

Project Remediate – Refund

Project Remediate

If you live in an apartment building in New South Wales, you might be aware that some apartments have been required to replace their cladding due to NSW Fair Trading's Aluminium composite panel ban on 15 August 2018.

Project Remediate was introduced to assist owners corporations replace flammable cladding, by providing a 10-year interest-free loan, to assist with cladding replacement.

Since the ban, many Owners corporations replaced their cladding, either with or without the assistance of Project Remediate.

Those buildings that have since replaced their cladding without the assistance of Project Remediate may be eligible for retrospective assistance for cladding remediation work.

Refund – [NSW Fair Trading](#).

An owners corporation that passed a strata resolution to enter into a contract for cladding remediation work before 30 June 2021 may be eligible to receive a lump sum payment equivalent to the interest that would have been paid by the NSW Government under Project Remediate, had your cladding replacement been completed with the assistance of Project Remediate.

The refund amount is based on the **interest cost** the NSW Government would have incurred, if it assisted the owners corporation under Project Remediate, **for the same amount spent** by the owners corporation on eligible remediation work.

Eligibility

1. The owners corporation must have passed a strata resolution to enter into a contract for cladding remediation work on or before **30 June 2021**; and
2. Your building must be confirmed by the NSW Cladding Taskforce to have had a high-risk combustible cladding façade requiring remediation; and
3. Your building must be a residential apartment building (Class 2) in NSW. This includes multi-use buildings, for example part commercial/part residential.

But Beware

If an owners corporation entered into a contract to replace flammable cladding, that owners corporation is considered the developer of the cladding work (for the purpose of the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020 (RAB Act)*). In some situations, such as where an owners

corporation engaged the original builder to replace the cladding (perhaps at a substantial discount), and that builder has not complied with the required standards of remediation – the owners corporation, as developer of the work, risks a building work rectification order (**BWRO**) being made against it by the NSW Building Commissioner under the RAB Act.

The maximum penalty for non-compliance with an order made by the NSW Commissioner is currently:

for a body corporate—10,000 penalty units and in addition, in the case of a continuing offence, 1,000 penalty units for each day the offence continues.

One penalty unit in NSW is currently worth \$110. That means, if you are fined for 10,000 penalty units, this would equate to a fine amount of one million one hundred-thousand dollars (**\$1,100,000**).

An eligible owners application submitting documentation for retrospective assistance, should therefore be aware of the following possible outcomes.

1. It may receive the financial assistance available.
2. It may not receive any assistance if supporting documentation is not available, such as the required evidence of the standards of remediation.
3. It may receive a BWRO from the NSW Building Commissioner directly, as the developer of non-complying cladding remedial work, and if not complied with, may be at risk of receiving more than \$1,000,000 in upfront fines, plus continuing **finest of up to \$110,000 per day**.

This article is general advice only. For legal advice, please contact one of our experienced legal practitioners.

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