

Victorian Cladding Taskforce

Interim report

November 2017

The Victorian Cladding Taskforce is chaired by former Premier and architect Ted Baillieu, and former Deputy Premier and Minister for Planning Professor John Thwaites.

It has been supported in its work by the Office of the Taskforce overseen by a Chief Executive Officer, Mr Stan Krpan.

The Taskforce members include senior representatives from Victorian Government departments and key agencies.

Taskforce Membership

Department of Environment, Land, Water and Planning (DELWP)

Department of Health and Human Services (DHHS)

Department of Justice and Regulation (DJR)

Emergency Management Victoria (EMV)

Metropolitan Fire Brigade (MFB)

Country Fire Authority (CFA)

Municipal Association of Victoria (MAV)

Victorian Building Authority (VBA)

Victorian Municipal Building Surveyors Group (VMBSG)

Worksafe Victoria

A Stakeholder Reference Group (SRG) was established enabling the Taskforce to tap into the expertise of industry professionals and peak bodies and utilise the communications channels to their members. We thank the stakeholders who have generously shared their advice and time and contributed to its enquiries.

Stakeholder Reference Group

Australasian Fire and Emergency Service Authorities Council (AFAC)

Australian Institute of Architects (AIA)

Australian Institute of Building Surveyors (AIBS)

Construction, Forestry, Mining and Electrical Union (CFMEU)

Engineers Australia (EA)

Housing Industry Association (HIA)

Master Builders Association of Victoria (MBAV)

National Fire Industry Association (NFIA)

Property Council of Australia (PCA)

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Foreword

We are pleased to present our interim report on the work of the Victorian Cladding Taskforce to the Minister for Planning.

The 2014 fire at the Lacrosse apartment building in Melbourne's Docklands and the tragic Grenfell fire in London in June this year, highlighted the fire safety risks arising from the non-compliant use of exterior cladding.

We found combustible cladding is widely used on buildings throughout Victoria.

The Report sets out our interim recommendations to ensure Victorians are safe in their homes, their property is protected and buildings comply with the law.

The Taskforce is currently overseeing a pilot audit of buildings in six municipalities. This important work will contribute to an audit methodology that can be used Statewide.

A robust audit process is complex and will take some time.

The Victorian Government will also continue to audit state owned and occupied buildings.

We recommend the Taskforce continues its work to determine a rectification standard with a final report to be commissioned at the discretion of the Minister for Planning.

We thank stakeholders, industry professionals and interested parties for their contribution to this vital task; their knowledge, expertise and experience has been greatly appreciated.



A blue ink signature of Ted Baillieu, written in a cursive style.

A black ink signature of Prof John Thwaites, written in a cursive style.

Ted Baillieu and Prof John Thwaites

Co-chairs, Victorian Cladding Taskforce

Summary

Introduction

On 3 July 2017, the Victorian Government established the Victorian Cladding Taskforce to investigate the extent of non-compliant external wall cladding on buildings Statewide, and make recommendations for improvements to protect the public and restore confidence that building and fire safety issues are being addressed appropriately.

The 2014 fire at the Lacrosse apartment building in Melbourne's Docklands and the tragic Grenfell fire in London in June this year, highlighted the fire safety risks arising from the non-compliant use of combustible cladding.

Findings

The Victorian Cladding Taskforce has found systems failures have led to major safety risks and widespread non-compliant use of combustible cladding in the building industry across the State.

The extent of non-compliance has been supported by the findings of the Victorian Building Authority (VBA) audit after the Lacrosse apartment fire.

We found the failings identified by the VBA in 2015 were not merely administrative, or paper-based, but were significant public safety issues, which are symptomatic of broader non-compliance across a range of areas within the industry.

The problem of widespread non-compliant cladding can be attributed to three factors: the supply and marketing of inappropriate building materials, a poor culture of compliance in the industry, and the failure of the regulatory system to deal with these issues.

Under its Terms of Reference, the Taskforce prioritised community health and safety and this was a guiding principle in assessing building risk, the breadth and severity of the issue and how to address it.

A Stakeholder Reference Group (SRG) was established enabling the Taskforce to tap into the expertise of industry professionals and peak bodies and utilise the communications channels to their members.

Most members of the SRG made submissions outlining their views on the potential causes of non-compliant use of cladding, summarised as follows:

- inadequate compliance and enforcement and low risk of consequences to deter breaches of the law
- competitive commercial pressures which incentivise the taking of shortcuts
- over-reliance on the building surveyor role as an assurance mechanism
- inadequate on-site inspection, supervision and quality assurance
- inaccurate and potentially misleading labelling and/or marketing of products
- complexity, ambiguities and poor understanding of the application of the National Construction Code (NCC) and how to comply with it
- variations in regulations and codes and their inconsistent interpretation over time regarding combustibility tests and use of panels
- a widely held view that combustibility standards in the NCC are too onerous and stifle new product innovation
- substitution of non-compliant products between the approval phase and the construction phase
- incorrect, inadequate or misleading documentation including product certificates
- poor quality workmanship, or inexperienced professionals, highlighting a general need to increase skills and capabilities amongst building practitioners, and
- poor understanding of performance-based solutions, evidentiary requirements and inadequate oversight.

We found as the products became more prevalent and visible in the industry, a general complacency or blind spot occurred as to the risks.

Recommendations

We make the following priority recommendations:

- that the Taskforce continues its work, at the Minister's discretion and oversees with DELWP the Statewide audit and audit of all Victorian Government buildings until completion.
- that the Minister for Planning implement as a priority measures to prevent the use of aluminium composite panels (ACP) with a polyethylene core (as agreed at the Building Ministers' Forum) and expanded polystyrene (EPS) cladding, for class 2, 3, or 9 buildings of two or more storeys, and class 5, 6, 7 or 8 of three or more storeys. These measures should be highlighted in a product safety alert and remain in place until he is satisfied with compliance with new testing standards and a permanent labelling system is introduced.
- that the Taskforce oversee the completion of pilot audits in six councils to inform final inspection and assessment processes, including the finalisation of the Taskforce's Risk Assessment Tool.
- that the Victorian Government act as an exemplar and undertake a comprehensive audit of its own assets and leased buildings, overseen by the Taskforce.
- that the Victorian Government uses its procurement powers to stop future use of aluminium composite panels (ACP) with a polyethylene core on government buildings.
- that the VBA lead a Statewide audit overseen by the Taskforce of privately owned, residential, multi-unit buildings, three storeys and above and all public-use buildings two storeys and above, and that:
 - the audit prioritise buildings identified by the Taskforce as likely to have either ACP or expanded polystyrene cladding
 - the VBA develop a resourcing model for the audit, including consideration of inspection workforce options and likely budget impacts to ensure that the work is properly funded
 - the Taskforce and/or the VBA write to the owners of prioritised buildings, advising of their obligations and encouraging them to seek professional advice on the nature of their cladding.
- that a State Building Inspector or State Building Surveyor is established within the VBA to provide authoritative compliance advice, provide technical guidance and provide interpretations of relevant standards.
- that the Taskforce complete the development of a rectification standard, to be used by the VBA in its audit as well as fire safety engineers and private building surveyors. The rectification standard will set out appropriate action for rectifying buildings with non-compliant external wall cladding based on a safety risk assessment, stakeholders will be asked to promote it as part of the voluntary activation of the private sector.
- that the Taskforce work with the Department of Treasury and Finance to further consider and research options for financing building rectification.
- that the Taskforce oversees an independent review of the VBA's post-Lacrosse audit and its findings.
- that the VBA:
 - significantly increase its compliance and enforcement activities to deter future breaches
 - review and consolidate its current compliance, enforcement and prosecution policies to more clearly reflect a risk-based compliance and enforcement approach
 - ensure that private building surveyors do not have prohibited exclusions from their professional indemnity insurance policies
 - work to ensure practitioners have greater understanding of the NCC and building legislation so compliance is taken more seriously
 - immediately resource planned improvements to its data collection and analysis capabilities
 - develop a resourcing model and business case to allow it to effectively discharge these functions.

- that bodies responsible for disciplinary action against professionals in the building industry, including the Architect Registration Board Victoria, Building Practitioners Board and the VBA ensure that hearings take place expeditiously into matters of professional conduct.
- that consideration be given to amending the Building Act to ensure building surveyors and fire safety engineers act independently, supported by a code of conduct developed by the VBA.
- that the Minister for Planning advocate nationally to develop a standard that would define and restrict the use of “FR” (Fire Resistant, Fire Retardant or Fire Rated) in the marketing of products.
- that relevant authorities collaborate to educate the community on risks associated with excessive occupancy levels and to undertake enforcement where appropriate.
- that the regime for establishing, maintaining and enforcing Essential Safety Measures (ESM) and the qualifications of those inspecting such systems, in multi-storey buildings be strengthened.
- that the Taskforce further explore options for low cost financing be explored to allow owners’ corporations to fund works and allow for any long-term costs that are borne by owners to be distributed over time.

We also recommend that further consideration and consultation occur on the following longer-term reforms:

- that DELWP develop a discussion paper and undertake consultation on:
 - introducing a statutory duty of care on building practitioners (including architects and designers) to protect occupants and consumers in the residential strata sector
 - introducing shared responsibility legislation that would apply to manufacturers, importers and suppliers of building products along similar lines to product safety legislation introduced in Queensland in August 2017
 - introducing compulsory warranty insurance for residential multi-unit developments and insurance by commercial builders.
 - the range of the other measures outlined in this report to improve the regulation of building product safety
 - introducing a requirement to seek approval of significant variations to plans, and to lodge drawings and specifications with councils that reflect building plans and specifications ‘as built’
 - the restoration of the role of Clerk of Works to oversee building works and provenance of building products.
- that consideration be given to improvements to the current private surveyor model in Victoria to ensure an effective and efficient model that would improve levels of compliance, the rigour of inspection and clarify and improve the effectiveness of enforcement of building laws.
- that consideration be given to reconsidering and clarifying the role of the VBA relative to local government and the MBS.
- that DELWP review the compliance and enforcement powers in the Building Act to ensure that regulators are equipped with a suite of comprehensive, fit for purpose tools that allow for quick, responsive, robust interventions.
- that DELWP, with input from the VBA, analyse the penalties under the Building Act and consider whether maximum penalties and sentencing practices are adequate.
- that the Government consider measures to strengthen of the requirements for fire safety designs to be independently reviewed, inspected and approved:
 - requiring that fire safety related performance solutions be peer reviewed by a second fire safety engineer who is truly independent to the design process
 - requiring that a registered fire safety engineer inspect and approve the works carried out pursuant to their fire safety designs at specific mandatory notification stages
 - introducing an additional mandatory inspection stage for fire safety designs
 - expanding the scope of fire safety matters that require the report and consent of the Chief Officer

- increasing the time allowed for the Chief Officer to make a determination on an application for report and consent
- prescribing additional matters that would require the Chief Officer's consent and that the Minister promote through the Building Ministers' Forum (BMF) the adoption of the rectification standard as a national model.
- that the Minister continue to encourage the BMF and ABCB to improve the clarity and readability of the NCC. Such a review should reduce the number of subjective standards included in the Code and improve consistency of language used to describe compliant performance standards.
- that the Minister write to the Commonwealth Minister urging the Commonwealth to make arrangements that would allow Australian Standards to be made available free of charge.
- that the Taskforce continue to work with peak bodies and professional associations to disseminate its advisory notes to owners.

