

PFAS class action settles for \$132.7M on eve of trial



Catherine Gleeson 2023-05-15 10:44 am By Cindy Cameronne | Sydney

One of the two remaining class actions against the Department of Defence over the use of alleged toxic firefighting foam at military bases across the country has settled for \$132.7 million on the eve of trial, with the final case going back to mediation.

On the first day of trial on Monday before Federal Court Justice Michael Lee, class action barrister William Edwards SC said lead applicant Reanna Haswell had

reached an agreement with the federal government late last night to settle the class action for the headline figure of \$132.7 million.

“I congratulate those involved. I know it has not been a straightforward exercise...It is very welcome news,” said Justice Lee.

The trial was scheduled to run for eight weeks before Justice Lee concerning allegations that a substance in firefighting foam, known as perfluoroalkyl and polyfluoroalkyl (PFAS), had leached into the soil and damaged property values in eight locations.

The trial was also set to hear allegations in a related class action by the Wreck Bay Aboriginal Council over the use of Aqueous Film Forming Foam (AFFF) in Jervis Bay, NSW.

Edwards said on Monday that the Wreck Bay proceeding should be stood down so the parties could continue to mediate rather than proceed to trial.

“Frankly, given where we are at, I think it is incumbent upon me to consider whether it is appropriate to resume mediation or reconvene mediation in [Wreck Bay],” said Edwards.

Justice Lee adjourned the trial until May 29 and ordered the parties to continue mediation until May 24.

Shine Lawyers joint head of class Actions Craig Allsopp, said while the news is positive, the outcome is still subject to approval by the Federal Court.

“Group members in our class action have the protection of the court at all times. The next step in our negotiations is to present our in-principle agreement to the Federal Court. If the proposed settlement is found to be fair and reasonable, the court will approve it. More details about the settlement will be available when the Court issues notices to group members in advance of the settlement approval hearing,” Allsopp said.

“It is always a good outcome when group members reach an agreement ahead of a trial to avoid incurring the extra costs and risks of complex litigation through the court.

“The settlement money, if approved, will go some way to compensate the seven communities in this class action for their losses, however, many are still stuck on contaminated land.”

Shine Lawyers said on Monday that the settlement is confidential and made without admission of liability by the Commonwealth.

Shine Lawyers brought [the class action April 2020](#) on behalf of 40,000 residents across Australia, two months after a \$215.5 million settlement was announced in three other PFAS class actions. That settlement was [approved by the court in June 2020](#).

The settlement announced Monday comes after [Justice Lee expressed frustration](#) in a case management hearing in April that the Haswell proceeding had not settled, despite the resolution of similar group proceedings almost three years ago.

“I have a degree of frustration in the matter because it seemed to me, given the previous proceedings have been settled, it was likely these will settle,” the judge said.

Class action silk William Edwards SC [flagged in March](#) that the mediation could run into problems because the federal government had said it would not be ready to commit to a settlement.

While the parties attended a mediation on April 19, legal representatives for the Commonwealth said on April 21 that it was not able to resume the talks that day.

In March, Edwards slammed the scheduled mediation as a “solemn farce” because the Commonwealth had said it was not ready to commit to a settlement and did not have approval to “make or receive offers”.

The Wreck Bay class action accuses the Commonwealth of negligently allowing contaminants in the firefighting foam to escape from the HMAS Creswell and the Jervis Bay Range Facility bases.

The class action is represented by William Edwards SC, Ryan May, Kathleen Morris, Peter Gaffney and Stephen Puttick, instructed by Shine Lawyers. The Commonwealth is represented by Sophie Callan SC, Edward Muston SC, Catherine Gleeson, Oliver Jones, Catherine Hamilton-Jewell, Henry Cooper and Anya Poukchanski, instructed by King & Wood Mallesons.

The case is [Reanna Laura Haswell & Anor v Commonwealth of Australia](#).

The Wreck Bay case is [Wreck Bay Aboriginal Community Council & Anor v Commonwealth of Australia](#).