

Cladding Rectification Levy Review Report

December 2023



Ref:

Mr Robert McDonald
Clerk of the Legislative Council
Parliament House
Spring Street
East Melbourne Vic 3002

Ms Bridget Noonan
Clerk of the Legislative Assembly
Parliament House
Spring Street
East Melbourne Vic 3002

Dear Presiding Officers

Under the provisions of section 205LO of the *Building Act 1993*, I transmit my report Cladding Rectification Levy Review for tabling before each House of Parliament.

The purpose of the Review is to determine whether there is an ongoing need for the Cladding Rectification Levy to retire the remaining cladding risk in the Victorian community.

The Review recommends continued usage of Cladding Rectification Levy revenue to complete the Cladding Rectification Program and the Cladding Remediation Partnership Program.

Yours sincerely

The Hon Sonya Kilkenny MP
Minister for Planning

OFFICIAL



Contents

Executive summary	3
Findings	3
Table 1 Review findings	4
Recommendations	4
Background	5
Combustible external cladding on buildings in Victoria	5
Introduction of the Cladding Rectification Levy	5
Collection and distribution of the Cladding Rectification Levy	5
Review objectives and scope	6
Review method	6
Cladding Rectification Levy revenue and distributions	6
CRL revenue	6
Figure 1 Cladding Rectification Levy – Annual Budget vs. Forecast to June 2023	7
Figure 2 Cladding Rectification Levy – Forecast	8
CRL distributions	8
Rectification of high-risk private residential buildings	9
Support for councils, owners corporations and owners	10



Executive summary

In July 2019, the Victorian Government established a world-first program to tackle high-risk combustible cladding and keep Victorians safe. Since then, the \$600 million Cladding Rectification Program (CRP) has seen combustible cladding removed from the external facades of hundreds of apartment buildings across Victoria. This has brought significant safety and wellbeing outcomes to occupants, first responders and the community, while preserving the economic value of built assets.

The program is overseen by Cladding Safety Victoria (CSV) which works with owners corporations from start to finish. The Private Residential CRP was originally funded for five years with an anticipated completion date of 30 June 2024.

In 2019, amendments¹ were made to the *Building Act 1993* (the Building Act) to establish an additional building permit levy to raise \$297.04 million to cover approximately half of the \$600 million initiative. This additional levy, known as the Cladding Rectification Levy (CRL), is collected by the Victorian Building Authority (VBA) and remitted to CSV. This original funding will deliver the rectification of approximately 365 of the highest risk buildings.

In August 2022, funding of \$40 million was allocated for implementation of the Cladding Remediation Partnership Program (Partnership Program), including \$32.18 million through usage of the CRL revenue for at least one year (until 30 June 2025).

In December 2023, gross funding of \$109.03 million was allocated over 2023-24 to 2025-26 to retire unacceptable cladding risk by rectifying the 80 remaining highest risk buildings and subsequently finalising the Private Residential CRP by December 2025, this included \$95.19 million from CRL revenue.

The abovementioned Government decisions require that \$433.77 million is raised through the CRL to fund the existing commitments. As at 31 October 2023, the CRL has collected net funds of \$291.75 million of the \$433.77 million required and it is anticipated the remaining \$142.02 million will be collected by early 2026, due to the CRL performing ahead of budget.

The *Building Amendment (Cladding Rectification) Act 2019* required the Minister for Planning to ensure that a review of the CRL be undertaken no later than four years after commencement, this being 1 January 2024. The purpose of the Review, as stated in section 205LO(2) of the Building Act, is to determine whether there is an ongoing need for the additional levy to fund cladding rectification works.

Findings

The Review considered whether there remains an ongoing need to fund activities and programs to address the risk associated with combustible external cladding on buildings in Victoria.

The Review focused on two key evaluation questions:

- Will the usage of the CRL provide funding for the rectification of all Unacceptable risk private residential buildings?
- Will the usage of the CRL provide funding to support councils, owners corporations and owners, to ensure that they can effectively address risk on buildings with an Elevated or Low combustible external cladding risk, that will not be funded through the Private Residential CRP due to their lower cladding risk level?

