

Schedule A

**OPT OUT AND REGISTRATION NOTICE  
SUPREME COURT OF VICTORIA**

**Class Action against the Commonwealth of Australia in relation to the  
Home Insulation Program**

If you wish to participate in any settlement of this class action you must comply with this notice (unless you have already registered to participate in this class action). If you do not do so your rights to receive a distribution from any settlement may be lost. If you have not already registered, you have three options:

1. Do nothing and lose any rights to any compensation agreed through a settlement process.
2. Register to be eligible to receive any compensation that may become available through a settlement of this class action, subject to further assessment of your claim.
3. Complete an 'opt out' form, cease to be a group member and lose the right to any compensation available in this class action, but keep your right to try and recover compensation yourself.

1. Why is this notice important?

A class action has been commenced against the Commonwealth of Australia (Commonwealth) in the Supreme Court of Victoria by Roo-Roofing Pty Ltd and Matsuh Pty Ltd as representative Plaintiffs. The class action is being brought:

- (a) on their own behalves; and
- (b) on behalf of group members falling within one or more of the descriptions in (c) to (d) below, being persons, who at all material times, either:
  - i. carried on business in Australia; and/or
  - ii. were incorporated in, citizen of, or resident in Australia;
- (c) are persons (owners) who:
  - i. owned or partly owned a business directly or indirectly in their capacity as one or more of a shareholder or unitholder, or as a beneficial owner, of shares or units

or who guaranteed some of all of the debts and obligations of such businesses being an installer business, manufacturer business and/or supplier business that installed, manufactured and/or supplied insulation in a home or homes in Australia:

- A. between sometime after 3 February 2009 and before 19 February 2010; and
  - B. pursuant to the terms of the Homeowners Insulation Program (which was renamed the Home Insulation Program around 2 September 2009) (HIP);
- iii. operated a business that installed, manufactured or supplied products for retrofit installation in a home or homes in Australia between sometime after 3 February 2009 and before 19 February 2010; and
  - iv. suffered loss as a result of the early termination of the HIP; and
  - v. remain or become legally entitled to commence and maintain a claim against the Commonwealth in respect of that loss;
- (d) are installers, manufacturers or suppliers who:
- i. operated a business that installed, manufactured or supplied products for retrofit installation in a home or homes in Australia between sometime after 3 February 2009 and before 19 February 2010; and
  - ii. being either:
    - A. pre-existing installers, manufacturers or suppliers who operated such a business prior to 3 February 2009; or
    - B. new installers, manufacturers or suppliers who operated a business after 3 February 2009;
  - iii. suffered loss as a result of the early termination of the Home Insulation Program (HIP); and
  - iv. remain or become legally entitled to commence and maintain a claim against the Commonwealth in respect of that loss.

Such persons are defined as **group members**.

The Supreme Court of Victoria has ordered that this notice be published for the information of persons who might be group members and thus may be affected by the action. **If you believe that you may be a group member you should read this notice carefully. Any questions you have concerning the matters contained in this notice should not be directed to the Court.** If there is anything in it that you do not understand, you should seek legal advice.

This notice is part of a court-ordered process to assist the parties to attempt to resolve this proceeding by settlement. In order to do that, the parties need to know how many group members may participate in any settlement of the proceeding.

Class members wishing to participate in any potential settlement of the proceeding must register their claims by **4.00pm AEST on 25 August 2017**. If you do not register, you may lose any rights you have to compensation agreed through a settlement process.

## **2. What is a class action?**

A class action is an action that is brought by one person (**Plaintiff**) on his or her own behalf and on behalf of a group of people (here, group members) against another person (**Defendant**) where the Plaintiff and the group members have similar claims against the Defendant.

Group members in a class action **are not** individually responsible for the legal costs associated with bringing the class action. In a class action, only the Plaintiff is responsible for the costs.

Group members are bound by any resolution of the class action, by judgment or approved settlement, in unless they have opted out of the proceeding. This means that:

- (a) if the class action is successful, group members may be eligible for a share of any compensation ordered to be paid by the Court or agreed to be paid as part of a settlement;
- (b) if the class action is unsuccessful, group members are bound by that result; and
- (c) regardless of the outcome of the class action, group members will not be able to pursue their claims against the Defendant in separate legal proceedings unless they have opted out.

