

Legal settlement lets Australian military off the hook over PFAS pollution

Patrick Davies
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An Australian Federal Court judge this month approved as “fair and reasonable” a class action legal settlement over fire-fighting foam contamination covering over 3,000 people and three polluted towns. The deal reached with the Defence Department, will see victims share only \$126 million of a \$212 million payout.

While the payout is possibly a world first for compensation for economic loss as a result of toxic PFAS contamination, over 40 percent of the settlement will be swallowed up as profits and expenses for the litigation funder and two law firms involved.

Three separate class actions were initiated in 2016 by 500 residents from Williamstown in New South Wales (NSW), 450 from Oakey in Queensland and 2,500 from Katherine in the Northern Territory after fire-fighting foam run-off from air force bases was found to have contaminated groundwater in all three areas.

Before the payout is distributed to the victims, Omni Bridgeway, the litigation funder will take \$53.1 million in profits and \$940,000 in costs. Lawyers from Denton and Shine law firms will take \$30.1 million for their costs. Another \$2 million will be used to administer the distribution of the funds.

The settlement releases the Defence Department from any further claim over financial loss, property losses, mental anguish or nuisance for those involved, even though the areas remain polluted. There is no admission of liability by the government. This still leaves it open to future personal injury compensation litigation once the health dangers become more difficult to obscure.

Workers and their families living in affected towns have seen property prices plummet, with some properties considered unsellable. Small businesses and family farms have faced a dramatic loss of income, leaving many financially chained to their contaminated

properties.

Fire-fighting foam has been used in aviation fire and emergency training exercises since the 1960s. The foam contains a family of chemicals known as per- and polyfluoroalkyl substances (PFASs), which contaminate water sources and build up in the populations that use this water. It was known to be “toxic” by the Defence Department as far back as 1987, but no action was taken to phase it out until 2000, and waterways were only discovered to be contaminated in 2012.

The potential dangers for those exposed to high concentrations are still being fully identified. The limited research available points to probable links with a number of deadly cancers and diseases. A *Newcastle Herald* investigation in 2017 discovered 50 cases of cancer that had occurred on Cabbage Tree road in Williamstown during the time period of the contamination.

As federal and state government authorities became aware of the extent of the pollution, following its discovery in Williamstown and later at Oakey and Katherine, they used every effort to downplay the impacts on the victims. They denied any adverse health effects, asserting there was “limited to no evidence” of disease or illness from PFAS exposure. Government health authorities only conducted blood testing after significant petitioning by local residents.

A federally-funded “expert health panel” report in 2018 attempted a whitewash, claiming there was only “weak and inconsistent evidence” of any adverse effects. The government then refused to carry out health screening on affected communities, seeking to protect itself from any future liability.

An independent expert report ordered by the Federal Court helped to vindicate the residents’ concerns.

Prepared by Nick Osbourne of the University of Queensland, it said there is “general agreement” in the scientific community that the chemicals can cause kidney cancer, testicular cancer and high cholesterol.

This month’s settlement comes six years after Williamtown residents were informed for the first time that their homes had been contaminated.

The entire political establishment has waged a campaign to wear down the victims and force them to settle. A Greens-backed Senate inquiry in 2015 recommended, among other things, financial compensation but its proposals were non-binding. The Labor Party worked to block Senate motions calling for investigations into buyouts of victims’ properties. Empty promises continued for years, while victims continued to suffer.

Toxic PFAS has been the responsibility of countless authorities and governments, Labor and Liberal-National alike. It continues to be discovered at other sites and poses a danger to fire fighters and the general population. Earlier this year, PFAS chemicals were found at all Metropolitan Fire Brigade sites in Victoria.

There were 75 objections to the settlement from participants, many of whom argued that the compensation would be insufficient for them to leave their contaminated properties. A property devaluation figure of 21.5 percent was used to guide the settlement negotiations in Williamtown, but some losses were shown to exceed that.

Rob Roseworne, a resident living close to the Williamtown base, estimates he has lost \$200,000 off the value of his property. He received a letter from the class action lawyers saying he was likely to receive just \$32,986 for the property loss and \$32,300 for inconvenience and distress. An Oakey cattle farmer, Diane Priddle, with losses professionally estimated at over \$2 million, will receive just \$152,000.

The judge insisted that the only alternative to the settlement was a trial that could take years and still result in a loss. Williamtown steering committee member Cain Gorfine told the court: “We cannot afford another four years of legal action, mounting legal costs with the risk of getting no outcome whatsoever.”

This settlement shows how the capitalist court system treats the interests of the working class. Justice would, at the very least, require full individually assessed compensation for those who have paid for this pollution

with their life savings and health. Their suffering was essentially reduced to a risky but lucrative investment opportunity for litigation funders and law firms. During the proceedings, Federal Court Justice Michael Lee admitted that litigation is a “brutal business,” with a winner-takes-all model.

The Defence Department has displayed its essential hostility to those impacted by its operations. The *Newcastle Herald* recently reported that Defence had set aside \$53.8 million for legal fees to fight six cases, including PFAS-related lawsuits.

Over the past 10 years, the government has spent \$137 billion on major military weapons systems, preparing for war, but just \$125 million on PFAS remediation.

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