The Review findings are outlined in Table 1 below.

¹ Through the *Building Amendment (Cladding Rectification) Act 2019*



Table 1 Review findings

The Review findings are outlined in Table 1 below.

Section	Evaluation Question	Review Finding	Approximate buildings
3.1	Will the usage of the CRL provide funding for the rectification of all Unacceptable risk private residential buildings?	A significant number of buildings have been and continue to be rectified under the Private Residential CRP. The usage of the CRL will provide funding to rectify all private residential buildings identified by CSV to have an Unacceptable cladding risk. This will ensure the safety and wellbeing of building occupants, first responders and the community.	445
3.2	Will the usage of the CRL provide funding to support councils, owners corporations and owners, to ensure that they can effectively address risk on buildings with an Elevated or Low combustible external cladding risk, that will not be funded through the Private Residential CRP due to their lower cladding risk level?	The usage of the CRL will provide councils, owners corporations and building owners with support to ensure that they can effectively address the risk on approximately 800 buildings with combustible external cladding, which will not be funded through the Private Residential CRP.	800

Recommendations

The Review has determined that there is a need to continue usage of the Cladding Rectification Levy to complete existing programs, including funding cladding rectification works for Unacceptable risk buildings and increase council capability and capacity to retire the remaining cladding risk in the community.



Background

Combustible external cladding on buildings in Victoria

The use of combustible external cladding on buildings in Victoria is a critical public safety issue.

In 2017, the Victorian Government established the Victorian Cladding Taskforce (the Taskforce) to identify how many buildings had combustible external cladding and potential solutions to fix them.

The Taskforce oversaw an initial pilot audit of buildings suspected to have combustible cladding based on permit data. In late 2017, the VBA commenced a Statewide Cladding Audit (SCA) to identify and assess risk for further buildings with combustible external cladding. The SCA assessed:

- apartment buildings, motels, and hotels (3 storeys and above)
- buildings where Victorians gather as a large group, such as sporting arenas
- private schools, private hospitals, and aged care facilities (2 storeys and above)

The Taskforce released an interim report in December 2017 and a final report in July 2019. One of its key recommendations was for the government to take action to rectify buildings with high-risk cladding and to establish a dedicated cladding agency.

Introduction of the Cladding Rectification Levy

In 2019, the *Building Amendment (Cladding Rectification) Act 2019* made amendments to the *Building Act 1993* (Building Act) to:

- provide the VBA with appropriate functions to provide information and advice on rectification work and make payments to persons or bodies eligible for financial assistance for rectification work
- impose an additional building permit levy (CRL) as a contribution towards the costs of carrying out VBA's functions related to rectification work
- make provision for a new account—the Cladding Safety Victoria Account (CSV Account)—within the Victorian Building Authority Fund to:
 - receive money from the additional building permit levy and other specified sources for the purposes of rectification work (and related purposes)
 - enable money to be paid out from the CSV Account for rectification work, the review of the building legislative framework and related purposes
 - enable claims for payment to be made for building works associated with rectification work
 - make provision for the appropriation of certain sums out of the Consolidated Fund for payment into the CSV Account
 - provide for a review of the new additional levy amount to be conducted within four years of commencement of the relevant provisions.

The 2019 amendments reflected arrangements at the time, whereby CSV was operating as a business unit of the VBA.

On 1 December 2020, the *Cladding Safety Victoria Act 2020* formally established CSV as a body corporate for the purposes of administering a cladding rectification program. This includes providing funding to owners and owners corporations that are eligible for financial assistance to fix their buildings. CSV can also offer non-financial support to people living in buildings impacted by combustible cladding who may not be eligible to receive funding for rectification.

Amendments to the Building Act transferred functions in relation to cladding rectification work from the VBA to CSV and required the VBA to pay to CSV monies collected relating to the building permit levy payable under section 205G(2A).

