



Federal Court of Australia

District Registry: Victoria

Division: General

No: VID564/2020

**MICIULIS SUPERANNUATION PTY LTD**

Applicant

**CIMIC GROUP LIMITED**

Respondent

### ORDER

**JUDGE:** JUSTICE BUTTON

**DATE OF ORDER:** 26 April 2023

**WHERE MADE:** Melbourne

#### THE COURT ORDERS BY CONSENT THAT:

1. Pursuant to s 33J(1) of the *Federal Court of Australia Act 1976* (Cth) (the **Act**), 4:00pm (AEST) on 22 June 2023 is fixed as the date before which a Group Member (as defined in paragraph 2 of the Further Amended Statement of Claim dated 7 October 2022) may opt out of the proceeding (the **Class Deadline**).
2. Pursuant to s 33ZF and/or s 37P of the Act, the opt out form set out at Schedule 1 to the Notice (as defined in order 6 below), being a modification of Form 21 (the **Opt Out Notice**), is approved for this proceeding for the purposes of r 9.34 of the *Federal Court Rules 2011* (Cth) (the **Rules**).
3. Pursuant to s 33J(2) of the Act, any Group Member who wishes to opt out of this proceeding must, before the Class Deadline, complete and deliver an Opt Out Notice in the form of Schedule 1 to the Notice to the Victorian District Registry of the Federal Court of Australia.
4. If, on or before the Class Deadline, the solicitors for any party or Omni Bridgeway Limited (**Omni Bridgeway**) receive a notice purporting to be an Opt Out Notice referable to this proceeding, the solicitors and, in respect of any Opt Out Notice received by Omni Bridgeway, the Applicant's solicitors must file the notice in the Victorian District Registry of the Federal Court of Australia within ten (10) days after receipt, and the notice shall be



treated as an Opt Out Notice received by the Court at the time it was received by the solicitors or Omni Bridgeway.

5. The solicitors for the parties are granted leave to inspect the Court file and to copy any Opt Out Notice(s) filed by Group Members.

#### **Notice to Opt Out, Register or Do Nothing**

6. Pursuant to ss 33X and 33Y of the Act, the form and content of the notice set out at Annexure B to this order (the **Notice**) is approved.
7. Pursuant to s 33Y of the Act, the Notice be given to the Group Members on or before 11 May 2023 according to the following procedure:
  - a. by 27 April 2023, the Respondent shall instruct its share registry to prepare a list of contact details (including the last known postal address and/or email address) for all security holdings for which securities in CIMIC were recorded on the CIMIC share register as acquired during the period from 7 February 2018 to 22 January 2020 (inclusive) (the **Relevant Period**), including those security holders whose qualifying transactions were recorded on the register within the two-day settlement window following 22 January 2020 (the **Confidential Group Member List**);
  - b. by 11 May 2023, the Respondent shall cause the Notice to be sent by email to any security holder on the Confidential Group Member List that has an email address recorded on the share register;
  - c. to the extent that any security holder does not have an email address recorded on the share register, the Respondent shall, by 11 May 2023, cause the Notice to be sent by prepaid ordinary post to that security holder at the address recorded for that person on the share register;
  - d. to the extent that any email sent to a security holder referred to in order 7b above experiences a delivery failure, the Respondent shall cause the Notice to be sent by prepaid ordinary post to that security holder at the address recorded for that person on the share register, within two (2) business days of receiving that delivery failure notice;



- e. the Applicant shall cause a copy of the Notice to be sent by email to each Group Member who has, at the date of this order, entered into a funding agreement with Omni Bridgeway or identified herself, himself or itself to the Applicant's solicitors or Omni Bridgeway as a potential Group Member (even if they have not entered into a funding agreement with Omni Bridgeway), and for whom the Applicant's solicitors or Omni Bridgeway hold a current email address or, failing that, by prepaid ordinary post;
  - f. by 11 May 2023, the District Registrar of the Victorian District Registry of the Federal Court of Australia shall cause the Notice to be posted on the website of the Federal Court of Australia, and made available for inspection at the District Registry of the Federal Court in Sydney, Melbourne, Canberra, Brisbane, Adelaide, Perth, Hobart and Darwin continuously up to and including the Class Deadline; and
  - g. by 11 May 2023, the Applicant shall cause a copy of the Notice, the pleadings in this proceeding and these orders to be displayed on the website of Omni Bridgeway at <https://portal.omnibridgeway.com/cimic>, and to remain continuously so displayed up to and including the Class Deadline.
8. The disbursement costs of and incidental to the procedure set out in order 7 above be paid in the first instance by the Applicant but subsequently be dealt with by the Court as costs in the cause.

