



## **SCHEDULE A**

### **CLADDING (VITRABOND) CLASS ACTION**

#### **FURTHER IMPORTANT NOTICE – INFORMATION FOR UPCOMING SETTLEMENT NEGOTIATION (MEDIATION)**

**THIS IS A NOTICE APPROVED BY THE FEDERAL COURT OF AUSTRALIA FOR CLASS MEMBERS IN THIS CLASS ACTION**

The Applicant and the Respondent will engage in negotiations (mediation) on 14 and 15 December 2021, in order to attempt to reach a settlement and resolve the claims of the Applicant and the class members.

If you have not opted out of this class action and have not already signed up, you are encouraged to sign up and provide information about your claim by 8 October 2021, to help the Applicant and William Roberts Lawyers consider and advance your claim for compensation in the class action, and to assist the mediation process. The mediation process may lead to a settlement and the recovery of compensation. Although all class members' interests will be represented during the settlement talks using all available information, it is likely to be significantly more advantageous for class members at such talks if the best possible information has been provided by as many class members as possible.

You can sign up to the class action in one of two ways, even if you are unsure whether you have Vitrabond PE or FR products fitted on your building, and even if you have received or will receive funds from the NSW or VIC Government cladding rectification schemes.

If you have already signed up via Omni Bridgeway in accordance with the previous notice approved by the Court, by completing the on-line registration form and/or entering into a funding agreement and retainer with Omni Bridgeway and William Roberts Lawyers, you will be separately contacted (on the details you have provided) and requested to provide any further information you may have by 8 October 2021.

Any settlement reached at the mediation needs to be approved by the Court.

You are not obliged to sign up. If you do not sign up and provide information you will still remain a class member and await the outcome.

#### **APARTMENT / LOT OWNERS IN STRATA SCHEME BUILDINGS**

The Owners Corporation or Body Corporate is the class member in the class action in respect to cladding affixed to common property of the building, such as external walls, and if it wishes, should take the steps in respect to this notice and previous notices issued by the Court. In this regard, if you are a lot owner and you receive this notice, please pass it onto your owners corporation/strata manager and to committee representatives of the owners corporation/body corporate, who can take steps, as required, on behalf of the owners corporation/body corporate.

You may contact William Roberts Lawyers or seek legal advice from your own lawyer concerning your personal circumstances and whether you are a class member.

## A. BACKGROUND INFORMATION ABOUT THE CLASS ACTION

1. The class action seeks compensation (that is, money) for buildings fitted with "Vitrabond PE" and "Vitrabond FR" branded Aluminium Composite Panel cladding.
2. The class action is against the manufacturer of the cladding, Fairview Architectural Pty Ltd (ACN 111 935 963) (under Deed of Company Arrangement) "**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 Court made orders on 25 May 2020 and 14 December 2020 approving notices to class members, which contain more information concerning the class action. These notices can be viewed at: <http://www.williamroberts.com.au> and <https://portal.omnibridgeway.com/claddingau>.
4. The solicitors running the case are William Roberts Lawyers, and a company named Omnibridgeway (**OBL**) is currently funding the case by paying the lawyers and covering any exposure to pay Fairview's costs.

### The continuation of the class action and insurance proceeds

5. The class action is proceeding against Fairview to access any available insurance proceeds covering Fairview's liabilities.
6. The applicant believes Fairview has insurance policies which are likely responsive to at least part of the claims of the applicant and class members, and which may result in up to \$190 million in total being available to the applicant and class members in the event the class action succeeds (though which parts of this insurance may respond to any individual claim could depend on individual factors).

## B. THE SCHEDULED SETTLEMENT DISCUSSIONS (MEDIATION)

7. On 14 December 2020, the Court made orders (amongst other orders to advance the case) referring the matter to a formal mediation. That mediation has been scheduled to be conducted between the parties on 14 and 15 December 2021 with the Hon. Peter Jacobson QC, a former judge of the Federal Court of Australia, as a neutral mediator.
8. The mediation process is a formal process which will be engaged in by the parties with the aim of negotiating and resolving the class action, being the applicant's claim and the claims of the class members.
9. If the parties reach a settlement, it will need to be approved by the Court before it becomes binding. As part of the approval process and before it grants any approval, the Court will issue a notice of the settlement to class members and provide class members with the opportunity to indicate their support or objection to it.

## C. SIGNING UP AND INFORMATION TO FACILITATE MEDIATION

10. Although you do not have to sign up or provide information about your claim to remain a class member, signing up to the class action (by any mode as set out in this section) and providing the best information possible concerning your claim, will assist William Roberts



Lawyers to consider your details and circumstances in order to advance your claim for the settlement talks that will occur at the mediation on 14 and 15 December 2021. Although all class members' interests will be represented during the settlement talks using all available information, it is likely to be significantly more advantageous for class members at such talks if the best possible information has been provided by as many class members as possible.

