

## NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 26/04/2019 8:35:16 AM AEST and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

### Filing and Hearing Details

Document Lodged:	Originating Application Starting a Representative Proceeding under Part IVA Federal Court of Australia Act 1976 - Form 19 - Rule 9.32
File Number:	NSD1388/2018
File Title:	KIRSTY JANE BARTLETT & ANOR v COMMONWEALTH OF AUSTRALIA
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised



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

Dated: 30/04/2019 11:00:09 AM AEST

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 Reason for Listing shown above is descriptive and does not limit the issues that might be dealt with, or the orders that might be made, at the hearing.

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.



**Further Amended Originating application starting a representative proceeding under Part IVA of the Federal Court of Australia Act 1976**

Amended on 26 April 2019 and filed pursuant to an order made on 23 April 2019

No. 1388 of 2018

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

**KIRSTY JANE BARTLETT & ANOR named in the Schedule**

Applicants

**COMMONWEALTH OF AUSTRALIA**

Respondent

To the Respondent

The Applicant applies for the relief set out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

**Time and date for hearing:**

**Place:** Federal Court of Australia, Commonwealth Law Courts Building, Queens Square,  
Sydney NSW 2000

Date: 2019

Signed by an officer acting with the authority  
of the District Registrar

Filed on behalf of	Kirsty Jane Bartlett and Anor (Applicants)		
Prepared by	Joshua Aylward		
Law firm	Shine Lawyers Brisbane		
Tel	(07) 3006 6082	Fax	(07) 3229 1999
Email	<a href="mailto:jaylward@shine.com.au">jaylward@shine.com.au</a>		
Address for service	Level 13, 160 Ann Street Brisbane QLD 4000		



### Details of claim

On the grounds stated in the accompanying Statement of Claim, the Applicants claim on their own behalves and on behalf of Group Members:

1. Damages (including aggravated and exemplary damages);
2. Further, or alternatively:
  - (a) a declaration that by its use of the Tindal Base as pleaded in paragraphs 33 to 46 and 91 and/or 92 of the Statement of Claim, the Commonwealth contravened s 28(1) of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (**EPBC Act**) on and from 16 July 1999;
  - (b) statutory compensation pursuant to s 500(1) of the EPBC Act;
- 2A. If any claim in the proceedings is statute barred, an order pursuant to s44 of the *Limitation Act* (NT) extending the time for the commencement of these proceedings to 7 August 2018.
3. Interest;
4. Costs; and
5. Such further or other relief as the Court thinks fit.

### Questions common to claims of group members

The questions of law or fact common to the claims of some or all of the Group Members are as follows (with defined terms having the meaning as defined in the Statement of Claim):

#### ***Questions of fact concerning the Tindal Base and the Relevant Area***

1. Whether:
  - (a) the Tindal Base, and surrounding areas, had the features as pleaded in paragraphs 5 to 7 of the Statement of Claim;
  - (b) the climatic features of the Tindal Base and the Relevant Area were as pleaded in paragraph 8 of the Statement of Claim;
  - (c) the topographical features of the Tindal Base and Relevant Area were as pleaded in paragraphs 9 to 11 of the Statement of Claim;
  - (d) the soils of the Tindal Base and the Relevant Area were as pleaded in paragraph 12 to 13 of the Statement of Claim;



- (e) the hydrological features of the Tindal Base and Relevant Area were as pleaded in paragraphs 14 to 16 of the Statement of Claim;
- (f) the hydrogeological features of the Tindal Base and Relevant Area were as pleaded in paragraphs 17 to 19 of the Statement of Claim;
- (g) the Tindal Base and the Relevant Area were prone to flooding and associated overland flow during the wet season as pleaded in paragraph 20 of the Statement of Claim;
- (h) the artificial water-related features of the Tindal Base (including the Drainage System, the Fire Station Drain and the Evaporation Ponds) were as pleaded in paragraphs 21 to 24 of the Statement of Claim;

2. Whether:

- (a) Tindal Creek was used as pleaded in paragraph 26 of the Statement of Claim;
- (b) Katherine River was used as pleaded in paragraph 27 of the Statement of Claim;
- (c) the Tindal Aquifer has the features and usages as pleaded in paragraphs 28 to 29 of the Statement of Claim