### **Claim registration information**

9. Pursuant to s 33ZF of the Act, any Group Members who wish to register their claim in this proceeding may, by the Class Deadline, complete and return a registration form to be made available at <https://portal.omnibridgeway.com/cimic> and which seeks the following information from each registering Group Member:
- a. the Group Member's name, or names in the case of joint security holders, and address and/or email address;



- b. the full name of the registered owner and any relevant Holder Identification Number (HIN) or Security Reference Number (SRN) or equivalent reference number in respect of CIMIC securities;
  - c. whether the Group Member was a trustee, responsible entity of a registered managed investment scheme, investment manager, agent or custodian;
  - d. the name (and ABN, ACN or ASRN if applicable) of the beneficial owner, if different to the name of the Registered Group Member;
  - e. the full name of the registered owner of the relevant CIMIC securities if different to the name of the Registered Group Member;
  - f. the number of CIMIC securities held by a Group Member at the close of trade on 6 February 2018;
  - g. details of the Group Member's acquisition(s) of CIMIC securities between 7 February 2018 and 22 January 2020 (inclusive), including date of acquisition(s), quantity acquired and the price at each acquisition; and
  - h. details of the Group Member's sale(s) and/or disposal(s) of CIMIC securities between 7 February 2018 and 22 January 2020 (inclusive), including date of sale(s)/disposal(s), quantity sold/disposed and the price at each sale/disposal.
10. A Group Member will be deemed to have registered their claim if that Group Member has, by the Class Deadline, executed a funding agreement with Omni Bridgeway in respect of the proceeding.
11. By 13 July 2023, the Applicant must:
- a. deliver to the solicitors for the Respondent, on an identified basis, a list of the Group Members who have registered their claim by completing the registration form referred to in order 9 above, or who have executed a funding agreement with Omni Bridgeway in respect of the proceeding by the Class Deadline (**Registered Group Members**), which list shall contain (if available):



- i. a unique identification number for each Registered Group Member;
  - ii. the group member's full name, or names in the case of joint security holders;
  - iii. the group member's ABN, ACN or ARSN if applicable;
  - iv. the information listed at order 9(a)–(h) for each Registered Group Member;
  - v. for each acquisition of CIMIC securities, if the securities were acquired other than through a regular on-market transaction, the nature of the transaction;
  - vi. for each disposal of CIMIC securities, if the securities were disposed of other than through a regular on-market transaction, the nature of the transaction;  
and
  - vii. any amendments to the information listed at order 9(a)–(h) notified to the Applicant’s solicitors or Omni Bridgeway by that date.
- b. file, in a sealed envelope marked “Confidential List of Group Members Not to be Opened without leave of the Court or a Judge”, a list of Registered Group Members which list shall contain (if available):
- i. a unique identification number for each Registered Group Member;
  - ii. the information listed at order 9(a)–(h) for each Registered Group Member;  
and
  - iii. any amendments to the information as notified to the Applicant’s solicitors or Omni Bridgeway by that date.

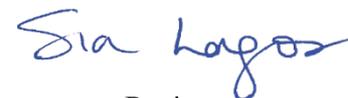
12. A confidentiality undertaking in the form set out in **Annexure A** to these orders (**Respondent’s Confidentiality Undertaking**) must be executed by persons referred to in order 13 prior to them being granted access to the information referred to in order 11(a) (**Identifying Information**).