Communications

We recommend the Taskforce website continues and is updated and maintained by DELWP and added as a landing page to the VBA website.

We also recommend direct communications with tenants and the general public be rolled out and visual aids be developed to improve the understanding of the NCC.

Introduction

The Taskforce aims to bolster the State's ability to detect and address non-compliant cladding, and ensure residents, owners, owners' corporations and building managers are better informed about the issue.

The Taskforce has been co-chaired by the Hon Ted Baillieu and Professor the Hon John Thwaites.

The Taskforce has been supported in its work by the Office of the Taskforce overseen by a Chief Executive Officer, Mr Stan Krpan.

The functions of the Taskforce are to:

1. review the VBA audit, develop a scope, methodology and timetable and oversee a comprehensive audit of relevant buildings in Victoria, identifying instances where inappropriate cladding material has been used and poses a risk to public health and safety
2. develop a process for prompt rectification to protect the health and safety of building occupants and make recommendations on any cost implications
3. review and recommend any enforcement and/or potential disciplinary action arising from the Statewide audit to the VBA for action
4. examine the effectiveness and make recommendations to improve the current compliance, certification and enforcement regime for ensuring practitioners comply with relevant regulations and legislation
5. provide advice to the Minister for Planning, the Hon Richard Wynne, and the Victorian Government on how best to mitigate non-compliant uses of cladding materials in Victoria in the future
6. advise relevant agencies on communications to residents, owners, owners' corporations and building managers about what actions they can take to satisfy themselves of the safety of their buildings, and actions required to protect the health and safety of occupants of affected buildings in Victoria
7. review and recommend improvements to the existing Victorian system for fire safety in buildings.

In addition, the Co-chairs and Office of the Victorian Cladding Taskforce met with over fifty additional stakeholders associated with the building and development industries, individual companies, consumer advocates, local government, representatives of strata title owners and owners' corporations, banks and insurers.

A public website providing information on the Taskforce has been established and a targeted call for submissions was mailed out on 25 July, closing on 15 September 2017. Thirty-seven submissions were received.

Approach

As a guiding principle, the Co-chairs and Taskforce put community safety first and made a commitment to seek the views and collaboration of stakeholders and their representatives on the audit approach, options for reform and potential solutions.

Cladding types

In order to form a view about the scope and methodology of the Taskforce's work, it is first important to understand the nature of cladding used on Victorian buildings, the risks posed and when it is considered non-conforming or non-compliant with the NCC.

Based on advice from engineering experts, the Taskforce agreed early in its work to focus on two categories of cladding products – aluminium composite panels (ACP) and expanded polystyrene (EPS). Stakeholders suggest these products have proliferated since the 1990s, present a significant potential fire risk, and have been implicated in the Grenfell, Lacrosse and other fires.

Aluminium Composite Panels

ACP products are flat panels, generally 3-6mm thick, consisting of two thin aluminium sheets bonded to a non-aluminium core (such as polyethylene or a mineral product). Panels are produced in various formats but can span 2-6m in length and 600mm to 2m wide.

The growth of ACP product use over the last 10 years, particularly in high rise applications, has been attributed to its light weight and aesthetic qualities. Their attractiveness to designers and developers includes the variety of colours and finishes. ACPs do not generally add to the structural integrity of a building but may contribute to the energy efficiency and weather proofing of an external wall.

Manufacture and supply

While there are companies like Symonite that manufacture a portion of their product in Australia, most ACP products are manufactured internationally in Germany, China, India, Brazil, Japan and the United States. A number of products are produced by large multinationals including Mitsubishi Arconic.

Key suppliers of ACP in the Victorian market include Fairview Architectural, HVG and Bluechip.

Fire performance of ACP

In the case of ACP, concerns have centred on products with 100 per cent PE cores, which were used on the Lacrosse and Grenfell buildings. Some stakeholders, including in submissions to the Senate Inquiry, have advocated for ACP PE products to be removed from the market. The Senate Inquiry recommended that such a ban be introduced in its interim recommendations.

On 6 October 2017, the BMF agreed that Ministers would use their available laws and powers to prevent the use of ACP with a PE core for most types of multistorey buildings, until such time as they are satisfied that manufacturers, importers, and installers, working in collaboration with building practitioners, will reliably comply new testing standards for cladding products and a permanent labelling system for cladding products is introduced. We understand that the Minister for Planning is considering available mechanisms for introducing this measure.

CSIRO has undertaken non-combustibility tests of ACP PE panels at the request of the MFB. The test was a “clear fail”, 55 seconds into the test. The MFB found no evidence that any PE-based product would pass the non-combustibility test.

Some stakeholders have also raised concerns about the marketing of FR products, which are variously described as “fire rated”, “fire resistant” or “fire retardant”. ACP FR products typically have had a mineral component added to their cores. There is no standard definition of “fire rated” in Australia, and discussions with CSIRO suggest that the composition of their cores, and therefore fire performance, can differ markedly.

Expanded Polystyrene

EPS is a lightweight plastic material that is commonly used in packaging as well as in the building and construction industry. The material is refined from oil and gas, polymerised and expanded to form EPS. The raw product is imported into Australia and expanded with air in local plants.

In addition to its light weight, key characteristics of EPS include; ease of installation and its thermal insulating properties.

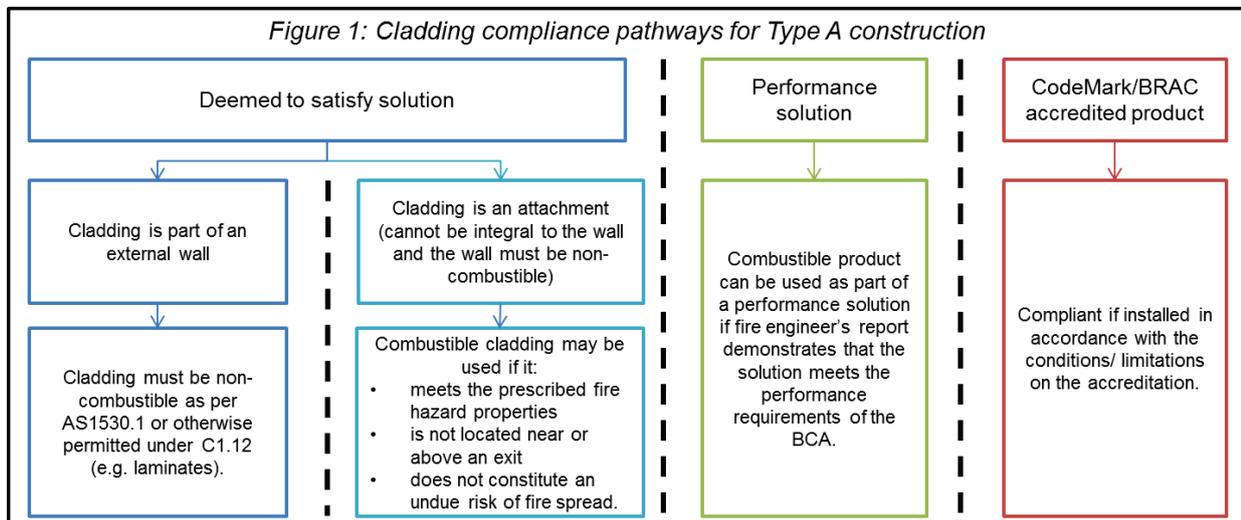
Originally used as a construction material in commercial buildings, such as cool stores, due to its insulant properties, EPS has become more widely used in residential buildings in the past 20 years as a light-weight construction method for low-rise buildings. EPS is typically rendered with cement when used as a cladding material. It is common in domestic construction, particularly for a second storey construction. Anecdotal evidence has suggested it is more commonly used as a construction method in Victoria than in other jurisdictions and has also been used in a significant number of apartment buildings above 3 storeys. The one building identified by the VBA post-Lacrosse audit identified as requiring emergency action involved a combination of ACP and EPS.

Fire performance of EPS

EPS is combustible and may melt or ignite when exposed to temperatures above 100°C or an open flame. The oxygen voids created by melting EPS may intensify fires, and molten droplets may cause fire to spread. EPS cladding may also increase the risk of building collapse during a fire. Penetrations into EPS increase both fire risks and water proofing risks. EPS cladding is thought to have contributed to a fatal fire at the Television Cultural Centre in Beijing in 2009.

When are ACP and EPS Compliant?

Figure 1 outlines the compliance pathways and fire-performance requirements under the NCC for cladding products on Class 2 (multi-unit residential), Class 3 (temporary accommodation) and Class 9 (public use) buildings above 2 storeys (Type A construction). Different requirements apply for single storey residential buildings where ACP and EPS can be allowed.



External wall

A combustible material, such as 100% polyethylene core ACP, cannot meet the DTS pathway for an external wall as it will not pass the AS 1530.1 test. The only exception to this rule is for combustible laminate products; provided that each of the components of the product, other than the adhesive, are non-combustible. A number of ACP products claim to be compliant in accordance with this provision. While these products meet the NCC requirements, some submitters have raised concerns about their fire performance as a complete product. The Taskforce is seeking further advice on this issue.

