

Opal Tower Class Action
Supreme Court of New South Wales Case No. 232749 of 2019

IMPORTANT NOTICE

Why are you getting this notice?

A class action has been filed against Sydney Olympic Park Authority (**SOPA**) on behalf of all persons who, as at 24 December 2018, owned one or more lots in Opal Tower (being, Strata Plan 97315) or the common property of Opal Tower (other than SOPA, Ecove or its related entities).

The class action, filed in the NSW Supreme Court, claims that SOPA did not comply with warranties which arise under the *Home Building Act*.

The New South Wales Supreme Court has ordered that this notice be published for the information of persons who are members of the class on whose behalf the action is brought. You are getting this notice because you may have been an owner of a lot in Opal Tower on 24 December 2018. This notice describes the class action and the steps you should take if you don't want to be part of the class action. **You should read this notice carefully. Any questions about any of the matters in this notice should not be directed to the Court.** Instead, if there is anything in this notice you do not understand, you should seek independent legal advice.

What is this all about?

A class action is a claim which is made by one or more people (called the **Plaintiffs**) for the benefit of people with similar or related claims (called the **Group Members**).

The Plaintiffs in this case are Terry and Helen Williamson. Mr and Mrs Williamson own an apartment in Opal Tower, and owned that apartment on 24 December 2018.

Mr and Mrs Williamson's class action is for the benefit of all persons who owned one or more lots in Opal Tower or the common property of Opal Tower on 24 December 2018 (other than SOPA, Ecove or its related entities). The Plaintiffs do not need to seek the consent of Group Members to start the class action on their behalf. However, Group Members can cease to be Group Members by opting out of the class action.

If Group Members do not opt out of the class action, they will be 'bound' by the outcome in the class action. A binding result can happen in two ways: (a) a trial followed by a judgment of the Court, or (b) a settlement at any time. If there is a judgment or a settlement of a class action, Group Members will not be able pursue the same claims and may not be able to pursue similar or related claims against the defendant or any of the cross-defendants in any other legal proceedings.

Further, Group Members should be aware that, in any judgment following trial, the Court will likely decide various factual and legal issues which are common to the claims made by the Plaintiffs and Group Members. Unless that judgment is successfully appealed, those findings bind the Plaintiffs, Group Members, defendant and cross-defendants. Importantly, if there are other proceedings between a Group Member and the defendant or any of the cross-defendants, it may be that the parties are not be permitted to raise

arguments in that proceeding which are inconsistent with a factual or legal issue decided in the class action.

Currently, no date for a mediation or trial has been set for the class action.

The Plaintiffs claim that:

- (a) Pursuant to the *Home Building Act*, Group Members have the benefit of warranties enforceable against SOPA in relation to work done, and materials supplied, in carrying out the design and the construction of Opal Tower – specifically, warranties that:
 - (i) the work would be done with due care and skill;
 - (ii) the work would be in accordance with the plans and specifications;
 - (iii) the work would be done in accordance with and comply with the law;
 - (iv) materials that were supplied would be good and suitable for the purpose for which they were used; and
 - (v) the work would result in the construction of dwellings that were reasonably fit for occupation as dwellings,
(together, the “**Warranties**”);
- (b) SOPA breached those warranties;
- (c) SOPA is liable for loss Group Members have suffered because it breached those warranties including, for example:
 - (i) any drop in value of your apartments;
 - (ii) lost rental income;
 - (iii) loss of rental income under any future lease;
 - (iv) out-of-pocket expenses you incurred in the period you were not able to access your apartment;
 - (v) compensation for increased strata fees, legal fees and other professional costs; and
 - (vi) inconvenience, stress and vexation.

The defendant to the class action is SOPA. SOPA denies liability to the Plaintiff and Group Members and is defending the class action and has filed a cross-claim against Australia Avenue Developments, Ecove and Icon Co (NSW).

Icon Co (NSW) denies liability to SOPA, Icon Co (NSW) is defending the class action, and has filed a cross-claim against WSP Structures.

WSP Structures denies liability to Icon Co (NSW), is defending the class action, and has filed a cross-claim against Evolution Precast Systems and Icon Co (NSW).

How do you know if you are affected by this class action?

