



Government bodies and legislation established with good intent

Cladding Safety Victoria (CSV) was established in 2020 by the Victorian Government and seen as a world-leading initiative via the Cladding Safety Victoria Act 2020 (Vic) (CSV Act). The \$600 million program was intended to make Victorians safer by helping residential apartment building owners rectify non-compliant or non-conforming external wall cladding products.

In September 2023, the Minister’s Guideline MG-15 was published and was supported by the CSV’s Cladding Risk Mitigation Framework (CRMF). The guideline and framework provide councils, Municipal Building Surveyors (MBSs) and owners with clear policy for understanding:

- The combustible cladding risk
- How the risk is assessed, and
- A procedure for how risk can be addressed

Meanwhile, the NSW Government introduced Project Remediate and the NSW Design and Building Practitioners Act (DBPA) in 2020, to help both strata and non-strata owners rectify combustible cladding on their residential apartment buildings.

Project Remediate is a voluntary (opt-in) program to replace flammable cladding for eligible Class 2 residential apartment buildings and is managed by the new Building Commission of NSW. It offers:

- A 10 year interest-free loan and assistance from experts
- Financial support for eligible building owners
- Replacement cladding that is certified, safe, long-lasting and insurable

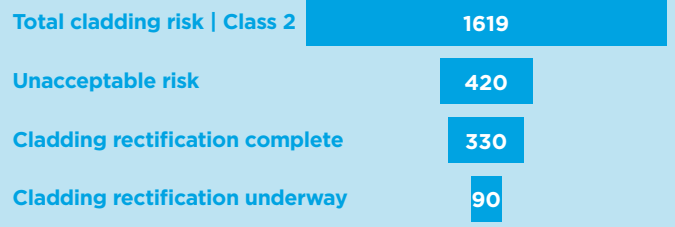
Owners corporations who began cladding remediation work before Project Remediate was introduced may be eligible for retrospective financial assistance¹.

Has the approach to cladding rectification worked?

Both governments are positive about the success of their respective rectification programs. However, some owners corporations are not so optimistic. Delays involving legal action against developers, the requirements of the DBPA and the remediation plan has drawn out the process and increased costs. It has also impacted as the affordability and accessibility to insurance. The emotional and financial burden on owners is huge.

The graphs below provide insight into the number of residential apartment buildings identified with some form of cladding, and the number rectified²:

Victorian cladding as at June 2024



NSW cladding as at August 2024



A new approach to buildings with cladding

CSV is now focusing on buildings which have some cladding but are not as risky and has adjusted its approach to rectification. Any work on these buildings will need to be funded by the owners, so CSV aims to reduce risk in the most cost-effective way by partnering with local councils and owner corporations³.

In some cases, CSV will accept a signed-off fire engineered solution rather than requiring full removal. This shift allows for greater flexibility in managing cladding risks while still prioritising occupant safety. Depending on a full risk assessment and expert advice, CSV may formally approve a building to retain most of the existing cladding provided that:

- The fire safety risk is adequately mitigated through engineered controls, and
- The solution is formally approved

Under the DBPA before any cladding rectification work can be done, a registered design practitioner must prepare designs for that building element or performance solution and declare that the work meets the requirements of the BCA. This design and declaration must be lodged on the NSW Planning Portal before the registered building practitioner can commence building work, including where the work is not done under a Construction Certificate (CC) or Complying Development Certificate (CDC).

In Queensland, strata titled buildings with potentially unsafe cladding face specific requirements due to the 'Safer Buildings' program, which aims to identify and rectify non-compliant combustible cladding. This program includes mandatory registration of buildings, a three-part assessment checklist, and potential remediation efforts.

Remediation and insurance implications

Anecdotally, the cost of cladding remediation has increased dramatically. This is due to legislative and compliance requirements in some states, increased cost of labour and materials, engineer's fees and the potential 'over-engineering' of solutions to protect the engineer's liability and warranty of works.

Owners corporations remediating privately need to ensure that the risk from combustible cladding has been removed. Importantly, all cladding remediation works undertaken pursuant to a Fire Safety Order need to be completed to the satisfaction of the consent authority. Confirmation of this should be obtained in writing and provided to the insurer. Once remediation is completed, OCs should work with their broker for the insurance policies, premiums, terms and conditions to be reassessed by the insurer to factor in the mitigated risks.

