

## Article Information

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## From Chemicals to Courtrooms: Tracking the Expanding Landscape of PFAS Litigation

**The dangers of PFAS contamination were brought into the public consciousness upon the release of *Dark Waters* in 2019 starring Mark Ruffalo, which told the story of Robert Bilott's litigation against the chemical manufacturing giant, DuPont.**

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PFAS, often dubbed 'forever chemicals', are a class of synthetic chemicals that pose serious threats to both public health and the environment. A prominent environmental litigation attorney in the United States named Emily Lamond was quoted saying 'To say the floodgates are opening is an understatement'. As the scientific evidence regarding the dangers of PFAS mounts, so will the pressure for accountability over its use.

Now, across the globe, more than 6,400 legal actions have commenced in relation to PFAS contamination between July 2005 and March 2022. Most of them have been initiated in the United States.

The term 'waves of litigation' describes a legal phenomenon in which legal actions emerge in successive phases, often driven by evolving knowledge, regulatory developments and public awareness. As a case study, PFAS litigation illustrates how detection and growing recognition of environmental health risks have been followed by successive spates of corresponding legal claims.

Australia is now poised to face its own reckoning with regard to the dangers of PFAS contamination.

### ***The first wave: Environmental contamination***

In 2001, a landmark class action was filed on behalf of 80,000 residents of Ohio and West Virginia. The class claimed that DuPont had been conducting activities which caused PFAS to contaminate their water supply.<sup>[1]</sup> This case was the first PFAS-related class action filed in the United States and later inspired the film *Dark Waters*. The class action was settled for USD335 million. As part of the settlement, DuPont was required to install water filtration systems to clean the water supply and a further USD70 million was awarded for community education and health projects. DuPont was also obligated to fund a science panel, which was tasked with researching the link between PFAS exposure and human health.

The 'first wave' of PFAS-related litigation in Australia has primarily focused on damage to property and loss of business value. These claims typically arise from environmental contamination, particularly in the soil and water, leading to a diminution in property value and economic harm to businesses.

Most of the Australian claims have been brought against the Commonwealth Government, specifically, the Department of Defence for the use of aqueous film-forming foam (AFFF) at or around Australian Defence Force bases.<sup>[2]</sup> In a series of class action judgments delivered by Justice Lee of the Federal Court, the Commonwealth has been found liable for significant sums, including:

- *Smith v Commonwealth of Australia (No 2)* [2020] FCA 837, was a class action brought on behalf of landowners and business owners in three communities situated in close proximity to RAAF bases, alleging that PFAS discharged from the use of AFFF contaminated surrounding land and water. The matters settled for \$212.5 million;<sup>[3]</sup>
- *Haswell v Commonwealth of Australia (No 3)* [2023] FCA 1093, was a class action brought on behalf of people and entities that own land in the vicinity of several defence sites in Victoria, New South Wales, Queensland, South

Australia and the Northern Territory. The matter settled for \$132.7 million;<sup>[4]</sup> and

- *Wreck Bay Aboriginal Community Council v Commonwealth of Australia* [2023] FCA 660, was a class action brought on behalf of members of the Wreck Bay Aboriginal Community in respect of damage to land in the area around HMAS Creswell (Jervis Bay) resulting from the use of AFFF. The matter settled for \$22 million.<sup>[5]</sup>

These suits mirror early litigation in the United States regarding PFAS which concerned the contamination of municipal water systems and natural resources. PFAS litigation began in the United States significantly earlier than in Australia, with the first PFAS-related legal actions in Australia being filed more than a decade after.

On 28 May 2026, the Commonwealth Government launched a landmark \$2 billion lawsuit against 3M and 3M Australia in the Federal Court of Australia. It will be the largest legal claim ever brought by the Commonwealth Government.<sup>[6]</sup> The defendants are responsible for manufacturing firefighting foam containing PFAS, which has allegedly contaminated the environment in and surrounding 28 Defence bases across Australia. The action follows years of government expenditure on PFAS remediation, with liabilities and clean-up costs already exceeding \$1.3 billion. At the heart of the claim: allegations that 3M and 3M Australia both withheld internal lab testing which disclosed the toxicity of PFAS (misrepresentation by silence/omission) and made positive statements assuring that AFFF was biodegradable (express misrepresentation).

### ***The second wave: Consumer-manufacturer led litigation***

PFAS-related litigation claims focusing on the manufacturing and the provision of PFAS in consumer goods has emerged relatively recently in both the United States, Europe and Australia. This development can be understood as part of a broader 'second wave' of PFAS litigation. This type of litigation has emerged following an increase in regulation restricting the use of PFAS in manufacturing processes and has a focus on the notion of 'corporate accountability'.

PFAS has historically been used in the manufacture of a wide range of common household products, including cosmetics and cooking utensils. The National Health and Medical Research Council estimates that food and household products account for approximately 90% of PFAS exposure.