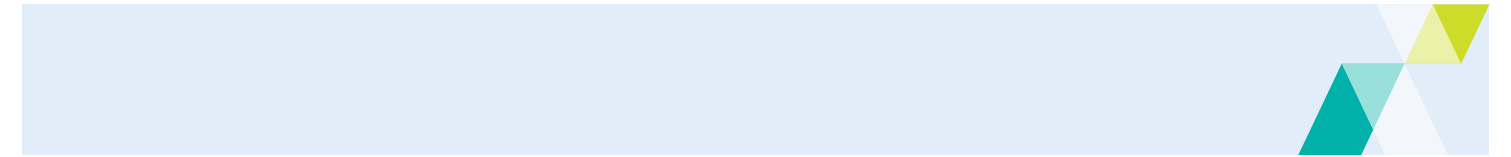
Collection and distribution of the Cladding Rectification Levy

The Cladding Rectification Levy (CRL) is collected by the VBA and remitted to CSV monthly. Overall, the CRL funds over half of the Private Residential CRP, with the balance derived from consolidated revenue. The CRL is calculated based on the rates and cost of building works and is subject to fluctuations due to shifting activity levels across the construction sector.

The CRL applies to all building permit number applications submitted on or after 1 January 2020 that meet the following criteria:

The building permit is for a building:

- that is not, or will not be, in regional Victoria

- 
- that is, or will be of any of Classes 2 to 8², and
 - that has a cost of building works that relate to Class 2 to 8 of \$800,000 or more.

According to data collected by the Victorian Building Authority, since its introduction, the levy had applied to approximately 2.6 per cent of building permits issues in Victoria.

Review objectives and scope

Section 205LO(2) of the Building Act includes a mechanism for review of the ongoing need for the additional levy to fund cladding rectification works. This is to ensure any levy payable remains appropriate, considering any changes to the scope and/or duration of the Private Residential CRP. The purpose of the review is to determine *whether there is an ongoing need for that additional levy to fund cladding rectification works*.

A Review of the CRL must be undertaken within 4 years of commencement. The CRL commenced on 1 February 2021 but applied retrospectively from 1 January 2020. Accordingly, the Review must be undertaken before 1 January 2024.

In undertaking this Review, the overarching question considered was whether there remains an ongoing need to fund cladding related activities and programs to address the risk associated with combustible external cladding on buildings in Victoria.

Out of scope of the Review:

- Whether the design of the CRL is appropriate
- The extent to which the provisions of the Act are relevant and appropriate
- Whether administration of the CRL is being undertaken in accordance with the legislation.

Review method

The key questions posed by the Review:

- Will the usage of the CRL provide funding for the rectification of all Unacceptable risk private residential buildings?
- Will the usage of the CRL provide funding to support councils, owners corporations and owners, to ensure that they can effectively address risk on buildings with an Elevated or Low combustible external cladding risk, that will not be funded through the Private Residential CRP due to their lower cladding risk level?

Data inputs to the Review included:

- Financial data on the CRL, including revenue and distributions, provided by VBA as part of regular reporting processes
- Data analysis undertaken by CSV, to understand the type, extent and risk profile of buildings with combustible external cladding in Victoria
- Performance data on Private Residential CRP provided by CSV as part of regular reporting processes
- Feedback received from councils and their municipal building surveyors about the type of support required to address the risks associated with combustible external cladding
- Data analysis undertaken by CSV, to understand the extent of buildings with non-cladding defects identified as part of the Private Residential CRP.

Cladding Rectification Levy revenue and distributions

The funding for the Private Residential CRP comes from both government appropriations and revenue collected via the CRL.

CRL revenue

Revenue from the CRL is dependent upon building permit activity and therefore fluctuates according to market conditions.

The total revenue from the CRL to October 2023 was \$296.37million.

The budget for the CRL to October 2023 was \$250.38million.

² Within the meaning of the Building Code of Australia, i.e. Class 2 (apartments), Class 3 (residential buildings including hotels), Class 4 (dwellings attached to commercial buildings), Class 5 (offices), Class 6 (shops), Class 7 (car parks and warehouses) and Class 8 (laboratories and factories).