13. The list of Registered Group Members provided in accordance with order 11(a), and any information contained therein, is to be kept confidential to:



- a. the Respondent's external solicitors or counsel (including support staff) who are directly working on the proceeding who have executed a Respondent's Confidentiality Undertaking;
  - b. Michael Cooper (General Counsel) and Michael Charlton (Senior Counsel) of the Respondent who have the conduct of this proceeding on behalf of the Respondent and who have executed a Respondent's Confidentiality Undertaking; and
  - c. experts retained by the Respondent in the proceedings who have executed a Respondent's Confidentiality Undertaking.
14. The Identifying Information must not be used by, or on behalf of, the Respondent to contact Registered Group Members in relation to this proceeding.
15. The Respondent's solicitors must notify the Applicant's solicitors within one business day of becoming aware of any disclosures of the Identifying Information to any person who is not listed at order 13 above.
- Other**
16. The Notice may be amended by agreement between the parties before it is emailed, posted, displayed or published, in order to correct any website or email address or telephone number or other non-substantive error.
17. Liberty to apply on 48 hours' notice.

Date that entry is stamped: 26 April 2023

  
Registrar



## Annexure A

### Respondent's Confidentiality Undertaking

I, \_\_\_\_\_ of \_\_\_\_\_  
hereby undertake that pending further order of the Court, or the prior written consent of the solicitors  
for the Applicant, as follows:

#### Definitions

**Applicant** means Miciulis Superannuation Pty Ltd (ACN 146 559 426) ATF The Miciulis Superannuation Fund.

**Court** means the Federal Court of Australia.

**Identifying Information** means the information provided at items (a) to (m) of Registration Data (defined below) in respect of group members in the Proceeding.

**Proceeding** means Miciulis Superannuation Pty Ltd (ACN 146 559 426) ATF The Miciulis Superannuation Fund v CIMIC Group Limited (VID564 of 2020) in the Federal Court of Australia.

**Registration Data** means the following information provided by the solicitors for the Applicant in respect of group members in the proceeding:

- (a) a unique identification number for each Registered Group Member;
- (b) the group member's full name, or names in the case of joint security holders;
- (c) the group member's ABN, ACN or ARSN if applicable;
- (d) the full name of the registered owner and any relevant Holder Identification Number (HIN) or Security Reference Number (SRN) or equivalent reference number in respect of CIMIC securities;
- (e) whether the group member was a trustee, responsible entity of a registered managed investment scheme, investment manager, agent or custodian;
- (f) the name (and ABN, ACN or ASRN if applicable) of the beneficial owner, if different to the name of the Registered Group Member;
- (g) the full name of the registered owner of the relevant CIMIC securities if different to the name of the Registered Group Member;
- (h) the number of CIMIC securities held by a Group Member at the close of trade on 6 February 2018;



- (i) details of the Group Member's acquisition(s) of CIMIC securities between 7 February 2018 and 22 January 2020 (inclusive), including date of acquisition(s), quantity acquired and the price at each acquisition; and
- (j) details of the Group Member's sale(s) and/or disposal(s) of CIMIC securities between 7 February 2018 and 22 January 2020 (inclusive), including date of sale(s)/disposal(s), quantity sold/disposed and the price at each sale/disposal,
- (k) for each acquisition of CIMIC securities, if the securities were acquired other than through a regular on-market transaction, the nature of the transaction;
- (l) for each disposal of CIMIC securities, if the securities were disposed of other than through a regular on-market transaction, the nature of the transaction; and
- (m) any amendments to the information listed at (a) to (l) as notified to Phi Finney McDonald or Omni Bridgeway by that date.

**Respondent** means CIMIC Group Limited.

### **General Terms of Undertaking**

1. I am one of the following persons:
  - (a) the Respondent's external solicitors or counsel (including support staff) who are directly working on the proceeding;
  - (b) Michael Cooper (General Counsel) or Michael Charlton (Senior Counsel) of the Respondent who has the conduct of this proceeding on behalf of the Respondent; or
  - (c) experts retained by the Respondent in the proceedings.
2. I must keep the Identifying Information strictly confidential at all times and shall use it only for the purposes of analysing the Registration Data and assessing the potential quantum of claims of the Applicants or group members for the purpose of mediation of the Proceeding.
3. I may only disclose the Identifying Information if:
  - (a) permitted to do so by this undertaking; or
  - (b) compelled to do so by law.
4. I may only disclose the Identifying Information to:



- (a) any of the persons listed at clause 1 above, provided that person has executed a Respondent's Confidentiality Undertaking in the form of this undertaking; or
- (b) the Applicant, its legal representatives (including support staff), funders or any persons deemed eligible in writing by the Applicant's solicitors; or
- (c) the mediator of the Proceeding.