Market feedback in NSW is that the introduction of the DBPA has contributed to three-fold increase the cost of cladding and defect rectification. Furthermore, any work that doesn't comply with the DBPA in NSW will be deemed non-compliant. This may have adverse insurance consequences such as non-insurability of non-compliant work. However, if works are completed under Project Remediate in NSW, the owners corporation will receive a Remediation Assurance

Certificate, which gives insurers confidence that the risk of combustible cladding has been removed.

Underwriters approach where building notices or fire safety orders are cancelled or lifted

In Victoria, the Municipal Building Surveyor (MBS) issues a Building Notice in writing to the OC identifies non-compliance or safety issues in a building where cladding is present requesting the OC to 'show cause'. Once the OC has provided the necessary information to the MBS, the Building Notice may be cancelled.

In NSW, Fire Safety Orders are issued by local councils or the NSW Fire Brigade to require cladding rectification work. The standards for any cladding rectification work required to meet the terms of an Order will be determined by the consent authority. The works are subject to the requirements of the DBPA, including that a registered design practitioner must prepare designs for the work and declare that the work meets the requirements of the Building Code of Australia.

Insurers are requesting the specific product names of the Aluminium Composite Panels (ACP) and Aluminium Solid Composite Panels (ASCP), not just generic references to ACP. They want to ensure there are no unidentified cladding products present that could pose an additional fire risk.

Furthermore, insurers are taking a much firmer line on Expanded Polystyrene (EPS). While EPS may be code compliant on buildings of two stories or less, insurers consider it a significant fire risk. As a result, they may refuse to quote on the building or load the premium if EPS is present.

Fire Safety Orders related to cladding may be lifted when the buildings are:

- Assessed and determined to not pose a higher risk
- The cladding has been investigated and cleared, or
- Unsafe cladding has been fully remediated

Underwriters will require a copy of the written notification from the statutory body to the OC that:

- Provides details of the reasons for the cancellation of the Building Notice of Fire Safety Order
- States that no further action is required, and
- The building is deemed as 'low risk'

Underwriters will need to know if the notice or order was removed due to:

- Cladding removal
- Active fire safety system upgrades
- Passive fire safety system upgrades, and / or
- Protecting entrances and exits

If cladding is still present, the underwriter will rate and apply an excess according to the risk.

Where legal action is still in progress, the Council or Statutory Body may extend the compliance period for the notice or order to remediate. Again, the underwriter will require written copies of the extension to the compliance period and progress reports on the legal proceedings as they become available and not just at renewal.

What questions to expect from underwriters

If cladding is still present on the building, underwriters will often require a cladding questionnaire to be completed. The information requested may include:

- The specific product name of the ACP and ASCP
- If the product is used internally or externally on the building
- The percentage of cladding and location (for example, which floor level, on balconies)

Underwriters are also taking a firmer stance on expanded polystyrene (EPS), even though it may be compliant with the building code on buildings two stories or less. EPS is considered a significant fire risk to insurers, especially where more than 15% of floor space contains the product.

As part of the duty of disclosure, the OC must be able to confirm that there is no ACP, ASCP or EPS present on the building. Where the OC cannot confirm this, underwriters may request detailed cladding reports to cover the points raised above.

Achieving the best strata insurance solution

As a broker, we work closely with strata insurance underwriters to find the best solution for owners with cladding risks. When comparing quotes and policies, it is important to consider the product inclusions, premiums, excesses/deductibles, exclusions and cover limits for each insurer. Please contact your Whitbread insurance broker if you would like to know more about the strata market or to discuss a particular cladding risk in greater detail.

- 1 <https://www.nsw.gov.au/departments-and-agencies/building-commission/replace-flammable-cladding-through-project-remediate>
<https://www.nsw.gov.au/departments-and-agencies/building-commission/replace-flammable-cladding-through-project-remediate/retrospective-assistance-for-cladding-remediation-work>
- 2 <https://www.parliament.vic.gov.au/4961fa/globalassets/tables-paper-documents/tables-paper-8679/cladding-safety-victoria-annual-report-2023-24.pdf>
- 3 <https://www.vic.gov.au/media/936733>
<https://www.clydeco.com/en/insights/2024/10/rectifying-defective-cladding-a-tale-of-two-cities>

This article is not intended to be personal advice and you should not rely on it as a substitute for any form of personal advice. Please contact Whitbread Associates Pty Ltd | ABN 69 005 490 228 | License Number 229092, trading as Whitbread Insurance Brokers for further information or refer to our [website](#).