## **3. What is Opt Out?**

The Plaintiff in a class action does not need to seek the consent of group members to commence a class action on their behalf or to identify a specific group member. However, group members can cease to be group members by opting out of the class action. An explanation of how group

members are able to opt out is found below in the section headed "What Group Members must do".

#### 4. What is this class action?

This class action against Commonwealth is brought by Roo-Roofing Pty Ltd and Matsuh Pty Ltd on behalf of themselves and group members (**HIP class action**). ACA Lawyers and McLaughlin & Riordan have been retained by the Plaintiffs to conduct the class action. ACA Lawyers are the solicitors on the Court record and are responsible for the legal proceedings. McLaughlin & Riordan have a long standing relationship with a large number of the Group Members and a historical involvement in this dispute. A summary of the Plaintiffs' claim is set out below.

- (b) On 3 February 2009, the Commonwealth made a public announcement that, from 1 July 2009 and for a time-limited period of two and a half years, it would provide funds of \$1,600 per home under the HIP to fund the installation of ceiling insulation in a minimum of 2.2 million eligible Australian homes.
- (c) The Department of Environment, Water, Heritage and the Arts (**DEWHA**) was charged with designing, implementing and operating the HIP.
- (d) The Commonwealth intended that the HIP provide economic stimulus. To this end the Commonwealth met with and advised industry representatives in manufacture, supply and installation of insulation (**insulation related businesses**) to encourage them to invest and expand their businesses to meet increased demand.
- (e) The HIP was to formally commence on 1 July 2009. However from the date of the announcement on 3 February 2009 interim measures were established to allow home owners to take advantage of the rebate for installation of insulation pursuant to the HIP (phase 1).
- (f) From inception until 30 June 2009 it was contemplated by the Commonwealth that the pre-existing installers would meet the demand to retrofit insulation to existing homes under the HIP. This was to allow the pre-existing installers to continue to operate pending the commencement of phase 2 of the HIP on 1 July 2009.
- (g) From 1 July 2009, a register was established and was open to new installers (businesses with no previous installer experience) provided they undertook to abide by the terms of the HIP Program Guidelines (phase 2).

- (h) A significant number of new installers entered the market after 1 July 2009 to take advantage of the HIP. It is estimated that there were 200 to 270 pre-existing installer businesses at the commencement of the HIP. During phase 2 approximately 10,500 new businesses were registered under the HIP.
- (i) The Plaintiffs allege that the DEWHA failed to institute a robust compliance regime to ensure installers were suitably trained in installation and fully aware of the dangers associated with installing insulation in existing houses.
- (j) The HIP was suspended on 19 February 2010, due to the likelihood of further risk of injury and fatalities if the scheme continued.
- (k) On 22 April 2010 the Commonwealth announced that the HIP would not proceed in any rebranded form. Approximately \$1 billion of the \$2.45 billion allocated to the HIP had not been spent.
- (l) The Plaintiffs allege that cancellation of the HIP proved catastrophic for the insulation related businesses who had increased capital investment to meet increased demand for retrofit installation of insulation created by the HIP.
- (m) The Plaintiffs plead a number of causes of action against the Commonwealth. Broadly, the causes of action are as follows:
  - i. **Breach of contract.** The Plaintiffs allege that the Commonwealth entered into a contract with the pre-existing and new installer businesses for the installation of ceiling insulation in eligible homes and that by reason of the Commonwealth's repudiation of the contract on 19 February 2010, pre-existing and new installer businesses suffered loss and damage.
  - ii. **Negligence.** The Plaintiffs allege that the Commonwealth had a duty to take reasonable care to minimise the risk of foreseeable economic loss to both the pre-existing manufacturers and installer businesses as well as new installer businesses and that insulation related businesses suffered loss and damage as a result of the defective design, implementation and/or operation of the HIP.
  - iii. **Negligent misrepresentation.** The Plaintiffs allege that the Commonwealth negligently represented expressly or impliedly to the Plaintiffs and group members that the Commonwealth would not reconsider their decision to operate the HIP until the earlier of the following dates:

- A. 31 December 2011; or
- B. the funds that the Commonwealth had allocated to the HIP to fund insulation of a minimum of 2.2 million Australian homes built prior to 2003 ran out,

and that as a result of acting in reliance on the Commonwealth's negligent representations the Plaintiffs and group members suffered loss and damage.