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**Signature**

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**Date**



## Annexure B

### FEDERAL COURT OF AUSTRALIA

#### *Miculis Superannuation Pty Ltd v CIMIC Group Limited (VID564/2020)*

#### IMPORTANT NOTICE TO GROUP MEMBERS PLEASE READ CAREFULLY

This is an important Notice issued to you by the Federal Court of Australia about the CIMIC Class Action. The Notice is sent to you because it is likely you are a member of the class in the CIMIC Class Action. You should read this Notice carefully as the matters set out in the Notice may affect your rights.

As explained at Section 5 below, you may do one of three things in response to this notice:

1. **Register:** If you wish to obtain compensation by participating in any settlement reached between the Applicant and Respondent before final judgment you can register your interest in accordance with this Notice by 4:00pm (AEST) on 22 June 2023 (**Class Deadline**).
2. **Opt out:** You can exclude yourself from the class action by opting out in accordance with this Notice by the Class Deadline, which will mean you will not be eligible to receive compensation in the event of a successful outcome, but you keep your right to make your own claim.
3. **Do nothing:** If you do nothing by the Class Deadline following receipt of this Notice and you have not already registered your claim, you will remain a "Group Member" in the Proceeding but, depending on what orders are later made by the Court, you may not be permitted to participate in any settlement reached between the Applicant and Respondent before final judgment. This is because if an in-principle settlement is reached before judgment, the Applicant intends to apply to the Court as part of the settlement approval application for Court approval, for an order which, if made, will mean that Group Members who neither opted out nor registered (i.e. "do nothing") will be bound by the settlement but will not be able to seek any benefit under the settlement.

If there is anything in this Notice that you do not understand, you should use the contact information at Section 7 below to make enquiries or seek independent legal advice. Do not contact the Federal Court with any questions about this Notice.



## 1 KEY INFORMATION ABOUT THE CIMIC CLASS ACTION AND THIS NOTICE

- 1.1 On 20 August 2020, Miciulis Superannuation Pty Ltd (ACN 146 559 426) ATF the Miciulis Superannuation Fund (**Miciulis Superannuation**) commenced a class action against CIMIC Group Limited (**CIMIC**) in the Federal Court of Australia on behalf of all persons who purchased CIMIC shares between 7 February 2018 to 22 January 2020 (inclusive) (**Claim Period**) (**CIMIC Class Action**).
- 1.2 The Applicant, Miciulis Superannuation, is bringing the CIMIC Class Action with funding from Omni Bridgeway (Fund 5) Australian Invst. Pty Ltd (**Omni Bridgeway**). The Applicant's lawyers are Phi Finney McDonald.
- 1.3 The Federal Court has ordered that this Notice be published for the information of persons who may be affected by the CIMIC Class Action.
- 1.4 You should read this Notice carefully. Any questions you have concerning the matters contained in this Notice should not be directed to the Court. If there is anything in it that you do not understand, you should seek legal advice.

## 2 WHAT IS A CLASS ACTION?

- 2.1 A class action is an action that is brought by one or more persons ("applicant") on behalf of a class of people ("group members") against another person ("respondent") where the applicant and the group members have similar claims against the respondent.
- 2.2 Group members in a class action are not individually responsible for the legal costs associated with bringing the class action. In a class action, only the applicant is responsible for the costs.
- 2.3 If a class action is resolved — either by the Court delivering a judgment, or by an agreed settlement that is approved by the Court — the resolution binds all persons who are group members unless they have opted out of the class action. Once the CIMIC Class Action is resolved, group members will not be able to pursue the same claims against CIMIC in other legal proceedings, and may not be able to pursue similar or related claims.
- 2.4 If you consider that you have claims against CIMIC which are based on your individual circumstances or are additional to the claims described in the class action, then it is important that you seek independent legal advice about the potential binding effects of the class action before the deadline for opting out.

