

Canberra must take responsibility for solving the flammable cladding disaster

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It is pretty clear that once it has given up trying to duck the problem, the federal government will have to lead a national high-rise building rectification scheme, possibly run by COAG and funded by a levy on the construction industry.

The thousands of buildings that are clad in flammable aluminium composite material are bad enough, but as more and more other defects emerge, the extent of the industry's failure to comply with the building codes, and the failure of inspectors to pick up those failures, is turning into a nightmare for everybody concerned, not to mention a complete shemozzle.

And now [flammable cladding](#) has even been found on hallowed ground — [the MCG no less](#). It's the final straw.

The industry is responsible for this crisis, no doubt about that. It's true that governments shouldn't have privatised building inspection, but the National Construction Code has been intentionally flouted: architects, builders, surveyors, fire inspectors and everyone else in the apartment supply chain buckled to the demands of profit-hungry, short-term developers.

So the question is not who should pay, but rather who is going to make the industry pay, and how?

As things stand everybody is running for cover, including insurance companies and governments — except the Andrews government in Victoria, which has set aside \$600m of taxpayers' money to replace flammable cladding.

Good effort, and it has spoiled things nicely for the other states that are trying to run away, but it's nowhere near enough money.

There are apparently 1100 buildings in Victoria covered in flammable material that need to be replaced, so that works out at \$550,000 per building.

Add a nought or two.

Premier Daniel Andrews tried to get the federal government to share the cost, and was told by Industry Minister Karen Andrews that “The commonwealth is not an ATM for the states.

“This problem is of the state’s making and they need to step up and fix the problem and dig into their own pockets.” No, minister, that won’t wash.

The states can’t afford it and, in any case, a national approach is required.

It would be completely unfair if failure to comply with a national code resulted in different outcomes for residents and builders in different states.

And the cost needs to be funded by a levy borne by everybody in the construction industry.

It’s true that not all builders and surveyors are at fault, but that’s just too bad in my view.

The bad ones spoiled it for everyone.

A troublesome precedent

Peter Shergold and Bronwyn Weir have produced an excellent report setting out how the regulations need to be enforced in future, but of course every time the issue comes up at a press conference the only thing the journalists want to know about is how the existing flammable cladding and defects will be fixed, and who is going to pay.

A legal precedent has been set on flammable cladding in the Victorian Civil and Administrative Tribunal, with its decision on the [Lacrosse Apartment Tower fire](#) in La Trobe St Melbourne in November 2014.

The 211 apartment owners brought proceedings in VCAT against the builder, LU Simon, plus the building surveyor, the architect, the fire engineer, the occupier of apartment 805, where the fire started, the tourist whose cigarette caused the fire, and the building superintendent.

The owners claimed some \$12,765,812.94 in damages and in February this year were awarded \$5,748,233, with \$6,823,165 unresolved and the subject of further submissions.

But while the judge said LU Simon was liable to pay, he said the builder had to be reimbursed by the surveyor, the architect and the fire engineer, in the proportions of 33, 25 and 39 per cent respectively.

The bloke whose cigarette caused the fire, one Jean-Francois Gubitta, was required to pay the remaining 3 per cent (it’s unclear whether that \$172,446.99 has been extracted from Mr Gubitta).

The three consultants are now appealing so who knows where it will end up, but the idea that the consultants are to blame rather than the builder is both interesting and problematic.

That's because they are the least able to pay and also, probably, the least insured.

Lacrosse was an actual fire, and the owners were suing for actual damage, so the liability proportions shouldn't necessarily apply to the cost of removing the cladding from other buildings before they catch fire, but they are a start.

Secret lists

Not that there is much removal going on at this point. Most state governments have made lists of buildings covered in the cheap aluminium composite material but they're keeping the lists secret, ostensibly to prevent the buildings being targeted by arsonists, but actually, no doubt, to ensure that the owners in those buildings don't move out, en masse, and march on Parliament House with pitchforks looking for cash.

The federal government has also made a list of commonwealth buildings covered in the stuff and is keeping that list secret as well.

But the VCAT precedent could definitely apply to other defects that are now emerging and can be described as actual damage, such as those in the Opal and Mascot Towers in Sydney.

In other words, the surveyors, architects and engineers are on the hook, possibly more than the builder, and it's fair to say that most of them would be sent broke or out of business because they can't get insurance.

You couldn't make this stuff up: the entire Australian construction industry could be brought to its knees by rampant non-compliance with building codes, and now the ducking and weaving by all concerned has reached Olympic standards. And of course the real losers are the poor schmucks who bought apartments off the plan, believing that they would be protected by regulation and, failing that, the integrity of builders and consultants, and failing that, insurance.

The only solution, it seems to me, is for someone to step up and show leadership, and that has to be a politician, and it has to be national. It's simply not good enough for Karen Andrews to wash her government's hands of it and say it's the states' problem.

And anyway, underlying the whole catastrophe is the federal system of negative gearing, which is why the apartments are sold off the plan in the first place, by "flipper" developers to people who are buying tax breaks, not homes.

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