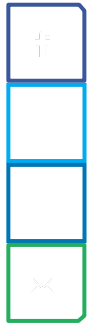




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# Lawyers for combustible cladding class action can search Fairview's offices after discovery failure

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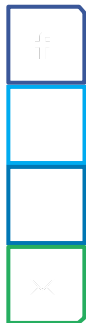
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**Class Actions** 2021-07-16 6:06 pm By **Cindy Cameronne** | Sydney

Cladding manufacturer Fairview Architectural must allow the group members in a class action over allegedly combustible cladding products to search the company's offices and access electronically stored information to carry out discovery, a judge has ruled.

Federal Court Justice Wigney ruled on June 24 that Fairview's continued failure to hand over documents due

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on March 15, justified an order that solicitors for the group members, William Roberts Lawyers, should be able to search for documents themselves.

“There is now no reasonable or acceptable justification for Fairview’s ongoing default in respect of discovery,” said Justice Wigney.

“The current impasse in relation to discovery is frustrating and delaying the progress of the matter. The roadblock needs to be removed. The orders sought by Fairview are an appropriate way to remove that roadblock.”

The order will “allow or enable [the] owners to satisfy or discharge Fairview’s discovery obligations in circumstances where Fairview is in default of those obligations and has not suggested any other means by which they could or would be discharged”, he said.

William Roberts filed the class action against Fairview in June last year, claiming it misrepresented the quality of its allegedly highly flammable Vitrabond cladding. The class action, funded by Omni Bridgeway, seeks compensation to be paid to property owners for the cost of replacing the cladding and the costs associated with making any affected buildings safe.

A notice to group members approved [in the Federal Court on Wednesday](#) revealed that Fairview may have \$190 million in insurance to cover the claims. Settlement

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negotiations in the matter are scheduled for two days in December this year before former Federal Court judge Peter Jacobson QC.

In August last year, the Federal Court heard that [the lead applicant in the case had a claim for \\$5.8 million.](#)

Fairview entered voluntary administration in July 2020, citing challenges from COVID-19 and \$1.5 million it had spent defending the class action. In October, a related entity purchased Fairview, bringing the company back to life and ensuring all creditors were paid in full.

In granting the order that William Roberts can inspect Fairview's offices, Justice Wigney found the company's failure to comply with discovery could be explained by it being placed in administration but found its "ongoing non-compliance" could not be justified.

The judge found that Fairview may no longer have the funds to pay solicitors to undertake discovery but said the situation was "largely of Fairview's own making" because the company undertook a restructure that saw its business "hived off to another entity".

"That effectively left Fairview as a shell company, albeit a shared shell company with the benefit (if indeed it turns out to be a benefit) of insurance which may indemnify it for any loss or damage incurred as a result of this proceeding," said Justice Wigney.

## Law Firms

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Mallesons

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■ Sparke Helmore

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William Roberts  
Lawyers



Justice Wigney ruled the group members could use the information only for the purposes of the class action and must enter the offices in a “courteous and orderly manner...that minimises disruption” to Fairview. Fairview may separate communications with its lawyers that may be subject to legal professional privilege, Justice Wigney said.

The judge also ruled that it was “fair and reasonable” to require Fairview to pay the group members’ costs of the application.

The Fairview class action is the second combustible cladding class action brought by Williams Roberts on behalf of property owners. 3A Composites and Australian distributor Halifax Vogul Group are named in the first class action, accused 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 Fairview group members are represented by Ian Roberts SC and Jerome Entwisle, instructed by William Roberts Lawyers. Fairview is represented by Adam Hochroth, instructed by Mills Oakley. 3A Composites is represented by King & Wood Mallesons. HVF Group is represented by Sparke Helmore.



The Fairview class action is [The Owners – Strata Plan No 91086 v Fairview Architectural Pty Ltd ACN 111 935 963](#).  
The Halifax Vogel and 3A Composites class action is [The Owners – Strata Plan 87231 v 3A Composites GmbH & Anor](#).



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