## 3 WHAT IS THE CIMIC CLASS ACTION ABOUT?

- 3.1 The CIMIC Class Action is brought by the Applicant, Miciulis Superannuation, on its own behalf and on behalf of all persons who are "Group Members".
- 3.2 The Applicant alleges that CIMIC:
  - (a) contravened its continuous disclosure obligations by failing to properly inform the market of:
    - (i) the use of factoring and reverse factoring as substantial components of CIMIC's working capital and financing arrangements and the impact of this on CIMIC's reported earnings, especially on operating cash flow and EBITDA cash conversion;
    - (ii) the use of increased levels of factoring and reverse factoring to alleviate the adverse impact of cash flow and working capital pressures CIMIC was experiencing during the Claim Period arising from, among other matters:



- a. CIMIC's operating companies having been awarded an increased number of large alliance contracts which had a higher upfront working capital burden and lower cash flow conversion rate than fixed price contracts;
  - b. the relative growth in revenue from contracts within the Mining Segment which contracts had a higher upfront working capital burden and lower cash flow conversion rates than contracts in the Construction Segment;
  - c. several large, fixed price Australian infrastructure projects, which had large initial mobilisation payments collected in prior periods, being in the execution phase precipitating higher cash outflows, in circumstances where new projects had not been awarded with similar initial mobilisation payments;
  - d. unplanned capital expenditure associated with Thiess' Australian and Indonesian mining regions and CPB Contractors' Sydney Metro and Westgate Tunnel construction projects; and
  - e. the reduction in Leighton Asia's underlying cash flows from operating activities;
- (iii) the impact of factoring and reverse factoring on the sustainability of CIMIC's reported cash metrics;
- (iv) the extent of the financial deterioration of CIMIC's Middle Eastern joint venture, BIC Contracting (**BICC**), and the risk that by reason of BICC's performance, growth prospects, liquidity position and degraded legacy project receivables:
- a. further impairments would be required against CIMIC's shareholder loans to BICC; and
  - b. CIMIC would be required to recognise a liability in respect of its obligations under facilities drawn down by BICC in respect of which CIMIC had provided a guarantee; and
- (v) the amount by which CIMIC's financial position in FY19 would be negatively impacted by the financial deterioration of its Middle East operations, and that therefore CIMIC would not meet its FY19 net profit after tax (**NPAT**) guidance of \$790-\$840 million and CIMIC would not be able to pay a final dividend in FY19.
- (b) engaged in misleading and deceptive conduct by:
- (i) representing that its cash generation was sustainable;
  - (ii) representing that it would meet its FY19 NPAT Guidance; and
  - (iii) representing that it would be able to pay a final dividend in FY19.
- 3.3 The class action alleges that the falls in share price value reflect the removal of "inflation" from CIMIC's share price, and that investors who acquired CIMIC shares during the Claim Period are entitled to compensation for loss and damage they have suffered as a consequence of CIMIC's conduct.

3.4 CIMIC denies the claims made against it and is defending the class action.

#### **4 ARE YOU A GROUP MEMBER IN THE CIMIC CLASS ACTION?**

4.1 You have been sent this Notice because you have been identified as someone who is likely to be a Group Member in the CIMIC Class Action.

4.2 You are a Group Member in the CIMIC Class Action if:



- (a) you acquired an interest in ordinary shares in CIMIC between 7 February 2018 to 22 January 2020 (inclusive), by purchasing CIMIC shares on the ASX;
- (b) you have suffered loss or damage by or resulting from the conduct of CIMIC alleged at Section 3.2; and
- (c) you are not:
  - (i) a related party, related body corporate, associated entity, or officer or close associate of CIMIC; or
  - (ii) a Justice, Registrar, District Registrar, or Deputy District Registrar of the High Court of Australia or the Federal Court of Australia.