- iv. **Misleading and deceptive conduct.** The Plaintiffs allege that the Commonwealth engaged in conduct that was misleading and deceptive for the purposes of section 52 of the *Trade Practices Act 1974* (Cth) by making the representations defined in paragraphs 5, 6, 8, 12 and 12A of the Further Amended Statement of Claim and that as a result of the Plaintiffs and group members reliance on the Commonwealth's misleading and deceptive conduct the Plaintiffs and group members suffered loss and damage.

The Commonwealth denies all the Plaintiffs' allegations and is defending the class action.

#### 5. Are you a group member?

As noted above, you may be a group member if you are were an owner, installer, manufacturer or supplier who:

- (a) operated a business that installed, manufactured or supplied products for retrofit installation in a home or homes in Australia between sometime after 3 February 2009 and before 19 February 2010; and
- (b) being either:
  - i. pre-existing installers, manufacturers or suppliers who operated such a business prior to 3 February 2009; or
  - ii. new installers, manufacturers or suppliers who operated a business after 3 February 2009;
- (c) suffered loss as a result of the early termination of the Home Insulation Program; and
- (d) remain or become legally entitled to commence and maintain a claim against the Commonwealth in respect of that loss.

If you are unsure whether or not you are a group member, you should contact ACA Lawyers on +61 2 9216 9898 or email [info@acalawyers.com.au](mailto:info@acalawyers.com.au) or seek your own legal advice without delay.

**6. Will you be liable for legal costs?**

You will **not become liable for any legal costs** simply by remaining as a group member for the determination of the common questions. However:

- (a) if the preparation or finalisation of your personal claim requires work to be done in relation to issues that are specific to your claim, you can engage the Plaintiffs' lawyers, ACA Lawyers and McLaughlin & Riordan, or other lawyers to do that work for you. A copy of the terms on which ACA Lawyers and McLaughlin & Riordan are acting in the class action may be obtained by contacting ACA Lawyers at [info@acalawyers.com.au](mailto:info@acalawyers.com.au) or on +61 2 9216 9898; and
- (b) if any compensation becomes payable to you as a result of any order, judgment or settlement in the class action, the Court may order that some of that compensation be used to help pay a share of the costs which are incurred by the Plaintiffs in running the class action but which are not able to be recovered from the Commonwealth.

**Under no circumstances will class members be required to pay more in legal costs and commissions than they receive in compensation.**

**7. What will happen if you choose to remain a class member?**

Unless you opt out, you will be bound by the outcome of the class action. If the class action is successful at Court and judgment is awarded in favour of the Plaintiffs, you may be entitled to the benefit of any order or judgment made. If the action is unsuccessful or is not as successful as you might have wished, you will not be able to bring proceedings or take action against the Commonwealth in respect of the same claims or in relation to the matters the subject of the allegations made against the Commonwealth in this proceeding.

If the class action is settled by negotiation and that settlement is approved by the court, **and** if you have registered in accordance with "Option A" below, you may be entitled to share in the benefit of any settlement.

**Note:** Group members who retain ACA Lawyers and McLaughlin & Riordan and enter into a funding agreement with Harbour before 4pm AEST on 25 August 2017 or who have already retained ACA Lawyers and McLaughlin & Riordan and entered into a funding agreement with Harbour, will be registered to participate in the class action through ACA Lawyers and may disregard this notice.

**8. What group members must do**

If you are a group member in the HIP class action, and you wish to remain a group member but have not retained ACA Lawyers and McLaughlin & Riordan, you must select one of the following options:



### *Option A - Register your interest in receiving compensation*

If you wish to make a claim for any loss you may have suffered as a result of the Commonwealth's conduct, as alleged, you must complete the "Group Member Registration Form" on the ACA Lawyers website, which is accessible at <https://www.acalawyers.com.au/hip>.

Registrations must be completed and submitted online before **4:00pm AEST on 25 August 2017**. Registrations received after this time will not be accepted with the result that you will be treated as having not responded to this notice (see Option C below).

As set out below, you will find copies of the Court papers which detail the claims made in the HIP class action at this website.

### *After registration - claims assessment procedure*

**Registering your claim does not guarantee that you will receive compensation if the HIP class action is settled.** In order to determine your eligibility for compensation, ACA Lawyers, McLaughlin & Riordan or their agents will contact you to request additional information to enable assessment of your claim. The assessment may be different to your own estimate of your losses. Information provided by you will be treated as confidential but may be disclosed to the Commonwealth or to its legal advisers and expert consultants for the purposes of seeking to achieve a settlement.

