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Cladding class action builds numbers for case

By Tim Boreham

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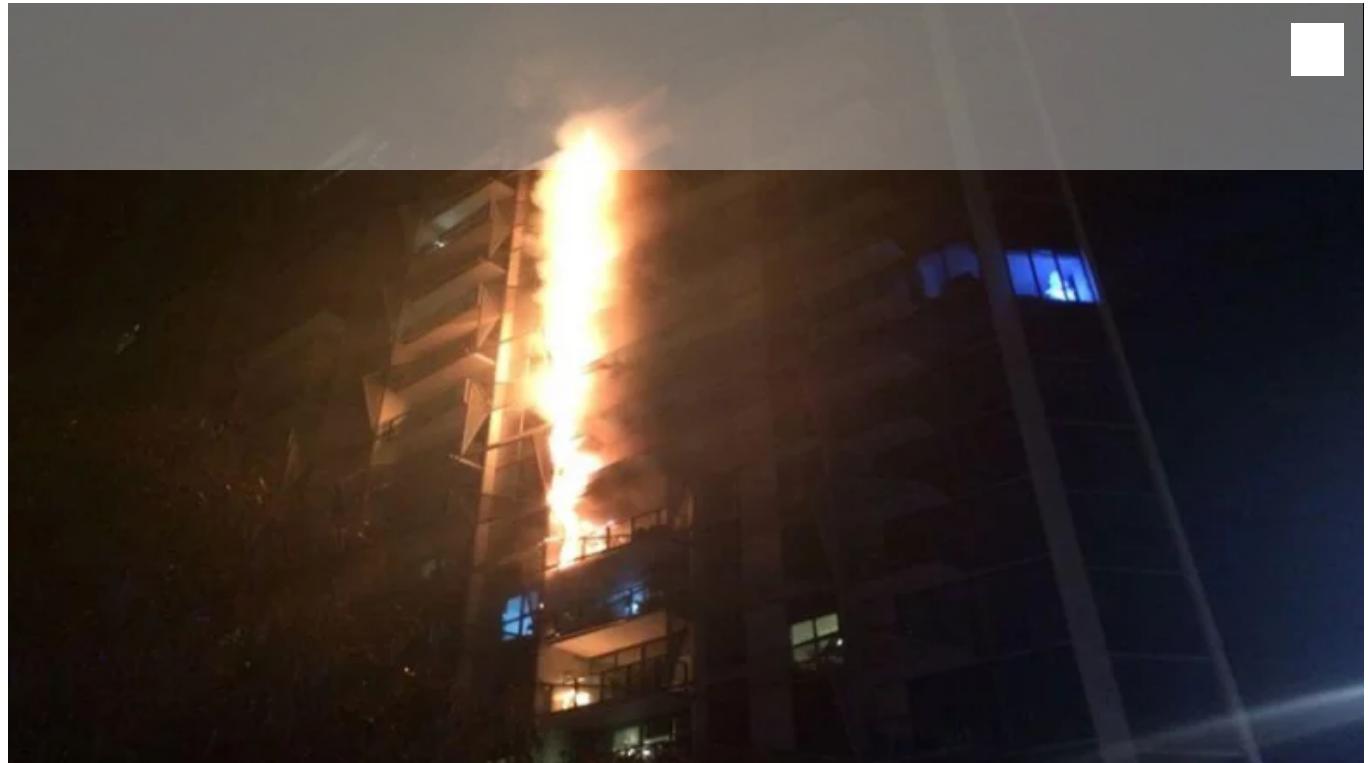
The law firm planning the country's first class action over combustible building cladding is confident of getting enough apartment owners to

launch a case, despite the traditional apathy

faced by managers of owner (or body) corporate

structures.

Adley Burstyner principal David Burstyner said while the Melbourne firm was still seeking body corporate and individuals owners to join the action, enough of them had expressed interest to support a viable case.



Fire fuelled by cladding roars up the Lacrosse apartment building in Docklands.

“There is no scientific or magic number about it but yes we have enough interest,” Mr Burstyner said. “We are not new to class actions and so we have a good feel about those that will take off and those that won’t.”

Run in conjunction with Roscon Property Services, a class action will be aimed at recovering cost from the builders of the towers in question, after a court case year deemed owners to be responsible for replacing the potentially deadly material.

The issue was highlighted by a multi-level blaze at the Lacrosse building in Melbourne’s Docklands precinct in 2014 and then by the Grenfell Tower tragedy in London that killed 71 people.

Following safety audits, several local councils have sent letters to owners corporations demanding rectification.

“The building is a danger to the life, safety or health of the members of the public or any person using the building,” one letter reads.

Building Industry Reform Group president Phil Dwyer said owners should not be held responsible, given their apartments should have complied with building and fire regulations on settlement.

“It’s morally corrupt to put the onus on property owners,” he said.

But a class action faces several obstacles, one of them being the large number of potential defendants (builders) involved.

Another is that the interests of the individual owners and the body corporate structures differ.





Rectification of flammable cladding is estimated at between \$40,000 and \$60,000 per apartment.

Photo: Joe Armao

In the case of the owners, it's about seeking compensation for the diminished value of their property.

In the case of the body corporate, it's about recouping funds for the actual rectification, which has been estimated at between \$40,000 and \$60,000 per apartment.

The enduring problem with owner corporates is that many owners do not participate in decision making, which leaves the managers hamstrung in terms of making decisions.

The problem is thought to be even more widespread in NSW, with at least one Sydney law firm also mulling a class action.

However the complexities around the cladding issue have proved too much for even class action veteran Slater & Gordon.

“We are looking into the legal rights of lots of different parties but we are not investigating a class action,” a spokeswoman for the firm said.

In Victoria, body corporate require at least 75 per cent of member owners to approve a legal action, but Mr Burstyner said his firm has devised a legal mechanism to circumvent this requirement.

He said owners corporation secretaries were “pulling their hair out” over low owner involvement.

“They can’t do anything because they bump up against the 75 per cent requirement and there are too many passive owners,” he said.

“The ones we have spoken to are certainly interested in participating ... and they have found it extremely helpful we have a solution.”

Mr Burstyner said it was a “freak of nature” that the Lacrosse fire did not result in deaths. Despite that, owners – many of whom are absentee -- were reluctant to act or assumed the government would come to the rescue.

“People instinctively think the problem can’t be as big as it is, that is human nature,” he said. “For a large proportion it goes straight into the too hard basket and nothing happens.”

Chaired by former premier Ted Baillieu and former deputy premier John Thwaites, the Victorian Cladding Taskforce identified 1369 buildings with the suspect panels. But of these, 579 had not been built and 129 were partly constructed.