



Federal Court of Australia  
District Registry: New South Wales  
Division: General

No: NSD1908/2016  
NSD1155/2017  
NSD1388/2018

NSD1908/2016

**GAVIN SMITH** and others named in the schedule  
Applicants

**COMMONWEALTH OF AUSTRALIA (DEPARTMENT OF DEFENCE)**  
Respondent

NSD1155/2017

**BRADLEY JAMES HUDSON** and others named in the schedule  
Applicants

**COMMONWEALTH OF AUSTRALIA**  
Respondent

NSD1388/2018

**KIRSTY BARTLETT** and another named in the schedule  
Applicants

**COMMONWEALTH OF AUSTRALIA**  
Respondent

## **ORDER**

**JUDGE:** JUSTICE LEE

**DATE OF ORDER:** 24 September 2019

**WHERE MADE:** Sydney

### **THE COURT ORDERS THAT:**

#### **Smith, Hudson and Bartlett Proceedings**

1. The matters be listed for a Case Management Hearing at 9am on 27 September 2019.



2. An initial trial (**Initial Trial**) is to be held for the determination of:
  - (a) the whole of the claims of Gavin and Kim Smith;
  - (b) the whole of the claims of Bradley and Sharyn Hudson; and
  - (c) the whole of the claims of Kirsty and Anthony Bartlett,  
(together, the **Initial Trial Applicants**).
3. The Initial Trial will be conducted in two stages:
  - a. a first stage hearing to commence on 1 April 2020 and scheduled to be completed by 15 May 2020 (**First Stage Hearing**); and
  - b. a second stage hearing to commence on 30 November 2020 and scheduled to be completed by 24 December 2020 (**Second Stage Hearing**).
4. In addition to determining the whole of the claims of the Initial Trial Applicants, the Initial Trial will include a trial of questions of fact or law common to the claims of the Initial Trial Applicants and the group members in each of the three proceedings.
5. By midday on 25 September 2019 the parties are to file and serve agreed orders setting out:
  - a. the questions of fact or law common to the claims of the Initial Trial Applicants and the group members in each of the three proceedings (**Common Questions**);
  - b. questions to be determined at the First Stage Hearing to be held on factual issues required for references on the topics of hydrology, hydrogeology and remediation and other questions common to all three proceedings including issues relating to allegations of Commonwealth knowledge;
  - c. the names of proposed referees for the topics of toxicology, land valuation, hydrology, hydrogeology and remediation; and
  - d. proposed questions for the referees to be appointed on the topics of toxicology and land valuation and proposed directions for those references.
6. Where the parties are unable to reach agreement in relation to Order 5, the parties are to provide, by midday on 26 September 2019, submissions in response to 5(a), (b), (c)



and (d) containing each parties' proposed questions and directions, and names proposed, to the extent they are not agreed.

7. At the Case Management Hearing on 27 September 2019 orders will be made specifying the Common Questions that are to be determined at the Initial Trial.

### **Hudson Proceeding**

8. The respondent be given leave to file the affidavit of Rodney Louis Brett sworn 5 July 2019.
9. The respondent be given leave to file the affidavit of Simon Leslie Bishop sworn 15 August 2019.
10. The time for compliance with order 1 of the Orders made by the Court on 5 July 2019 in respect of the applicants' reply evidence in respect of hydrology be extended to 30 August 2019.
11. The time for compliance with order 2 of the Orders made by the Court on 5 July 2019 in respect of the applicants' reply evidence in respect of land valuation be extended to 30 August 2019.
12. The time for compliance with order 3 of the Orders made by the Court on 5 July 2019 in respect of the applicants' reply evidence in respect of remediation be extended to 4 September 2019.
13. The time for compliance with order 1 of the Orders made by the Court on 5 July 2019 in respect of the applicants' reply evidence in respect of hydrogeology be extended to 3 September 2019.
14. The affidavit of Stephen Lourey affirmed on 29 March 2019 filed by the respondent in NSD1908/2016 (*Gavin Smith and Ors v Commonwealth*) be taken as filed in these proceedings.

