



**Australian
Institute of
Architects**

ABN 72 000 023 012
The Royal Australian Institute of Architects
trading as Australian Institute of Architects

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26 November 2020

Hon Mark McGowan
Premier
Level 5, Dumas House
2 Havelock Street
WEST PERTH WA 6005

Dear Sir,

INSURANCE MARKET IMPACTS ON BUILDING SURVEYORS

The Australian Institute of Architects (Institute) is the peak body for the architectural profession in Australia. It is an independent, national member organisation representing over 12,500 members across Australia and overseas. More than 1,100 of these are based in Western Australia and are supported by the WA Chapter.

We are writing to you to bring your attention to an issue that if un-addressed, represents substantial risk to the West Australian construction industry.

We received notification (refer appended) that one of West Australia's largest and most respected Building Certifiers, John Massey Group (JMG), has been forced in liquidation solely as a consequence of having been certifiers to buildings with Aluminium Cladding similar to those incorporated in to the notorious Lacrosse Towers, and that have subsequently been subject to buildings audits undertaken by the Western Australia Department of Mines Industry Regulation and Safety (DMIRS) combustible cladding risk audits undertaken in 2019.

The unintended effect of these audits, through transferred claims, may be to render Building Certifiers virtually un-insurable. In this case, with professional indemnity insurance premiums increased tenfold.

The consequence of losing Certifiers such as JMG is alarming. A shrinking Certification industry will delay Building Licences, creating a hiatus in construction lead economic recovery. Further, since Architects are often required to engage all consultant teams for State tendered work via the Department of Finance, insurance premium hikes will likely cascade through to insurance of architects and sub-consultants, threatening the capacity to undertake these works.

It is noted that in Victoria¹, Cladding Safety Victoria have set out cladding rectification guidelines whereby they may provide subsidised funding for the rectification of external wall combustible cladding of some higher risk residential apartment buildings, as assessed by the Victorian State-wide Cladding Audit led by the Victorian Building Authority.



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We recognise that the issue of insurance price is outside the government's remit and which falls within global market trends and overall identification of risk. A subsidy program would, however, assist in minimising litigation claims and insurance claims against building surveyors, engineers and architects in privately owned buildings which have been identified as at risk through the DMIRS audits.

We urgently request that the State Government re-considers its position of Aluminium Cladding, and follows the Victorian Government's lead by providing assistance funding for the removal of these materials.

We look forward to your response.

Yours sincerely,

Peter Hobbs FRAIA

STATE PRESIDENT WESTERN AUSTRALIA

Encl.

CC: Hon Bill Johnston
Minister for Mines and Petroleum; Energy; Industrial Relations

Hon John Quigley
Attorney General; Minister for Commerce

Saj Abdoolakhan
Executive Director, Building and Energy

ⁱ <https://www.vic.gov.au/cladding-rectification-funding-guidelines>

Wednesday November 11, 2020



JMG Liquidation Announcement – Appointment of HLB Mann Judd as Liquidators

I wish to advise you that after 20 successful years of operation the John Massey Group Pty Ltd trading as JMG Building Surveyors will be ceasing to trade as of 5pm today.

JMG Building Surveyors has been the subject of litigation actions caused by the Government of Western Australia Department of Mines Industry Regulation and Safety (DMIRS) combustible cladding risk audits undertaken in 2019.

JMG Building Surveyors has not been the subject of any litigation or claims (other than the current combustible cladding allegations) in the past 20 years. Our reputation remains intact as competent certifiers.

The DMIRS cladding audits stated some buildings having “medium” risks, notwithstanding that they were previously approved and certified using legislated procedures at the time. These audit reports were created by DMIRS without interaction with any of the key parties (Architects, Builders or Certifiers) and currently the determination of the risk matrix is not negotiated with those key parties .

The result of these subjective and opinionated audits being forwarded to the owners of the identified buildings “at risk” by DMIRS, has created understandable panic.

As a level one Building Surveyor with 30 years experience, I believe that the DMIRS cladding audits were ambiguous, poorly researched and presented biased interpretative information. The audits offered no due process for certifiers and were not sent to the professionals involved prior to release. This created no ability for the professionals involved to respond prior to the reports being sent to the owners. These buildings were approved as compliant at the time of design.

