

NATIONAL VICTORIA **COMBUSTIBLE CLADDING CRISIS**

OPINION

How can we stop the cladding crisis from happening again?

By **Peter Holding**

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So the cladding scandal will result in the Victorian government meeting most of the cost of rectification works. It will probably be too expensive to remove all of the cladding, so the effort will be to make buildings with non-compliant cladding safe by removing the cladding from the highest risk areas.

But the owners of these buildings and apartments within them will still likely be left with losses in capital value. Even if the buildings are made safe, for as long as non-compliant cladding remains in any part of a building, potential new buyers are likely to be put off.

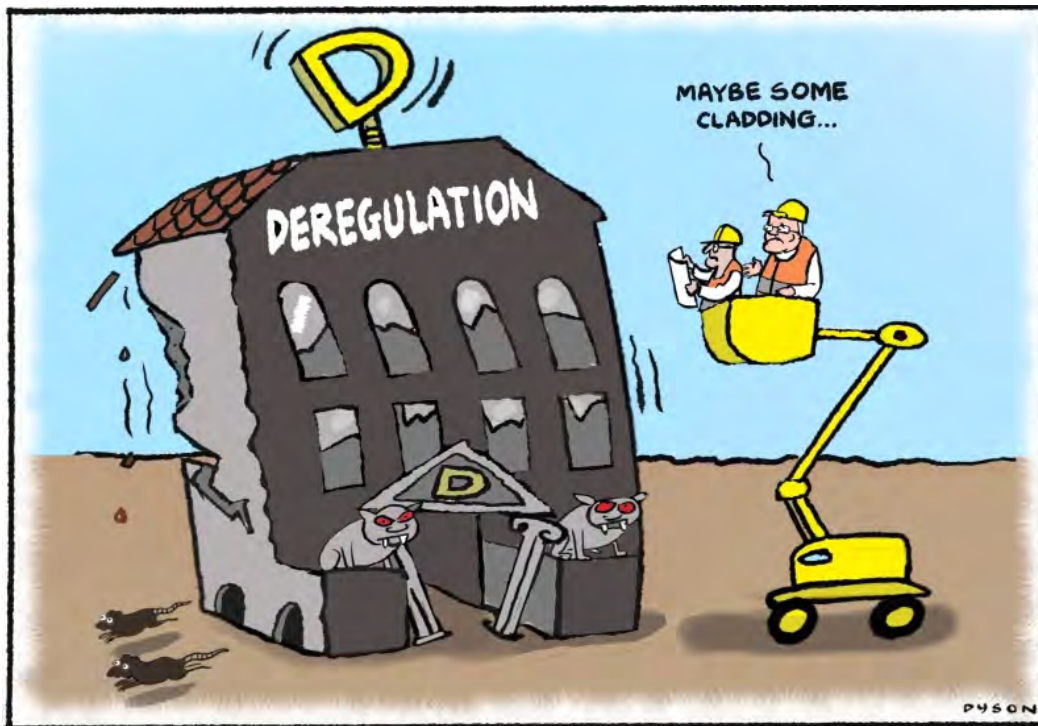


Illustration: Andrew Dyson

The state government has called upon the federal government to contribute half of the cost for the rectification, indicating the scandal is a national problem. [Treasurer Josh Frydenberg has rejected this](#) on the basis that it is a state regulatory failure. But the federal government controls the importation of the cladding, labelling requirements (which could have contained warnings about its

uses), and the development of the national construction code under which use of the inflammable cladding was permitted in some circumstances - though not generally the non-compliant uses that have created the current issues.

Responsibility for the cladding scandal goes beyond builders. It includes other building practitioners. Only one civil case on cladding has run to conclusion- the [Lacrosse building fire of November 2014](#). The Victorian Civil and Administrative Tribunal found that the builder was entitled to recover the overwhelming bulk of damages awarded to owners from other building professionals- the private building surveyor (33 per cent), the fire engineer (39 per cent) and the architect (25 per cent). It is likely to be a similar story with other non-compliant cladding laden buildings.

The [Victorian Cladding Taskforce chaired by John Thwaites and Ted Baillieu](#) has released a report containing 37 recommendations, which aim to address the systemic issues within the legislative and regulatory framework to ensure that the underlying causes of the regulatory failure that led to the scandal are addressed.

Most of the Cladding Taskforce recommendations are good. But some fall short.

The taskforce also recommends that the Victorian Building Authority (VBA) be given the power to require a builder to rectify defective building works beyond the period when construction has been practically completed, that is, when an occupancy permit has been issued for the building.

The VBA, as well as the relevant building surveyor, has the power to issue a direction to a builder to fix work up until an occupancy permit has been issued. But the Supreme Court has held that the direction to fix cannot be issued after the occupancy permit has been issued.

Nevertheless, the VBA does have the power to apply to a court for orders against a person who has contravened the regulations or permit, or who has been party to the contravention. This appears to be what occurred with the surveyor, engineer and architect in the Lacrosse case. The order can require the carrying out of building work or payment of money into court for building work carried out, or that may be carried out, by a Municipal Building Surveyor.

Why the VBA has not taken any such action and has left owners to fend for themselves through expensive civil proceedings might need an answer. Part of the answer may be that the corporation (builder) that built the non-compliant building may no longer exist or would go insolvent if sued. Presumably, however,



Illustration: Matt Davidson

the individual building surveyors, engineers and architects still exist - and they carry insurance. If the existing power is inadequate VBA should say why and how it should be amended.



Flammable cladding fuelled London's Grenfell Tower blaze in 2017, in which 72 people died.
EVENING STANDARD

Conspicuously absent from the taskforce report is any recommendation to end, or limit, the current model of privatised building surveying. Yet a 2015 Victorian Auditor General's Office report found that the role of private building surveyors was undermined by a conflict of interest arising from them typically relying on builders for recurrent work.

Building permits issued by building surveyors aim to ensure that buildings comply with standards required by the national construction code. Under a reformed system, private building surveyors could be permitted to continue to issue building permits. Their permits might be subject to third-party quality control. Or this might depend on the class or risk of the building involved. A high rise residential tower is riskier than a farm shed.

But the conflict of interest issue identified by the Victorian Auditor General's Office means private building surveyors should no longer be permitted to certify compliance of building work carried out under a permit they have issued, unless perhaps the building is low risk.

Certification of compliance on should instead be done by municipal building surveyors. Municipal building surveyors currently spearhead local government's role in enforcement of building regulations in a municipality.

Private building surveyors or private building inspectors might still be engaged by a municipal building surveyor for inspection functions, provided they are not the same building surveyor who issued the building permit.

Another recommendation of the Cladding Taskforce aims to address the dysfunction resulting from fragmentation of enforcement roles as between the Victorian Building Authority and councils under the current system. There are a few options to remove fragmentation. One is for municipal building surveyors to continue to exercise independent statutory functions and to remain located in councils, or regional offices, to maintain a strong local focus. But they would be

employed by a reformed central regulator instead of sometimes risk adverse councils. The reformed regulator would include a prominent role for a chief building surveyor. He or she would have statutory powers, including to set operational guidelines for municipal building surveyors.

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