11. The type of information you will be asked to provide via the online portal (please see paragraphs 16 and 18 below, which discuss the process for signing up and providing information) is set out at **Annexure A** to this notice. You may of course provide further information in respect to your claims.
12. If you have already signed up to the class action by completing the on-line registration form and/or entering into a litigation funding agreement and retainer with Omni Bridgeway and William Roberts Lawyers, respectively, you do not have to do so again, but you are requested to provide any further information you have by **8 October 2021**.
13. If you have not previously signed up in any way, but wish to now do so and provide information concerning your claims in the class action, you can do it in one of two ways, by either:
  - a) entering into a funding agreement and retainer with OBL and William Roberts Lawyers, respectively (and becoming a **Represented Class Member**); or
  - b) 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**).
14. 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 Lawyers for any component of costs not funded by OBL. However, if you remain a class member who does not sign a funding agreement with OBL and retainer with William Roberts Lawyers, 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.
15. Important notes:
  - a) If you are unsure about the type of ACP cladding on your building, you can still sign up.
  - b) If you sign up as a Represented Class Member, you will have the benefit of OBL paying for experts (as required) to undertake the work necessary to determine the type of cladding you have and your eligibility to participate in the class action.
  - c) 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 of the type required to make a claim in the class action.
16. If you want to sign up as a **Represented Class Member** and provide claim information, what you need to do is:

- a) go to OBL's website <https://portal.omnibridgeway.com/claddingau> and complete the information form online, after which you will be sent the funding pack of documents; or
  - b) 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.
17. If you are considering becoming a Represented Class Member, you should carefully read 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 will not be disclosed to OBL or the lawyers running the class action.
18. If you want to sign up as a **Registered Unrepresented Class Member** and provide information, you should go to OBL's website <https://portal.omnibridgeway.com/claddingau> and complete the information form online only. You do not need to sign the funding agreement or lawyers' retainer. This means you will not enter into any contract with OBL or William Roberts Lawyers, but it will still assist William Roberts Lawyers to consider your details and circumstances in order to advance your claim for the settlement talks that occur at the mediation scheduled on 14 and 15 December 2021. 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 23 below).

#### If you have previously signed up

19. If you have already signed up in accordance with the previous notice approved by the Court, by completing the on-line registration form on OBL's website and/or by entering into a funding agreement and retainer with OBL and William Roberts Lawyers, respectively, you will be contacted (on the details you have previously provided) and requested to provide any further information you have by 8 October 2021. In the meantime, if you wish to supply any further information concerning your claim(s) you may send it electronically to OBL by email [claddingau@omnibridgeway.com](mailto:claddingau@omnibridgeway.com), or if it is not practicable to email it, you may post it to PO Box 5106, Perth, WA.

#### D. IF YOU DO NOT SIGN UP AND PROVIDE INFORMATION

20. If you do not sign up and provide information you will remain a class member and await the outcome. If you take this option you will be an **Unregistered Class Member** but, 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 Lawyers in the same way as Registered Unrepresented Class Members (see paragraphs 22 to 24 below).

## E. OTHER IMPORTANT MATTERS

### This is not a scam

21. This is **not** a scam. You can check (and get copies of relevant documents about the class action) by:
- a) visiting the website of OBL <https://portal.omnibridgeway.com/claddingau>, by emailing them at [claddingau@omnibridgeway.com](mailto:claddingau@omnibridgeway.com) or by telephoning them 1800 016 464; or
  - b) 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 by telephoning them at any of their offices in Sydney (02) 9552 2111, Melbourne (03) 9321 9111 or Brisbane (07) 3894 0780.

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

22. 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 and then to be distributed upon the resolution of the proceedings as set out in paragraphs 23 and 24 below.
23. 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.
24. If the class action is unsuccessful, class members will have no liability to pay any legal and funding costs.

### Is a Class Member able to participate in the class action if they have received or will receive funds from the NSW or VIC Government cladding rectification schemes?

25. If you are a class member who has not opted out of the class action and has received or will receive financial assistance for rectification of the cladding from either the New South Wales Government's "Project Remediate" or from the Victorian Government's – Cladding Safety Victoria program, you may still participate in the class action, and you are encouraged to sign up and provide information about your claim for the reasons set out in this Notice. Further information about this is provided in Annexures B and C to this Notice.

### If you are unsure about anything

26. 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 agreement 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 A

### Indication of the type of information to be provided via the online registration portal only

#### Contact Information

1. Email
2. Contact details

#### Claim Information

3. Claimant details (who owns the affected property)

Information Required	Detail
Who is the claim for?	<i>An individual, Owners Corporation, a publicly owned property, Other</i>
Name of claimant	<i>Name of the individual/ entity that owns the property</i>
Registered owner	<i>Registered owner of the property</i>
Claimant address	<i>Registered address of the claimant</i>

4. Claim details (an indication of the type of information you will be asked to provide is as follows) \*only fields with an asterisk indicates compulsory information

