



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
Applicant

COMMONWEALTH OF AUSTRALIA
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: 6 December 2019
WHERE MADE: Sydney

THE COURT ORDERS THAT:

Williamtown, Oakey and Katherine Proceedings

Tender bundle

1. The date in order 10 of the Orders made on 1 November 2019 be varied from 6 December 2019 to 13 December 2019.



2. The date in order 13 of the orders made on 1 November 2019 be varied from 21 February 2020 to 28 February 2020.

Interrogatories

3. Any application by the applicants to administer interrogatories is to be made by 13 December 2019 and returnable at 2.15pm on 19 December 2019.

Site visits

4. The Initial Trial (as defined in order 3 of the orders made on 24 September 2019) is to commence in the week of 16 March 2020 with a view of RAAF Base Tindal and the surrounding area, a view of the Army Aviation Centre Oakey and the surrounding area, and a view of RAAF Base Williamtown and the surrounding area, pursuant to s 54 of the *Evidence Act 1995 (Cth)*.
5. Pursuant to s 23 of the *Federal Court of Australia Act 1976 (Cth) (FCCA)* and the implied power of the Court, any entity or persons responsible for access to any land upon which the view is to be conducted provide access to the land and enclosed area on the land to the parties, their legal representatives and any Court or transcription staff.

Case Management Hearing

6. The matter be listed for a further case management hearing at 2.15pm on 19 December 2019.

Oakey Proceeding

Subpoena to Landgate

7. Leave be granted to the parties to inspect and copy in the Registry the documents produced in accordance with the subpoena addressed to Western Australian Land Information Authority, Landgate.
8. Subject to order 7, leave be also granted to the solicitors for the parties to uplift these documents, for the purposes of inspection and copying, on the following conditions:
 - a. If original documents rather than copies have been produced, the solicitor provides to the Registry a letter of consent from the person to whom the subpoena is addressed.



- b. Documents not leave the custody of the solicitor, or counsel instructed by the solicitor.
 - c. Documents be returned to the Registry in the same condition, order and packaging as when uplifted.
 - d. Documents be returned promptly and, in any event, when an officer of the Registry so requests.
9. On completion of this matter, the Registrar may return to the addressee of the subpoena any document without giving the issuing party any further notice.

Closed class extension in Oakey Class Action

10. The applicants in Federal Court of Australia proceeding NSD 1155 of 2017 (**the Oakey Class Action**) have leave, pursuant to ss 33K and 33ZF of the FCAA, to amend the description of Group Members in each of the Originating Application and the Statement of Claim by replacing the words “21 January 2019” with the words “29 October 2019”.
11. The applicants in the Oakey Class Action are to file and serve a Further Amended Originating Application and a Further Amended Statement of Claim reflecting the amendment set out in order 10 by 6 December 2019.
12. Any person in the Oakey Class Action referred to in order 10 who entered into a funding agreement with IMF Bentham Limited after the date of commencement of this proceeding is to be taken to have commenced proceedings on the date upon which these orders were made with liberty for any such group member to make an application in respect of this order.
13. Pursuant to ss 33X(1)(a), 33X(5) and 33Y(2) of the *Federal Court of Australia Act 1975* (Cth) (**FCAA**), the form and content of the notice set out in Annexure A (**Notice**) be approved.
14. Pursuant to ss 33X(1)(a), 33X(5) and 33Y(3) of the FCAA, the Notice be given on or before 9 December 2019 (**Notice Date**) to Group Members who entered into litigation funding agreements with IMF Bentham Limited after 21 January 2019 (**Additional Group Members**) by the solicitors for the applicants emailing a copy of the Notice to the Additional Group Members.