You are a Group Member in this class action if, on 24 December 2018, you owned one or more lots in Opal Tower (being Strata Plan 97315) or the common property of Opal Tower (and if you are not SOPA, Ecove or any of Ecove’s related entities).

Who pays the lawyers?

The Plaintiffs' lawyers are Corrs Chambers Westgarth. A company called Augusta Pool 1 UK Limited (the **Funder**) is funding the class action, which means that it is paying the Plaintiffs' legal costs, including the Plaintiffs' costs of bringing the claim on behalf of all Group Members.

You do not have to pay money in order to participate in this case. If the class action fails, you will not have to pay anything.

Intention to seek a funding order

The majority of Group Members have entered into litigation funding agreements with the Funder. Those agreements describe what those Group Members are required to pay the Funder in the event that their claims are resolved successfully.

Some Group Members have not entered into litigation funding agreements with the Funder.

If there is a successful judgment or settlement, the Funder intends to make an application to the Court requiring *all* Group Members – whether they have signed a litigation funding agreement or not – to pay a commission to the Funder in return for the Funder's contribution to the successful prosecution of the claims. That commission will not be any higher than the commission stipulated in the litigation funding agreements that most Group Members have already signed.

If, in all the circumstances it is fair, just, equitable and in accordance with principle, the Court is likely to make an appropriately framed order to prevent unjust enrichment and equitably and fairly to distribute the burden of reasonable legal costs, fees and other expenses, including reasonable litigation funding charges or commission, amongst all persons who have benefited from the action.

What do you need to do if you want to continue to be part of this case?

You do not need to do anything to stay part of this case. You will continue to be part of this case unless you follow the steps in the next section and "opt out" of the class action.

You do not need to register, but you may do so by emailing opaltower@corrs.com.au or by phoning (+612) 9210 6187. Registration will ensure that you continue to be informed about the progress of the class action.

As noted above, all persons who owned a lot in Opal Tower on 24 December 2018 who do not opt out, will be bound by the result of the class action in so far as it relates to them.

What do you need to do if you do not want to be part of this case?

Some people who owned a lot in Opal Tower on 24 December 2018 may not wish to be part of the class action. They may not wish to claim damages from SOPA, or they may wish to do that by themselves rather than as part of a class action. If you opt out of the class action, you will:

- a) not be affected by any orders made in the class action;
 - b) not be permitted to participate in the distribution of any damages award or settlement outcome (you will not receive any compensation) in the class action;
- and

- c) be entitled to commence separate legal proceedings against the defendant or any of the cross-defendants in relation to the matters the subject of the class action on your own behalf, if you wish to do so.

If you do not want to be part of the class action, **you need to fill out a form and send it to the New South Wales Supreme Court by 22 May 2020**. The form is called an “**Opt-Out Notice**” and it is **Annexure A** to this notice. You can also get a copy of the Opt Out Notice at:

- 1 online at [the Supreme Court of NSW's website \(http://www.supremecourt.justice.nsw.gov.au/\)](http://www.supremecourt.justice.nsw.gov.au/);
- 2 by emailing opaltower@corrs.com.au;
- 3 by writing to:

Opal Tower Class Action
Corrs Chambers Westgarth
GPO Box 9925
Sydney NSW 2001
Australia

You should be aware that, if you do not want to be part of the class action and you do not opt out by **22 May 2020**, you may not be given an opportunity to opt out at a later date, unless the Court allows you to do so.

Annexure A – Opt-out Notice

COURT DETAILS

Court	Supreme Court of New South Wales
Division	Equity
List	Commercial
Registry	Sydney
Case number	2019/232749

TITLE OF PROCEEDINGS

First Plaintiff	Terry Walter Williamson
Second Plaintiff	Helen Therese Williamson

Defendant	Sydney Olympic Park Authority (ABN 68 010 941 405)
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PREPARATION DETAILS

Prepared for

[person opting out of proceedings]

Legal representative

Contact name and telephone

Contact email

OPT OUT NOTICE

_____ (name of group member), registered proprietor of unit _____ (unit number) in Opal Tower as at 24 December 2018, a group member in these representative proceedings, gives notice under section 162 of the *Civil Procedure Act 2005*, that _____ (name of group member) is opting out of the class action.

Date: _____

_____ (signature)

_____ (print name)

_____ (capacity, eg, group member / lawyer for Group member / position in company, if signing on company's behalf)