

Claims against AICF and the Liable Entities: ABN 60, Amaca and Amaba for Section 281D damages under the Wrongs Act 1958 (VIC) (as amended) from 1 January 2018

On 19 November 2015 the *Wrongs Amendment Act 2015* (Vic) came into effect, amending the Victorian Wrongs Act 1958, and on 3 May 2016 the *Wrongs (Part VB) (Dust and Tobacco-Related Claims) Regulation 2016* came into effect (together, the Victorian Amendment).

One of the effects of the Victorian Amendment was to allow plaintiffs to recover damages for loss of capacity to provide gratuitous care for dependants in certain circumstances as a separate head of damage (Section 281D damages).

The AFFA Parties have amended the AFFA by adding a new clause 13.4A. From 1 January 2018, Section 281D Liabilities will not and cannot be paid by James Hardie Industries plc, Asbestos Injuries Compensation Fund Limited (AICF) and the liable entities (ABN 60 Pty Limited, Amaba Pty Limited and Amaca Pty limited, all subject to NSW administered winding up). Clause 13.4A is in the following terms:

"13.4A Impact of the *Wrongs (Part VB) (Dust and Tobacco-Related Claims) Regulation 2016*

- . (a) The Parties acknowledge that the promulgation of the *Wrongs (Part VB) (Dust and Tobacco-Related Claims) Regulation 2016* by the State of Victoria has triggered clause 13.4.
- . (b) Despite any other provision of this deed, the Related Agreements, the Transaction Legislation and the Release Legislation, to the extent that a Proven Claim which is the subject of a final judgment given, or binding settlement made, on or after 1 January 2018 includes an amount of damages in excess of the amount that a Claimant would have been otherwise entitled to due to a change in the basis of assessment of damages brought about by the *Wrongs (Part VB) (Dust and Tobacco-Related Claims) Regulation 2016* (or any other Victorian law that may replace that law but, in effect, restate those parts of it which change the basis of the assessment of damages), that excess amount must not be paid (whether in whole or in part and whether by a member of the JHISE Group, a Liable Entity or the Trustee) during the winding up period for the Liable Entities.
- . (c) Having regard to the provisions of sub-clauses 13.4A(a) and (b), clause 13.4(c) shall be modified in its application to matters arising out of the *Wrongs (Part VB) (Dust and Tobacco-Related Claims) Regulation 2016 (Victoria)* (or any other Victorian law that may replace that law but, in effect, restate those parts of it which change the basis of the assessment of damages) so as to provide that clause 13.4(c)(i) shall continue to apply if, and to the extent that, an amount of additional damages of the kind referred to in clause 13.4A(b) is actually required to be paid by or on behalf of a member of the JHISE Group, a Liable Entity or the Trustee after 22 October 2016.