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Class action seeks \$4.2b compensation over flammable cladding



More than 450 people were evacuated from the Lacrosse building fire in Melbourne in 2014. **Gregory Badrock**

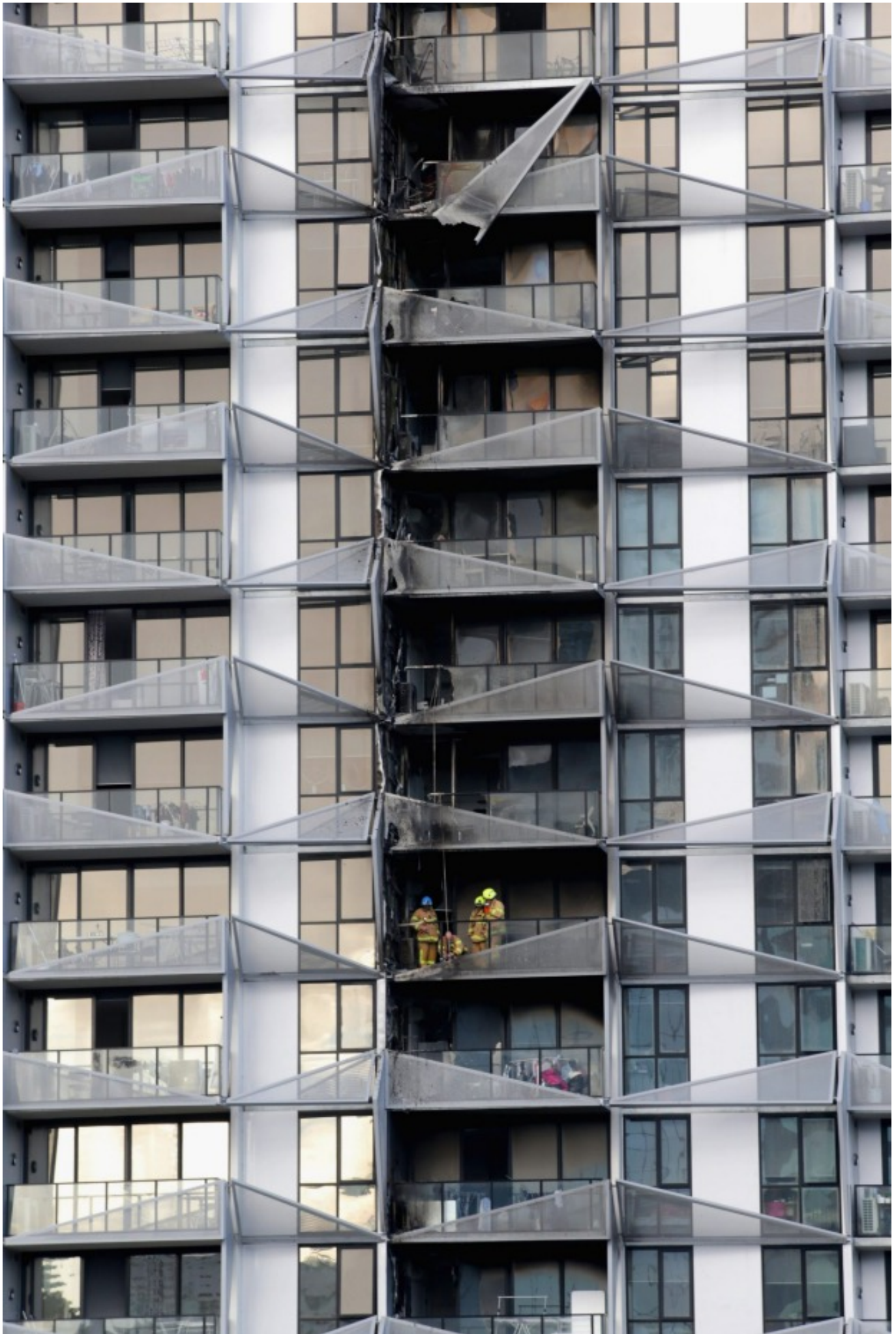
by **Duncan Hughes**

A \$4.2 billion class action on behalf of about 250,000 owners and residents of about 1400 apartments is being planned in Victoria as the first stage in a national campaign against construction companies to compensate for the costs of replacing combustible cladding.

Law firm Adley Burstyner and Roscon Property Services are preparing the first round of legal actions on behalf of Victorian owners that is expected to roll on to NSW, non-residential buildings, then other states and territories. The law firm is seeking registrations of interest to establish whether there is enough backing to make the case worthwhile.

"Urgency is needed. But the tragedy is that it can take all too long," said Adley Burstyner's principal lawyer, David Burstyner, about the risk to owners and occupants of high-rise towers that have been fitted with flammable cladding.

They are targeting large building companies including Hickory Building, Hamilton Marino, LU Simon Builders and Probuild.



More than 450 people were evacuated during the fire in Melbourne's Lacrosse Building in 2014. Wayne Taylor

"A group claim – or class action – is superior because not only does it give the claim group enough legal and financial muscle for court proceedings against powerful and aggressive opponents, it also it enables a single settlement and ends the uncertainty caused by the potential for multiple actions to be spread over years," Mr Burstyner said.

"Architects may want to blame engineers, the engineers may blame building surveyors, who may want to blame the builders. This settles all claims in one go with a court order prohibiting future claims – a builder will not have to hold back out of fear of copycat claims."

In Melbourne, a fire in 2014 raced up 13 floors of the [Lacrosse](#) building in Docklands in about 10 minutes, leading to the evacuation of more than 450 people.

Apartment [owners are fighting LU Simon over who should pay the costs of replacing the cladding](#) in the Victorian Civil & Administrative Tribunal in a case due to start in September. It is unclear how the class action bid will be affected by this case.

Mr Burstyner estimated a class action seeking rectification and compensation for losses caused by defective cladding could take between one and three years.

The firm is considering no-win, no-fee payment as a way of securing outcomes for the owners' corporation without them having to bring a special resolution with a 75 per cent majority, which is difficult to achieve because of high numbers of detached and passive investors.

NSW has identified 1000 buildings with potentially dangerous combustible cladding, and Victoria has drawn up a list of 1400.

About 96 per cent of building permits in Victoria are not compliant, according to an Auditor-General's investigation.

More than eight in 10 NSW apartments have defects, according to a University of NSW report in 2012.

The average cost of cladding replacement on a high-rise building is between \$40,000 and \$60,000 per unit, according to building specialists.

"We have tried relentlessly to civilly resolve cladding matters with builders without any luck for stakeholders, so this is the next logical step," said Sahil Bhasin, Roscon's national general manager.

"Each owners' corporation should not have to spend \$100,000-plus in the legal system to achieve an outcome; this will be a great result for stakeholders."

Mr Bhasin warned that outer-suburban buildings under seven floors are "ticking time bombs" because they generally do not have sprinkler systems installed.

The planned action follows a Victorian Supreme Court ruling that the Victorian Building Authority, a government agency, no longer has authority to order builders to rectify cladding defects.

That means it is individual apartment owners – or the owners' corporations – that need to ensure their buildings are safe from serious fire risks.

Fears have been heightened by [last year's fire in the 24-storey Grenfell Tower](#), in east London, which killed 71 people.

Government inquiries have made extensive recommendations about lowering the risk of fire and [improving](#) building materials.