

# Court approves one of the first video opt out notices in a class action

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The Federal Court has approved what is thought to be only the second ever audio-visual opt out notice in a class action, a move that will make it easier for group members to find out about class actions they may be eligible for.

In a case management hearing on Friday, Justice Michael Wigney approved the audio-visual opt out notice along with other orders in a class action against German-cladding manufacturer 3A Composites and Australian distributor Halifax Vogal Group.

“Certainly I didn’t see anything controversial and I did have the opportunity to play the audio-visual notice and again I saw no issue at all. It seemed to encapsulate all the relevant points in a fair and reasonable manner,” the judge said.

Bill Petrosvksi, principal of William Roberts Lawyers, the law firm behind the class action, told Lawyerly that the firm considered what judges had said about the notices in other class actions.

“We of course took note of what has been said elsewhere in producing it,” he said.

Audio-visual opt out notices have been blocked at least twice before by Federal Court judges overseeing other class action proceedings.

In September, Justice Michael O’Bryan [shot down the audio-visual notice in a class action by Slater & Gordon](#) against Westpac over allegedly worthless credit card insurance.

The judge said the notice had the “flavour” of promoting the class action proceeding and was more expansive than the webpages proposed to be sent out describing the class action.

“If that was all that the script covered, I would be inclined to approve the link. I consider that it may be helpful for some members of the community to receive essentially the same information that is contained in a written notice in a video

format. However, the script for the video is considerably more expansive,” Justice O’Bryan said.

In April, Justice Michael Lee [called the notice in Shine Lawyer’s life insurance class action against Westpac](#) a “very good start” but said the video clip had been filed too late to be used in the proceedings. The judge did say that the clip could be used as a basis for future notices.

“I think I’ll use that as a useful starting point but I think what I might do, perhaps the next time I have to deal with this, is have the court prepare such a notice ... which may be the basis on which further audio-visual notices are based,” Justice Lee said.

But Shine’s second attempt at an audio-visual notice, this time in a class action against the Federal Government over PFAS fire-fighting foam, was approved by Justice Lee in July. That one is believed to be the first and only other video notice to go out to group members.

The William Roberts-led class action accuses 3A Composites and Halifax Vogul Group of misrepresenting the quality of the allegedly highly flammable Alucobond cladding. Both companies have denied the cladding is unsafe, saying its suitability would be subject to assessments by builders, architects or certifiers.

The Alucobond class action is being case managed alongside a [second class action filed by William Roberts Lawyers in June 2019](#) against Fairview Architectural over its representations regarding the quality of its Vitrabond polyethylene cladding.

The Vitrabond case, which was filed June 13 and seeks compensation for the cost of replacing the cladding and costs associated with making any affected buildings safe.

Both cases are being funded by Omni Bridgeway.

The Australian class actions were filed after major fires around the world in buildings that used polyethylene core cladding. Most notably, the 23-storey Lacrosse tower in Melbourne caught fire on November 25, 2014 and the Grenfell tower in London caught fire on June 14, 2017, resulting in loss of lives and property.

The NSW government issued a retroactive ban on the use of certain aluminium cladding which took effect on August 15, 2018, and applies to cladding where the core is more than 30 percent PE. In Victoria, orders to remove and replace flammable cladding have been issued to owners of several buildings.

The class action applicant is represented by William Edwards, and Jerome Entwisle, instructed by William Roberts Lawyers. 3A Composites is represented by Amelia Smith, instructed by King & Wood Mallesons. Halifax Vogel Group is represented by Sam Adair, instructed by Sparke Helmore.

The Halifax Vogel and 3A Composites class action is [The Owners – Strata Plan 87231 v 3A Composites GmbH & Anor](#). The Fairview class action is [The Owners – Strata Plan No 91086 v Fairview Architectural Pty Ltd](#).