



## CLADDING (VITRABOND) CLASS ACTION

### NOTICE TO REGISTER IN THE CLASS ACTION OR TO OPT OUT

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#### WHY IS THIS NOTICE IMPORTANT?

**This is an important notice approved by the Federal Court of Australia because you are likely a class member in the “Cladding (Vitrabond) Class Action.**

As explained below, you may do one of three (3) things in response to this notice:

1. **opt out** of the class action by 2 April 2021 (4.00PM (Sydney time)) and lose a right to get any money compensation out of the class action (but keep your right to try to get some money compensation in an action you start yourself against Fairview);
2. **sign up** to the class action, even if you are unsure whether you have Vitrabond PE or FR products fitted on your building – which you can do in two ways; or
3. **do nothing.**

#### A. SOME THINGS YOU SHOULD KNOW ABOUT THE CLASS ACTION

##### *What is the class action about?*

1. The class action seeks compensation (that is, money) for buildings fitted with “Vitrabond PE” and “Vitrabond FR” branded Aluminium Composite Panel (ACP) cladding (**Vitrabond PE Core Cladding**).
2. The class action is against the manufacturer of the cladding, a company called “Fairview”. The claimed compensation includes the cost of removal and replacement of the cladding (whether it has occurred yet or not), the cost of rectification (to the extent replacement is not required), increases in insurance premiums, the costs of building safety assessments, and the consequent reduction of value to buildings.
3. The class action is not a case against developers, builders and others involved in specifying, approving or installing the Vitrabond PE Core Cladding on your building. Even if you want to make a claim against those people, you can still stay in this class action, though you won’t be able to recover double compensation.
4. The solicitors running the case are William Roberts Lawyers, and a company named Omni Bridgeway Limited (which used to be called IMF Bentham Limited) (**OBL**) is currently funding the case by paying the lawyers and covering any exposure to pay the other side’s costs.

##### *Is a Class Member liable for any costs and charges?*

5. Class Members are not, and will not be, liable for any “out of pocket” legal costs by remaining in this class action. The costs of running it are being borne in the first instance by OBL and William Roberts Lawyers to be distributed upon the resolution of the proceedings as set out in paragraphs 6 and 7 below.
6. If the class action is successful (that is, if money compensation is recovered), the Court will be asked to distribute the legal and funding costs, from the money recovered, equally among all persons who



have benefitted from the class action. The effect of any such order, if made, would be that all Class Members who benefit will contribute to the legal and funding costs. That means even class members who do not sign up to a funding agreement with OBL might have to contribute out of their share in the same way as those that sign a funding agreement do.

7. If the class action is unsuccessful, Class Members will have no liability to pay any legal and funding costs.

## **B. YOUR THREE OPTIONS**

### ***OPTION 1 – OPT OUT AND CEASE TO BE A CLASS MEMBER***

8. Class Members who opt out will not be bound by the outcome of the class action and will not receive any money from the class action if it wins or settles. If you opt out, you will no longer be a part of the class action but will be able to commence your own proceedings against Fairview if you wish to do so.
9. Because some of the relevant conduct of Fairview occurred a long time ago, if this class action had not been brought, then some claims against Fairview may have been lost from around 13 June 2019 onwards due to the expiration of limitation periods that may apply to those claims. This class action suspended those limitation periods but they will start to run again if you opt out. Therefore, if you are one of these class members, and you opt out, you may only have a very short period of time to take your own action before your claim is lost. You should seek independent legal advice before opting out. To opt out is to take a serious step - you should not do it unless you understand what it means.
10. To opt out of this class action you need to complete the below "Opt out notice" and then return it to the Federal Court of Australia at the address on the form by no later than 4:00pm (Sydney time) on 2 April 2021.
11. **NOTE:** If you have already signed a litigation funding agreement with OBL and retainer with William Roberts Lawyers, you should note that your litigation funding agreement with OBL contains terms as to your rights and obligations in the event that you opt out of this class action.

### ***OPTION 2 – SIGN UP TO THE CLASS ACTION***

12. Class members may sign up by providing their details and information about their claims to the lawyers running the class action. This means it is possible for their claims to be specifically considered if there are settlement talks.
13. You do not have to sign up to remain a Class Member. However, it is likely that at some point you will need to register your interest to participate anyway – either to get money in any settlement, or (if there is no settlement) to take further steps to bring your claim forward following the initial trial of issues that are common as between the applicant's claim and any claim you may have.
14. If you wish to sign up, it will assist the solicitors in being ready for any settlement talks that eventuate for you to register by 2 April 2021. If you have already signed a funding agreement with OBL, you do not need to sign up again.
15. If you want to sign up, you can do it in one of two ways, by either:
  - Entering into a funding agreement and retainer with OBL and William Roberts Lawyers, respectively (and becoming a **Represented Class Member**); or
  - Alternatively, submitting claim details to OBL and William Roberts Lawyers without entering into a funding agreement and retainer (with the result you will be a **Registered Unrepresented Class Member**).