15. The costs of, and incidental to, the procedure set out in order 14 above are costs in the cause. For the avoidance of doubt, answering inquiries by Group Members and members of the public in relation to the Notice is work incidental to order 14 above.
16. Pursuant to s 33J(1) of the FCAA, the day two weeks after the Notice Date, being 23 December 2019 (**Opt Out Date**), be fixed as the date by which Additional Group Members may opt out of this proceeding.
17. If, on or before the Opt Out Date, the solicitor for any party receives a notice purporting to be an opt out notice referable to this proceeding, the solicitors must file that notice with the Federal Court of Australia, NSW District Registry, within three (3) days of receipt of the notice by the solicitors, and the notice shall be treated as an opt out notice received by the Court at the time it was received by the solicitors.
18. The solicitors for the parties be granted leave to inspect the Court file from time to time and to copy any opt out notices filed.

Date that entry is stamped: 6 December 2019

Sia Lagos
Registrar



Schedule

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

No: NSD1908/2016

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

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

Second Applicant	ANTHONY CRAIG BARTLETT
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Annexure A
(Group Member Notice)

OAKEY CONTAMINATION CLASS ACTION

NSD 1155 of 2017 (Hudson & Ors v Commonwealth of Australia)

1. Why is this notice important?

A class action has been commenced in the Federal Court of Australia by Mr Bradley Hudson, Mrs Sharyn Hudson and Meaties Pty Ltd (**Applicants**) against the Commonwealth of Australia (**Commonwealth**). The class action was commenced on 11 July 2017.

The class action claims compensation for damages to property and business values as a result of contamination of groundwater, surface water, soil and biota in Oakey by per- and polyfluoroalkyl substances (**PFAS**) from the use of Aqueous Film Forming Foam (**AFFF**) by the Commonwealth at Army Aviation Centre Oakey.

The Applicants' lawyers are Shine Lawyers (**Shine Lawyers**), and they are helping them run the case. A company called IMF Bentham Ltd (**IMF Bentham**) is funding the case.

An important step is going to take place in this litigation, with the hearing of the class action scheduled to commence in April 2020. The Federal Court has ordered that this notice be published to alert Group Members that they must decide by 23 December 2019 whether they wish to opt out of these proceedings. Information relating to opting out of the proceedings is explained in more detail below.

There are various factors which may inform your decision in relation to the above matters, including whether you wish to pursue any claim you may have separately to this litigation. The main options available to you are set out in Section 6 below.

You should read this notice carefully, as it concerns your rights. If there is anything in it that you do not understand, you should seek independent legal advice.

THE OPT OUT DATE IS 23 DECEMBER 2019

2. What is a class action?

A class action is an action that is brought by one or a small number of people (in this case Mr and Mrs Hudson and Meaties Pty Ltd) on behalf of a class of people (**Group Members** – this may include you) against another person (**Respondent** – in this case the Commonwealth) in circumstances in which the Applicants and the Group Members have the same or similar claims against the Respondent.

The Applicants in a class action does not need to seek the consent of group members to commence a class action on their behalf. Anyone who falls within the group definition is automatically included. However, persons can cease to be group members by "opting out" of the class action. This is done by filling out a form. It does not matter that a group member has signed a litigation funding agreement; they can still opt out.

Group members are "bound" by the outcome in the class action, unless they have opted out of the proceeding. A binding result can happen in two ways: judgment following a trial, or a settlement at any time. If there is a judgment or a settlement of a class action, group members will not be able pursue the same claims and may not be able to pursue similar or related claims against the respondent in other legal proceedings. Group members should note that:



- a) in a *judgment* following trial, the Court will decide various common factual and legal issues in respect of the claims made by the Applicants and group members. Group members will be bound by those findings, whether or not they are favourable to them (unless they are appealed – IMF Bentham is not required to fund any appeal). Importantly, if there are other proceedings between a group member and the respondent, neither of them will be permitted to raise arguments in that proceeding which are inconsistent with a factual or legal issue decided in the trial of common issues in the class action. This means that if the issues are resolved against the Applicants, group members will be unable to pursue claims they have which are the same as the Applicants' claims, and will not be able to pursue other claims which are dependent upon common issues which have been resolved against the Applicants in any other Court proceeding; and
- b) in a *settlement* of a class action, where the settlement provides for compensation to group members it is likely to extinguish all rights to compensation which a group member might have against the respondent which arise in any way out of the events or transactions which are the subject-matter of the class action.