The amount group members receive by way of compensation ordered by the Court to be paid or agreed to be paid as part of a settlement may be lower than the assessment, as various risk factors will likely be taken into account in calculating any settlement or judgment amount. Any compensation received will also be subject to the legal costs in pursuing the claim and any amounts retained by Harbour pursuant to Funding Agreements.

### *Option B - Opt out and cease to be a group member*

If you do not wish to remain a group member in the HIP class action, you must opt out of the proceeding by completing the "Opt Out Notice" below. If you opt out of the HIP proceeding, you:

1. will not be affected by any orders made in the HIP class action;
2. will not be permitted to participate in the distribution of any damages award or settlement outcome; and
3. will be able to commence separate proceedings on your own behalf if you so wish.

Opt out forms must be submitted to the Registry of the Supreme Court of Victoria before **4:00pm AEST on 25 August 2017**. Opt out notices received after this time will not be accepted, and you will remain as a group member in the HIP class action (see Option C below).

***Option C - Not respond to this notice***

If you do nothing (i.e. do not opt out and do not register), you will remain a group member in the class action and you will be bound by a court order approving any settlement agreement. If a settlement agreement provides for compensation to be payable to registered group members, unless the Court makes an order to the contrary, **you will not be permitted to participate in that compensation** or otherwise benefit from the settlement. Note that, in that event, any cause of action you might otherwise have had against the Commonwealth in respect of the matters the subject of the class action will no longer be available to you, and you will be barred from making any claim against the Commonwealth in respect of or relating to the subject matter of this proceeding.

**9. Where can you obtain copies of relevant documents?**

You may access copies of the Court papers which detail the relevant documents filed in connection with the HIP class action, by:

- viewing them at the ACA Lawyers website, which is accessible at <https://www.acalawyers.com.au/hip>;
- inspecting them by appointment between 9.00am and 5.00pm AEST at the Sydney office of ACA Lawyers; or
- inspecting them at the Supreme Court of Victoria website, which is accessible at <http://www.supremecourt.vic.gov.au/home/law+and+practice/class+actions/roofing+class+action>, or by visiting the Registry of the Supreme Court of Victoria in Melbourne.

**10. Questions?**

Please consider the above matters carefully. If you are unclear about whether you are a group member, or if you have any other questions regarding the HIP class action, you should contact ACA Lawyers by writing to "HIP Class Action", Level 3, 44 Martin Place, Sydney NSW 2000, or by sending an email to [info@acalawyers.com.au](mailto:info@acalawyers.com.au). Alternatively, you can seek legal advice from other solicitors. You should not delay in making your decision.

If you wish to register (Option A), but do not have access to the internet or are otherwise unable to register in accordance with Option A, please call ACA Lawyers on +61 2 9216 9898 between the hours of 9:00am to 4:00pm AEST by no later than 4:00pm AEST 25 August 2017.

## OPTION A

### GROUP MEMBER REGISTRATION

To register as a group member to claim compensation through a settlement, please complete the Group Member Registration Form available at <https://www.acalawyers.com.au/hip>.

**Note:** Group members who retain ACA Lawyers and McLaughlin & Riordan and enter into a funding agreement with Harbour before 4pm AEST on 25 August 2017, or who have already retained ACA Lawyers and McLaughlin & Riordan and entered into a funding agreement with Harbour, will register to participate in the class action through ACA Lawyers and may disregard this notice.

OPTION B

OPT OUT NOTICE

IN THE SUPREME COURT OF VICTORIA  
AT MELBOURNE

MAJOR TORTS LIST

No. 3382 of 2015

BETWEEN

ROO-ROOFING PTY LTD (ACN 131 182 093)

First Plaintiff

MATSUH PTY LTD (ACN 105 461 818)

Second Plaintiff

- and -

THE COMMONWEALTH OF AUSTRALIA

Defendant

To: The Registrar  
Victorian Supreme Court  
Registry  
210 William Street Melbourne VIC 3000

..... (print name), a group member in this  
representative proceeding, gives notice under section 33J of the *Supreme Court Act*, that he,  
she or it is opting out of the representative proceeding.

Date: .....

Signed by .....  
(print name) Group Member / Lawyer for the Group  
Member

(please complete the next page)

Address of group member:

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Telephone:

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Email:

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ACN/ABN (if a company or trustee):

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**If you are signing as the solicitor or representative of the group member:**

Name:

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Capacity in which you are signing:

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Telephone:

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Email:

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Address:

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