



Annexure A
(Group Member Notice)

Oakey Contamination Class Action

NSD 1155 / 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 August 2019. The Federal Court has ordered that this notice be published to alert Group Members that they must decide by 5 July 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 5 JULY 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)	5 July 2019	Section 6(a) below
2. Opt out of the class action	5 July 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 5 July 2019, otherwise it will not be effective and you will not be able to opt out of the proceeding.



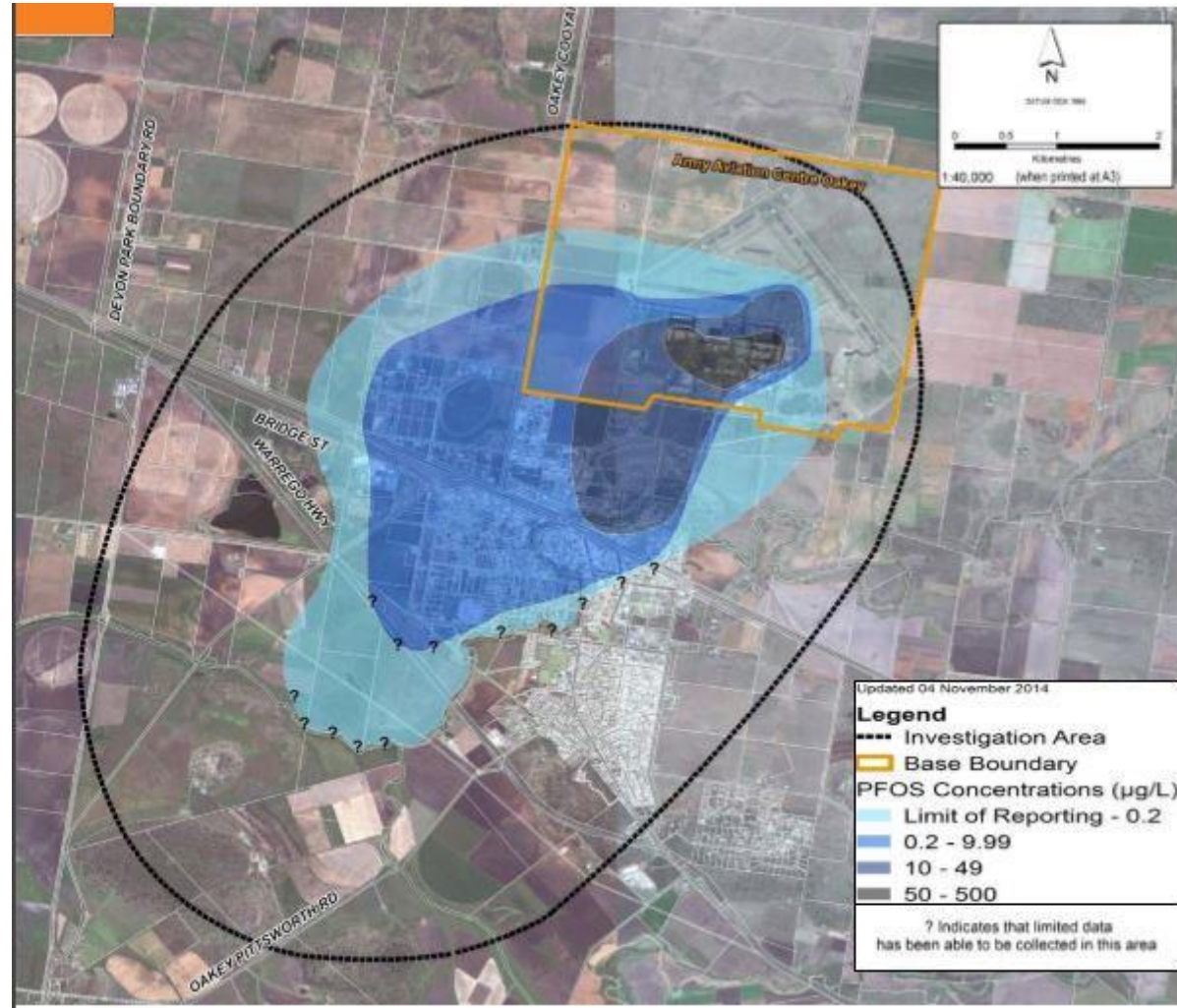
7. Where can you obtain copies of relevant documents?

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 A to Notice”
Relevant Area**





“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)



Annexure B
(Group Member Cover Letter)

Dear Client,

Oakey Class Action (NSD1155/2017 – Hudson & Ors v The Commonwealth of Australia)

A class action has been commenced against the Commonwealth seeking 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 the Army Aviation Centre Oakey.

You are receiving this letter because you are a group member in the Oakey Class Action, and you have already signed a funding agreement with IMF Bentham and retainer with Shine Lawyers in respect of the Oakey Class Action.

Please see enclosed a notice which the Court has approved and directed be sent to all group members in the Oakey Class Action. It is important that you read the enclosed notice carefully as it relates to your ongoing participation in the class action and sets out the steps you need to take if you do not want to be bound by the outcome of the class action. The date to take action by is 5 July 2019.

If there is anything of which you are unsure, you should contact Shine Lawyers via email to OakeyContamination@shine.com.au or seek your own independent legal advice.

Kind Regards,

Shine Lawyers