If you consider that you have claims against the Commonwealth which are based in your individual circumstances or otherwise additional to the claims described in the class action (for example you have suffered different kinds of loss), then it is important that you seek independent legal advice about the potential binding effects of this class action in advance of the opt-out date. If you stay in this proceeding and it is determined by a judge then you may not be able to issue separate proceedings on different, but related, grounds later on.

3. What is this class action?

This class action is brought by the Applicants on behalf of all persons who are Group Members (see Section 4 below).

The Applicants allege that from 1977 onwards, the Commonwealth discharged large quantities of AFFF at Army Aviation Centre Oakey, containing PFAS chemicals which are potentially damaging to the environment and potentially causative of adverse health effects in humans. The Applicants allege that the Commonwealth's negligent use and failure to contain AFFF has resulted in the contamination of the Oakey Creek, soil in the Relevant Area and the aquifer (groundwater) underlying the town of Oakey and its surrounds, resulting in contamination of groundwater, surface water, soil and biota in the area. The Applicants also allege that the Commonwealth failed to inform actual and potential property owners of the contamination at any time prior to 29 July 2014, notwithstanding what it knew or ought to have known of the potential properties of AFFF, and the contamination. The Applicants claim that the Commonwealth's conduct created a nuisance, was negligent and was in breach of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).



The Applicants allege that the Commonwealth's conduct has caused adverse impacts to the value of land and businesses in the area delineated by the solid purple line on the map annexed to this notice as Attachment "A" (**Relevant Area**). The Applicants do not claim that the Commonwealth's conduct has caused personal injuries to them or seek compensation from the Commonwealth in this regard.

The Commonwealth denies that it is liable to the Applicants and Group Members, and is defending the class action.

4. Are you a Group Member?

You are a Group Member in the Oakey Contamination Class Action if you:

- a) owned land located in whole or in part within the Relevant Area (that is, if you were registered as the legal owner of that land) as at 29 July 2014; or
- b) operated a business situated on land located in whole or in part within the Relevant Area as at 29 July 2014; and
- c) have signed a Funding Agreement with IMF Bentham.

If you are unsure whether or not you are a Group Member, you should contact Shine Lawyers, or IMF Bentham (via the details set out in Section 7 below) seek your own independent legal advice without delay.

5. How is the class action being funded?

Group members in a class action are not individually responsible for the legal costs associated with bringing the class action. In a class action, only the Applicants are responsible for the costs.

In this class action, the Applicants and all Group Members have entered into Funding Agreements with IMF Bentham which provide for IMF Bentham to pay the Applicants' legal costs of the action, to indemnify the Applicants in respect of any adverse costs orders which may be made against the Applicants in the action, and to provide any security for adverse costs in the action (that is, any amount the Applicants have to pay the Commonwealth if the class action is lost). In exchange for IMF Bentham providing funding, the Applicants and Group Members have agreed that in the event that there is a successful outcome to the proceedings:

- (1) IMF Bentham may recover amounts which are deemed "Project Costs" on page 7 of your Funding Agreement (plus GST), including legal expenses, project investigation fees, project management fees, adverse cost orders, out of pocket expenses and other fees. These may include amounts incurred prior to your entry into the Funding Agreement; and
- (2) IMF Bentham will be paid a commission from any amount they recover from the Commonwealth. The commission which the Group Members have agreed to pay IMF Bentham is set out in the Funding Agreement you have signed at clause 12.1.4 (page 19) and in Schedule 5.

Under the Funding Agreement, IMF Bentham is not obligated to fund the litigation until it is finalised. If IMF Bentham chooses to terminate the Funding Agreement it will not be responsible for any costs of the litigation after it makes its decision.