Some ACP products are branded as A2, signifying that they are considered non-combustible or of limited combustibility according to the European Standard for reaction to fire (EN 13501-1). However, these products do not necessarily meet the Australian standard for non-combustibility.

Some stakeholders have also raised concerns about the marketing of FR products, which are variously described as “fire rated”, “fire resistant” or “fire retardant”. ACP FR products typically have had a mineral component added to their cores. There is no standard definition of “fire rated” in Australia, and discussions with CSIRO suggest that the composition of their cores, and therefore fire performance, can differ markedly.

Attachments

The NCC allows for combustible material to be used as an attachment to an external wall, provided that the wall meets the required Fire Rating Level and the product meets the prescribed fire hazard properties, is not located near or above an exit, and does not constitute an undue risk of fire spread.

Submissions suggest that some building practitioners have used compliance with AS1530.3 as evidence for why ACP meets the requirements for an attachment. A number of suppliers of these products note compliance with AS1530.3. However, CSIRO’s view is that AS1530.3 is not a relevant test for ACP used on external walls as it is designed to test internal linings and their contribution to accelerating fire.

AS1530.3 involves a test performed at a much lower, radiant heat than AS1530.1. It is not a test of ‘combustibility’. It considers ignitability, heat and smoke but the radiant heat at which the test is conducted is quite low (lower than the ignition point for timber) while AS1530.1 involves direct application of a flame at temperatures of approximately 700 degrees. ACPs (including 100 per cent PE) can pass the 1530.3 test because the aluminium sheets shield the core in the test. Aluminium melts at approximately twice the heat used in the test.

Advice to the Taskforce suggests that ACP PE and EPS are unlikely to comply as attachments as their use would constitute an undue risk of fire spread.

Performance Solution

A 'performance solution' (previously referred to as an 'alternative solution'), provides a secondary pathway to compliance that permits a fire safety engineer to develop a design, involving the use of combustible cladding, that meets the performance requirements of the BCA. In other words, that the use or design of a fire protection systems façade would otherwise achieve the same 'performance standard or outcome' as a non-combustible façade.

Such design decisions need to be made by a suitably accredited and experienced fire safety engineer on a case-by-case basis. To comply, a performance solution would require a documented assessment method:

- Evidence of suitability
- A verification method
- Expert judgement
- Comparison with the deemed to satisfy solution

A performance solution for an external wall system would need to address the performance requirement CP2 as a minimum. CP2(a) requires that a building must have elements which will to the degree necessary, avoid the spread of fire in a building. Large scale façade test data is recommended by CSIRO as the best basis for complete analysis. Proposed changes to the BCA, released for public consultation on 14 August, would introduce a new verification method for alternative solutions for external walls, including a new full-scale façade test AS 5113.

Stakeholder feedback varied on the extent of the use of performance solutions for cladding. Building practitioners suggested that performance solutions were the predominant method of achieving compliance due to the preference for bespoke designed façade systems and fire safety systems. Fire safety engineers argued that comparatively few of the buildings that incorporate combustible cladding have used performance solutions for cladding.

Accredited products

Building products or systems accredited either under CodeMark or by the Building Regulation Advisory Committee (BRAC) in Victoria, are required to be accepted as compliant if used in accordance with the limitations and conditions on the accreditation. Under CodeMark, products can either be certified as meeting the deemed to satisfy provisions of the BCA, or as meeting the performance requirements of the BCA when installed in accordance with the certificate and the manufacturer's instructions.

A number of ACP products are CodeMark accredited, although with varying limitations on their use. Some of these products are accredited as meeting the deemed to satisfy requirements of the BCA, while others do not meet these requirements but are accredited as meeting the performance requirements of the BCA.

Non-conforming products

States and territories have agreed that non-conforming products are products that claim to be something they are not or are not suitable for their intended use, while non-compliant products are products that have been used in situations where they do not comply with NCC.

Cladding fires

The Lacrosse building fire

On 25 November 2014, at 2.24 am a fire broke out in the 23-storey Lacrosse apartment building at 673 La Trobe Street Docklands, Melbourne, built in 2012. The incident involved rapid external fire spread across the façade of the building and resulted in a mass evacuation of more than 400 residents. The cause was a non-extinguished cigarette disposed of in a plastic container. The rapid vertical fire spread was attributed to the

façade of the building, which consisted of combustible external aluminium wall cladding. Fortunately, there were no casualties and residents were evacuated safely.

The product used was an ACP (Alucobest) of approximately 4mm thickness containing a PE core. The MFB's report into the Lacrosse building fire found that the Alucobest ACP PE contributed to 'the fire load and the rapid spread of the fire up the vertical face of the building'. The fire behaviour and extent of fire spread, both externally and internally, clearly demonstrated that the form of construction adopted in the building solution did not meet the performance requirements of the NCC with respect to the avoidance of fire spread.

Other incidents

International fires involving ACP or EPS include:

- the Grenfell Tower fire, in which the use of ACP with a PE core has been identified as a contributing factor to the speed and severity of the fire
- The Torch, Dubai in 2015 and 2017
- Robuazix, France in 2012
- Sharjah, United Arab Emirates in 2012
- Tecom, Dubai in 2012
- The Water Club, Atlantic City in 2007.

1. Review of the VBA audit and development of a comprehensive audit

Review of the VBA audit post-Lacrosse

Overview of VBA audit

In 2015, after the Lacrosse fire, and prior to the formation of the Victorian Cladding Taskforce, the VBA initiated an audit of external wall cladding on high-rise and public buildings in Melbourne's CBD to determine the extent of non-compliance with the NCC, and prevent a repeat of Lacrosse. The audit initially identified and audited 168 high rise residential and public buildings in central Melbourne and inner surrounds.

Of the building permits audited, 51 per cent (85 buildings) were assessed as non-compliant with the NCC. A working group comprised of the VBA, City of Melbourne and MFB determined that none of the buildings posed a safety risk requiring immediate action. One building in the City of Port Phillip (the Harvest building), which was outside of the audit scope but identified during this process, required immediate remedial action.

VBA findings

The VBA Audit Report made the following findings:

- The levels of non-compliance were “too high...but generally do not pose a risk to safety”
- There were at that stage many types of external cladding material in use in the Victorian building industry and whether they were ‘fit for purpose’ was not well understood by building practitioners and building surveyors
- The NCC requirements for external walls were inconsistently applied and poorly understood
- “No single category of practitioner involved in the design, approval or construction of those building projects audited is consistently responsible for the non-compliance use of cladding”

Taskforce analysis of VBA audit

The Taskforce sought further information from VBA on the audit. Of interest to the Taskforce, was the nature of non-compliance, including whether the buildings had combustible attachments, combustible external walls, or both, and whether performance solutions for external walls and attachments were relied on. The Taskforce also noted the number of buildings that the VBA considered had been brought into compliance following their audit, and sought to understand the basis for determining compliance or non-compliance.

Significantly, the majority of buildings had combustible cladding and on initial observation were non-compliant under a deemed to satisfy (DtS) provision. In many cases, information provided by the VBA did not indicate the actual products used, the extent of cladding or a consistent indicator of risk-based rationale for achieving compliance that would assist the Taskforce's audit in defining the acceptable ‘standard’ in future.

The VBA noted the nature and scope of design detail in many drawings and specifications was inadequate to determine compliance with the NCC. As of the 31 October 2017, the VBA and MBS have concluded, more than 30 buildings remain non-compliant.

Importantly 91% of the buildings identified by the VBA had architectural/specification documentation which indicated the use of combustible external wall cladding and/or combustible external wall linings/attachments. Even if the cladding was considered a lining or attachment, the majority at first observation did not comply as a DtS provision.

It is also significant that the instances of non-compliance identified by the VBA were not merely administrative or minor in nature – they were central to demonstrating compliance with elements of the NCC that require non-combustible elements to be used for external walls.

We agree with the VBA's assessment that the level of non-compliance it detected is too high, with significant and wide-spread non-compliance detected. Of concern is whether the same practitioners may have been involved in multiple non-compliant buildings. The VBA should analyse such patterns and communicate the outcomes of its audit with specific feedback to those practitioners of their shortcomings so corrective action to be taken.

The Taskforce is taking advice on the appropriate standard of risk reduction and/or compliance that should be aimed for in the Statewide audit, as outlined in Chapter 2. This will be the subject of engineering advice.

It is not clear whether the buildings that were accepted as compliant will meet the standard of risk reduction and rectification that the Taskforce is developing.

Given this possibility, an independent review of the VBA's original audit should be undertaken. The VBA had resolved to commission a review of its audit, prior to the announcement of the Taskforce. Such a review should include technical engineering involvement to ensure that all buildings are held to the same objective standard.

Development of the Taskforce's audit process

A key element of the Taskforce's work has been to develop the scope, methodology and timetable for a comprehensive audit of relevant buildings in Victoria to identify instances of the use of inappropriate cladding material that poses a risk to public health and safety.

Pilot kerbside visual inspections

The experience from the VBA audit meant that commencing with a review of documents would be extremely time consuming and be of little value. Accordingly, the Taskforce considered the most expeditious approach was to commence with field inspections to consider buildings 'as-built'. Follow up enquiries could then be made regarding documents, sampling and testing if required. The Taskforce facilitated a series of pilot kerbside visual inspections across four nominated councils. Between August and September 2017, the following four councils undertook over 500 kerbside inspections:

- City of Greater Dandenong
- City of Monash
- City of Moreland
- City of Whittlesea

The pilot was based on data provided by the VBA of building permits issued in the relevant classes of buildings and municipalities since 1 July 2005. Councils were provided with permit information on approximately 628 buildings in classes 2, 3 and 9. Council officers validated the data, and after removing some out of scope buildings, inspected a total of 567 buildings.

The inspecting officers could visually identify products that appeared to be ACP, but unfortunately could not easily identify EPS, which proved difficult to visually distinguish from other rendered products. Overall, 84 per cent of the buildings inspected were deemed to require further investigation after the initial kerbside inspection.

Notably, the inspected buildings represent over 10 per cent of the buildings within the Statewide audit scope discussed below.