In the United States a number of 'second wave' legal actions have been commenced against manufacturers. For example:

- in August of 2024, a legal action was commenced in Minnesota against 3M Company, the Chemours Company and Cortev, which alleged that they concealed the risks posed by the use of PFAS in carpets and rugs. The class captured by this legal action includes anyone who bought and installed carpets before 2020 in the buildings they own; and
- consumer-led class actions in the United States have brought claims against companies at the end of the supply chain alleging that companies have falsely marketed their products as safe, healthy and environmentally friendly. Therefore, companies throughout the supply chain have been affected by PFAS litigation.

The 'second wave' of legal actions has also arrived in Australia. In December 2024, a class action against 3M Australia was filed in the Federal Court. The class, which is made up of manufacturers, alleges that from 1980 until 2000, 3M Australia:

- engaged in misleading and deceptive conduct by selling products containing PFAS while failing to disclose the risks associated with the chemicals;
- breached their duty of care by failing to protect customers from harm; and
- caused public nuisance.

In addition to private litigation, as described above, the Commonwealth Government has now commenced landmark litigation against 3M and 3M Australia (together, **3M**). The implications for future litigation are significant. The Commonwealth's action is likely to have a catalytic effect on PFAS-related claims.

The sheer scale of the claim sends a powerful signal that major PFAS manufacturers face serious legal exposure in this jurisdiction. The causes of action relied upon by the Commonwealth, including allegations of misrepresentation, concealment of test results and failure to disclose known risks, mirror the types of claims already being advanced by private litigants in both Australia and the United States. If the Commonwealth succeeds in establishing that 3M engaged in misleading conduct and withheld material information, the factual findings in that proceeding may provide a helpful legal precedent for future plaintiffs whether they be state and territory governments, local councils, water utilities, or private landowners in prosecuting their own claims. The action underscores the viability of claims that focus on the conduct of the manufacturer at the point of supply, specifically the adequacy of disclosures about known environmental and health risks.

While consumer-led litigation in the United States is more advanced, the emergence of the 3M case in Australia is clear evidence that more of these claims are likely to be filed in Australia.

### ***The third wave: Personal injury***

Personal injury claims are being designated as the emerging 'third wave' of PFAS-related litigation. They are classified as the third wave because health effects are often not apparent until many years after exposure to the alleged dangerous chemicals.

As noted previously, DuPont were required to set up a science panel to research the effects of PFAS exposure on human health. Since its establishment, approximately 3,500 personal injury legal actions have been filed by members of the class stemming from the findings of the panel. The personal injury legal actions were settled in principle by DuPont in 2017 for approximately \$670.1 million.

The recognition of PFAS-related personal injury is not confined to the United States. In December 2023, the Swedish Supreme Court determined that more than 150 residents of Ronneby, who had high levels of PFAS in their blood as a result of contaminated drinking water had suffered 'personal injury' within the meaning of the Swedish *Product Liability Act*. The contamination originated from firefighting foam used at the nearby Blekinge Air Wing military base, which leached PFAS into the groundwater and subsequently into the municipal water supply operated by Ronneby Miljö och Teknik AB, a company wholly owned by the Ronneby municipality. The Court noted that: 'the facts in the case can be considered to provide sufficient support for the assertion that the contaminated drinking water has had a significant negative impact on the appellants' bodies. Indeed, the increased risk of future adverse health effects does not in itself constitute a personal injury. On the other hand, the considerable physical deterioration manifested in the high levels of PFAS in each appellant's blood must be regarded as constituting an impairment which is a personal injury for the purposes of tort law'. This decision is significant because it establishes that elevated PFAS blood levels alone, absent a diagnosed disease, can constitute compensable personal injury, a proposition that, if adopted in other jurisdictions, could substantially lower the evidentiary onus for claimants.

Although PFAS exposure has been linked to potential health impacts in scientific research, Australian courts have not yet formally recognised such a connection, and the issue remains undecided before them. However, Justice Lee of the Federal Court, who has presided over several of the largest PFAS-related class actions, has in obiter expressed strong support for the viability of personal injury claims arising from PFAS contamination:

- 'Another important objection was concern about people within the community continuing to become sick. I understand the seriousness of that concern, but the settlement does not mean no action can be taken about personal injury. I told everyone at the hearing and repeat it now: group members should take legal advice about any personal injury claim they may have'.: *Wreck Bay Aboriginal Community Council v Commonwealth* [2023] FCA 660 at [15];
- '...Given the potential for an argument to be raised that each group member may have a singular claim for damages in tort, this was a matter in respect of which I sought clarity, and it was expressly agreed that the settlements, if approved, would not prevent any claim for damages for personal injury arising out of the same circumstances being made in the future, if a group member was advised to bring such a claim...': *Smith v Commonwealth (No 2)* [2020] FCA 837 at [69]; and
- '...notwithstanding the first point, the proposed settlement does not affect any claim or potential claim that may be made on behalf of group members for personal injury damages associated with PFAS contamination.': at *Haswell v Commonwealth (No 3)* [2023] FCA 1093 at [6].