### **Bartlett Proceeding**

15. The respondent is granted leave to file the:
  - (a) affidavit of Benjamin John Sleeman, affirmed 18 July 2019;
  - (b) affidavit of Gareth John Edwards, affirmed 18 July 2019;



- (c) affidavit of Peter Paul Doran, affirmed 19 July 2019;
  - (d) affidavit and expert report of Simon Bishop, sworn 23 July 2019;
  - (e) affidavit of Sharon Lee Durbidge, affirmed 26 July 2019;
  - (f) affidavit of Marc Richard Centner, affirmed 8 August 2019; and
  - (g) affidavit and expert report of Martin Giles, sworn 23 August 2019.
16. The time for compliance with order 8(c) of the Orders made by the Court on 6 June 2019 be extended to 13 September 2019 in respect of the respondent's hydrogeology expert report.
  17. The time for compliance with order 8 of the Orders made by the Court on 14 June 2019 be extended to 13 September 2019 in respect of the respondent's remediation expert.
  18. The time for compliance with order 3 of the Orders made by the Court on 5 July 2019 be extended to 13 September 2019 in respect of a lay affidavit relating to the installation and operation of water treatment plants in Katherine and at RAAF Base Tindal.
  19. The time for compliance with order 17 of the Orders made by the Court on 9 October 2018 with respect to the applicant's lay evidence in reply be extended to 25 October 2019.
  20. The time for compliance with order 17 of the Orders made by the Court on 9 October 2018 with respect to the applicant's hydrology expert evidence in reply be extended to 16 October 2019.
  21. The time for compliance with order 17 of the Orders made by the Court on 9 October 2018 with respect to the applicant's valuation expert evidence in reply be extended to 11 October 2019.
  22. The time for compliance with order 17 of the Orders made by the Court on 9 October 2018 with respect to the applicant's remediation expert evidence in reply be extended to 21 October 2019.



23. The time for compliance with order 17 of the Orders made by the Court on 9 October 2018 with respect to the applicant's hydrogeology expert evidence in reply be extended to 25 October 2019.
24. The affidavit of Stephen Lourey affirmed on 29 March 2019 filed by the respondent in NSD1908/2016 (*Gavin Smith and Ors v Commonwealth*) be taken as filed in these proceedings.
25. The affidavit of Mark Neile Willetts affirmed on 29 March 2019 filed by the respondent in NSD1155/2017 (*Hudson & Ors v Commonwealth*) be taken as filed in these proceedings.
26. The affidavit of Dr Antony Fletcher affirmed on 17 April 2019 annexing his expert report dated 17 April 2019 filed by the respondent in NSD1908/2016 (*Gavin Smith and Ors v Commonwealth*) and NSD1155/2017 (*Hudson & Ors v Commonwealth*) be taken as filed in these proceedings.
27. The affidavit of Professor Ian Cousins affirmed on 18 March 2019 annexing his expert report dated 18 March 2019 filed by the respondent in NSD1908/2016 (*Gavin Smith and Ors v Commonwealth*) and NSD1155/2017 (*Hudson & Ors v Commonwealth*) be taken as filed in these proceedings.
28. The report of Professor Philippe Grandjean dated 31 August 2018 filed by the applicant in NSD1908/2016 (*Gavin Smith and Ors v Commonwealth*) be taken as filed in these proceedings.

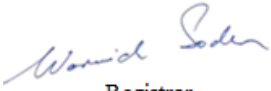
### **Smith Proceeding**

29. The applicants are to serve on the respondents a draft proposed Fourth Further Amended Statement of Claim by 4.00pm on 13 September 2019.
30. The respondent be given leave to file the affidavit of Simon Leslie Bishop sworn 15 August 2019.
31. Order 4 of the Orders made by the Court on 19 March 2019 be vacated.
32. The applicants be granted leave to file and serve any lay and expert evidence in reply by 30 August 2019.



33. The affidavit of Brian Wrigglesworth affirmed 19 December 2018 filed by the applicants in NSD1388/2018 (*Bartlett and Anor v Commonwealth*) be taken as filed in these proceedings.
34. The affidavit of Mark Neile Willetts affirmed on 29 March 2019 filed by the respondent in NSD1155/2017 (*Hudson & Ors v Commonwealth*) be taken as filed in these proceedings.

Date that entry is stamped: 24 September 2019

  
Registrar



**Schedule**

No: NSD1908/2016

Federal Court of Australia  
District Registry: New South Wales  
Division: General

Second Applicant	KIM SMITH
Third Applicant	ANN AND LINDSAY CLOUT SMSF PTY LTD ACN 154 516 006
Fourth Applicant	ANN CLOUT
Fifth Applicant	LINDSAY CLOUT
Sixth Applicant	JOHN ARTHUR HEWITT
Eighth Applicant	MARSHALLS TRANSPORT PTY LTD
Ninth Applicant	NICHOLAS MARSHALL
Tenth Applicant	MELISSA MARSHALL

No: NSD1155/2017

Federal Court of Australia  
District Registry: New South Wales  
Division: General

Second Applicant	SHARYN DANELLE HUDSON
Third Applicant	MEATIES PTY LTD (ACN 113 651 755) AS TRUSTEE FOR THE BSTS UNIT TRUST
Interested Person	BANK OF QUEENSLAND



No: NSD1388/2018

Federal Court of Australia  
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Second Applicant      ANTHONY CRAIG BARTLETT