

NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 9/04/2019 2:17:30 PM 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 - Form 15 - Rule 8.01(1)
File Number:	NSD1155/2017
File Title:	BRADLEY JAMES HUDSON & ORS 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: 9/04/2019 2:37:20 PM 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.



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

No. 1155 of 2017

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

BRADLEY JAMES HUDSON & others 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:

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

Filed on behalf of	Bradley James Hudson and others (Applicants)
Prepared by	Peter Shannon & Joshua Aylward
Law firm	Shine Lawyers Dalby
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Address for service	33a Archibald St Dalby QLD 4405



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 Oakey Base as pleaded in paragraphs 29 to 37 and 75 and/or 76 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;
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 Oakey and the Relevant Area

1. Whether:
 - (a) the Oakey Base, and surrounding areas, has the features as pleaded in paragraphs 6 to 8 of the Statement of Claim;
 - (b) the topographical features of the Oakey Base and Relevant Area were as pleaded in paragraphs 9 to 10 of the Statement of Claim;
 - (c) the soils of the Oakey Base and the Relevant Area were as pleaded in paragraph 11 of the Statement of Claim;
 - (d) the hydrological and hydrogeological features of the Oakey Base and Relevant Area were as pleaded in paragraphs 12 to 14 of the Statement of Claim;
 - (e) the artificial water-related features of the Oakey Base (including the Drainage System) were as pleaded in paragraphs 15 to 16 of the Statement of Claim;



2. Whether:

- (a) Oakey Creek had the features as pleaded in paragraphs 18 to 19 of the Statement of Claim;
- (b) the Oakey Surface Water Usages were as pleaded in paragraph 20 of the Statement of Claim;
- (c) the Oakey Aquifers have the features and usages as pleaded in paragraphs 21 to 25 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 Oakey Base as pleaded in paragraph 28 of the Statement of Claim;
- 4. Whether the Respondent engaged in the Training and Operation Activities issuing AFFF as pleaded in paragraphs 29 to 37 of the Statement of Claim;
- 5. Whether the Respondent engaged in each of the acts and omissions pleaded in paragraphs 75(a) and (b) and 76(a) and (b) and 77 of the Statement of Claim;
- 6. Whether the Commonwealth had the knowledge pleaded in paragraphs 68, 69, 70, 71, 72, 73 and/or 74 (and if so, from what date);

Questions of fact concerning the properties of AFFF and Spent AFFF

- 7. Whether AFFF and Spent AFFF has the physical properties as pleaded in each of paragraphs 38 to 39 and 41 to 45 of the Statement of Claim;

Questions of fact concerning the contamination and its causes

- 8. Whether the Toxic Plume is the result of AFFF discharged on the Oakey Base, and whether the groundwater in the Oakey Aquifers has become and is likely to continue to remain contaminated by, and a receptor of PFC Contaminants originally emanating from the Oakey Base (as pleaded in paragraphs 48 and 49 of the Statement of Claim);
- 9. Whether the Groundwater Contamination exists, as pleaded in paragraph 50 of the Statement of Claim;
- 10. Whether the Broader Biota Contamination exists, as pleaded in paragraph 55 of the Statement of Claim;
- 11. Whether land in the Relevant Area has become and is likely to remain affected by the Groundwater Contamination, the Soil Contamination and/or the Broader Biota Contamination (as pleaded in paragraph 59 of the Statement of Claim);



12. Whether the Ongoing Contaminant Exposure exists (as pleaded in paragraph 60 of the Statement of Claim);
13. Whether the Contamination Land Value Affection exists (as pleaded in paragraph 64 of the Statement of Claim);
14. Whether the Contamination Business Affection exists (as pleaded in paragraph 66 of the Statement of Claim);

Questions of law concerning the cause of action in nuisance

15. Whether the Respondent's use of the Oakey Base (as pleaded in paragraphs 29 to 37 and 75 and/or 76 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 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**);
16. Whether each of:
 - (c) the matters pleaded in paragraph 17 as to the foreseeable flow of water from the Oakey Base;
 - (d) the matters pleaded in paragraph 26 and 27 as to the foreseeable usage of water emanating from the Oakey Base;
 - (e) the matters pleaded in paragraph 40 as to the foreseeable flow of Spent AFFF from the Oakey Base;
 - (f) the matters pleaded in paragraph 46 as to the foreseeable flow of unnatural substances from the Oakey Base;
 - (g) the matters pleaded in paragraph 67 as to the foreseeable Groundwater Contamination, Soil Contamination, Broader Biota Contamination, and injurious affection to the value of land and businesses in the Relevant Area,

were reasonably foreseeable;
17. 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

18. Whether, having regard to the answer to question 16, the Risk of Harm was reasonably foreseeable (as pleaded in paragraph 87 of the Statement of Claim);
19. Did the respondent owe the Duty of Care (as pleaded in paragraph 88 of the Statement of Claim) to:
 - (a) Landowner Group Members; and/or
 - (b) Business Owner Group Members;
20. Did the respondent owe the Duty to Warn (as pleaded in paragraph 89 of the Statement of Claim) to:
 - (a) Landowner Group Members; and/or
 - (b) Business Owner Group Members;
21. 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;
22. What was the scope of the Duty to Warn owed by the Respondent to:
 - (c) Landowner Group Members; and/or
 - (d) Business Owner Group Members;
23. 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 95 of the Statement of Claim);
24. 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 96 of the Statement of Claim);
25. 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)

26. Whether the Respondent's use of AFFF products at the Oakey Base (as pleaded in paragraphs 29 to 37 and 75 and/or 76 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;
27. Whether the Respondent's use and discharge of AFFF products at the Oakey Base as pleaded in paragraphs 29 to 37 and 75 and/or 76 of the Statement of Claim) amounts to a breach of s.28(1) of the EPBC Act;
28. 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 29 July 2014 (**Relevant Date**):
 - (i) owned land located in whole or in part within the area delineated by black dotted lines on the map which is Annexure A to the Statement of Claim (the **Relevant Area**); or
 - (ii) operated a business situated on land located in whole or in part within the Relevant Area;
- (b) have suffered loss or damage by or resulting from the conduct of the Respondent pleaded in the Statement of Claim; and
- (c) have, as at ~~the commencement of this proceeding~~ 21 January 2019, entered a litigation funding agreement with IMF Bentham Ltd (ACN 067 298 088).

**Applicant's address**

The Applicant's address for service is:

Place: Shine Lawyers Dalby

33a Archibald St

DALBY QLD 4405

Email: pshannon@shine.com.au & jaylward@shine.com.au

The First and Second Applicants' address is: 14 Walkers Lane
Oakey QLD 4401

The Third Applicant's address is: 13 Campbell Street
Oakey QLD 4401

Service on the Respondent

It is intended to serve this application on the Respondent.

Date: ~~10 July 2017~~ 9 April 2019

A handwritten signature in black ink, which appears to read "Joshua Aylward".

Signed by Joshua Aylward
Lawyer for the Applicants

**Schedule**

No. 1155 of 2017

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

Applicants

Second Applicant: SHARYN DANELLE HUDSON

Third Applicant: MEATIES PTY LTD (ACN 113 651 755) AS TRUSTEE FOR
THE BSTS UNIT TRUST

Date: ~~10 July 2017~~ 9 April 2019