***Questions of fact and law concerning the Commonwealth's actions and knowledge***

- 3. Whether the Respondent is responsible for conducting all activities at the Tindal Base as pleaded in paragraph 31 of the Statement of Claim;
- 4. Whether the Katherine Town Council operated the Katherine Regional Airport within the Tindal Base as pleaded in paragraph 32 of the Statement of Claim;
- 5. Whether the Respondent engaged in the Training and Operation Activities issuing AFFF as pleaded in paragraphs 33 to 46 of the Statement of Claim;
- 6. Whether the Respondent engaged in each of the acts and omissions pleaded in paragraphs 91(a) and (b) and 92(a) and (b) and 93 of the Statement of Claim;
- 7. Whether the Commonwealth had the knowledge pleaded in paragraphs 85, 86, 87, 88, 89 and/or 90 (and if so, from what date);

***Questions of fact concerning the properties of AFFF and Spent AFFF***

- 8. Whether AFFF and Spent AFFF has the physical properties as pleaded in each of paragraphs 47 to 48 and 50 to 54 of the Statement of Claim;



***Questions of fact concerning the contamination and its causes***

9. Whether the Toxic Plume is the result of AFFF discharged on the Tindal Base, and whether the groundwater in the Tindal Aquifer has become and is likely to continue to remain contaminated by, and a receptor of PFC Contaminants originally emanating from the Tindal Base (as pleaded in paragraphs 61 and 63 of the Statement of Claim);
10. Whether the Tindal Creek and Katherine River have become and is likely to continue to remain contaminated by, and a receptor of, PFC Contaminants originally emanating from the Tindal Base (as pleaded in paragraphs 56 to 58 of the Statement of Claim);
11. Whether the Tindal Creek Contamination and Katherine River Contamination exists, as pleaded in paragraph 59 of the Statement of Claim;
12. Whether the Groundwater Contamination exists, as pleaded in paragraph 64 of the Statement of Claim;
13. Whether the Soil Contamination exists, as pleaded in paragraph 67 of the Statement of Claim;
14. Whether the Broader Biota Contamination exists, as pleaded in paragraph 69 of the Statement of Claim;
15. Whether land in the Relevant Area has become and is likely to remain affected by the Tindal Creek Contamination, Katherine River Contamination, Groundwater Contamination, the Soil Contamination and/or the Broader Biota Contamination (as pleaded in paragraph 76 of the Statement of Claim);
16. Whether the Ongoing Contaminant Exposure exists (as pleaded in paragraph 77 of the Statement of Claim);
17. Whether the Contamination Land Value Affection exists (as pleaded in paragraph 81 of the Statement of Claim);
18. Whether the Contamination Business Affection exists (as pleaded in paragraph 83 of the Statement of Claim);

***Questions of law concerning the cause of action in nuisance***

19. Whether the Respondent's use of the Tindal Base (as pleaded in paragraphs 33 to 46 and 91 and/or 92 of the Statement of Claim) has created or continued a substantial and unreasonable interference with the use and enjoyment of land by:
  - (a) Group Members who ~~owned land~~ were the registered owners of a fee simple interest in a lot (within the meaning of the *Land Titles Act 2000* (NT)) in the Relevant Area as at the Relevant Date (**Landowner Group Members**); and/or



- (b) Group Members who owned businesses conducted on land in the Relevant Area as at the Relevant Date (**Business Owner Group Members**);

20. Whether each of:

- (c) the matters pleaded in paragraph 25 of the Statement of Claim as to the foreseeable flow of water from the Tindal Base;
- (d) the matters pleaded in paragraph 30 of the Statement of Claim as to the foreseeable usage of water emanating from the Tindal Base;
- (e) the matters pleaded in paragraph 49 of the Statement of Claim as to the foreseeable flow of Spent AFFF from the Tindal Base;
- (f) the matters pleaded in paragraph 55 of the Statement of Claim as to the foreseeable flow of unnatural substances from the Tindal Base;
- (g) the matters pleaded in paragraph 84 of the Statement of Claim as to the foreseeable Tindal Creek Contamination, Katherine River Contamination, Groundwater Contamination, Soil Contamination, Broader Biota Contamination, Contamination Land Value Affectation and Contamination Business Affectation in the Relevant Area,

were reasonably foreseeable;

