

## Questions taken on notice and further information agreed to be supplied at the hearings

Portfolio:	Planning
Witness:	Mr Richard Wynne, Minister for Planning
Committee member:	Richard Riordan MP
Page/s of transcript:	Written Question on Notice

### Relevant text:

CLADDING (BP5 PG 193)

- On page 7 of the Victorian Cladding Taskforce Update report of October 2018, Private Building Expert Panel determinations were published, and of the reported 629 private buildings, 43 were at highest risk, 232 high risk, 228 moderate risk and 126 low risk. Further, the report documents 59 emergency orders, 153 building notices and 4 building orders have been issued. Could you please advise an update of these statistics as at June 2019?

### Answer:

As of 14 June 2019, there have been 1,033 private buildings risk rated by an Expert Panel. The results are below:

Risk Ratings	Total
Extreme Risk	72
High Risk	392
Moderate Risk	373
Low Risk	196
<b>Total</b>	<b>1,033</b>

There have been 51 Emergency Orders, 368 Building Notices and 27 Building Orders that have been issued (includes those from local councils and VBA).

The number of Emergency Orders (51) is fewer than those listed in the Victorian Cladding Taskforce Update report of October 2018 (59) as the number of Emergency Orders in the report was based on the number of recommendations to local councils for Emergency Orders to be issued.

The process for monitoring Emergency Orders has changed to reflect improvements in processes that enables the real time monitoring of Emergency Orders actually issued by local councils.

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- Referring to the Cladding Taskforce Update report, page 7. Of the private buildings audited and identified as being at risk, how many residents are affected, and what steps have been taken by the Government to inform these residents that their homes are in imminent danger of fire?

**Answer:**

After the VBA inspects a building, a panel of experts form an advisory reference panel and review information collected during the inspection. If a building is found to be at risk due to the presence of combustible cladding required, the panel will recommend steps to reduce the fire safety risk of the building.

These steps will be communicated to the owners corporation and relevant council's Municipal Building Surveyor. The VBA will remind the owners corporation or building owner of their duty of care to occupants, including requirements to keep building residents informed of inspection results. This may include recommending the Municipal Building Surveyor issues notices or orders to improve the fire safety of the building.

Residents will be advised of the outcome in the weeks after the advisory reference panel is held. If urgent actions are required following an advisory reference panel, building managers and residents will be informed immediately.

Further information about the VBA's audit is available at:

<https://www.vba.vic.gov.au/cladding/assessing-and-fixing-cladding>.

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3. Can you guarantee that every tenant of every building in Victoria clad in dangerous combustible material is aware that they are potentially living in a fire trap?

**Answer:**

Following the Neo200 fire in February 2019, the VBA wrote to all owners corporation managers of buildings assessed as being moderate and higher risk, reminding them of their responsibility to inform owners of the presence of combustible cladding along with fire safety tips about how to live in a building with combustible cladding.

In this letter, owners duty of care to occupants was highlighted and they were asked to ensure information about the building’s cladding status was passed on to occupants.

This measure was taken in addition to the normal audit processes in which owners corporations are informed of their building’s audit outcomes and asked to inform owners and occupants as well as share fire safety information.

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4. Residents and owners could once rely upon government regulators to ensure they were protected when things went wrong within the building industry. So, why now should those people be forced to live in unsafe properties, with the threat of prosecution from the Victorian Building Authority if they do not personally rectify mistakes made by the building industry?

**Answer:**

Under the *Owners Corporation Act 2006* (the Act) it is the responsibility of building owners to ensure the safety of their buildings.

Under the *Building Act 1993*, relevant building surveyors (RBSs) may issue directions to fix building work to owners or builders if, after inspection of a building, the RBS reasonably believes that the work fails to comply with the Act, the Regulations or the permit, the RBS will determine the appropriate next steps.

The Victorian Building Authority (VBA) has previously issued directions to builders to fix building work after construction was completed, however in 2017 the Supreme Court determined that the VBA can only do this before a certificate of final inspection or occupancy permit is issued. Therefore it is the responsibility of owners to comply with directions to fix building work on completed buildings.

In addition, under the Building Act the RBS may issue a building notice or a building order to the owner or owners corporation if they believe works are required to bring a building into compliance, or in case where the matter presents an immediate danger to life or property the RBS may refer it to the local Municipal Building Surveyor to consider the issue of an emergency order. Owners are required to comply with notices and orders.

