

Fresh round of legal challenges over apartments with flammable cladding

By [Clay Lucas](#)

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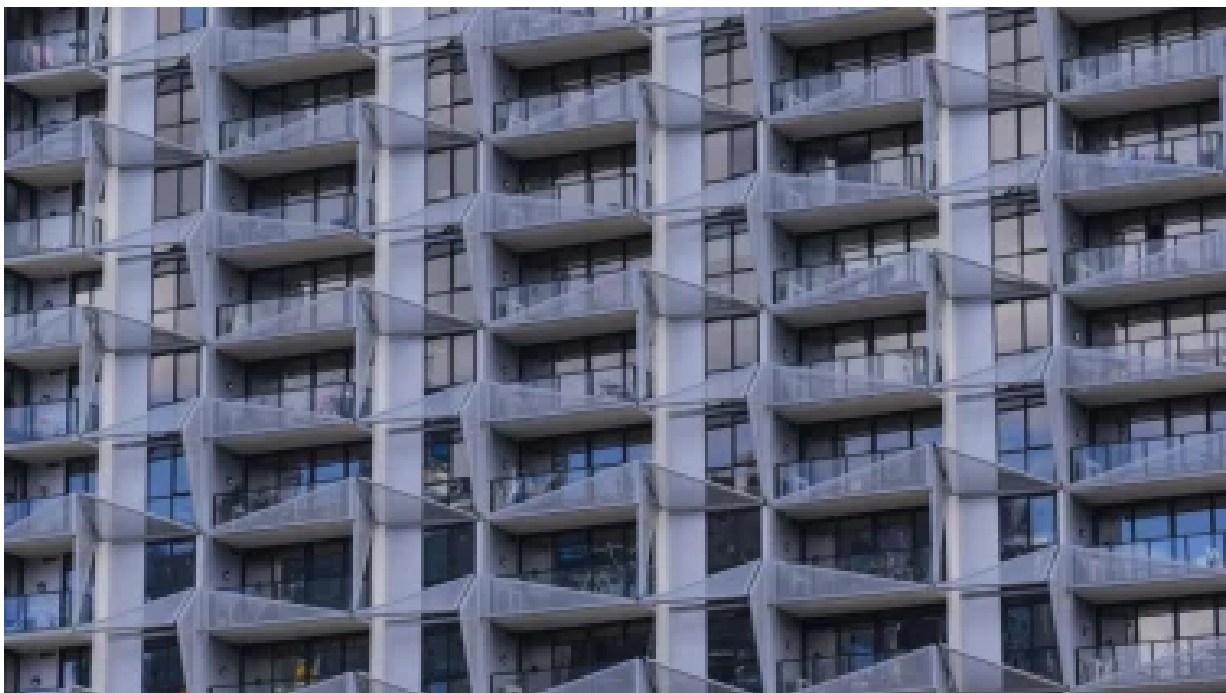
Two new multimillion-dollar disputes over flammable cladding have hit the courts, the latest in a slew of litigation over who is to blame for incorporating the deadly materials into apartment buildings.

It comes as a sprawling high-rise in Coburg built by the Victorian government and now partly managed for social housing was found to have flammable cladding.

The government last week stripped responsibility from suburban councils for ensuring dangerous cladding is removed from 283 more buildings around Melbourne, handing the task to its Victorian Building Authority.

But the location of these new buildings, along with 44 others the government had already seized responsibility for, will remain secret, with the Government gazette keeping their addresses confidential.

Cladding that catches fire easily hit the headlines in 2014 in Melbourne when a blaze hit Docklands' Lacrosse tower.



Cladding on Docklands Lacrosse building caught fire in 2014. WAYNE TAYLOR

Since that fire, it has become clear that thousands of Australian buildings are clad in flammable materials, placing their inhabitants in danger and their owners at risk of financial ruin.

Governments across the country have been slow to devise an effective response.

Lacrosse's 312 apartment owners responded to their fire by suing their builder.

In February, their long-running legal case found the builder, together with its fire engineer and surveyor, liable for replacing non-compliant cladding at a cost of about \$12 million.

One lawyer whose firm specialises in insurance law and litigation said there had been increased scrutiny of the construction industry – and a corresponding increase in litigation – since Sydney's Opal Tower cracking saga, February's Lacrosse legal decision and another cladding fire at a high-rise in Spencer Street.

“There appears to be greater awareness of, and concern over, the cladding used in the construction of [residential] buildings,” said lawyer Hubert Wajszel, a principal at national firm Barry Nilsson.

Mr Wajszel warned that, unless a workable solution was developed to help building owners affected by flammable cladding, “there will be a wave of litigated claims”.

He said state and federal governments needed to “seriously consider funding, or at least defraying, the cost of rectifying what is a significant public issue”.



London's Grenfell tower burns in June 2017. EVENING STANDARD

The issue of how to deal with combustible cladding on hundreds of Melbourne apartments gained fresh urgency when 72 people died in London's 2017 Grenfell Tower fire.

The Victorian government set up a taskforce to tackle the issue. But last month, with the taskforce having achieved little, flammable cladding on Spencer Street's Neo200 tower caught fire.

In a sign of how widespread issues with flammable cladding are likely to be, two fresh cases – of medium-rise suburban apartments – will begin hearings at the Victorian Civil and Administrative Tribunal next month.

The first is a 63-apartment complex in Springvale Road, Glen Waverley, constructed by Pellicano Builders in 2008. The building is run as a Quest serviced apartments business, as well as having some private dwellings.



The apartments in Glen Waverley. JOE ARMAO

In October last year, almost a decade after the apartments were finished, Monash Council issued a “show cause” notice to owners, asking them to explain within 60 days why they should not be forced to evacuate the building.

According to the notice, the flammable cladding on the apartments’ exterior was “a danger to the life, safety and health” of residents.

The owners corporation immediately launched legal action against Pellicano Builders and building surveyor Peter Eyers, in a bid to force them to pay for removal of the cladding.

The Age contacted both Pellicano and Mr Eyers, but neither returned calls or emails. The first hearing in that case begins at VCAT next month.

In the second case, owners of a four-level apartment complex in Queen Street, Blackburn, have launched legal action against builder Verve Constructions. Their action is over both water entering some apartments, and flammable cladding across the entire block.



The Blackburn apartment block. JOE ARMAO

So bad was the moisture entering one apartment, an expert report filed in the case says, “the tenant was unable to live in the apartment due to excessive mould and health risks”. The legal action also demands the builder replace the complex’s entire cladding. In all, the works would cost \$1.8 million.

The builder, Verve, in its defence, blames architects Hayball and five other consultants for some or all responsibility for any problems that did exist.

Verve’s lawyers, Thomson Geer, were contacted for comment.

In the third case, Coburg’s The Nicholson building has also been found to have flammable cladding. The 199-apartment building was completed by government agency VicUrban, which was absorbed into its Development Victoria.

This month, owners in the complex wrote to Planning Minister Richard Wynne asking him to do more to fix the problem flammable cladding has created for apartment owners across Victoria.

“Public confidence in higher density housing is quickly being eroded by the poor quality of construction and governance,” their letter said. “Residents are being sent a clear message that normal rights and regulations do not extend to those who live in higher density housing.”

Mr Wynne’s spokeswoman would not comment, saying the matter was currently with the council responsible for The Nicholson building, Moreland.

The building was developed by the government as an exemplar in high-density, affordable housing.



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