4.3 If you are a Group Member because you meet the above description, you should read this Notice carefully as it will affect your rights.

4.4 If you are unsure whether or not you are a Group Member, you should contact Omni Bridgeway on 1800 016 464 (free call) or by email at [cimic@omnibridgeway.com](mailto:cimic@omnibridgeway.com) or seek your own legal advice without delay.

## 5 YOUR THREE OPTIONS IN RESPONSE TO THIS NOTICE

5.1 The Federal Court has ordered that this Notice be published for the information of persons who may be affected by the CIMIC Class Action. You have three options that you may elect to take in response to this Notice.

### *OPTION 1 – REGISTER*

5.2 Upon any in-principle settlement of the CIMIC Class Action before final judgment, the Applicant intends to apply to the Court for an order which, if made, will mean that only Group Members who have registered by 4:00pm (AEST) on 22 June 2023 in accordance with this Notice will be permitted to seek any benefit under the settlement (subject to Court approval).

5.3 If you wish to be sure of having the opportunity to receive a share of any monies resulting from a settlement reached between the parties in the CIMIC Class Action before final judgment you should either:

- (a) complete the Group Member Registration Form; or
- (b) enter into a litigation funding agreement with Omni Bridgeway,

available at <https://portal.omnibridgeway.com/cimic> by 4:00pm (AEST) on 22 June 2023.

5.4 If you previously completed and returned a litigation funding agreement with Omni Bridgeway in the CIMIC Class Action you do not have to take any further steps to register your claim. This is because you have already taken the steps necessary to register your claim.

5.5 The implications of registering for the class action are as follows:

- (a) you may be eligible to receive compensation as part of any settlement prior to judgment (provided that it is approved by the Court and you satisfy any eligibility requirements); and
- (b) you will be bound by any resolution of the class action (meaning that you will not be permitted to bring any future claims related to the subject matter litigated in the CIMIC Class Action).



- 5.6 If you have any difficulty registering at <https://portal.omnibridgeway.com/cimic>, please contact Omni Bridgeway by telephone on 1800 016 464 (free call) or by emailing [cimic@omnibridgeway.com](mailto:cimic@omnibridgeway.com).

*OPTION 2 – OPT OUT AND CEASE TO BE A GROUP MEMBER*

- 5.7 If you do not want to remain a Group Member in the CIMIC Class Action, you should opt out by 4:00pm (AEST) on 22 June 2023. The applicant in a class action does not need to seek the consent of group members to commence a class action on their behalf or to identify a specific group member. However, group members can cease to be group members by opting out of the class action.

- 5.8 If you opt out of the class action, you:

- (a) will not be bound by any order, judgment or settlement in the CIMIC Class Action;
- (b) will not be entitled to share in the benefit of any order, judgment or settlement in the CIMIC Class Action; and
- (c) will be able to commence separate proceedings against CIMIC on your own behalf outside of the CIMIC Class Action provided you issue those proceedings within the time limit applicable to your claim. You should seek your own legal advice about your claim and the applicable time limit prior to opting out.

- 5.9 Each Group Member seeking to opt out should fill out a separate Opt Out form located at Schedule 1 to this Notice. Opt Out forms must be submitted directly to the Victorian District Registry of the Federal Court of Australia:

- (a) by post to: Owen Dixon Commonwealth Law Courts Building, 305 William Street Melbourne VIC 3000; or
- (b) by email at [vicreg@fedcourt.gov.au](mailto:vicreg@fedcourt.gov.au)

before 4:00pm (AEST) on 22 June 2023.

- 5.10 If you are opting out on behalf of a company or business, please provide your name, the name of the company or business and your position within the company or business (e.g. director or partner).
- 5.11 Opt out notices received after 4:00pm (AEST) on 22 June 2023 will not be accepted without leave of the Court and you will be treated as having not responded to this Notice.