Information Required	Detail
Property details*	<i>Street address, suburb, state, postcode</i>
Name of building	<i>(if any)</i>
Property type	<i>Strata Residential, Strata Commercial, Strata Mixed Use, Non-Strata Commercial, Factory, Warehouse, Other</i>
Number of storeys	<i>Less than 3 storeys, 3 or more storeys</i>
Estimated amount of cladding	<i>(square meters)</i>
Brand of cladding*	<i>Vitrabond PE, Vitrabond FR, Alucobond PE, Alucobond Plus, I don't know, Other (describe)</i>
When was the property built?	<i>Month and year</i>
When was the cladding affixed to the building?	<i>Month and year</i>
Have you received any letter or notice advising that you are required or may be required to replace the cladding, or upgrade the building's fire suppression system?	<i>(Yes/ No)</i>
Have you suffered any of the following losses as a result of the cladding on your building (whether incurred yet or not)?	<ul style="list-style-type: none"> <li>• <i>Cost of replacement of the cladding</i></li> <li>• <i>Cost of remediation if replacement is not required</i></li> <li>• <i>Increase in insurance premiums</i></li> <li>• <i>Cost of building safety assessments</i></li> <li>• <i>Additional strata management fees</i></li> <li>• <i>Reduction of value to building</i></li> <li>• <i>Other losses as a result of the cladding</i></li> </ul>

## ANNEXURE B

### Further information – NSW Government's Project Remediate

1. In NSW, there is a three-year Government program (**Project Remediate**) to help remove combustible cladding on eligible high-risk residential apartment buildings known to the NSW Government Cladding Taskforce. This is a voluntary program to remediate only combustible cladding.
2. Essentially, Project Remediate provides, amongst other things, eligible building owners, including owners corporations (**Owners**), with a 10-year, interest-free loan to fund the cost of the cladding remediation work, with quarterly repayments by Owners commencing after the work is completed.
3. The NSW Government will pay for the interest on the loan. The NSW Government will not repay the loan principal.
4. While Project Remediate provides interest-free loan finance to Owners of eligible buildings to replace combustible cladding, they will still need to repay the loan principal out of their own resources.
5. You can still participate in the class action even if you are eligible for Project Remediate, and it may be in your interest to do so because if successful you may receive compensation to help you repay the loan. Because you have not opted out, you are encouraged to sign up and provide information about your claim for the reasons set out in this Notice. Further information concerning Project Remediate can be obtained from: <https://www.nsw.gov.au/customer-service/customer-service-%E2%80%92-projects-and-initiatives/project-remediate>.
6. You may wish to seek independent legal advice about how Project Remediate works in conjunction with the class action; and any possible entitlement to receive assistance from Project Remediate.

**ANNEXURE C****Further information – VIC Government Financial Assistance  
(Cladding Safety Victoria)**

1. The Victorian Government established Cladding Safety Victoria (**CSV**) to provide financial assistance for the rectification of combustible cladding on certain higher risk residential apartment buildings as assessed by the audits led by the Victorian Building Authority.
2. If the CSV has provided an amount to a building owner, including any owners corporation (**Owner**) by way of financial assistance in relation to cladding rectification work on the building (**CSV Payment**), the Crown (**Victorian Government**) is subrogated to all the rights and remedies of the Owner of the building against any person in relation to the installation or use of the non-compliant cladding, that required the cladding rectification work to be undertaken. The Victorian Government would be entitled (but not required) to make a claim and bring proceedings, in its own name or in the name of the Owner of the building, to recover money, including but not limited to the amount of the CSV Payment made to the Owner.
3. If the Owner of the building receives or recovers from another source or sources an amount in relation to the installation or use of the non-compliant cladding, or other building work, that required the cladding rectification work to be undertaken (**Third Party Payment**), the amount of the Third Party Payment is a debt payable by the Owner of the building to the Victorian Government. The amount of the debt cannot exceed the amount of the CSV Payment.
4. Essentially, if the CSV has provided financial assistance to an eligible Owner to replace combustible cladding, the Victorian Government has the right to stand in your shoes for the purposes of certain claims. This may mean that any compensation you receive from the class action has to be paid over to the Victorian Government, if it relates to the installation or use of cladding that required the rectification work to be undertaken.
5. You can still participate in the class action even if you are eligible to receive financial assistance from the CSV, and it may be in your interest to do so because if successful, you may receive compensation for losses which are additional to the CSV Payment. Because neither you nor the Victorian Government (on your behalf) has opted out of this class action, you are encouraged to sign up and provide information about your claim for the reasons set out in this Notice.
6. You should consider whether in the circumstances in which you received financial assistance from the CSV, you have any duties to the Victorian Government to sign up as a Registered Unrepresented Class Member and provide information about your claim. If you are considering signing up and providing information, you should consider whether there is any reason you should or should not do so. Further information about the CSV program can be obtained from:  
<https://www.vic.gov.au/find-out-about-cladding-safety-victorias-program>.
7. You may wish to seek independent legal advice about your rights and obligations if you have received or will receive financial assistance from the CSV; and any possible entitlement to receive financial assistance from the CSV.