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# Victoria hits wall on phoenix builders, needs Commonwealth help

**Michael Bleby** *Senior Reporter*



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Premier Daniel Andrews has watered down statements that Victoria was about to crack down on builders who closed their doors to avoid cladding-related claims, saying state legislative changes would take time and that changes in anti-phoenixing laws were up to the federal government.



Victorian Premier Daniel Andrews, right, and Planning Minister Richard Wynne announce the \$600 million cladding fund earlier this month. **AAP**

Two weeks ago Mr Andrews said the state's building regulator would "quite soon" be taking action against "a number of individuals", who were responsible for the state's combustible cladding crisis.

However, a spokeswoman for Mr Andrews on Monday told *The Australian Financial Review* that state legislative changes would only happen later this year and national company law changes were necessary to stamp out illegal phoenix activity.

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## **We acknowledge that legislation governing phoenix activity is primarily a federal government responsibility.**

— Victorian government spokeswoman

"We're looking to strengthen legislative requirements to crack down on this so we can better recoup expenses and lessen the burden on taxpayers. We'll be in a position to provide more information later this year," the spokeswoman said.

"We acknowledge that legislation governing phoenix activity is primarily a federal government responsibility and we call on them to work with us to fix this problem."

While Victoria took a national lead earlier this month by saying it would put \$600 million into a cladding rectification fund, clawing money back from responsible parties could be a harder slog than the government expected when it announced funding for the 500 priority buildings and could leave the state footing more of the bill.

"So many of these apartment buildings have been built by phoenix companies and almost as the last nail is driven, the company folds up and there's no one to go after. We think that's something that should be on the national agenda as well," Mr Andrews said at the announcement.

"I would anticipate that the [Victorian] Building Authority – [CEO] Sue [Eddy] and her team – will be able to have more to say quite soon about actions against a number of individuals."

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## **There's no evidence that the cladding crisis is associated with phoenix activity.**

— Romauld Andrew, construction lawyer

One construction lawyer said Mr Andrews' initial comments were questionable.

"It's surprising a state government would make that announcement," said barrister Romauld Andrew.

"It was always a matter for the Commonwealth Parliament and secondly there's no evidence that the cladding crisis is associated with phoenix activity."

Moves by Melbourne builder Hickory to put subsidiary H Buildings into voluntary administration froze defect and recladding claims by apartments owners in Richmond and Brunswick against the builder. But Mr Andrew, representing one of the owners' corporations in their claim against Hickory, said the problem was not a frequent one.

"That's one case," he said. "The wider problem is not associated with phoenix activity."

In any event, the federal government has an interest in cracking down on phoenixing, which a [PwC report last year](#) put at a direct cost of between \$2.85 billion and \$5.13 billion in unpaid bills to trade creditors, lost employee benefits and unpaid taxes.

Amendments to tighten the Corporations Act were introduced into federal Parliament earlier this year and progressed to a second reading, but lapsed when parliament was dissolved in April.

"The Commonwealth has a powerful incentive to minimise illegal phoenix activity and a number of reforms have been underway with that objective," said Professor Ian Ramsay, director of the Centre for Corporate Law at Melbourne University.

"Because illegal phoenixing is typically designed to be hidden in many respects, it's sometimes hard to fully regulate it, but it's important these initiatives be undertaken."



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