



Lacrosse cladding appeal to shine a light on construction contracts

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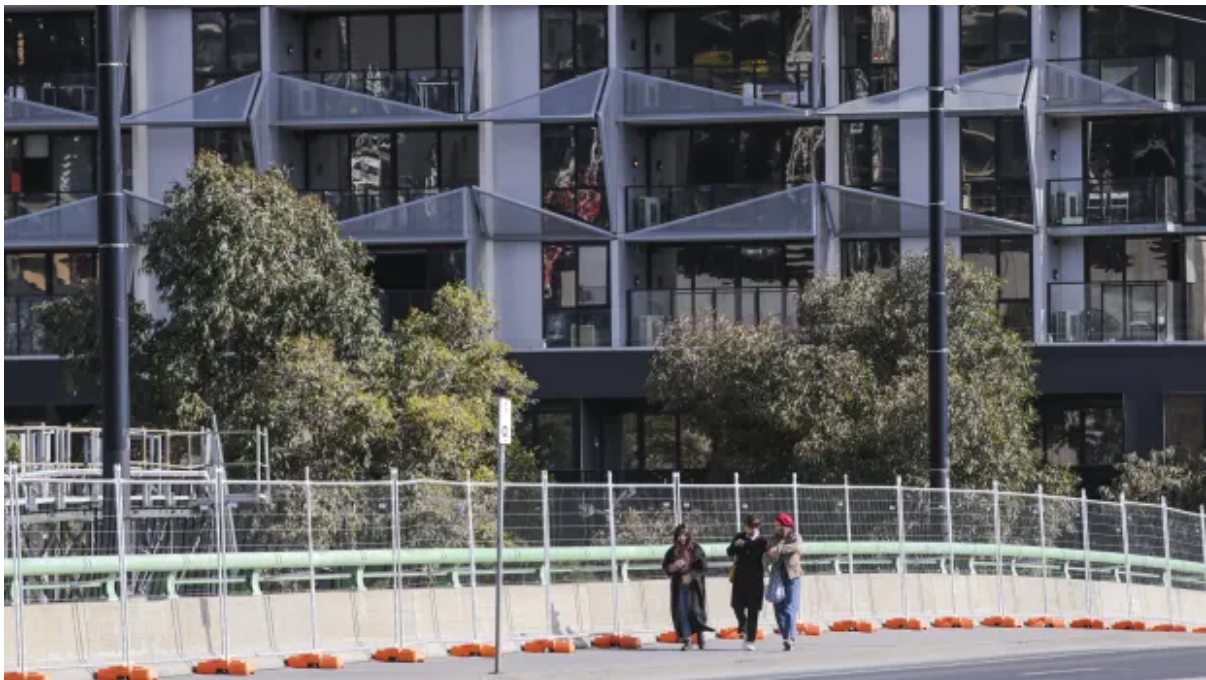


Sep 11, 2019 — 3.05pm



The battle over responsibility for combustible cladding on residential buildings has resumed, with the building surveyor, fire engineer and architect of Melbourne’s Lacrosse building taking their case to Victoria’s Supreme Court of Appeal.

Building surveyor Gardner Group, fire engineer Thomas Nicolas and architect Elenberg Fraser are seeking to overturn a judgment earlier this year that found them overwhelmingly liable for use of combustible cladding on the residential tower that suffered a potentially tragic fire in November 2014.



The road back to Lacrosse: Consultants slugged with liability for combustible cladding on the building are appealing to the Supreme Court of Appeal. **Wayne Taylor**

No hearing was likely to take place until the first half of next year, judicial registrar

Ian Irving said during a directions hearing on Wednesday.

While each of the consultants has its own argument, the three – collectively hit with 97 per cent of liability in the Victorian Civil and Administrative Tribunal judgment in February – want the higher court to allocate more liability to builder LU Simon, saying the builder largely escaped its statutory obligations under the state’s Building Act and should be regarded as a “concurrent wrongdoer”. A successful appeal could 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.

“There needs to be more control over design and construct contracts to make sure they produce complying buildings,” said Geoff Hanmer, an architect and University of NSW adjunct professor.

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— Architect Geoff Hanmer

“Design and construct contracts have negatively impacted on quality because the builders get to change things to make them as cheap as they can. First cost rules and whole-of-life costs gets lost. If the builder’s involved in making decisions about materials and finishes and even structure, then they have to bear a portion of the responsibility for doing that.”

NSW Building Commissioner David Chandler declined to comment on the Lacrosse case. But while there was no problem with design-and-construct contracts per se, problems arose out of poor administration of contracts and a failure by lenders to ensure that what was being built was what was supposed to be being built, he said.

“It’s time to start cleaning up the systemic failures,” Mr Chandler said.

“It’s the sloppiness of [the] procurement process and substandard administration of the contract.”

The original judgment found LU Simon breached the warranties of suitability materials, compliance with the law and fitness for purpose implied in its original contract. However, VCAT also ruled the builder did not fail to exercise reasonable care when it put combustible panels on the building as it relied on the consultants to guide it.

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Builder LU Simon opposes the bid for appeal, saying as there was no finding of negligence against it it bore no responsibility for the cladding.

Building surveyor Gardner Group, which VCAT found bore 33 per cent of liability for the use of combustible Alucobest panels on the 21-storey tower, also argues [Judge Ted Woodward](#) erred in law by finding the panels did not comply with the Building Code of Australia as it stood at the time.

The Australian Institute of Building Surveyors (AIBS), the profession's peak industry body, said that while a favourable appeal ruling could make it easier for professionals to secure professional indemnity insurance, other factors would still make insurers wary of offering the product.

"The Lacrosse ruling may have had some effect on the PI insurance market but that alone did not bring us to where we are now with many building professionals unable to get workable PI cover," AIBS chief executive Brett Mace said.

The Australian Institute of Architects (AIA) said combustible cladding was a symptom of a much bigger problem in construction.

"The last two decades have seen quality control taken out of the hands of regulators and design consultants, and instead placed in the hands of builders and project managers, leaving builders largely in control of supervising their own work," AIA chief executive Julia Cambage said.

"Despite their loss of control over quality, consultants are still held liable when problems inevitably arise, making them an unattractive risk for insurers."



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