Pilot on-site inspections

Based on the results of the visual kerbside inspections, the Taskforce has developed and is piloting an inspection and risk assessment methodology in partnership with six councils:

- City of Greater Dandenong
- City of Monash
- City of Moreland
- City of Melbourne
- City of Port Phillip
- City of Whittlesea

The methodology follows the following key steps:



Risk assessments

To ensure consistency in approaches and terminology by the various parties, the Taskforce has utilised the standards for Risk Management (AS/NZS4360:2004 and ISO 31000) and Fire Safety Audits (AS4655-2005) to ensure consistency of terminology.

The standards apply four levels of risk based on probability and consequence: Low, Moderate, High, and Extreme.

The definition of the different risk profiles and the relevant factors for a risk assessment include:

- the types of cladding present
- the extent of combustible cladding
- the configuration of cladding
- the orientation of cladding panels
- the presence and extent of sprinkler systems
- ignition sources in close proximity to combustible cladding
- risk of fire from adjacent buildings
- cladding adjacent to windows or service openings
- the insulation type behind cladding
- the fixing method of cladding
- ability of occupants to exit unaided (e.g. hospitals, nursing homes)
- the adequacy of egress provisions
- factors influencing the speed of evacuation
- the adequacy of firefighting provisions
- the maintenance of ESMs
- active brigade monitoring systems and other fire/smoke management systems.

These factors have been incorporated into the Risk Assessment Tool to establish the initial risk rating of each building. The Risk Assessment Tool is supported by onsite data collection using the iAuditor inspection app on a handheld device. iAuditor is already widely used by councils.

The results of the audits, including the proposed risk rankings calculated by the Risk Assessment Tool, are reviewed by an expert advisory panel including a fire safety engineer, the VBA and the relevant fire agency and support the MBS in each of the pilot municipalities.

The panel's role is to support the MBS in undertaking their statutory function. Decisions on risk mitigation measures, as well as any required building or emergency orders to be issued, remain with the MBS.

Ensuring buildings are safe to occupy

Where a building is rated as high or extreme risk, the MBS for that building would consider whether an Emergency Order is required to ensure that the building is safe to occupy. This order would include building or other work that should be completed within a specified timeframe to ensure that the building is safe to occupy.

The MBS and advisory panel may also consider other mitigation options that the building manager / owners can implement to avoid the need for evacuation:

- a 24-hour presence onsite by a person qualified in firefighting and first aid
- an assessment of building occupants to identify those needing help to exit in an emergency.

Evacuations

If after considering all other measures, an MBS is of the opinion that an extreme risk still exists, an Emergency Order to evacuate may be issued. Should this be the case, a planned 'contingency' response is required so that evacuees are relocated to safe accommodation.

Proposed comprehensive audit process

Following advice, submissions received, the review of the VBA Audit and consideration of the outcomes of its two pilot processes, we recommend a three-part audit process:

1. The voluntary activation of owners, owners' corporations, occupants and practitioners through the Stakeholder Reference Group and direct communications from the Taskforce.
2. A comprehensive and consistent audit of government owned and occupied buildings, coordinated through an Interdepartmental Working Group, and reporting through to the Taskforce.
3. A comprehensive, prioritised audit of privately owned buildings, focussing on multi-storey class 2 (multi-unit residential), class 3 (temporary accommodation) and class 9 (buildings of a public nature), to be led by VBA.

The Taskforce has begun to implement this process, with a voluntary activation process and an audit of government owned and occupied buildings is already underway.

Proposed Statewide process

We consider that a government-led audit of privately-owned buildings is required, at least in relation to priority buildings.

Scope

Based on advice from fire authorities and fire safety engineering experts, we recommend that the Government coordinate an audit of the following types of privately-owned buildings constructed in Victoria since 1997:

- Class 2 buildings (multi-unit residential buildings), three storeys and above.
- Class 3 buildings (short-term accommodation buildings), three storeys and above.
- Class 9 buildings (buildings of a public nature), two storeys and above.

Data analysis performed by the Victorian Centre for Data Insights has identified up to 1,369 buildings in these categories that are likely to have ACP or EPS cladding. Further detailed analysis and cleansing of these records will establish a priority group for inspection, noting that this does not indicate that other buildings in scope do not necessarily have these types of cladding.

We recommend that the priority buildings identified as likely to have either ACP or EPS cladding form the first priority group for the audit, and that these buildings proceed straight to onsite inspections. It is estimated this process will take 6-12 months.

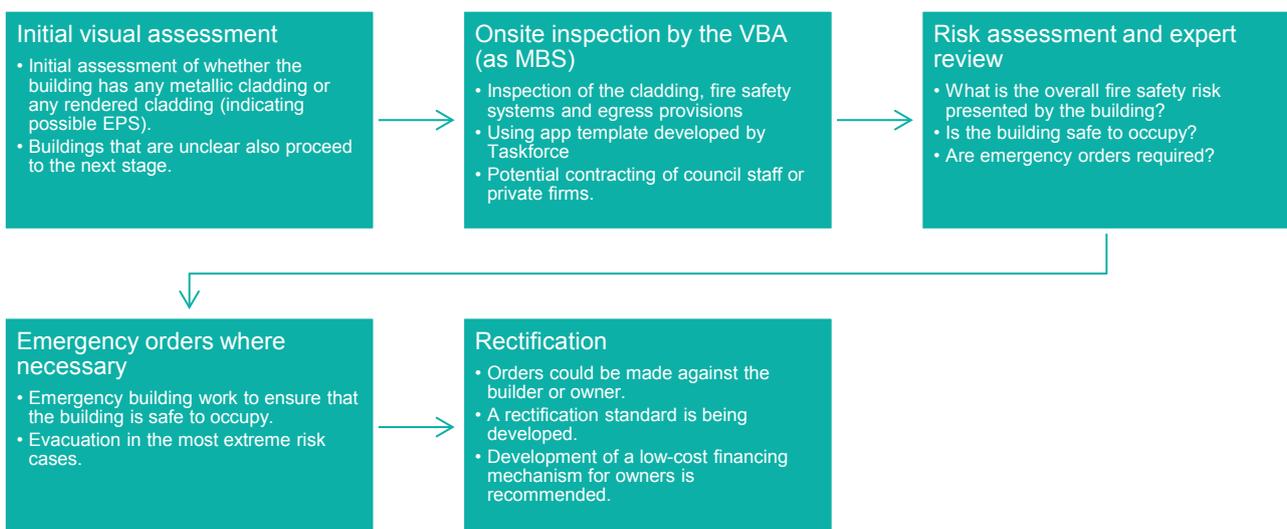
At this stage, advice from stakeholders including the MFB, is that other classes of non-domestic buildings (classes 5-8) may need to be covered in subsequent audits, depending on the finding of the priority audit. A sampling strategy may be considered for other buildings.

Audit approach

The results of pilot inspections to date support the continued use of the piloted inspection approach, including the use of the inspection and risk assessment tools developed by the Taskforce.

A key issue that has become apparent from the pilot, however, is the difficulty in maintaining the necessary level of coordination and consistency across councils as they roll out the pilot. These issues are likely to become more difficult if this process is rolled out to a larger number of councils. There are limited resources in councils to undertake inspections to the magnitude that will be required for the Statewide audit. There may also be a perception of conflict where they have been involved in an original issue of a permit or certification process. The pilot process has also proven relatively costly.

We therefore recommend that the VBA lead the audit on a Statewide basis, using a similar process to that developed for the pilot (as outlined below). This will promote a higher degree of coordination and consistency in the audit and should improve the cost effectiveness of the audit process through economies of scale. It would also allow for buildings to be prioritised based on data analysis and risk factors, rather than prioritising on a municipality-by-municipality basis. The VBA could explore more efficient resourcing models to undertake the audit expeditiously.



Private building owners will be encouraged to initiate their own inspections and take remedial action. The Minister for Planning has the power to declare the VBA as an MBS so that it has the maximum allowable powers under the Building Act to manage the audit and rectification process. This would avoid duplication. The VBA could then use its own staff and recruit new staff or contractors, including appointing council staff and MBSs, as part of the Statewide approach and centrally coordinate the response. The VBA may agree that council staff may also lead the audit process.

Rectification

We recommend that once a building has been deemed safe to occupy, the VBA would be responsible for bringing the building to a low level of risk in accordance with the rectification standard. The rectification standard and the proposed process for ensuring the long-term safety of these buildings is outlined in Chapter 2.

2. Process for rectification and cost implications

A priority for the Taskforce, in accordance with its Terms of Reference, is to develop a standard and a process for bringing at-risk buildings to an acceptable level of safety and/or compliance on completion of the audit process outlined in Chapter 1.

Development of a rectification standard

The Taskforce has commissioned a panel of fire safety engineers and façade system experts to develop a standard for rectification. The standard will be evidence based, incorporating Australian and international product test results, fire modelling and full-scale fire tests.

The standard would be used to provide guidance to regulators, building owners and practitioners as to what risk mitigation measures would be required to eliminate or reduce risks posed by the presence of combustible cladding to as of as is reasonability practicable.

The Taskforce has been advised by experts it has engaged to prioritise risk reduction and aim to achieve equivalent levels of health and safety protection as the NCC would require. Owners would continue to have the ability to address any compliance issues.

The standard is expected to include guidance on a range of suitable (and unsuitable) products for replacement without endorsing any one particular product. This would prevent any confusion or inappropriate use of cladding, for example products marketed as FR that may not perform to the required standard.

Rectification can vary from full replacement of all combustible cladding to no further action required in low risk/incidental uses of cladding. Full replacement would be the costliest option and is likely to require a new building permit to be issued and considerable construction works including protective works and protective measures for health and safety.

There is considerable interest from stakeholders and other jurisdictions in the Risk Assessment Tool and a rectification standard. The Taskforce has offered to share these materials. Feedback from national stakeholders is that national consistency is preferable and that they would encourage their members to use the tool. There is also strong support for a national approach to rectification.

Rectification costs and legal duties

Owners' obligations

In Victoria, owners' corporations are responsible for managing the common property. There can be more than one owners' corporation, particularly where a building comprises a mix of uses. The common property will be delineated on the plan of subdivision but will generally include walls, stairwells, lifts and foyers. Accordingly, external cladding is likely to be on common property. There may be some exceptions, for instance, where cladding is attached to a private balcony this may or may not comprise common property.

