

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 7/01/2019 12:22:52 PM AEDT and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

Document Lodged:	Reply - Form 34 - Rule 16.33
File Number:	NSD1388/2018
File Title:	KIRSTY JANE BARTLETT & ANOR v COMMONWEALTH OF AUSTRALIA
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



A handwritten signature in blue ink, reading "Warwick Soden".

Dated: 7/01/2019 12:22:56 PM AEDT

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Reply

No. 1388 of 2018

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

Kirsty Jane Bartlett and Another

Applicants

The Commonwealth of Australia

Respondent

The Applicants join issue with each allegation in the Amended Defence other than as expressly pleaded in this Reply.

Terms used in this Reply which are defined in the Statement of Claim have the meaning given to them in the Statement of Claim.

1. As to paragraphs 118 and 124 of the Amended Defence, the Applicants:
 - a. say that:
 - i. the causes of action for negligence and/or breach of statutory duty accrued when the Applicants and Group Members first suffered loss or damage;
 - ii. the Applicants and Group Members first suffered loss or damage on or after the Contamination Announcement; and
 - iii. in the premises, the causes of action for negligence are not time barred pursuant to s12(1) of the *Limitation Act* (NT) and the cause of action for breach of statutory duty are not time barred pursuant to s 12(1) of the *Limitation Act* (NT) and/or s 14(1) of the *Limitation Act 1969* (NSW);
 - b. alternatively, say that:

Filed on behalf of (name & role of party)	Kirsty Jane Bartlett & Anor, Applicants
Prepared by (name of person/lawyer)	Joshua Aylward
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- i. facts material to the Applicants and/or some Group Members' cases were not ascertained by them until sometime within 12 months before the expiration of the limitation period or occurring after the expiration of that period, and that the action was instituted within 12 months after the ascertainment of those facts by the Applicants and/or Group Members;

PARTICULARS

- (i) *The following material facts were ascertained by the Applicants within the 12 months prior to the commencement of these proceedings on 7 August 2018:*
 - a. *in or about December 2017 the Second Applicant reviewed the December 2017 Factsheet;*
 - b. *on or about 27 March 2018 the Applicants were informed that PFOS, PFOA, PFNA and PFHxS were detected in the Second Applicant's blood;*
 - c. *on or about 9 April 2018 the Applicants were informed that PFOS, PFOA and PFHxS were detected in the First Applicant's blood;*
 - d. *in or about February 2018 the Second Applicant reviewed the Coffey report entitled "Department of Defence RAAF Base Tindal: Detailed Site Investigation Report 12 February 2018";*
 - e. *in or about March 2018 the Second Applicant reviewed the March 2018 Factsheet;*
 - e. *in or about June 2018 the Second Applicant reviewed the June 2018 Factsheet.*
- (ii) *Further particulars for the Applicants will be provided following service of the Applicants' lay evidence in chief.*
- (iii) *Particulars of material facts ascertained by Group Members in the twelve months prior to commencement of these proceedings on 7 August 2018 will be given following opt out, the determination of the Applicants' claims and identified common issues at an initial trial and if and when it is necessary for a determination to be made of the individual claims of those Group Members.*

- ii. alternatively, the Applicants and/or some Group Members failure to institute the action within the limitation period resulted from representations or conduct of the Commonwealth, or a person whom the Applicants reasonably believed to be acting on behalf of the Commonwealth, and was reasonable in view of those representations or that conduct and other relevant circumstances;

PARTICULARS

- (i) *The Applicants rely upon the Commonwealth's Negligent Failure to Warn and the announcement of the contamination of Katherine as pleaded in part F.5 of the Statement of Claim.*
 - (ii) *Further particulars for the Applicants may be provided following service of the Applicants' lay evidence in chief.*
 - (iii) *Particulars for Group Members will be given following opt out, the determination of the Applicants' claims and identified common issues at an initial trial and if and when it is necessary for a determination to be made of the individual claims of those Group Members.*
- iii. in all the circumstances of the case, it is just to grant an extension for the commencement of this action to 7 August 2018; and

PARTICULARS

- (i) *The Applicants rely upon the following matters:*
 - a. *the latent nature of the loss or damage suffered by the Applicants;*
 - b. *the short length of the delay (if there is a delay, which is denied) from the date of the Contamination Announcement and the commencement of these proceedings;*
 - c. *the significant hardship that would be caused to the Applicants if the action were dismissed; and*
 - d. *the limited prejudice to the Commonwealth if the action were allowed to proceed notwithstanding the delay (if there is any delay, which is denied).*

- (ii) *Further particulars for the Applicants may be provided following service of the Applicants' lay evidence in chief.*
 - (iii) *Particulars for Group Members will be given following opt out, the determination of the Applicants' claims and identified common issues at an initial trial and if and when it is necessary for a determination to be made of the individual claims of those Group Members.*
- iv. in the premises, the Court ought to extend the time for the commencement of these proceedings to 7 August 2018 pursuant to s 44 of the *Limitation Act* (NT); and
- c. otherwise deny the allegations therein.

Date: 7 January 2019



Signed by Joshua Aylward
Solicitor for the Applicants

This pleading was prepared by RJ May of counsel and settled by WAD Edwards of counsel.

Certificate of lawyer

I Joshua Aylward certify to the Court that, in relation to the reply filed on behalf of the Applicants, the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non admission in the pleading.

Date: 7 January 2019

A handwritten signature in black ink, reading "Joshua Aylward". The signature is written in a cursive, flowing style. The first name "Joshua" is written with a large, prominent 'J' and 'h'. The last name "Aylward" is written with a large 'A' and 'w'. The signature is positioned above a horizontal dotted line.

Signed by Joshua Aylward
Lawyer for the Applicants