6. What do you need to do?

If you are a Group Member in this proceeding, you have two options:

Option	Deadline	More Information
1. Stay in the class action (do nothing)	23 December 2019	Section 6(a) below
2. Opt out of the class action	23 December 2019	Section 6(b) below

(a) OPTION 1: If you want to be part of this class action

You do not need to do anything to stay as a Group Member in this class action.

If you stay as a Group Member you will be bound by the outcome of the class action, as described in Section 2 above. If it is successful, you will be eligible to benefit from any favourable outcome that is reached in the class action and may need to provide evidence to substantiate your claim as a group member. You will also be bound by any orders that the Court makes in relation to the payment of costs, including legal fees and the funding commission payable to IMF Bentham. These will prevail over the litigation funding agreement you have signed to the extent of any inconsistency.

(b) OPTION 2: If you do not want to be part of this class action

If you do not wish to be a Group Member in this class action you should opt out. If you opt out you will not be bound by the outcome of the class action, as described in Section 2 above. If you opt out, you may:

- i. take no further action against the Commonwealth; or
- ii. commence your own proceedings against the Commonwealth. If you want any claim you have against the Commonwealth to be pursued you will need to take steps to bring it, and fund it, yourself, which you are free to do provided that you issue Court proceedings within the time limit applicable to your claim; or
- iii. make a financial claim against the Commonwealth in writing (for example, by using the claim form available at: <http://www.defence.gov.au/Environment/PFAS/FinancialClaims.asp>).

You should seek independent legal advice about your claim and the applicable time limit **prior to** opting out of this class action. Additionally, you should seek specific legal advice if you're opting out about the effect of the litigation funding agreement you have already signed with IMF Bentham, including where you intend to pursue a claim against the Commonwealth, as it may bear upon your rights if you opt out.

If you do not wish to remain a Group Member you must opt out of this class action by completing an "Opt Out Notice" in the form shown at Attachment "B" to this notice, and returning it to the Registrar of the Federal Court of Australia at the address on the form. **IMPORTANT:** the Notice must reach the Registrar by no later than 4.00pm on 23 December 2019, otherwise it will not be effective and you will not be able to opt out of the proceeding.