*OPTION 3 – DO NOTHING*

- 5.12 If an in-principle settlement is reached before judgment, the Applicant intends to apply to the Court as part of the settlement approval application for Court approval, for an order which, if made, will mean that Group Members who neither opted out nor registered (i.e. “do nothing”) will be bound by the settlement but will not be able to seek any benefit under the settlement.
- 5.13 In other words, if you do nothing following receipt of this Notice and have not already registered your claim (in accordance with the procedure set out above), you will remain a Group Member but, if the Court makes the order referred to at paragraph 5.12 above, you will likely not be able to receive a share of any settlement monies resulting from a settlement reached between the parties in the CIMIC Class Action before final judgment. The practical implications of doing nothing in response to this Notice are as follows:



- (a) if a settlement between the Applicant and CIMIC is approved by the Court prior to final judgment, and if the Court makes the order foreshadowed in paragraph 5.12 above, you will not be entitled to participate in that settlement. Further, you will be bound by the terms of the settlement (despite not being eligible to participate in the settlement). This means that your right to bring a claim against CIMIC (and potentially its related entities and officers) for matters related to those canvassed in the CIMIC Class Action will be extinguished; and
- (b) if there is no settlement prior to final judgment, you will remain a Group Member and will be bound by the final judgment. In the event that the Court finds for the Applicant and Group Members, you will be entitled to obtain compensation and/or damages (if you satisfy the eligibility criteria set down by the Court).

#### *OTHER*

- 5.14 If you object to the registration option described above (i.e. you object to making the choice of registering your interest in accordance with this Notice and the potential consequences of making or not making that choice), or you seek a variation of the registration option, you must send a written notice to Omni Bridgeway by email to [cimic@omnibridgeway.com](mailto:cimic@omnibridgeway.com) by 4:00pm (AEST) on 22 June 2023. The written notice to Omni Bridgeway should set out the challenge you will make or the variation you seek and the reasons for that challenge/variation. You may then be required to attend the Victorian District of the Federal Court of Australia at a later date to have your challenge / variation application heard.

## **6 FUNDING OF THE CIMIC CLASS ACTION**

- 6.1 The CIMIC Class Action is funded by Omni Bridgeway. Omni Bridgeway has agreed to pay the costs of the CIMIC Class Action as it progresses in relation to the common issues. This means that the Applicant and some Group Members (known as **Funded Group Members**) have entered into a Litigation Funding Agreement (**LFA**) with Omni Bridgeway. Group Members who have not entered into a LFA with Omni Bridgeway are known as unfunded group members (**Unfunded Group Members**). The Applicant and Funded Group Members have also entered into a Conditional Legal Costs Agreement with Phi Finney McDonald.

#### *LEGAL COSTS*

- 6.2 Funded Group Members and Unfunded Group Members are not, and will not become, liable for any “out of pocket” costs by participating in the CIMIC Class Action.
- 6.3 In litigation, the Court will typically order the losing party to pay a proportion of the legal costs of the successful party (**adverse costs order**). In a class action, it is only the Applicant that faces the risk of an adverse costs order if the action fails. If the class action is unsuccessful, Omni Bridgeway Limited has indemnified the Applicant against any adverse costs order which may be made against it in the Proceeding. As a Group Member, an adverse costs order will not be made against you.
- 6.4 However, if the class action is successful (that is, if compensation is recovered for Group Members), Omni Bridgeway will be entitled to recover legal costs, disbursements and other litigation expenses. In the event of a successful outcome, the Applicant will seek an order that these costs be paid out of the total amount recovered for all Group Members. These costs will never exceed the amount of compensation to which you may otherwise become entitled.
- 6.5 The Court will assess whether the costs proposed to be deducted are fair and reasonable. You will be given a notice at that time informing you of the amount which is proposed to be deducted and given an opportunity to tell the Court if you agree or disagree with what is proposed.