The owners' corporation is required by legislation to manage, repair and maintain the common property, organise insurance, raise fees and levies from owners to discharge its role and ensure compliance with the law. While this does not require inspection of every possible risk it is likely that, given the public attention to cladding issues and the work of the Taskforce, cladding would be considered a 'known safety risk' and require the owners' corporation to take expert advice on the risk and determine appropriate action.

Owners' corporations are permitted to pay for urgent works and to levy owners for maintenance and upgrade works. An owner must comply with an Emergency Order.

The owners' corporation and individual owners are occupiers of common property and each has a duty to take steps to prevent injury or damage to persons arising from the state of the premises. A letter to relevant owners by the Taskforce is likely to suffice in alerting owners and occupiers of cladding risks and put them on notice that they should take action to investigate the risk and determine appropriate action in accordance with their duty.

Building practitioners' obligations

Building practitioners may be liable for some or all of the cost of rectification, depending on a range of factors, including the type of construction, contractual obligations and the law of negligence.

Domestic Building Work

The *Domestic Building Contracts Act 1995* creates a number of implied warranties for builders in relation to all domestic building work. These include warranties that all building work is carried out in a proper and workmanlike manner and that all materials supplied by the builder are good and suitable for purpose.

A breach of these warranties is a domestic building work dispute. An owner has 10 years from the date the occupancy permit is issued to refer the dispute to Domestic Building Dispute Resolutions Victoria (DBDRV). If following conciliation the matter is not resolved, in certain circumstances DBDRV has the power to make binding dispute resolution orders based upon expert advice and can require rectification and/or the payment of money. Crucially, builders of multi-storey residential buildings are not required to maintain builders warranty insurance.

Building practitioners may also have liability in relation to other types of buildings due to their contractual arrangements or under the law of negligence.

Who can determine compliance and order rectification?

The inspection and compliance powers in the Building Act are divided between the MBS, PBS and the VBA. Appointing VBA as the MBS for the purposes of the audit, would ensure that the full suite of these powers is available to facilitate rectification.

Liability and costs

Liability for the costs of rectification will depend on the circumstances of every building and what type of enforcement mechanism is used:

- the VBA may issue Directions to Fix requiring building practitioners to rectify, noting that the use of this power post-occupancy is currently subject to legal challenge
- the MBS may issue Emergency Orders and Building Orders requiring the owner of the building to undertake the required works.

Where owners are required to rectify they may be able to seek compensation from building practitioners for 10 years post-construction.

The VBA could also negotiate enforceable undertakings that would confirm remedial measures and hold building practitioners to account. Unfortunately, no enforceable undertakings have been negotiated to date and the experience from other regulators that have introduced them has been that they are not well understood and take some years to take on. They are also unlikely to succeed without a prosecution on foot or a real prospect of prosecutions.

Financing mechanisms

It would be desirable to further explore options to mitigate the financial impact of rectification on building owners. For example, it may be possible to facilitate the development of low-cost financing mechanisms to allow owners' corporations to both fund works while awaiting the outcomes of any legal proceedings against building practitioners, and to allow for any long-term costs that are borne by owners to be spread out over time and between numerous owners.

The Taskforce has consulted banks regarding finance options for rectification works. Banks have indicated that there were some financial products available where money could be lent to owners' corporations and repaid by a levy on individual lot owners.

Financing options will be explored further once more is understood about the extent of non-compliance and risks involved.

Risk and Insurance

The Taskforce engaged with the Insurance Council of Australia. The insurance industry has concerns about the potential litigation and large-scale rectifications and the liability and impacts this may pose. The Taskforce was not provided with any evidence that claims had commenced. The Taskforce was advised informally that some insurers were withdrawing insurance for buildings with cladding. It was not provided with any evidence to confirm this. These issues will continue to evolve as the various inquiries and interstate Taskforces progress their work. DELWP will need to monitor such developments closely.

3. Enforcement and disciplinary action arising from audit

In November 2014, the VBA commenced its investigation into the Lacrosse fire and the non-compliant use of ACP in Melbourne's central business district and inner urban municipalities.

No one was prosecuted over Lacrosse as proceedings for offences under the Building Act must be brought within three years of the alleged offence. Lacrosse was completed in 2012 so the time limit had expired.

Time limits were amended in 2017 to state for almost all offences under the Act or the regulations, criminal proceedings can be brought within two years after the commission of the alleged offence first came to the attention of the VBA, up to 10 years after the commission of the alleged offence.

Disciplinary proceedings

Disciplinary proceedings were initiated against the following parties:

- Anastasios Galanos, private building surveyor
- Jim Moschoyiannis, a registered building practitioner and Director of LU Simon, the builder, and
- Con Nicolas, fire safety engineer

These proceedings are being heard by the Building Practitioner's Board (BPB)¹. We are concerned by the long period of time it has taken for these disciplinary proceedings to be dealt with and the fact they are still not complete.

Proceedings against Mr Galanos were issued in March 2016. The VBA alleges that the building surveyor breached the Building Act and Regulations and failed to carry out his work in a competent manner and to a professional standard in that he could not have been satisfied that the building work would comply with the Building Act and Regulations when he issued the building permit.

Mr Moschoyiannis, the builder, is alleged to have breached section 16 of the Building Act by installing ACP on external walls when it did not comply with the Building Code of Australia. During the BPB proceedings, it was alleged that LU Simon suggested substituting Alucobest for Alucobond and that the project's architect agreed to the suggestion pending guarantees that Alucobest met the Australian Standards.

Mr Nicolas, the fire safety engineer, faces six allegations including that he failed to carry out work as a registered building practitioner in a competent manner and to a professional standard by failing to identify or assess the use of ACP in the external wall which he had determined was compliant.

These matters will be considered and determined by the BPB.

Architects

In Victoria, professional disciplinary proceedings involving architects are the jurisdiction of the Architects Registration Board of Victoria (ARBV).

In 2016, the VBA referred matters discovered in its investigation to the ARBV for Elenberg Fraser to be investigated in its role as architect for the Lacrosse building. The ARBV has stated publicly that "this was not a formal request". The ARBV is empowered under section 18 of the *Architects Act 1991* (Vic) to initiate an enquiry itself into an architect's fitness to practise or professional conduct.

The complaint review in the matter of Elenberg Fraser was conducted by two ARBV board members. After reviewing Elenberg Fraser's response, the reviewers found there was no prima facie evidence to support the allegation of professional misconduct as to warrant referral to the Tribunal. No reasons for the decision were provided publicly and we are concerned that there may be other grounds on which the ARBV could have properly initiated an Inquiry in this case.

¹ From 1 September 2016, the BPB ceased to exist except for finalising referred matters. Their functions, powers and responsibilities have been transferred to the VBA.

4. Effectiveness of the current compliance, certification and enforcement regime

This chapter examines the role of the VBA, MBSs and private building surveyors, in accordance with the role of the Taskforce to examine the current compliance, certification and enforcement system and to recommend improvements.

Broader reforms to mitigate against the future use of combustible cladding are considered in Chapter 5.

The chief officers of the relevant fire authorities also have a regulatory role in consenting to important fire measures. This role is discussed in Chapter 7.

Context

The Building Act establishes the VBA as the lead agency in Victoria for monitoring and enforcing compliance in the building industry with the Act and Regulations. The VBA operates within a regulatory framework which includes other entities with regulatory oversight of the building sector, including:

- Building Surveyors (private and municipal)
- Councils (planning & building)
- WorkSafe Victoria (during building phase & for buildings used as workplaces)
- Environment Protection Authority (demolition work & building waste)
- Architects Registration Board of Victoria (regulation of architects).

In assessing current practices, we also recognise that there are legislative limitations that impact on the VBA's functions which the chapter highlights.

Victorian Building Authority

The VBA's functions, as outlined in the Act, include monitoring and enforcing compliance with the Building Act and the Regulations.

VAGO reviews and 2016-17 legislative reforms

A number of extensive, critical reviews of the VBA (and its predecessor the Building Commission) have been undertaken including by the Victorian Ombudsman report in 2012, and the Victorian Auditor-General's Office (VAGO) in 2011 and 2015 respectively.

Statement of Expectations

In mid-2016, the Minister for Planning issued his Statement of Expectations (SOE) to the VBA which outlined how the VBA should contribute to the Government's Regulation Reform Program to improve regulatory practices. A key focus of the SOE was to follow up on the VAGO recommendations focusing on risk-based strategies and an expectation that the VBA 'will take a risk-based approach to the management of their compliance responsibilities'.

The VBA's current approach

The VBA has made important improvements in moving toward being a risk-based and responsive regulator for the building industry. There are good examples of initiatives by the VBA to enhance its targeted approach to regulation which include the establishment of:

- a proactive inspection program
- a practitioner intelligence team
- a monitoring and evaluation framework.

In general, there has been an increasing trend in the level of compliance and enforcement activity from the VBA in recent years. In 2016/17, there were 1,187 investigations into building and plumbing related matters, resulting in 109 building and plumbing practitioner disciplinary hearings conducted by the BPB and the VBA.

The VBA prosecuted 60 registered and unregistered building and plumbing practitioners. Since 1 September 2016 the VBA has undertaken 44 show cause disciplinary proceedings following investigation.

It is, however, evident that the VBA's investigation and enforcement functions are still primarily driven by complaints received and that they have not adequately deterred or dealt with widespread compliance issues. This makes its regulatory response highly reactive in this area and significantly limits its ability to take a proactive risk-based approach to these functions.

The current VBA compliance and enforcement policy framework does not provide adequate guidance as to how and when the VBA will use its enforcement tools and in what circumstances it will escalate to tougher enforcement actions.

Submissions

Most submissions to the Taskforce commented on the role of government in the general regulation of the building industry and many specifically commented on the role of the VBA. It was suggested that a crucial ingredient of a rigorous approvals system would be widespread respect for the competence and integrity of the VBA. Some submissions argued that problems in the regulatory system are a shared responsibility and will require coordinated and cooperative initiatives.

Many submissions commented – negatively – on the investigation, enforcement and discipline processes that are currently in place to ensure compliance.

The Taskforce also heard from some stakeholders that weaknesses in the system were due to regulatory failure, some that they were due to regime failure, and some argued that it was both. Almost all industry association submissions argued for more consistent and rigorous enforcement of the existing regulations.

The Taskforce and Stakeholder Reference Group provided considerable feedback and support that Government should seize the opportunity to increase the level of rigour, accountability and consistency in the compliance, certification and enforcement regime.

