

## PFAS class action on behalf of First Australians settles for \$22M



[Class Actions](#) 2023-05-25 11:13 am By [Cindy Cameronne](#) | Sydney

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The last class action against the Department of Defence over the use of alleged toxic firefighting foam at a military base in Jervis Bay has settled for \$22 million, from which \$5 million will be deducted for legal costs.

In a hearing on Thursday before Federal Court Justice Michael Lee, class action barrister William Edwards SC said lead applicant Wreck Bay Aboriginal Community had reached an agreement with the federal government to settle the case on behalf

of 1,000 potential group members for \$22 million. The settlement remains to be approved by the court.

Justice Lee raised concerns that group members may misunderstand the settlement after media reports in recent days covering health problems residents in Wreck Bay have allegedly suffered because of the alleged Aqueous Film Forming Foam (AFFF) contamination.

“A concern for me is to ensure...there is no confusion in the minds of the people with respect to what this settlement relates to,” the judge said.

“This settlement is a claim about the inability to use land, not a claim with respect to the degree of personal injury.

“It simply has a laser-like focus on the issue of property impairment...and also the inhibition in being able to engage in cultural activities on the land.”

The judge directed Shine Lawyers, which is running the class action, to hold a public meeting with the group members to explain the scope of the settlement.

Shine will seek court approval for \$5 million in legal costs and an unknown amount for settlement administration and for the task of obtaining settlement approval.

Shine Lawyers’ joint head of class actions, Craig Allsopp said on Thursday that while the settlement was a victory for this First Nations’ group, they will still have to grapple with the effects of PFAS contamination for decades to come.

“Fire-fighting foam leaking harmful PFAS chemicals into sacred waterways connected to HMAS Creswell and Jervis Bay Range Facility has caused considerable harm to the people of Wreck Bay,” he said.

“Not only has their land been contaminated, the community’s connection to country has been irreparably harmed.

“Wreck Bay’s indigenous community has lived on NSW’s idyllic South Coast for tens of thousands of years. The loss of connection to land and water has also meant a loss of identity for this group and for generations to come.”

While Allsopp said he was pleased to have achieved the outcome for the Wreck Bay community, monetary compensation will never be enough as some parts of the land will “never be the same”.

Shine Lawyers said that the Wreck Bay case was brought separately to other PFAS class actions because First Nations property claims posed “unique challenges” in

Australia's legal system.

“The Wreck Bay community has property rights that were not recognised at the time the Western law causes of action sued on were developed, and unique features which make suing for it like fitting a square peg in a round hole,” the firm said.

“The Wreck Bay class action also includes claims for cultural loss that were not a part of the claims for the other communities affected by PFAS contamination.”

The settlement marks the resolution of the last remaining class action against the federal government over contamination of land by allegedly toxic firefighting foam.

A multi-site class action against the government led by representative applicant Reanna Haswell over alleged contamination in regional NSW **settled on the night before trial** was due to start on May 15 for \$132.7 million.

That settlement came 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.

Edwards **flagged in March** that the mediation in Haswell could run into problems because the federal government had said it would not be ready to commit to a settlement.

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 in NSW.

The trial was also set to hear allegations in the Wreck Bay proceeding over the use of AFFF in Jervis Bay, NSW.

Edwards said on May 15 that the trial in Wreck Bay should be stood over to allow the parties to continue to mediate.

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

Shine Lawyers brought the class action against the Department of Defence in February 2021, alleging a substance in the firefighting foam, known as PFAS,

leached into soil and waterways, damaging culturally significant sites in Wreck Bay and decreasing the value of the land.

The first three class actions over PFAS were settled in 2020 for \$212.5 million, the biggest class action settlement of that year.

Two of the class actions were brought by Shine on behalf of property owners living in Katherine in the Northern Territory and Oakey in Queensland. The other lawsuit was launched by Dentons on behalf of residents of Williamstown in New South Wales. The proceedings allege the government's use of firefighting foam at nearby military bases contaminated group member's land and caused their property values to plummet. [The settlement](#) was announced in February 2019.

Shine launched a [fourth class action](#) in August 2020 on behalf of 40,000 property owners living in Richmond and Wagga Wagga, NSW; Wodonga, Victoria; Townsville, Queensland; Edinburgh, SA; Bullsbrook, WA and Darwin, NT. The law firm says residents were exposed to per- and poly-fluoroalkyl substance used on surrounding military bases.

The Wreck Bay proceeding has been set down for settlement approval hearing on June 19 and the Haswell proceeding for August 28.

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

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