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Lacrosse judgment widens cladding insurance exposure for construction

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Governments may have to step in to bridge a combustible cladding-related insurance gap that is widening in the wake of the Lacrosse judgment.

Insurers last year [started raising premiums and inserting cladding-related policy exclusions](#) for professionals such as building surveyors and certifiers, but last month's judgment [finding building surveyor Gardner Group, fire engineer Thomas Nicolas and architect Elenberg Fraser liable](#) for the use of combustible non-compliant cladding on the Lacrosse residential tower in Melbourne, has accelerated the process.

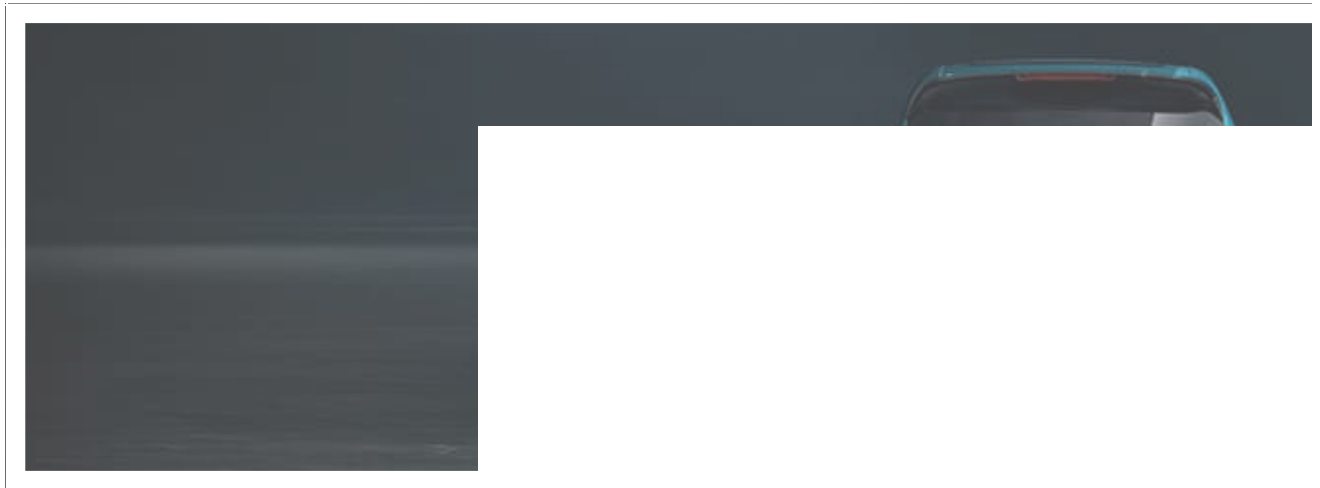
"What it's done is move the goalposts," said Robert Marinelli, the managing director of building certification firm Philip Chun and vice president of the Association of Accredited Certifiers industry body.



The building survey, fire engineer and architect were found liable for the use of combustible non-compliant cladding on Lacrosse. **Wayne Taylor**

"There is more scrutiny on the people involved in the design, such as the architects and the consultants. It's not [only] going to be building surveyors and certifiers struggling to get insurance, it's going to be architects, designers, fire engineers and everyone else."

Market failure over insurance for building industry professionals is another problem created by the cladding crisis. Governments – which *The Australian Financial Review* revealed earlier this month knew about the dangers of combustible cladding as early as 2010 but failed to limit its use – are already under pressure to resolve a widening situation in which unsuspecting apartment buyers face cladding rectification bills they cannot pay.



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Exclusions in PI policies leave professionals exposed for over claims around materials such as cladding. It could also leave consumers – the owners of apartments – without recourse over faults such as cladding needing rectification.

"A month ago I got a call from one of the largest underwriters of Australian building surveyor PI policies," said Darren Pavic, broking manager at industry broker Bovill Risk & Insurance Consultants.

"They said they were doubling premiums and applying cladding exclusions. It's more precarious now. There is a great deal of uncertainty."

It's not only a problem for building certifiers/surveyors and fire engineers. Last July Planned Cover, the brokerage owned by the Australian Institute of Architects, told clients insurer Vero was likely to start applying exclusions to projects with aluminium composite panels and expanded polystyrene to renewed policies.

A VCAT judgment last month found the building surveyor, architect and fire engineer were liable for the use of non-compliant cladding on Melbourne's Lacrosse building. **Wayne Taylor**

But the exclusions could push certifiers and fire engineers out of business. Building regulators require those two professions to have professional indemnity policies free of exclusion, to be registered.

"Renewal is not granted if the required insurance is not held," a NSW Fair Trading spokesman said.

State regulators do not regulate architects.

As a wave of industry PI renewals becomes due over the second half of this year, the risks are clear for the construction industry in all states.

Without insurance cover for claims over cladding, building industry professionals will not be able to operate.

"If building surveyors are no longer able to practise, the end result will be the Victorian building industry rapidly grinding to a halt," said Melbourne-based lawyer Hubert Wajszel.

The Victorian Building Authority said practitioners were required to have unencumbered cover.

"The VBA regularly suspends practitioners for failing to provide proof of complaint insurance," a spokeswoman said.

The businesses directly affected by Lacrosse are keeping their heads down. Elenberg Fraser, Thomas Nicolas and Gardner Group declined to comment. Sherren Hepburn, the national operations manager for Planned Cover, declined to comment.

One resolution would be for governments to step in where the market failed, Mr Wajszel said.

"As a reflection of the government's powers to regulate the building industry, [an] option would be for it to create a statutory insurance scheme providing coverage for claims arising out of building surveyor's conduct," he said.

This, however, would require a cost that governments were likely unwilling to bear, Mr Pavic said.

"Regulators and policy makers are avoiding reforms to allow cladding exclusions in policies; such an initiative should have support of a funding mechanism to address an uninsured exposure and that will involve spending lots of money," he said.



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