There are opportunities for the VBA to further enhance its compliance and enforcement approach to more clearly reflect that it is risk-based and responsive in its targeted activities and strategic objectives. This includes:

- providing more guidance and advice on compliance
- more targeted and visible inspections
- increasing the organisation's public exposure and improving transparency in VBA's processes, decision making and public disclosure on enforcement and prosecution
- undertaking education campaigns and activities to improve compliance understanding and awareness
- providing greater clarity and consistency in its compliance and enforcement approach
- speeding up its disciplinary proceedings and allowing prosecutions to commence simultaneously while the proceedings are underway
- increasing audits of building surveyors and fire safety engineers
- utilising powers to share intelligence and information with other regulators.

Proactive enforcement should include on ground inspections of buildings during construction. At first instance, proactive inspections should target use of PE cladding and EPS to determine the prevalence of continued non-compliance and prevent exacerbation of fire safety risks during the period of the Statewide audit.

Powers and Tools

Since 2016-17, new compliance and enforcement measures have been provided to the VBA including new regulatory tools. However, when outlining its compliance and enforcement tools in its policy framework, the VBA provides little indication as to when to apply them within a graduated response approach to create clear expectations of the consequences for non-compliance.

Improving VBA's powers and tools

While there may be scope for the VBA to better use available regulatory tools, we agree with its view that the Building Act does not provide the VBA with the requisite powers and tools to implement a response that is targeted at the highest priority risks posed by non-compliance. The Act places constraints on the VBA's ability to apply a responsive and appropriately graduated response required for effective regulation, i.e. that ranges from encouragement/education to sanctions, including revoking a registration/licence or instigating proceedings.

To ensure that these measures are able to be enforced, the VBA would need to have the requisite suite of powers to enter, inspect, examine and test building products to ensure compliance. In our view, the VBA's current powers and tools used for inspection, investigation and enforcement do not benchmark adequately against modern legislation and they need to be reconsidered to ensure it has the power to inspect and deal with issues detected after a building is complete.

There were concerns that the VBA lacked adequate in-house building and technical expertise to provide authoritative compliance advice on the NCC and on technical questions. This is a critical component of credible and effective regulation.

Municipal Councils

Local governments are responsible for the administration and enforcement of a number of sections of the Building Act. Local Councils also have jurisdiction for enforcement of the use of a building under building, planning and public health laws, as well as statutory authorities as relevant. MBSs are employed, or engaged, by most councils to enforce laws within their municipality in order to maintain community health and safety. This includes the issuing of building permits.

Specifically, councils have express responsibility under section 212 of the Act to administer and enforce parts of the Building Act as well as the Building Regulations in their municipality.

As a result of this role, the MBS and local councils are often the first point of contact for the community where there are concerns about building works, with expectations that councils will address safety, amenity and non-compliance matters. Complaints related to immediate life safety matters are the responsibility of Councils in the first instance. MBSs have the exclusive powers to issue Emergency Orders to evacuate, stop works or cause works to be made safe.

Submissions

A few submissions commented on the changing and declining role of the MBS with the privatisation of building surveyor services in 1994. It was noted that certification models vary across states, and in some states the local government authority has little or no direct involvement in the building approval or inspection process.

There is confusion between the regulatory responsibilities of state and local government particularly in relation to building works where a private building surveyor has been appointed.

While we acknowledge that the sharing of regulatory roles between the VBA and municipal councils can create complexity in the building regulatory framework, given the concerns raised with the Taskforce it is timely to recalibrate and clarify the role of VBA/Local Government/MBSs and private building surveyors.

Private building surveyors

Private building surveyors (PBS) are registered building practitioners who can be appointed as the Relevant Buildings Surveyor (RBS) for building work, and in this role are responsible for issuing building permits, undertaking inspections to satisfy themselves that building work complies with the building permit, and issuing occupancy permits at the completion of construction. They also enjoy enforcement powers. Most states require a building surveyor/certifier to certify compliance with the NCC at completion of works. Victoria does not.

Building surveyors are authorised to assess building plans for compliance with the performance requirements for buildings in the NCC, Australian Standards and other relevant building legislation or regulations.

While there are many participants in the building supply chain, building surveyors are often relied on as a critical point of quality assurance.

Key issues (and criticisms) of the current building surveyor role in submissions included:

- Lack of clarity around the relative roles and responsibilities of the PBS, the MBS and the VBA
- Perceived or actual conflicts of interest caused by commercial relationships between a private building surveyor and the builder and developer
- Increasing skills shortage and an ageing workforce is restricting the availability, accessibility and ability of PBSs to meet the needs of the current building regulatory regime
- The level of capability and capacity of private building surveyors to act as an effective assurance mechanism in regard to compliance, particularly in relation to large construction projects
- The nature of private insurance that is available for private building surveyors, and
- The dependence of the disciplinary system for private buildings surveyors on the receipt of complaints, and their subsequent investigation.
- Reluctance to use their enforcement powers after occupancy.

Submissions differed on the best way to respond. A common theme among submissions was the critical importance of the role of inspection and approval of building works.

A consistent theme in fire authority and professional association submissions was concern that changes occur after approvals are given, and that random audits could help to ensure continuing compliance. A number of submissions called for greater clarity of the expectations before approval is given, and on the nature of the approval itself. There was considerable concern expressed about the difficulty and cost of fixing non-compliance, and a strong preference for preventing it.

Private building surveyor – conflicts of interest

Submissions raised as a key issue the perceived or actual conflicts of interest between a private building surveyor and the builder, and the lack of clarity around the RBS's role.

While recent legislative changes mean a building surveyor cannot be appointed directly by the builder, they continue to be appointed by developers, who have a financial incentive to minimise cost and ensure that projects are completed as soon as possible. This commercial relationship aligns the incentives of the building surveyor with the developer rather than the eventual end users of the building. Stakeholders suggest building surveyors are often chosen based on cost, the ability to get the project completed as quickly and past experience. Numerous building surveyors and building practitioners expressed the view that overzealous building surveyors were less likely to be engaged on a repeat basis.

Improving the effectiveness of the Relevant Building Surveyor in assuring compliance

There also appears to be a common view in the building industry that it is the responsibility of the RBS to ensure that buildings are compliant. However, the building surveyor role is one of assurance (akin to an internal auditor). It should not be considered a primary prevention mechanism or control. That primary defence should be the professionals engaged in the building and construction role who are responsible for ensuring that their work is compliant with the relevant codes and standards and have a professional obligation of due diligence. Building surveyors have an important responsibility in relation to certification and assurance and have enforcement powers, but are not a substitute for the care and diligence of the other building practitioners involved, particularly given the increasing complexity of modern projects.

There was little suggestion from submissions that the current scheme should be reversed entirely. Further consideration for options to strengthen the assurance provided by the surveyor scheme will need to take place.

An option that could be considered would be decoupling the role of issuing permits from inspections of the building process, final inspection and enforcement powers.

We recommend consideration be given to amending the Building Act to require building surveyors to ensure they act independently, in a professional manner and uphold the integrity of the building design and approval system.

5. Mitigating the risk of future non-compliance

The terms of reference for the Taskforce include providing advice to the Minister for Planning and Government on how best to mitigate non-compliant uses of cladding material in Victoria in the future.

Serious concerns were raised with the Taskforce regarding safety issues in the building and construction industry. Although the extent of non-complying buildings is yet to be quantified, based on the extent of non-compliance identified by the VBA in its audit and the prevalence of combustible cladding, it can be expected that the number of non-compliant buildings could be more than 1400. Moreover, concerns were expressed over non-compliance with other aspects of the Building Act and insufficient auditing and proactive investigations by building regulators.

Many submissions outlined what they saw as the potential causes of non-compliant use of cladding. There was agreement that there were a number of potential causes which, over the years, have created a cumulative weakness in the building regulatory system and its enforcement regime. Potential causes identified included:

- incorrect or misleading labelling and/or marketing of products
- historic acceptance of materials that are no longer compliant, but were compliant at the time of installation
- confusion, inconsistency and ambiguities in the application of the National Construction Code (NCC)
- variations in regulations and codes and their interpretation over time
- substitution of non-compliant products between the approval phase and the construction phase
- poor quality workmanship or inexperienced professionals and/or practitioners
- lack of product or system knowledge
- competitive commercial pressures which incentivise the taking of shortcuts
- privatisation of the building surveyor role
- inadequate onsite inspection, supervision and quality assurance
- incorrect, inadequate or fraudulent documentation
- absence of visible deterrents and consequences and long-time delays in enforcement proceedings
- increasing reliance on performance-based solutions instead of deemed-to-satisfy provisions, and
- insistence on provision of compulsory industry-wide insurance.

The Taskforce was confronted with considerable and widespread concern at the level of non-compliance with Victorian building and construction regulations beyond cladding. Information was shared by concerned individuals and practitioners of serious defects in the construction of buildings that were not compliant and some that posed health, safety and amenity risks. In many cases, stakeholders advised that matters had been referred to VBA and local governments with little follow up or where the outcome of its enquiries were not communicated.

Generally, there were concerns that cladding was symptomatic of broader underlying levels of non-compliance and a lack of inspection or follow up of other matters required under the NCC including disability access, energy efficiency and amenity issues. Numerous examples were provided to the Taskforce of non-compliant buildings identifying serious fire safety deficiencies, inadequate waterproofing and even black mould in new buildings. Given the fundamental nature of building and fire safety to building regulations we are concerned that levels of auditing and inspection of these other requirements were low.

The extent of non-compliance detected in VBA's post-Lacrosse audit (51 per cent) is indicative of broader issues across the sector.

Ultimately, it appears that there have been system failures at three levels:

- Firstly, in the product supply chain from manufacturing, marketing, import, supply, sale and purchase
- Secondly, in the building and construction process from design, specification, procurement, installation, building and construction and maintenance and
- Thirdly, in regulation itself, particularly in compliance and enforcement (as discussed in Chapter 4).

Submissions

Many submissions stressed the importance and high priority of occupant safety during the design and approval processes and the inadequacy of current regulations. Some submissions argued for a shared responsibility and accountability, rather than “blaming” any particular category of practitioners.