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5. If the VBA has the role to regulate the building industry, why is the VBA currently pursuing owners, to personally rectify non-compliant cladding on hundreds of buildings installed by building professionals?

**Answer:**

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Owners may be able to seek redress for non-compliant building work through Domestic Building Dispute Resolution Victoria or the Victorian Civil Appeals Tribunal (VCAT) for up to ten years post-construction.

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6. There is a ten-year statute of limitations on claims in this space in Victoria, and you don't need a fire to occur to make a claim. Potential for mass lawsuits against contractors, suppliers, building surveyors and fire engineers in Victoria for buildings found to have at risk cladding. What is Government's plan to address this and how do they intend to 'future proof' public and private sector buildings?

**Answer:**

Manufacturers have an important role in ensuring that the products they supply meet domestic safety requirements. To restrict the continued use of combustible materials on multi-story buildings in Victoria, the Minister for Planning issued a guideline under section 188 of the *Building Act 1993* on 13 March 2018. Building surveyors who ignore this directive will be subject to disciplinary action by the VBA and may incur financial penalties. The VBA is proactively inspecting sites where cladding has been specified to ensure they are not using products set out in the guideline. It has the power to take disciplinary action against any building practitioner that fails to comply with the legislative requirements.

In addition, the Government has provided the VBA with new product testing powers and the power to suspend practitioners immediately on public interest grounds.

Recent amendments were made to the Act to introduce frameworks for the registration of trades and licensing of building employees. It will be an offence for persons to carry out certain types of building work without being registered or licensed to do so. The objectives of registering trades and licensing building employees are to ensure there is confidence that people who carry out or perform restricted work have adequate qualifications, skills and experience to do so, the incidence of non-compliant building work is reduced, and there is greater accountability for non-compliant work through the application of appropriate disciplinary processes.

While the general framework for the new registration and licensing schemes will commence from 1 September 2020, the department is currently looking into the scope of regulation required to implement the framework.

In recognition that cladding is a national issue, the Minister for Planning called on all state, territory and federal governments at the Building Ministers' Forum on 8 February 2019, to support a national ban on combustible cladding. In response, Ministers agreed in principle to a national ban on the unsafe use of combustible aluminium composite panels (ACPs) in new construction subject to a cost/benefit analysis being undertaken.

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HERITAGE – LEGAL COSTS (BP 3, PG 162 and BP5 PG 30)

7. How much are you estimating that your Department will spend in 2019-20 on legal representations at VCAT hearings and Supreme Court hearings, and what is the current amount for 2018-19 financial year that you have expended on legal representation at those various different tribunals, panels and court hearings – for yourself and for your Department?

**Answer:**

Most heritage matters are dealt with without the need for legal representation.

Legal costs are not itemised for heritage matters individually and are managed overall at the project / business unit level. There is no specific budget provision for heritage legal costs in 2019-20.

In the current 2018-19 financial year, the main proceeding related in-part to heritage has been the enforcement order and VCAT process related to the Corkman Hotel at 160 Leicester Street, Carlton. I have been represented by counsel as part of the VCAT process, however, the proceeding is still underway, and the legal costs have not been finalised.

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**Relevant text:**

REFERENCE: Budget Paper 3, page 40

1. How many loans have been issued under the Cladding Rectification Agreement (CRA) scheme?

**Answer:**

Cladding Rectification Agreements provide a mechanism by which an owner or owners corporation, lender and council may enter a three-way agreement to fund cladding rectification works. The lender will loan the funds to an owner or owners corporation and loan repayments will be made over time through the council rates system.

In October, the Victorian Government introduced legislation that created an enabling framework for Cladding Rectification Agreements to provide an option for councils to assist their ratepayers to manage the long term funding of rectification.

The Department of Environment, Land, Water and Planning has released guidance material to support the implementation of Cladding Rectification Agreements and continues to work with local councils to build understanding of how the scheme works, clarify or provide advice on any concerns or issues about operationalisation, and, where appropriate, facilitate meetings with lenders and/or owners corporations.

As far as we are aware, there have been no Cladding Rectification Agreements entered into.



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2. What is the value of the loans issued under the CRA scheme?

**Answer:**

There is no limit to the value of the loans issued under the CRA scheme. Under section 25 of the *Owners Corporations Act 2006*, an owners corporation may borrow money:

- a. by ordinary resolution, if the amount borrowed does not exceed the amount of the current annual fees of the owners corporation set under section 23; or
- b. by special resolution in any other case.