16. Becoming a Represented Class Member will mean you agree to pay, out of any money compensation you are awarded: (a) an amount to OBL for costs it has paid to fund the litigation and a commission; and (b) an amount to William Roberts for any component of costs not funded by OBL. However, if you remain a Class Member that does not sign a funding agreement with OBL and retainer with William Roberts, the Court may still make an order at the end of the proceeding or after settlement that requires you to make a contribution out of any money compensation you receive.
17. **IMPORTANT NOTE: If you are unsure about the type of ACP cladding on your building, you can still sign up.** If you sign up as a Represented Class Member, you will have the benefit of OBL paying for experts (as required) to analyse and test what type of cladding you have. There is no out of pocket cost or liability incurred by you even if it turns out that your building is not fitted with the cladding type required to make a claim in the class action.
18. If you want to **sign up as a Represented Class Member, what you need to do is:**
- go to OBL's website [www.imf.com.au/claddingau](http://www.imf.com.au/claddingau) and complete the information form online, after which you will be sent the funding pack of documents;
  - alternatively, if you require hard copy documents to complete and return, you may:
    - email: [claddingau@omnibridgeway.com](mailto:claddingau@omnibridgeway.com) , or telephone 1800 016 464.
    - email: [wrlvitrabond@williamroberts.com.au](mailto:wrlvitrabond@williamroberts.com.au) , or telephone (02) 9552 2111.
19. If you are considering becoming a Represented Class Member, you should read carefully the funding agreement and the retainer, and, if you then do not understand everything, you should get independent legal advice from your own solicitor. If you don't have a solicitor, you can contact the free legal helpline which OBL has committed to making available from independent lawyers, Dentons (Ben Allen on (02) 9035 7257 or [ben.allen@dentons.com](mailto:ben.allen@dentons.com)) and anything you tell them and they tell you will be confidential and won't be disclosed to OBL or the lawyers running the class action.
20. **If you want to sign up as a Registered Unrepresented Class Member**, you should go to OBL's website [www.imf.com.au/claddingau](http://www.imf.com.au/claddingau) and complete the information form online only. You do not need to sign the funding agreement or lawyer's retainer. This means you won't enter into any contract with OBL or William Roberts Lawyers, but it might still assist William Roberts to consider your details and circumstances in order to consider and advance your claim specifically for any settlement talks that may occur in the future. Also, at the end of the class action an order may be sought requiring people who benefit to contribute to the costs and the funding out of any money they receive (see paragraph 6 above).

### ***OPTION 3 – DO NOTHING***

21. Class Members who do not opt out by 2 April 2021 (Option 1 above) or sign up (Option 2 above) will remain Class Members and await the outcome. If you take this option you will be an **Unregistered Class Member** but, as noted above, at some point Unregistered Class Members will need to register to get any money out of any settlement (if that happens) or run their individual case following judgment on common issues (and because you are not a Represented Class Member you will have to pay any legal costs of this individual case yourself, should you choose to prosecute it). Also, at the end of the class action, an order may be made by the Court requiring Unregistered Class Members who benefit, to contribute to the costs and funding expenses to OBL and costs incurred by William Roberts in the same way as Registered Unrepresented Class Members (see paragraph 6 above).

## **C. THREE IMPORTANT THINGS TO NOTE**

22. First, this is not a scam. You can check (and get copies of relevant documents about the class action) by:



- visiting the website of OBL: [www.imf.com.au/claddingau](http://www.imf.com.au/claddingau) or [claddingau@omnibridgeway.com](mailto:claddingau@omnibridgeway.com) or telephoning them 1800 016 464; or
  - visiting the website of William Roberts Lawyers: [www.williamroberts.com.au](http://www.williamroberts.com.au); by emailing them at [wrlvitrabond@williamroberts.com.au](mailto:wrlvitrabond@williamroberts.com.au), or telephoning them at any of their offices in Sydney (02) 9552 2111, Melbourne (03) 9321 9111 or Brisbane (07) 3894 0780.
23. Secondly, as explained above, signing up to the class action (by any mode) will still assist William Roberts to consider your details and circumstances in order to consider and advance your claim specifically for any settlement talks that may occur in the future.
24. Thirdly, if there is anything of which you are unsure of or you don't want to speak with William Roberts Lawyers (or you want to understand their involvement or the funding agreements or retainer better), you should get legal advice from your own solicitor, or contact the free legal advice helpline if you want free independent legal advice about the funding agreement and retainer (by contacting Ben Allen of Dentons Lawyers by email: [ben.allen@dentons.com](mailto:ben.allen@dentons.com) or by telephone: (02) 9035 7257).



## ANNEXURE 1

Form 21  
Rule 9.34

### Opt out notice

No. 940 of 2019

Federal Court of Australia  
District Registry: New South Wales  
Division: General

#### **The Owners - Strata Plan No 91086**

Applicant

**Fairview Architectural Pty Ltd ACN 111 935 963**

Respondent

To: The Registrar  
Federal Court of Australia  
New South Wales District Registry  
Level 17, Law Courts Building, Queens Square, Sydney NSW 2000

The person named below, as a Class Member in this representative proceeding, gives notice under section 33J of the *Federal Court of Australia Act 1976*, that the person is opting out of the representative proceeding.

Name of Class Member	
Postal address of Class Member	
Telephone contact	
Email address	
ACN/ABN (if a company)	

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

Person completing this form	
Authority of person completing	
Postal address of person completing this form:	
Telephone contact	
Email address	



Date:

Signed by \_\_\_\_\_ (print name)  
Class Member / Lawyer for the Class Member / Class  
Member representative