

## **Cladding Class Actions – an opportunity for owners corporations to recover compensation\***

**By Bill Petrovski, Principal, William Roberts Lawyers\*\***

Two class actions have been commenced against manufacturers by William Roberts Lawyers. They seek financial compensation for Owners Corporations (OCs) and others, whose buildings are fitted with Aluminium Composite Panel (or ACP) cladding products branded, Alucobond Plus and Alucobond PE (first supplied between 14 February 2009 and 14 February 2019), and Vitrabond PE and Vitrabond FR (first supplied between 13 June 2009 and 13 June 2019).

The class actions claim compensation that includes:

- the cost of removal and replacement of the cladding, regardless of whether that has occurred yet or not,
- the cost of other rectification if some or all of the cladding can stay on the building,
- increases in building insurance premiums,
- the cost of building safety assessments, and
- any consequent reductions of value to buildings.

Omni Bridgeway Limited\*\*\* is funding the legal costs to run the class actions and covering any exposure to pay the manufacturers' legal costs.

The following are frequently asked questions which may be of interest to OCs.

### **Which OCs can claim compensation in the class actions?**

All Australian OCs whose buildings are fitted with the cladding above may be class action members. These are “open” class actions, which means if an OC fits the class membership criteria, it is included in the class action, even if it has not yet taken any steps to ‘sign up’ or provide any information to William Roberts or Omni Bridgeway.

. OCs may sign up to the class actions (see the further information section at the end of this article concerning sign up) even if they do not know whether they have the eligible cladding, and there is no out of pocket cost or liability to be incurred by the OC if it turns out that the OC does not fit the class membership criteria for any reason.

### **OCs who participate in the class actions are not liable to pay “out of pocket” legal costs**

OCs who participate in the class actions are not and will not be liable for any out of pocket legal costs. The costs of running the actions are being borne by Omni Bridgeway and William Roberts, essentially on a “no win no pay” basis. Omni Bridgeway’s funding is non-recourse. Unlike a loan, the legal costs funded by Omni Bridgeway are repayable only if the class action is successful.

If compensation is recovered, the Court will be asked to distribute the legal and funding costs equally among all persons who benefit from the class action. If the Court makes such an order, it will mean that those who benefit will contribute a portion of their recovery to the legal and funding costs.

\*The Federal Court of Australia has approved important notices (including short audio visual notices) that provide information to class members concerning the class actions. These can be viewed at: [www.williamroberts.com.au/Class-Actions/combustible-cladding-class-action](http://www.williamroberts.com.au/Class-Actions/combustible-cladding-class-action). This article is not intended to be a substitute for these notices, it is recommended that you read these notices.

\*\*William Roberts Lawyers is a leading Australian class actions law firm with offices in Sydney, Melbourne, Brisbane and Singapore: <https://www.williamroberts.com.au/>

\*\*\*Omni Bridgeway is one of the largest litigation funders in the world, which is publicly listed on the Australian Securities Exchange: <https://omnibridgeway.com/>

If the class action is unsuccessful, class members will have no liability to pay any legal or funding costs, including the manufacturers' legal costs which would be paid by Omni Bridgeway.

### **Can OCs participate in the class actions and still sue builders, developers or others?**

The class actions only seek compensation from the manufacturers of the relevant cladding, 3A Composites, a large German company, Halifax Vogel Group, and Fairview Architectural. Recently, the Court published a judgment that revealed Fairview has product liability insurance policies that make \$190 million potentially available for class action claims.

OCs may wish to make claims against builders, developers or others involved in the construction of their building, which I will refer to as 'Building Claims'. Building Claims can be made by OCs in addition to, and at the same time as OCs are participating in the class actions. OCs' eligibility to participate in the class actions is also not affected by their possible Building Claims.

Of course, if OCs do pursue a Building Claim in addition to participating in the class actions, OCs will not be entitled to recover compensation from both the class actions and the Building Claim for the same loss. That is, there is no entitlement to double compensation. However, it may be possible to recover from both the Building Claim and the class actions, particularly if there are certain types of losses capable of being claimed in one but not the other.

If an OC participating in the class actions also pursues a Building Claim, and makes a recovery from the Building Claim (separately from those sued in the class actions), Omni Bridgeway and William Roberts will not have any entitlement from such recovery.

Unlike the class actions (in which class members do not incur out of pocket costs and have no liability to pay any legal or funding costs if the class action is unsuccessful), pursuit of a Building Claim will typically require an OC to pay legal costs and take the risk of liability to pay for the other side's legal costs in the event the Building Claim is unsuccessfully litigated.

Of course, OCs should obtain independent legal advice in respect to their rights concerning any Building Claims they may have, particularly concerning the costs and risks involved, including whether the builder or developer is not able to pay compensation.

### **Does obtaining a loan for rectification affect the claims of OCs in the class actions?**

OCs may have to borrow to fund rectification works related to the cladding. If those loans are repayable (with or without interest), class action members will still have the right to claim compensation via the class actions in relation to the rectification of the relevant cladding, together with any other losses that are also claimable.

### **For further information generally and how to participate in the class actions**

The Court has approved important notices that provide information to class members concerning the class actions, including the options to sign up, opt out or do nothing. These can be viewed at: <https://www.williamroberts.com.au/Class-Actions/combustible-cladding-class-action>. It is recommended that you read these notices.

If you have any queries concerning the class actions you may contact William Roberts Lawyers at [wrlcladding@williamroberts.com.au](mailto:wrlcladding@williamroberts.com.au), and Omni Bridgeway Limited at [claddingau@omnibridgeway.com](mailto:claddingau@omnibridgeway.com) and on 1800 016 464.