Based on revenue received to October 2023, CRL revenue has exceeded budget expectations (refer Figure 1), and this trend is forecast to continue.

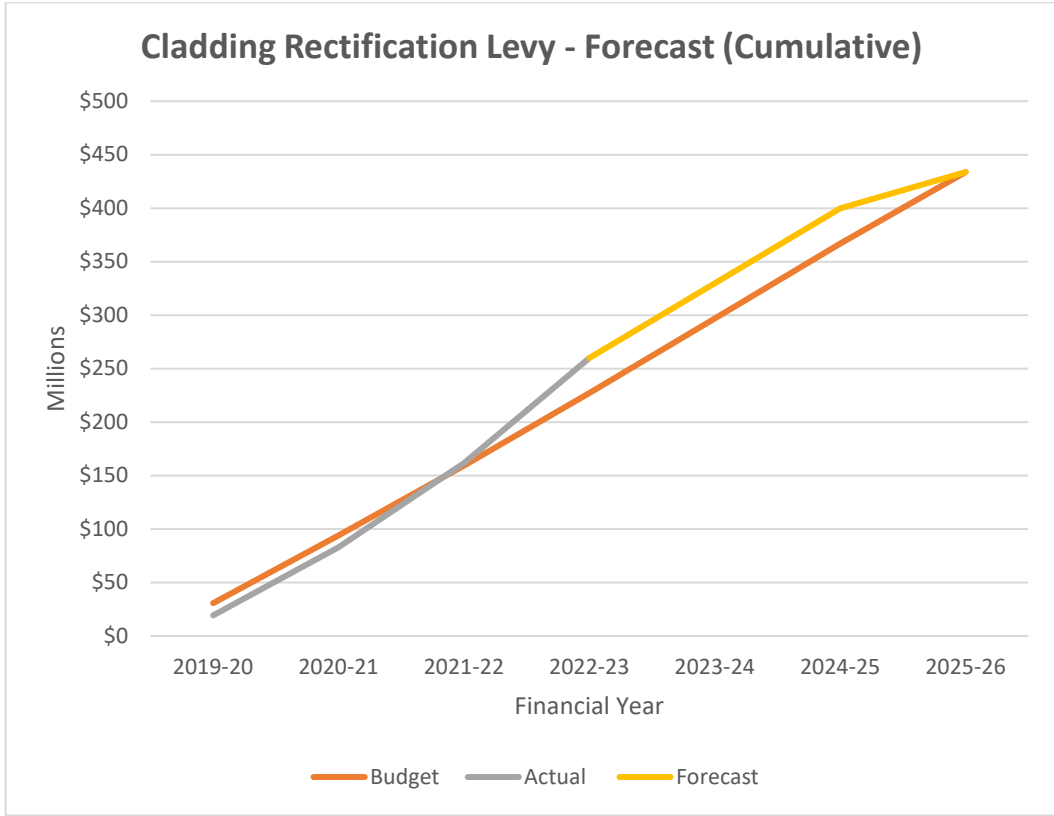


Figure 1 Cladding Rectification Levy – Annual Budget vs. Forecast to June 2023

Based on revenue received to October 2023, CRL revenue is forecast to raise at least \$70 million for 2024/2025 (refer Figure 2).