Real concerns were expressed at the skills and qualifications of practitioners and trades in particular. There was a common view that with the growth in the sector and increasing complexity and innovation that standards of skills and training needed to improve significantly. Training and understanding the NCC was a specific concern.

A number of submissions argued for better communications, education, and public awareness activities associated with building products, particularly cladding. It was noted that public confidence in building standards has been eroded in recent years, and that there was a heightened level of community concern and anxiety arising from recent incidents.

Duties of care

The regulatory roles and responsibilities of the various parties involved in the construction of a high-rise building are fragmented due to the various disciplines and the nature of modern contracting, sub-contracting and procurement of construction projects.

This fragmentation has caused practitioners to focus disproportionately on their own role and requirements without considering interdependencies and overall compliance and safety performance. The protection of safety and achieving the highest possible standards of performance should be paramount.

Unlike some other jurisdictions and other regulatory areas, building practitioners do not currently have an express positive statutory duty to ensure the safety of a building and compliance with the code.

Comparison with OHS Act duties

In comparison, broad duties apply to designers of buildings intended to be used as workplaces. Section 28 of the OHS Act imposes a duty on designers of buildings and structures, to ensure that hazards and risks that may exist in a workplace are eliminated or controlled at the design stage, so far as is reasonably practicable. The duty has existed since 2006 and attaches a maximum penalty of over \$250,000.

However, in the context of combustible façades on buildings, it appears counter-intuitive that clearer, broader duties are placed on designers of buildings that will be used as workplaces than those that will be residences.

Introducing a statutory shared general duty of care

We support the Senate Committee’s recommendation for state and territory governments to work together to develop a nationally consistent statutory duty of care to protect occupants and consumers in the residential strata sector. A principles-based and outcome-focused general duty that requires all parties involved in the construction of a building to take reasonably practicable safety measures would be an effective way to ensure that practitioners focus on prevention. Victoria is also developing such a model in environment protection legislation.

The concept of duty of care has been a successful model in OHS legislation for decades where failure to comply is regarded as an indictable offence subject to improvement and prohibition notices, enforceable undertakings, prosecution, high fines and imprisonment.

The Building Act and Regulations do not sufficiently recognise the capacity of upstream entities like designers of buildings to exercise control or influence over matters or activities giving rise to safety risks.

Stakeholder submissions called for greater responsibilities to be shared across the supply chain to address safety risks to residents and consumers at the source.

Lack of project oversight

Submissions to the Taskforce have raised concerns that current approaches to building procurement mean that the designer of the building is no longer responsible for oversight of the project through to delivery. For example, architects are now commonly engaged under a partial services agreement that limits their role to the preparation of design and construction documentation, rather than also ensuring that the building is constructed in accordance with that documentation.

In the past, a Clerk of Works would oversee the construction process on behalf of either the architect or the owner, undertaking a quality assurance role in the interests of the owner. According to submissions to the Senate Inquiry, this role has largely disappeared due to deregulation. Some stakeholders have recommended reinstating the role.

In effect, the head contractor is responsible for ensuring that the building is constructed in accordance with the design, with some oversight from the building surveyor. Given the cost pressures placed on head contractors, due to fixed price contracts at slim margins, there are significant pressures throughout the project to avoid unanticipated costs and to identify opportunities to reduce costs where possible. These pressures, combined with extensive subcontracting and a low risk of detection, result in head contractors being incentivised to cut corners at all levels of the construction project.

There were broad concerns at the 'fragmentation' between different contractors and professionals engaged in the design, development and construction process which diluted responsibility.

Improving product safety regulation

Much of the focus at the BMF and the Senate Inquiry has been in relation to non-conforming products and the responsibility of manufacturers and suppliers of ACP in relation to their safety.

We consider that there has been disproportionate emphasis on product safety regulation and that deeper issues of non-compliance in the building industry were more significant contributing factors to cladding issues. Nevertheless, there are important improvements in building product regulation which would mitigate similar scenarios in the future.

Compared to other jurisdictions internationally, Victoria's regulation of building products is limited in its ability to deal with non-conforming cladding.

Manufacture and importation

The Building Act does not apply any requirements to the manufacture or supply of building products, whether manufactured in Australia or overseas.

Distribution and supply

The Building Act does not apply any obligations on suppliers of building products.

The majority of requirements, restrictions and powers that apply to the supply and sale of products under the Australian Consumer Law (ACL) apply only to "consumer goods", defined as goods intended or likely to be used for personal, domestic or household consumption. It is unclear whether external cladding would meet this definition, although some other building products, such as commercial roofing insulation, have been found to be consumer goods in the past as they can be reasonably likely to be used in domestic applications.

ACCC has publicly stated that the regulation of "building products" does not fall within its role, noting that building products are not generally consumer products and that it does not have the resources to do the work of state building regulators. For building products that are not consumer goods, there is far less regulation governing the safety of goods, and currently no powers for defective products to be recalled.

Product substitution

Non-compliance and non-conformity of building projects can be caused by product substitution. As architects are often not retained during the build process in an oversight role due to novation, substitution of alternative products and systems was said to be common. Products that are named or with certain specifications can be

substituted in many cases with less expensive products. This can lead to the risk that their specifications or performance may be inferior to specified products.

The Senate Committee identified product substitution “as perhaps the most significant contributing factor to the prevalence of non-compliant external cladding materials on Australian buildings.”

Potential product safety alert

The Taskforce has considered a product safety alert to industry in relation to both ACP and EPS products. The BMF resolved in October 2017 to use existing laws to prevent future use of PE cladding for many types of buildings until further notice. The alert would complement this measure.

The short alert could note the issues that have been identified in relation to the use of combustible cladding products both in Australia and internationally, alert them to the measures to prohibit the use of PE cladding, and warn builders and building surveyors to be particularly careful in the use of other cladding products.

Although combustible cladding issues have been well publicised, ACP PE is still widely available and, given what the Taskforce has heard to date, an alert would draw a clear line in the sand about these products, potentially reducing future exacerbation of cladding issues. This must be addressed by the VBA through active inspections and authoritative statements.

Product safety options

We recommend consideration of a suite of building product safety measures, mirroring and building on work done in Queensland, having regard to similar provisions in New Zealand. There is a range of options open for Government to consider to better regulate building product safety, ranging from disclosure-based options, aimed at improving public information and industry awareness, to restrictions of products that are being used inappropriately.

Skills, training and registration

Education and training is important in achieving compliance. Many stakeholders expressed concerns to the Taskforce about the level of skills and training in the construction industry including trades, building practitioners and other professionals. Particular concerns have been expressed regarding the lack of skills and qualifications among installers of facade systems.

The Master Builders Association of Victoria (MBAV) considers that the lack of trades registration contributes to a lack of accountability for poor work, the rise of owner-builders, lack of regulation and monitoring, lower levels of productivity and poorer quality outcomes. It also claims that under the current system, its members find it difficult to find suitably qualified and skilled tradespeople, often leading to the need for costly rework.

Both the MBAV and the Construction, Forestry, Mining and Energy Union (CFMEU) acknowledge that while registering all trades may not be required in the first instance, they both suggested government should focus on those trades which primarily impact on the structural integrity of building.

Many raised concerns about variation in the quality of training provided, which impacts on the readiness for registration of applicants. Quite a few submissions argued that more trust in qualifications would result in increased confidence in the building industry, provide greater levels of qualified safety and thereby strengthen the economy.

Complexity of the NCC

In general, the Taskforce heard considerable concern about the complexity of the NCC. It has become evident in our enquiries that there are elements of the NCC, at least in relation to fire safety, that are not well understood and are interpreted in a range of different ways.

For example, the Taskforce noted that there has been widespread misinterpretation of the applicable fire performance requirements for cladding, particular where it is used as an attachment. Submissions to the Taskforce, including from product suppliers, suggest that there are still varying opinions on this matter.

Many practitioners indicated that the provisions were overly complex and that there was excessive cross-referencing to other parts of the Code and extraneous documents such as Australian Standards. There was also recognition that the standards prescribed for meeting compliance requirements are subjective and open to interpretation.

Liability and Insurance

As outlined in Chapter 2, in Victoria, building practitioners have proportionate liability for any building defects, within the 10-year limitation period, in accordance with their relative levels of responsibility for the defect in light of their obligations under the Building Act.

However, only building surveyors are required to have professional indemnity insurance, thereby encouraging claims to be structured in such a way that the building surveyor is held to have a greater degree of responsibility.

6. Advice on communications

The Taskforce was asked to advise relevant agencies on communications:

- to residents, owners and building managers about actions they can be taken to satisfy themselves of the safety of their buildings, and
- actions required to protect the health and safety of occupants of affected buildings in Victoria.

As part of the voluntary activation approach outlined in Chapter 1, a communiqué was distributed via the SRG and other stakeholders. It called on the industry to check past and present projects for compliance ahead of a possible third-party audit, and to exercise caution on current projects where ACP and EPS cladding may be specified.

The Taskforce established a dedicated web page on the DELWP website which went live on 24 July 2017. The webpage lists Taskforce members, Taskforce objectives, the latest news, media releases and updates. An Advisory Note, published on the landing page, has been written by the Taskforce, in consultation with key stakeholders.

The Advisory Note includes advice for residents, owners' corporations, building and facilities managers on fire safety, fuel and ignition source reduction and the legal requirements for the maintenance of ESMs and Annual Reports.

The Advisory Note was published by the VBA in its direct communication to building practitioners and by members of the SRG including the Housing Industry Association (HIA), Engineers Australia (EA) and the National Fire Industry Association (NFIA). Remaining members of the SRG agreed to publish the Advisory Note on their industry newsletters and social media channels.

Direct letters, including the Advisory Note, were also sent to owners' corporation managers prior to the pilot on-site inspection in Greater Dandenong.

7. Improvements to the system for fire safety in buildings

The Taskforce sought the views of experts and stakeholders in relation to fire safety systems in buildings. Most stakeholders said the current scheme involving the installation and maintenance of fire safety systems in buildings proved inadequate in dealing with ACP and other combustible cladding. In their view, improvements are required to reduce the possibility of failure in the future.

This is a problem for buildings with combustible cladding, as the safety of the building and protection of its occupants relies on both the building material and other fire safety systems being properly maintained.