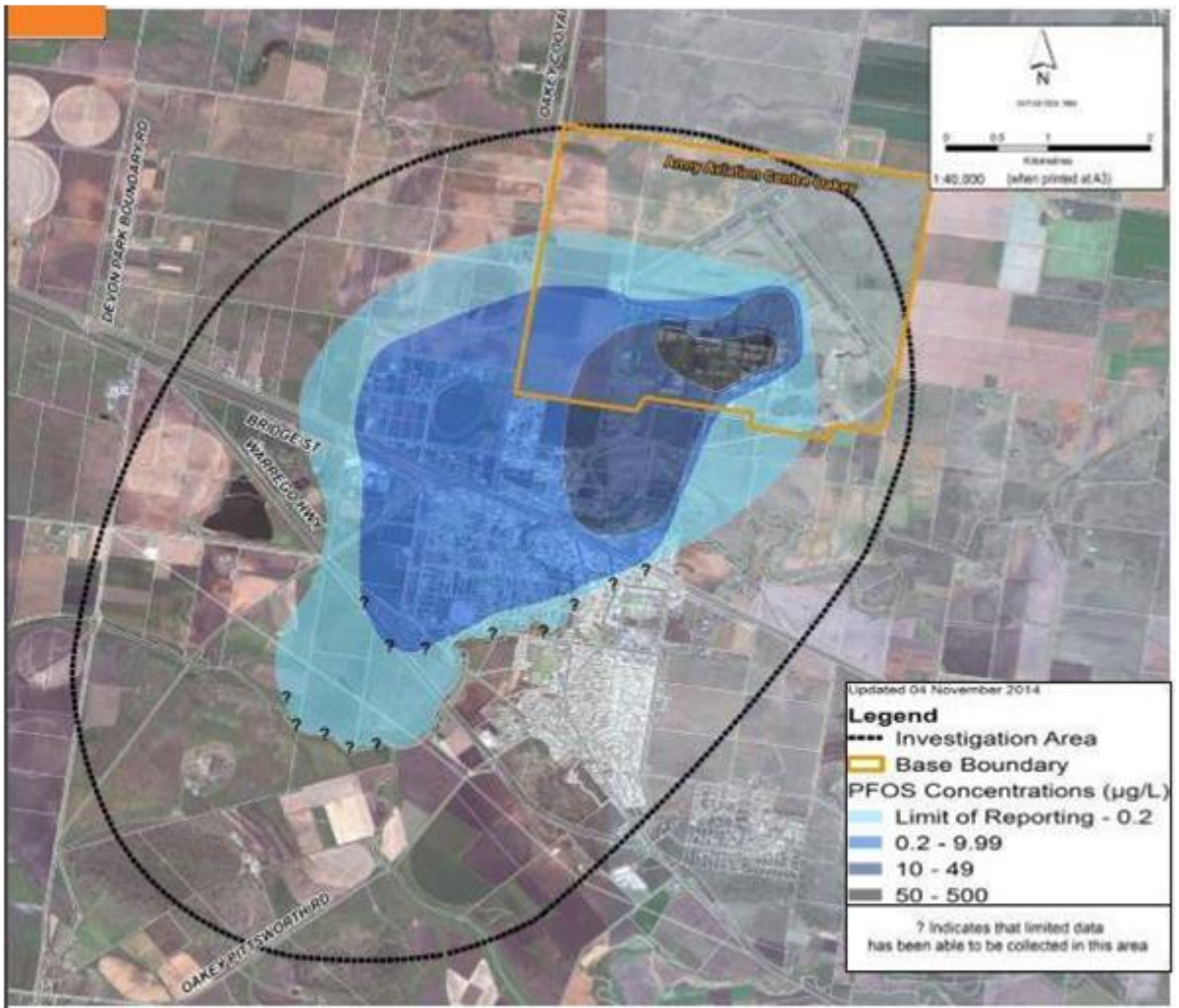


7. Where can you obtain copies of relevant documents?

Copies of relevant documents, including the current pleadings may be obtained by:

- a) downloading them from <https://www.shine.com.au/service/class-actions/pfas-contamination-class-actions/oakey-contamination>; or
- b) Inspecting them between 9am and 5pm at one of the offices of Shine Lawyers by prior appointment to be made by emailing OakeyContamination@shine.com.au. The nearest office of Shine Lawyers to you is likely to be Toowoomba.

Please consider the above matters carefully. If there is anything of which you are unsure, you should contact Shine Lawyers via email to (OakeyContamination@shine.com.au, or telephone 1800 066 105) or IMF Bentham (403093@imf.com.au; or telephone 1800 016 464) or seek your own legal advice.





“Attachment B to Notice”

Form 21
Rule 9.34

Opt out notice

No. 1155 of 2017

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

Bradley James Hudson and Ors
Applicants

The Commonwealth of Australia
Respondent

To: The Registrar
Federal Court of Australia
New South Wales District Registry
Locked Bag A6000
Sydney South NSW 1235

.....
[Name of group member]

a group member in this representative proceeding on the basis that they own (insert land/business), gives notice under section 33J of the *Federal Court of Australia Act 1976*, that

..... is opting out of the representative proceeding.
[Name of group member]

Date:
[DD Month YYYY]

.....
Signed by
[Name]

Capacity:
[e.g. Group Member/ Lawyer for the group member]

Filed on behalf of (name & role of party)
Prepared by (name of person/lawyer)
Law firm (if applicable)
Tel.....Fax
Email.....
Address for service
(include state and postcode)



[Version 2 form approved 9/10/13]