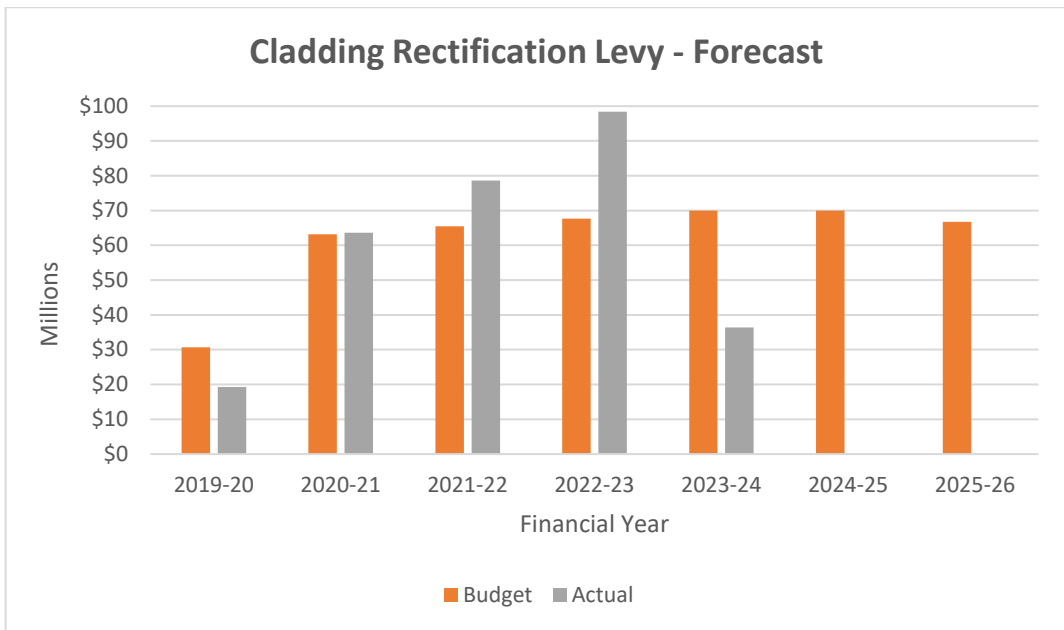




Figure 2 Cladding Rectification Levy – Forecast

CRL distributions

Reimbursement of the CRL is allowable in circumstances where the levy was paid prior to the issue of a building permit and the application is withdrawn.

Partial levy refunds are available in limited circumstances as part of the reassessment of levy under the Building Act.

There are requirements for the VBA to refund levy paid where:

- The building work includes the construction of social housing; and/or
- The applicant's dwelling was destroyed or damaged in an emergency that occurred on or after 1 November 2019 and the building work includes the reconstruction or repair of the applicant's dwelling.

The total levy refunded to October 2023 was \$4.62 million.

The remaining amount was paid in full to CSV.



Cladding Rectification Levy Review

Rectification of high-risk private residential buildings

Evaluation Question 1

Will the usage of the CRL provide funding for the rectification of all Unacceptable risk private residential buildings?

The purpose of the Private Residential Cladding Rectification Program (CRP) is to address risk for building occupants, first responders and the community.

Since 2019 and to the end of October 2023:

- 828 buildings have been referred to CSV from the VBA and councils for funding consideration
- 365 buildings have been granted funding approval for rectification works
- 276 buildings have had cladding rectification works completed.

CSV is currently working to complete rectification on the remaining buildings at pace.

Current estimates indicate that the original funding envelope, comprising government appropriations (\$253.74m) and the budgeted CRL distribution (\$297.04m), will enable CSV to deliver rectification of approximately 365 buildings assessed as having unacceptable cladding risk.

In late 2022, CSV undertook further data analysis on buildings recently identified through the Statewide Cladding Audit (SCA) as having combustible external cladding.

Through this process, 80 additional apartment buildings with an Unacceptable level of cladding risk were identified. The rectification of these buildings will also be funded through the CRL.

In December 2023, gross funding of \$109.03 million was allocated over 2023-24 to 2025-26 to retire unacceptable cladding risk by rectifying the 80 remaining highest risk buildings and subsequently finalising the Private Residential CRP by December 2025, this included \$95.19 million through usage of CRL revenue.

CSV has advised that the rectification of approximately 445 private residential buildings in the Private Residential CRP with an Unacceptable cladding risk will be completed by 31 December 2025. This investment includes the additional 80 buildings approved in December 2023.

The SCA has concluded, and the Victoria Government is well-placed, better than any major city in the world, in understanding the totality of the buildings impacted.

