

# Combustible cladding – Victoria legislates to implement rectification agreements

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## Background

In what the Victorian Government has described as a “world first”, a new loan scheme will allow owners of buildings with dangerous combustible façade cladding to have it removed via loans paid off through their council rates.

Since 2014, when fire damaged the Lacrosse Tower in Docklands, the Victorian Government has been wrestling with how to ensure that buildings with unsafe flammable cladding were rectified quickly.

The problem was only intensified when 72 people tragically died in a fire which engulfed the Grenfell tower building in London in June 2017.

The Cladding Rectification Scheme, proposed by the Victorian Cladding Taskforce, was introduced by the government ahead of the state election in November 2018. Planning Minister Richard Wynne said that the new scheme would help to make properties safe and compliant with building laws more quickly, and without affecting property prices.

Effective from 30 October 2018, the Building Amendment (Registration of Building Trades and Other Matters) Act 2018 (Vic) has inserted a new Part 8B into the Local Government Act 1989 (Vic). The effect of this amendment is that land owners now have the option of applying for entry into a CRA.

Under the legislation, land owners may enter into Cladding Rectification Agreements (“CRA”) with the municipal council to fund building works necessary for removing and replacing combustible cladding on their buildings.

Land owners who enter into a CRA will receive a loan from a financier or lender which they will pay back through their council rates over a minimum period of 10 years.

The CRA attaches to the land owner’s property as a charge and is transferred to any subsequent purchaser. The charge must be disclosed in the “Financial Matters” section of any pre-contract disclosure statement under section 32 of the Sale of Land Act.

## Eligibility

There are a number of eligibility requirements to determine whether land owners may participate in the scheme.

Applicants must be either a land owner or an owners corporation, which has acquired the approval of at least 75% of its members.

To be eligible, applicants must not be overleveraged. A land owner or an owners corporation will be deemed to be overleveraged where the total of all amounts owing in respect of the land plus the loan under the CRA exceeds the capital improved value of the land. In order to allow councils to facilitate this assessment, land owners must disclose all rates, taxes, charges and mortgages affecting the land upon the council’s request.

Land owners must also advise their mortgagee of any proposed or existing CRA.

## Councils

Councils are tasked with administering and ensuring the validity of CRAs, including:

- determining whether land owners are eligible for participating in a CRA;
- facilitating lending agreements by acting as an intermediary between the land owner and the lender; and
- issuing a charge on the land owner’s property to secure the loan.

## Owners corporations

If a CRA is entered into by an owners corporation with the approval of at least 75% of the lot owners:

- a) the loan repayments are distributed across all lot owners based on their individual lot entitlement;
- b) each individual lot owner is liable only for its allocated loan repayment which, as a charge on the land, will bind subsequent owners of the lot. The Charge is not an owners corporation liability ; and
- c) the owners corporation will manage the works (or appoint a project manager to do this).

## Administrative requirements

There are a number of formalities a CRA must satisfy in order to be valid. A CRA must:

- a) be in writing,
- b) provide for the advance of funds by the lender,
- c) explain the rectification works and methods,
- d) authorise the council to attach a charge to the land, and
- e) authorise the council to allocate the funds accrued under the charge to the repayment of the loan and recover an administration charge.

## Tenants

Land owners are prohibited from requiring residential tenants to assume liability to pay their CRA charge. However, non-residential tenants can be required to pay the CRA charge if they have 'specifically agreed in writing to pay the cladding rectification charge.' Landlords therefore cannot rely on broadly drafted generic rights to recover statutory rates and charges under existing non-residential leases.

The scheme is now in full effect.

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