Some submissions argued that safety measures had become inconvenient and expensive. The Occupancy Permit arrangements for safety maintenance were generally seen as inadequate, and some submissions argued that ESM obligations and enforcement powers were too weak.

Passive and active fire safety systems

Buildings are designed to have both passive and active fire safety systems. In accordance with the NCC, certain elements within a building must be fire resistant, provide fire-protection, compartmentation or separation so as to restrict the spread of fire and provide occupant safety.

A passive system is designed to withstand fire and to stop the spread. An active system will detect and respond to fire (such as sprinkler systems).

When designing a building, consideration must be given to the desired performance of both the passive and active fire safety systems, as well as to how they will interact should a fire occur. The NCC provides direction to practitioners on when they must incorporate active systems in their building design, and when they can rely on the structure of the building itself to offer fire protection to occupants.

Issues identified with passive and active fire safety systems

A key issue identified by fire authorities is the limited application of active fire safety systems in buildings of a particular construction. They note that buildings less than 25 metres high are not currently required to be fitted with sprinklers, even if they are used for residential purposes. The MFB submitted that the risk to occupants and firefighters is unacceptable where combustible external cladding catches fire in a building which is not sprinkler protected.

The MFB further notes that this issue was highlighted in the Coronial Inquest into the death of Ms Connie Zhang in New South Wales. The building in question was not fitted with sprinklers as it was less than 25 metres high.

The MFB recommended that sprinklers be required in all Class 2 and 3 (residential) buildings, regardless of height. The Australasian Fire and Emergency Service Authorities Council was represented on the Taskforce SRG. It has recently written to all relevant emergency ministers proposing such an amendment to the NCC.

Design and construction process for fire safety systems

Independent review of fire safety designs

In line with the NCC, when a building's fire safety system is designed with a performance solution, at least two people holding qualifications in performance-based design for fire safety must be involved in the approval process. Such a design is prepared by a registered fire safety engineer and checked by either:

- another registered practitioner holding requisite qualifications (this can be the Relevant Building Surveyor (RBS), another building surveyor or another fire safety engineer); or
- other circumstances must apply (e.g. certification from the Australian Building Codes Board, Building Regulations Advisory Committee, a Building Appeals Board decision, or a report and consent from the Chief Officer of the relevant fire authority).

The RBS can determine that a performance solution complies with a fire performance requirement by relying on a compliance certificate issued under section 238 of the Building Act by a fire safety engineer or registered building practitioner who did not design the building work.

Report and consent of Chief Officer (MFB or CFA)

Regulation 309 requires the report and consent of the Chief Officer of the relevant fire authority when a fire safety matter listed in the Regulations does not meet the DtS provisions of the NCC. The Chief Officer (or their delegate) has 10 business days to make a determination on such an application, beyond which time they are automatically deemed to have consented.

The MFB reported in 2015 that they and the CFA received a total of approximately 1500 applications for regulation 309 consent, therefore they estimate that there are over 38,000 commercial buildings constructed each year that the brigades are not consulted on at all.

DELWP is currently considering which of the MFB's proposals in relation to its role as a reporting authority can progress through its review of the Building Regulations, such as extending the report time limit from 10 to 15 days, noting that it is limited in its ability to make amendments that have a regulatory impact at this stage in the review process.

Issues with fire safety system design approval

The fire authorities note that it is not compulsory for every fire safety design matter to be approved by the Chief Officer as part of a report and consent. Accordingly, the approval system relies on private sector practitioners to follow regulations, which are complied with to varying degrees.

Essential Safety Measures

ESMs form part of the fire safety systems within buildings. An ESM is defined to include any item 'provided in relation to a building or place of public entertainment for the safety of persons in the event of fire'. ESMs include means of egress (exit), lighting, firefighting services and equipment, signs, emergency lifts, and air handling systems and ventilation, along with building elements required to satisfy prescribed fire-resistance levels or required to be non-combustible.

Occupancy permits, issued by the RBS, are required to list all of the ESMs relating to the particular building, specify the required level of performance of those ESMs and the frequency and type of maintenance required.

The ESM maintenance and reporting system operates under the expectation that owners and owners' corporations will comply and proactively maintain their fire safety systems. Building owners are required to prepare an Annual ESM Report in line with a maintenance determination or the relevant occupancy permit. The Annual ESM Report must demonstrate that the owner has complied with ESM maintenance obligations. Prior to July 1994 there was no requirement for ESMs to be identified in a maintenance determination in an occupancy permit.

Cladding as an Essential Safety Measures

The Taskforce has received advice that cladding is an ESM, and would therefore need to be maintained and reported on in accordance with other ESMs. This is important as advice to the Taskforce indicates that cladding deteriorates over time, potentially exposing the core at joins and corners. The fixing methods (including tape) may also deteriorate over time, therefore increasing risks. Where cladding is allowed to remain on a building, the ESM scheme could be used as a vehicle for ongoing maintenance with a view to ultimately removing the cladding.

We note the VBA's view that external wall cladding (and cladding as an attachment) fall within the definition of an ESM pursuant to regulation 1202(a), and items 1, 2 and 3 from Schedule 9 to the Regulations:

- Building elements required to satisfy prescribed fire-resistance levels
- Materials and assemblies required to have fire hazard properties
- Elements required to be non-combustible, provide fire protection, compartmentation or separation

Where cladding has been nominated as an ESM in an occupancy permit, the Building Act requires building owners to maintain panels, and provides an opportunity for known risks in building designs to be managed. We acknowledge that the industry does not necessarily share this view.

While it is unlikely that cladding will be specifically referred to as an ESM on an occupancy permit, those permits that have used VBA's template are likely to refer broadly to any building element required to comply with prescribed fire hazard properties in the NCC, thereby capturing cladding as an ESM and triggering the need for annual review. This includes cladding when it is used as either an attachment or as a wall.

Clarifying Scope of ESM

We agree with the VBA that it would be valuable to include cladding as an ESM removing confusion or future disputes and ensuring cladding is subject to regular maintenance.

Use of ESM as part of the audit strategy

The Advisory Note prepared by the Taskforce states that external cladding is an ESM. It advises that:

- Cladding may be listed as an ESM on an occupancy permit when used as either an external wall or an attachment;
- Where cladding is listed as an ESM, owners must ensure that it is reviewed in accordance with the occupancy permit and reported in the Annual ESM Report;
- Even if external walls or external cladding is not included as an ESM in an occupancy permit, or in a maintenance determination, we recommend that owners include cladding in their Annual ESM Report;
- Owners must provide an Annual ESM Report to an MBS or Chief Officer of the CFA or MFB for inspection, within 24 hours of any request.

The Advisory Note states that it is a criminal offence if an Annual ESM Report is not prepared annually. A penalty of up to \$1585.70 applies, which may be applied to each residence owner.

Issues identified with ESMs

The MFB, VBA and other stakeholders believe that ESMs within buildings are often not maintained correctly or regularly. Further concerns are that the Annual ESM Reports are not completed properly, and are rarely undertaken at all.

Essential Safety Measure Reform

Under currently proposed reforms to the Building Regulations, the Regulatory Impact Statement (RIS) recommends the following changes to ESM building regulation requirements:

- the introduction of VBA approved forms for annual reports and ESM maintenance determinations
- introducing a standalone maintenance schedule in a VBA approved form to overcome the current fragmented documentation of ESM requirements
- increased penalties for ESM breaches
- improved information sharing between enforcement agencies with better reporting of audit activity, ESM compliance and responses to non-compliance
- clarifying that owners must maintain exits while occupiers must keep them clear from obstruction
- requiring that ESM maintenance to be included as a condition of an occupancy permit.

The RIS also notes that consideration should be given that requires the Annual ESM Report is certified by a suitably qualified person. There were significant concerns raised around the expertise, training and qualifications of contractors involved in ESM maintenance including sprinkler systems. This issue requires further consideration to ensure those persons conducting inspections and maintaining these systems are appropriately qualified for the complexity and importance of this work.

Options for further reform

The views of regulators and stakeholders suggest that the current system is inadequate to ensure the appropriate maintenance of ESMs. The safety of the building, to a large degree, relies on the cladding being

maintained and the other fire safety systems and features being in appropriate working order. Other jurisdictions appear to have stronger oversight over ESM maintenance.

We agree with the MFB, VBA and VMBSG that the oversight of ESMs needs bolstering and recommend that the government look at measures to strengthen the ESM obligations, including:

- providing that the VBA, rather than the relevant building surveyor, determines the maintenance requirements for ESMs, other than those that relate to performance solutions.
- introducing a requirement to register ESM requirements with either council or the VBA
- requiring owners to lodge annual reports on ESM compliance with either council or the VBA
- requiring both owners and occupiers to ensure that ESMs are properly maintained as provided for in the occupancy permit issued for the building
- introducing a strengthened inspection and enforcement regime for ESM involving one or a combination of council, fire authorities and VBA
- introducing qualification and registration requirements for ESM maintenance contractors
- increasing penalties for ESM offence provisions
- including Annual ESM Report in Section 32 statements required to be provided prior to the sale of a property, and
- improving the communication to owners and occupiers of their building's ESMs and their maintenance requirements.

While we support in-principle the strengthening of requirements for the maintenance of ESMs, we acknowledge that further analysis of the recommendations is required, including of the burden associated with additional registration and auditing, and the costs associated with including Annual ESM Reports in Section 32 statements.

Building use and occupation

The City of Melbourne's report into the Lacrosse building fire raised significant concerns about the impact of changing uses and overcrowding of buildings, particularly in Melbourne's CBD. A similar issue was detected in Grenfell.

An occupancy permit must specify the permitted use of a building and its maximum total occupancy and permitted occupancy per floor ('Maximum permissible floor live load'). High occupancy of individual units has been identified as a risk factor in fires and is a growing concern for fire fighters. The risk is exacerbated where modifications are made to rooms that could compromise safety systems.

Fire safety solutions and systems are designed based on the permissible live load rather than the higher rates that might occur.

Concerns were raised about the lack of an education campaign by any of the relevant agencies regarding overcrowding and or advice as to why balconies should not be used for storage due to safety risks or breaches of compliance.

This was despite widely known and mounting concerns over the growth in high-rise developments that were used for short term rentals and student accommodation where both overcrowding and storage on balconies and in hallways was an issue.

planning.vic.gov.au/building-policy/victorian-cladding-taskforce

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