The usage of the CRL will ensure that the safety of occupants and the community by addressing cladding risk for all buildings currently determined as having Unacceptable cladding risk in Victoria.

Review finding 1

A significant number of buildings have been and continue to be rectified under the Private Residential CRP. The usage of the CRL will provide funding to rectify all private residential buildings identified by CSV that have an Unacceptable cladding risk. This will ensure the safety and wellbeing of building occupants, first responders and the community.

Support for councils, owners corporations and owners

Evaluation Question 2

Will the usage of the CRL provide funding to support councils, owners corporations and owners, to ensure that they can effectively address risk on buildings with an Elevated or Low combustible external cladding risk, that will not be funded through the Private Residential CRP due to their lower cladding risk level?

In keeping with the recommendations of the Victorian Cladding Taskforce, the Government required funding to be targeted at buildings facing the highest risk from combustible cladding, recognising that the primary responsibility for building safety continues to reside with building owners.

However, appropriate action will be required by a wider cohort of buildings that will not be directly funded by the Private Residential CRP.

Approximately 800 private residential buildings identified to date as having combustible cladding will not receive funding for remediation as they have an Elevated or Low level of cladding risk. Many of these buildings will require some remediation to address the remaining risk posed by combustible cladding and ensure the safety of occupants and the community. Others will require confirmation (and potentially ongoing maintenance) of emergency egress processes and fire detection systems. While less onerous and costly than full rectification, there was nonetheless uncertainty about how this work should be undertaken and how councils could resource support for owners.

Since 2019, the Victorian Government has developed a greater understanding of cladding risk and has developed a significant body of knowledge and experience relating to the management of risk related to combustible cladding.

During early 2022, government undertook targeted engagement with councils (in particular Municipal Building Surveyors) to understand the types of supports that would improve capacity and capability of councils, building practitioners and building owners to manage and respond to Elevated and Low risk combustible cladding.

In August 2022, funding of \$40 million was allocated for implementation of the Cladding Remediation Partnership Program (Partnership Program), including \$32.18 million through usage of the CRL revenue for at least one year (until 30 June 2025). In addition to this funding of \$9.36 million was allocated through the CRL for the completion of Statewide Cladding Audit activities prior to buildings being handed back to councils.

The Partnership Program was established in 2023 to ensure that:

- Councils are supported to manage the remediation process with clear policy around how cladding risk is understood, and a procedure for how risk can be addressed.
- Building owners and owners corporations have access to guidance and support to enable them to manage and respond to the cladding risk on their building.
- The CRL will enable government to fund costs associated with providing these supports through the Program.

To the end of October 2023:

- Government has published a Minister's Guideline and the Cladding Risk Mitigation Framework to support councils, owners corporations and owners.
- CSV and Department of Transport and Planning (DTP) officials have meet with all of the councils who have affected buildings.
- CSV has issued Partnership proposals to all affected councils outlining the support that will be provided.
- DTP have commenced issuing Partnership Program funding and reporting agreements to the affected councils.

The Partnership Program will be completed by June 2026 when a remediation solution for all buildings with an Elevated or Low cladding risk is sought to be agreed by councils and owners.

Review finding 2

The usage of the CRL will provide councils, owners corporations and building owners with support to ensure that they can effectively address the risk on approximately 800 buildings with combustible external cladding, which will not be funded through the Private Residential CRP.



Appendix A – Legislative framework

The following is the relevant section of the *Building Act 1993*.

Section	Section detail
205LO	Review of cladding rectification levy <ol style="list-style-type: none">(1) The Minister must ensure that a review of the additional levy imposed under section 205G(2A) is undertaken no later than 4 years after the commencement of section 15 of the <i>Building Amendment (Cladding Rectification) Act 2019</i>.(2) The purpose of the review is to determine whether there is an ongoing need for that additional levy to fund cladding rectification works.(3) The Minister must cause a report of the review to be laid before each House of Parliament within 7 sitting days of that House after the expiry of the 4-year period referred to in subsection (1).
