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# Cladding

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# Alert

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Important update  
for members →

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Dear members,

For those members who have not read the [Decision of the Victorian Civil and Administrative Tribunal on the Lacrosse apartment building matter](#), we have provided a summary of the decision below.

The judgement focused heavily on the contractual responsibilities of the consultants to the builder. The judgement allowed a claim against the builder by its owners, but also allowed the builder to claim almost 100 per cent of the damages payable from the architect, fire engineer and building surveyor in different proportions. The judgement emphasises the outcome depended on the design, contracts and dealings on this project and the 'failure of the consultants to meet their obligations under the contract'.

Some matters raised in the judgement will most likely be challenged, and should be challenged, as there is disagreement with the Tribunal's interpretation in some areas.

The judgement raises issues that will be the subject of further investigation by us before offering advice to members. These issues include:

- Performance solutions vs deemed to satisfy
- The role of the superintendent/project manager vis a vis the architect
- The rights, roles, responsibilities and risks under a design and construct contract
- The need for regulatory review and the potential misinterpretation of C12(f) of the Building Code of Australia (BCA).

We would encourage members to review their own contracts and take advice to clarify their responsibilities in light of the judgement.

We will continue to examine aspects of the decision in-depth to determine the best way we can assist members. Some actions identified so far are:

- **Survey**

This week we are launching a national member survey on the patterns and impacts of novation. This evidence-based research project will provide much needed data and feedback on the benefits and disadvantages of novation and enable us to develop best practice guidelines. It will also provide a platform to advocate for change in the industry to ensure fair risk allocation under design and construct novated contracts and clearly define roles and responsibilities for all parties to the contract. The Institute will develop practice advice for managing commercial pressures under novated arrangements.
- **Training**

We will be developing training packages for members on the pitfalls and risks of various procurement methods.


- **CPD**

A reminder that the Institute has made our online CPD course on inappropriate external cladding use and the subsequent amendments to Volume One of the National Construction Code available complimentary for all members. Watch [here](#)\*.

- **Planned Cover Webinar - 11 April**

Planned Cover, through its sister business *informed*, is hosting a special webinar on the implications of the Lacrosse judgement on 11 April from 12.30 pm – 1.30 pm (AEDT). Institute members are eligible for a 15 per cent discount. The code is 19ARCHITECT3. Lawyer Sarah Metcalfe, Special Counsel, Norton Rose Fulbright was part of the architect's legal team and will provide her insights into the roles of the various parties on the project, the expert evidence relied upon by the parties, the decision of Judge Woodward, and the implications for the construction industry generally. For further details and to book, click [here](#).

And we will of course be continuing our direct and public advocacy on these matters with further media and communications activities rolling out over coming weeks.



Clare Cousins,  
National President

[Read Summary](#)

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