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# Builders, architects, insurers await Lacrosse cladding appeal ruling

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Builders, consultants and insurers have an anxious few months ahead as they await the judgment of Victoria's Supreme Court of Appeal, which last week wrapped up a long-awaited hearing into the liability rulings around combustible cladding on Melbourne's Lacrosse building.

Justices David Beach, Kathryn Stynes and Robert Osborn last week heard the three-day appeal brought by [architecture firm Elenberg Fraser](#), fire engineering consultancy Thomas Nicolas and building surveyor Gardner Group, seeking to overturn the 2019 judgment that hit them with over \$12 million in damages for use of polyethylene-core panels on the tower.





Still a burning issue: Liability for combustible cladding on Melbourne's Lacrosse tower. **MFB**

Their judgment, which lawyers say could take up to six months, could overturn the Victorian Civil and Administrative Tribunal judgment that found that while [builder LU Simon](#) installed combustible panels on the 21-level apartment tower that suffered a potentially fatal fire in 2014, it bore little liability because it relied on the advice of its consultants.

A successful appeal could also force a reconsideration of design-and-construct contracts, under which a builder takes on a development contract from a developer and subsequently strikes its own contractual arrangements with lower-level contractors and consultants.

The judgment could affect other cladding-related cases making their way through the country's other lower courts and will also be closely scrutinised by local and global insurers as to whether it leaves consultants more or less exposed to professional indemnity insurance claims. Australia's building ministers have [failed to reform conflicts](#) – such as the payment of building surveyors by the very builders they assess – that make insurers reluctant to provide cover for consultants in a market where they cannot assess and price risk.

Victoria's state cladding agency [had to procure a bespoke \\$7 million policy to cover the cladding rectification work it is overseeing](#) as the companies it is contracting to do the work could not secure suitable coverage by themselves.

Elenberg Fraser and Thomas Nicolas challenged the VCAT ruling, saying it failed to properly consider the Wrongs Act, which apportions liability, and incorrectly let LU Simon off the hook by failing to consider the builder's role in selecting, as well as installing, the combustible panels.

“Builders are relying on this decision to say ‘We can do what we want,’” one source said. “It means all those consultants can no longer get insurance.”

But the judgment could equally kick the liability can further down the road, as the appeals court may refer questions about application of the Wrongs Act to the High Court, lawyers said.

Gardner Group argued that the panels used on the building should have been permitted under the provisions of the Building Code of Australia at the time, and that VCAT erred when it found they were not