### *INTENTION TO SEEK COMMON FUND ORDER*

- 6.6 In the event of a settlement or judgment in favour of the Applicant, the Applicant intends to apply to the Court for an order that both Funded and Unfunded Group Members to the Proceeding contribute a pro-rata amount to the costs incurred in conducting the Proceeding and to pay to Omni Bridgeway a percentage of any compensation to which the Funded and Unfunded Group Members become entitled as commission for funding the CIMIC Class Action. These orders are called “common fund orders” (**CFOs**).
- 6.7 Group Members will only be liable to contribute to a CFO if there is a successful outcome in the Proceeding. If there is a successful outcome, the amounts payable to Omni Bridgeway by Group Members will be deducted from the settlement or judgment sum (in addition to the reimbursement of reasonable costs incurred) before the balance is distributed to Group Members.
- 6.8 The total amounts deducted for legal costs and the funder’s commission from compensation payable to Group Members by way of a CFO will never exceed the amount a Group Member receives in the event of a successful outcome.
- 6.9 The Applicant intends to apply for a CFO for the following reasons:
- (a) it would be unfair for only those Funded Group Members who entered into an LFA with Omni Bridgeway to be the only Group Members required to pay a commission in circumstances where all Group Members would benefit from a successful outcome in the Proceeding;
  - (b) the ultimate percentage commission rate under the CFO must be approved as fair and reasonable by the Court; and
  - (c) Group Members who do not want to participate in the Proceeding, or who do not wish to pay a commission to Omni Bridgeway, may opt out of the Proceeding in accordance with Section 5 of this Notice.
- 6.10 In the alternative, if the Court is not minded to make a CFO, it is open to the Applicant to apply for a funding equalisation order. A funding equalisation order is a kind of order that calculates the dollar value of the funding commission payable by Funded Group Members (being those Group Members who have entered into a LFA with Omni Bridgeway) and pro rates that sum over the entire class of Funded and Unfunded Group Members, so that the commission payable by Funded Group Members to Omni Bridgeway under their LFAs is effectively paid (in equal shares) by all Group Members (including Unfunded Group Members).
- 6.11 The Court will assess whether any amounts proposed to be deducted from any settlement sum (including legal costs/disbursements and funding costs) are fair and reasonable. You will be given notice at or around the time that a CFO is sought by the Applicant, providing you with further information and giving you an opportunity to tell the Court or the Applicant if you agree or disagree with what is proposed.

## **7 FURTHER QUESTIONS ABOUT THE CIMIC CLASS ACTION**

- 7.1 Please consider the above matters carefully.
- 7.2 If there is anything of which you are unsure, or if you have any questions or comments about the Notice, or if you would like to request a copy of the pleadings (which may be subject to change), in the first instance you should contact Omni Bridgeway on 1800 016 464 (free call) or by emailing [cimic@omnibridgeway.com](mailto:cimic@omnibridgeway.com), or alternatively you can contact Phi Finney McDonald by telephone on (03) 9134 7100 or by email at



[classactions@phifinney-mcdonald.com](mailto:classactions@phifinney-mcdonald.com). You may also seek your own legal advice. You should not delay in making your decision.



Schedule 1

Form 21  
Rule 9.34

Opt out notice

**Only complete this form if you wish to opt out of the CIMIC Class Action**

No. 564 of 2020

Federal Court of Australia  
District Registry: Victoria  
Division: General

**MICIULIS SUPERANNUATION PTY LTD (ACN 146 559 426) ATF THE MICIULIS SUPERANNUATION FUND**

Applicant

**CIMIC GROUP LIMITED (ACN 004 482 982)**

Respondent

To: The Registrar  
Federal Court of Australia  
Victorian District Registry  
305 William Street  
MELBOURNE VIC 3000

\_\_\_\_\_ (print name), a group member in this representative proceeding, gives notice under section 33J of the *Federal Court of Australia Act 1976*, that [he, she, I or it] (circle as appropriate) is opting out of the representative proceeding.

Signed .....

Name .....

Date .....

Group Member / Lawyer for the Group Member (circle as appropriate)

**[you are required to also complete the next page]**



**Group Member details**

Telephone .....

Email .....

ACN/ABN (if a company or trustee) .....

HIN/SRN .....

If the shares were acquired on behalf of another person/entity, name of that person/entity:

.....

**If you are signing as the solicitor or representative of the Group Member:**

Name .....

Capacity .....

Address .....

Telephone .....

Email .....