JMG Building Surveyors now finds itself with the liabilities and legacies to defend both SAT and Supreme Court actions from owners who are rightfully concerned about the external cladding fire safety aspects of their buildings, as presented to them by DMIRS risk audits.

As a company director I have responsibilities to ensure that JMG Building Surveyors can meet its financial obligations, and sign an ASIC declaration each year to that effect.

The Professional Indemnity insurance problems for Building Certifiers in Australia continue.

Below is a 3 year comparison of JMG Building Surveyors costs and PI coverage

Renewal Date	Premium	Coverage	Excess
09/04/2018	\$ 27,368.84	10 Million	\$ 20,000
09/04/2019	\$ 80,386.98	10 Million	\$ 20,000
09/04/2020	\$ 340,760.26	5 Million	\$100,000

* JMG Building Surveyors has, since April 2020 had a combustible cladding exclusion placed on our PI Insurance. That is, in effect for future complaints we are no longer insured against combustible cladding actions taken after this date.

** I confirm that JMG Building Surveyors has attempted to obtain Insurance “run off” cover, however I have received written advice from our Insurance Brokers (BRIC Insurance Brokers) that this is not available in any circumstance for building surveying certifiers in Australia.

The Company cannot financially continue in light of the current (and future) combustible cladding litigation.

We have been strenuously defending current external cladding related legal actions and allegations caused by the DMIRS audits on behalf of our clients and ourselves for the past 14 months.

The latest legal action received by JMG Building Surveyors was received after the April 2020 period, and we are effectively uninsured should this action continue.

On this basis, my position as company director requires me to make a frank assessment of the continuing viability of trading. There is no option other than to cease trading and place the Company with Liquidators.

JMG Building Surveyors demise lands squarely at the feet of the DMIRS enforcement section.

It is noted that in Victoria, Cladding Safety Victoria have set out cladding rectification guidelines whereby they may provide funding for the rectification of external wall combustible cladding of some higher risk residential apartment buildings, as assessed by the Victorian State-wide Cladding Audit led by the Victorian Building Authority.

I believe these issues needs to be clearly communicated to you because our closure is in no way the result of any actions from our clients, architects, builders or allied professionals.

In order for your current projects to continue as required, we recommend that you immediately investigate seeking the services of an alternative registered building surveying contractor obtained from the following DMIRS site address. <https://www.commerce.wa.gov.au/building-and-energy/find-registered-building-surveyor> JMG Building Surveyors is not in a position to recommend registered contractors.

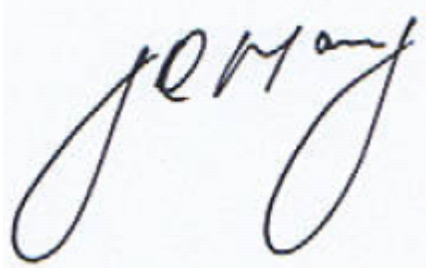
I take this opportunity to firstly thank our staff (both present and past) for the last 20 years making JMG Building Surveyors a leading certification Company in WA. Without their friendship, competence and professional support JMG Building Surveyors would not have obtained its levels of current success in our Industry.

In particular, Ron Shear has been a valuable team leader and friend over many years, as has Tracey Brown who has recently reached a 15 year milestone with us.

Finally, a big thanks to you our clients, allied professionals and consultants. You all helped guide us and enable our organisation to grow and prosper as well as develop professional friendships that have lasted many years. JMG was a fantastic experience.

Once again thank you for your support for the past 20 years.

Cheers John

A handwritten signature in black ink on a light blue background. The signature is stylized and appears to read 'John Massey'.

John Massey

Director – John Massey Group Pty Ltd

https://www.commerce.wa.gov.au/sites/default/files/atoms/files/acp_interim_report_final.pdf

<https://www.commerce.wa.gov.au/publications/aluminium-composite-panelling-high-rise-buildings-interim-report>

<https://www.abc.net.au/news/2019-12-13/building-surveyors-insurance-costs-increase-flammable-cladding/11771668>

<https://www.btlawyers.com.au/news/professional-indemnity-insurance-crisis-leaves-builders-and-insurers-in-limbo/>