21. What categories of loss and damage may be recovered as a result of any substantial and unreasonable interference by the Respondent with the use and enjoyment of land by:

- (a) Landowner Group Members; and/or
- (b) Business Owner Group Members;

***Questions of law concerning the cause of action in negligence***

- 22. Whether, having regard to the answer to question 20, the Risk of Harm was reasonably foreseeable (as pleaded in paragraph 103 of the Statement of Claim);
- 23. Did the respondent owe the Duty of Care (as pleaded in paragraph 104 of the Statement of Claim) to:
  - (a) Landowner Group Members; and/or
  - (b) Business Owner Group Members;
- 24. Did the respondent owe the Duty to Warn (as pleaded in paragraph 105 of the Statement of Claim) to:
  - (a) Landowner Group Members; and/or



- (b) Business Owner Group Members;
25. What was the scope of the Duty of Care owed by the Respondent to:
- (a) Landowner Group Members; and/or
- (b) Business Owner Group Members;
26. Did the Respondent breach the Duty of Care owed to:
- (a) Landowner Group Members; and/or
- (b) Business Owner Group Members,
- by engaging in the Negligence (as pleaded in paragraph 112 of the Statement of Claim);
27. Did the Respondent breach the Duty to Warn owed to:
- (c) Landowner Group Members; and/or
- (d) Business Owner Group Members,
- by engaging in the Negligent Failure to Warn (as pleaded in paragraph 113 of the Statement of Claim);
28. What categories of loss and damage may be recovered by reason any breach of duty of care, by:
- (a) Landowner Group Members; and/or
- (b) Business Owner Group Members;

***Questions of law concerning the cause of action under the Environment Protection and Biodiversity Conservation Act 1999 (Cth)***

29. Whether the Respondent's use of AFFF products at the Tindal Base (as pleaded in paragraphs 33 to 46 and 91 and/or 92 of the Statement of Claim) has, will, or is likely to have a significant impact on the environment within the meaning of s.28(1) of the EPBC Act;
30. Whether the Respondent's use and discharge of AFFF products at the Tindal Base as pleaded in paragraphs 33 to 46 and 91 and/or 92 of the Statement of Claim) amounts to a breach of s.28(1) of the EPBC Act;
31. What categories of loss and damage may be recovered by reason of any contravention by the Respondent of s.28(1) of the EPBC Act by:
- (a) Landowner Group Members; and/or
- (b) Business Owner Group Members;



### Representative action

The Applicants bring this application as a representative parties under Part IVA of the *Federal Court of Australia Act 1976* (Cth).

The group members to whom this proceeding relates are persons who or which:

- (a) as at 23 November 2016 (Relevant Date):
  - i. ~~owned land~~ were the registered owners of a fee simple interest in a lot (within the meaning of the *Land Titles Act 2000* (NT)) located in whole or in part within the area delineated by the solid purple line on the map which is Annexure A to the Statement of Claim; or
  - ii. operated a business situated on land located in whole or in part within the Relevant Area; and
- (b) have suffered loss or damage by or resulting from the conduct of the Respondent pleaded in the Statement of Claim.

### Applicant's address

The Applicant's address for service is:

Place: Shine Lawyers Brisbane

Level 13, 160 Ann Street

BRISBANE QLD 4000

Email: [jaylward@shine.com.au](mailto:jaylward@shine.com.au)

The First and Second Applicants' address is: 245 Collins Road  
Uralla NT 0851

### Service on the Respondent

It is intended to serve this application on the Respondent.

Date: ~~7 January 2019~~ 26 April 2019

A handwritten signature in black ink, which appears to read 'Joshua Aylward', is written over a horizontal dotted line.

Signed by Joshua Aylward  
Lawyer for the Applicants



**Schedule**

No. 1388 of 2018

Federal Court of Australia

District Registry: New South Wales

Division: General

**Applicants**

Second Applicant: ANTHONY CRAIG BARTLETT

Date: ~~7 January 2019~~ 26 April 2019