As a result of media pressure from the Sydney Morning Herald, on the 25<sup>th</sup> of June 2024, WaterNSW undertook to test the water systems in the Blue Mountains for PFAS, marking the first time that these water systems had been tested. Following the release of the test results, which showed elevated levels of PFAS, WaterNSW temporarily closed two of the five drinking water dams in the Blue Mountains to conduct remediation works. Sometime after this, around 1,500 residents of the Blue Mountains conducted blood testing at their own expense which revealed their blood to contain PFAS levels ranging from 10 nanograms per millilitre to 57 nanograms per millilitre. According to US National Academies of Science, a person may experience potential adverse side effects including, if their blood contains more than 2 nanograms per millilitre of PFAS, with an increased risk of adverse side effects if their blood contains more than 10 nanograms per millilitre of PFAS.

However, the landscape of personal injury litigation is not confined to claims arising from drinking water contamination. Firefighters, in particular, represent a significant cohort at elevated risk of PFAS-related health conditions. AFFF has been used extensively by fire and rescue services across Australia for decades, and firefighters have consequently been exposed to high concentrations of PFAS through both dermal contact and inhalation during training exercises and emergency responses. The scale of this exposure risk is reflected in institutional responses, for example, in mid-2022, the Victorian Government announced a \$57 million redress scheme to support firefighters who were exposed to PFAS during their training at the former Fiskville training facility.

Additionally, workers in industries that have historically utilised PFAS in manufacturing processes, such as textile, leather, electronics and food packaging industries, may also pursue personal injury claims as the causal link between PFAS exposure and adverse health outcomes becomes more firmly established. These claims could target employers for alleged failures to implement adequate workplace health and safety measures, as well as the manufacturers and suppliers of PFAS-containing products used in industrial settings.

There is also potential for personal injury claims to be brought by residents of communities located near industrial sites where PFAS has been manufactured, processed or disposed of. Unlike the defence-related contamination at the heart of the 'first wave' of litigation, these claims may target private corporations rather than the Commonwealth. The Blue Mountains scenario illustrates how community-wide exposure through contaminated drinking water can precipitate collective legal action, and similar patterns may emerge in other regions where PFAS contamination is detected in water supplies or soil.

Once more research is conducted into human health-related effects of exposure to PFAS, it is likely that legal actions seeking compensation for personal injury will be sought. However, the evidentiary challenges inherent in personal injury PFAS litigation should not be underestimated. Plaintiffs will need to establish not only that they were exposed to PFAS but also that such exposure caused or materially contributed to their specific health condition. Given the long latency periods associated with many PFAS-related diseases, including certain cancers, and the ubiquitous presence of PFAS in the environment, proving causation on the balance of probabilities will be a significant hurdle. Courts may need to grapple with complex epidemiological evidence and competing expert opinions regarding dose-response relationships and disease attribution.

## Conclusion

The evolution of PFAS-related litigation in Australia, from environmental contamination claims, through consumer-manufacturer disputes, to the emerging frontier of personal injury actions, reflects a maturing legal response to the risks posed by these persistent chemicals.

At the heart of the second wave is a focus on corporate accountability in the manufacture and supply of PFAS-containing products. As regulatory scrutiny intensifies and consumer awareness grows, manufacturers, distributors and retailers of products containing PFAS may face increased litigation risk. Companies throughout the supply chain should consider their potential exposure and implement appropriate risk management strategies.

The third wave, however, represents perhaps the most significant potential rise in PFAS related claims and could ultimately dwarf the first two waves in both volume and quantum.

The trajectory of PFAS litigation in the United States provides a sobering preview of what may await Australian defendants. With billions of dollars in settlements already paid and thousands of actions still pending in the United States, Australian governments, corporations and insurers should take proactive steps to understand their exposure, review their historical practices and prepare for the legal reckoning that appears increasingly inevitable.

The floodgates may not yet have opened in Australia, but they are certainly beginning to creak.

[1] *Leach v. E.I. Du Pont de Nemours Co., et al.*, No. 01-C-608, 2002 WL 1270121.

[2] *Wreck Bay Aboriginal Community Council v Commonwealth of Australia* [2023] FCA 660; *Haswell v Commonwealth of Australia* (No 3) [2023] FCA 1093; *Smith v Commonwealth of Australia* (No 2) [2020] FCA 837.

[3] *Smith v Commonwealth of Australia* (No 2) [2020] FCA 837 at [20], [118].

[4] *Haswell v Commonwealth of Australia* (No 3) [2023] FCA 1093 at [4].

[5] *Wreck Bay Aboriginal Community Council v Commonwealth* [2023] FCA 660 at [6(1)].

[6] <https://www.abc.net.au/news/2026-05-28/federal-government-sues-3m-australia-pfas-firefighting-foam/106731552>;

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