

Insurers pull the pin after flammable cladding fiasco

By [Unconventional Economist](#) in [Australian Property](#) at 11:45 am on March 18, 2019 | [11 comments](#)

By [Leith van Onselen](#)

Flammable cladding-related insurance policy exclusions may force fire engineers and building surveyors out of business. Such exclusions are increasingly being inserted by insurers in the wake of recent fires at the Lacrosse and Neo 200 buildings. However, building regulators will not register surveyors and fire engineers if their professional liability insurance policies contain such exclusions. Policy premiums for fire engineers and building surveyors are also being increased, leading for calls for governments to step in and bridge the insurance gap.

From [The AFR](#):

As a wave of industry PI renewals becomes due over the second half of this year, the risks are clear for the construction industry in all states.

“If building surveyors are no longer able to practise, the end result will be the Victorian building industry rapidly grinding to a halt,” said Melbourne-based lawyer Hubert Wajszel...

One resolution would be for governments to step in where the market failed, Mr Wajszel said.

“As a reflection of the government’s powers to regulate the building industry, [an] option would be for it to create a statutory insurance scheme providing coverage for claims arising out of building surveyor’s conduct,” he said.

Earlier this month, Geoff Hanmer – Adjunct Lecturer in Architecture at UNSW – [warned](#) that legal costs pertaining to the estimated 1,000 buildings with flammable cladding could top \$1 billion, with taxpayers potentially on the hook.

Now taxpayers may potentially have to cover the industry’s insurance claims as well. What a mess.

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Peachy MEMBER

March 18, 2019 at 11:49 am

“One resolution would be for governments to step in where the market failed, Mr Wajszel said.

“As a reflection of the government’s powers to regulate the building industry, [an] option would be for it to create a statutory insurance scheme providing coverage for claims ”

Weasel by name, weasel by nature.

[REPLY](#)



C3PO MEMBER

March 18, 2019 at 12:19 pm

Radical solution – maybe the government approves the buildings rather than outsource to private certifiers requiring PI?

[REPLY](#)



Dom 001

March 18, 2019 at 1:00 pm

So, um, the taxpayer takes full responsibility for any ensuing fiasco?

The fact that there are a hundred thousand or more property developers in this country driving around in \$250,000 cars suggests that they may have some capacity to shoulder this burden.

[REPLY](#)



C3PO MEMBER

March 18, 2019 at 1:41 pm

Looking forward yes (not backwards). How about buildings need to be certified by state or local govn instead of private certifiers? Maybe then when developers don't comply and their buildings are not certified we may have a better outcome than today's system.



Mediocritas MEMBER

[March 18, 2019 at 6:03 pm](#)

In mediaeval times we could collect the property developers, strap them to their buildings and try to light the cladding.

*"Never ye mind good sir. As thou hast surely performed thy task with honour and integrity, thou needst not fear" *lights torch**



Ronin8317 MEMBER

[March 18, 2019 at 12:56 pm](#)

It won't affect NSW, as there is no qualification or registration requirement to be a 'fire engineer'.

[REPLY](#)



Diogenes the Cynic MEMBER

[March 18, 2019 at 1:36 pm](#)

Is this not squaring the circle again? Didn't the state governments used to have building surveyors and certifiers? I remember a story told by my Grandfather concerning a dodgy construction that had to be fixed because the State certifier wouldn't allow it to be occupied. Another 'Straya failure.

[REPLY](#)



John MEMBER

[March 18, 2019 at 2:31 pm](#)

This is not new. These exclusions started being inserted some time ago after the Lacrosse building fire in late 2014 and subsequent investigations. I doubt that there have been any PI policies issued that don't have this exclusion for the last year at least. Given that PI insurance is issued on a claims made basis and that at each renewal there is a requirement to notify all circumstances that might give rise to a claim, anyone that did not notify their insurer of potential exposure at the first renewal after the Lacrosse building fire will probably find that their policy will not respond to a claim, even in the absence of a specific exclusion. Anyone facing that situation will probably be bankrupted by legal fees alone. Hence for claimants it is a lottery as some may win their legal case only to find that one or more of the defendants cannot pay up. The vagaries of PI insurance and the legal system (and fees) are the stuff of nightmares. As for whether professionals can get insurance, they probably can but only with the cladding exclusion included therein. Whether this will prevent them from renewing their relevant registrations depends on the circumstances of each state's registration system. State governments may have no choice but to allow re-registration despite the presence of the exclusion. We can be sure that this will all play out over the course of another decade or two.

[REPLY](#)



Even Steven MEMBER

[March 18, 2019 at 10:50 pm](#)

Knowledgeably said – good comment.

“anyone that did not notify their insurer of potential exposure at the first renewal after the Lacrosse building fire will probably find that their policy will not respond to a claim”

Not sure about this bit though. Principle of utmost good faith. The insurer would have to demonstrate that the insured knew or ought reasonably have known that they had installed suspect cladding. Pretty hard in practice I should think. Much, much safer to insert an exclusion.

[REPLY](#)



Mediocritas MEMBER

[March 18, 2019 at 5:52 pm](#)

Privatise the profits, socialise the losses.

Crony capitalism strikes again.

[REPLY](#)



Philly Slim MEMBER

[March 18, 2019 at 6:42 pm](#)

““As a reflection of the government’s powers to regulate the building industry, [an] option would be for it to create a statutory insurance scheme providing coverage for claims arising out of building surveyor’s conduct,” he said.””

Anything sounds like a good idea when you use the Government’s (ie. taxpayers money). A simpler solution would be to allow registration with the PI insurance containing exclusions. Then those surveyors and fire engineers might take a little more care with their work or put all their assets in their partners name.

[REPLY](#)