last Name

Email Address\*

Phone

Mobile\*

ADDRESS

Street\*

Suburb\*

State\*

Postcode\*

What is the amount of financial loss you estimate you have suffered?

In a few words please describe the type of loss that you have suffered:

For example "Fences destroyed" or "150 cows lost" or "Cabins destroyed"

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### Important note regarding protecting your claim by recording evidence

It may make a big difference to the amount you can recover (or whether you can recover any damages) if you preserve timely evidence of your losses and extra costs. For example:

- **Physical damage:** Photos of the damage (before it's repaired), and all invoices and similar regarding repair costs, or any other form of loss.
- **Costs to manage the impact of the flood:** For example for moving farming operations and using other resources which ordinarily wouldn't be part of your operations
- **Any conversations with the MDBA or other authorities (BOM) or other key people:** Notes of any key conversations or meetings should be prepared and kept. The notes should be written up during or shortly after those conversations, and include the date, matters discussed (even if a summary to jog your memory later), and names of relevant persons.
- Any other evidence showing the losses and costs, including reasons why the flood is responsible for those losses, both in photos and paperwork.

Please return this form either via fax to 03 9620 9288 or via email to [info@adleyburstyner.com.au](mailto:info@adleyburstyner.com.au).

We can be contacted on 03 9611 0190 or [www.adleyburstyner.com.au](http://www.adleyburstyner.com.au) for further information.