



Release of interim Senate Report into non conforming cladding

On 6 September 2017 the Senate Economics References Committee released its long awaited interim report following an extended inquiry on Non Conforming Building Products -aluminium composite cladding.

The inquiry was initially established in June 2015 as a review of the impact of non conforming building products on the Australian building and construction industry.

As part of a broader enquiry the Committee resolved on 13 October 2016 to inquire into the illegal products containing asbestos.

The scope of the enquiry was expanded again as a result of the fire at the Grenfell Tower in London in June 2017 to include a review of the implications of the use of non compliant external cladding materials in Australia.

The Inquiry consulted with industry and received 162 submissions from government departments and agencies, peak industry bodies, unions, individuals and consumer.

Public inquiries were also held at various times from November 2015 to July 2017.

The interim report has recommended that the Federal Government implement “*a total ban*” on the importation, sale and use of the polyethylene panels “*as a matter of urgency*”.

THE LACROSSE FIRE – DOCKLANDS MELBOURNE

The inquiry was first established by the Senate following the 2014 Lacrosse apartment fire in Melbourne's Docklands.

The Docklands fire started on an eighth floor balcony from an errant cigarette butt and travelled upward to all floors in the building to the roof.¹

As noted in the Interim Report:

- The Metropolitan Fire and Emergency Services Board (MFB) found that the use of Aluminium Composite Panels [ACP cladding] was a contributing factor to the rapid vertical spread of the fire.²
- The CSIRO tests found the cladding to be combustible and non-compliant with National Construction Code (NCC) standards for use in buildings of three or more storeys.³

- 'the imported combustible cladding installed at the Lacrosse building tested by the CSIRO and found to be so combustible that the tests were abandoned after 93 seconds due to the potential for the equipment to be damaged'⁴
- An audit conducted by Victorian Building Authority (VBA) in Melbourne following the fire found widespread use of 'non-compliant external wall cladding materials.'⁵
- The VBA has also taken disciplinary actions against practitioners involved in the fire including against the builder, fire safety engineers and relevant building surveyor which are continuing.⁶
- Determining who is at fault and who is liable for the cost of remediation is going to remain a vexing issue not just for the Lacrosse building, but for many body corporates into the future who have PE core ACP cladding on their buildings.⁷
- The Owners Corporation Network (OCN) told the Committee that⁸:
 - ◇ Owners of the Lacrosse tower are claiming more than \$15 million in damages from the builder saying combustible cladding installed on the apartment complex by the construction company was responsible for the spread of the blaze.
 - ◇ Work has already cost \$6.5 million including almost \$700,000 to dry out the building.
 - ◇ It is estimated it will cost another \$9 million to remove and replace the remaining unburnt cladding to comply with a council order

THE GRENFELL TOWER

The Grenfell tower fire this year involved the same type of cladding catching alight and engulfing the entire 24 storey residential building in flames. London police have confirmed that 80 people died or missing presumed dead following the fire⁹.

The interim Report noted that:

- The Grenfell Tower had completed a major refurbishment in 2016 which included new exterior cladding, replacement windows, new heating systems and remodelling of the bottom four floors.¹⁰
- The response by the UK Government to the Grenfell Fire has been wide ranging and which has included:
 - ◇ An independent review of building regulations and fire safety announced on 28 July 2017
 - ◇ An Inquiry into the circumstances surrounding the fire.¹¹
 - ◇ The removal by a nearby London council of combustible cladding from some of its tower blocks.¹²

AUSTRALIAN CONTEXT

As detailed in the Interim Report; the Grenfell Tower fire has highlighted the need to hasten the momentum for regulatory reforms which were set in motion following the Lacrosse building fire in 2014.¹³

Evidence was given during the Inquiry that:

- There has been an apparent lack of movement by regulators' since the Lacrosse fire in 2014¹⁴
- There have been 19 fires involving cladding worldwide since 2005¹⁵
- There has been some remedial action in various jurisdictions worldwide ranging from the removal of cladding and changes to evacuation policy to changes to fire service doctrine¹⁶
- the Grenfell Tower fire tragedy was not only preventable but foreseeable¹⁷

- prior to the 2014 Lacrosse building fire, there were at least seven international fire events involving external facades constructed of highly combustible PE core ACP panels.¹⁸

GOVERNMENT RESPONSE FOLLOWING THE GRENFELL FIRE

The Interim Report has noted that government response to the Grenfell Fire has included:

- A request by the Hon Craig Laundry MP to the Committee to report its findings as early as possible to 'ensure we can protect and retain confidence in Australia's built environment and building and construction industries'.¹⁹
- Appointment of taskforces and audits by state governments into ACP cladding.
- The appointment by the Building Minister's Forum (BMF) of an expert review to examine compliance and enforcement problems within the building and construction systems affecting the implementation of the NCC.²⁰ An initial report to the BMF is expected in October 2017.
- The establishment of the Building Regulators' Forum (BRF) which met for the first time on 13 July 2017 to share, collaborate and consider best practice, coordinated response and escalation points for issues requiring consideration.²¹
- The implementation of a one stop shop website on 1 July 2017 by the BMF that provides general information on non-conforming and not compliant building products and a complaints platform.²²
- Steps being taken by the Australian Building Codes Board to expedite and completing and adopt actions involving changes to the NCC from a comprehensive package of measures for fire safety in high rise buildings, developed following the Lacrosse Apartments fire in Melbourne.²³
- Amendments to the NCC including a new Verification Method that adopts the external wall testing standard AS 5113²⁴

RECOMMENDATIONS BY INQUIRY

The Inquiry made eight recommendations including:

1. the implementation of a total ban on the importation, sale and use of Polyethylene core aluminium composite panels as a matter of urgency.
2. That Commonwealth Government work with state and territory governments to establish a national licensing scheme, with requirements for continued professional development for all building practitioners
3. imposing a penalties regime for non-compliance with the National Construction Code such as revocation of accreditation or a ban from tendering for Commonwealth funded construction work and substantial financial penalties
4. Commonwealth government ensure the Federal Safety Commissioner is adequately resourced to ensure the office is able to carry out its duties in line with the new audit function and projected work flow
5. Establish a Director Identification Numbers to prevent directors from engaging in illegal phoenix activity.
6. That states and territory governments work together to develop a nationally consistent statutory duty of care protection for end users in the residential strata sector

A full copy of the Inquiry Report appears at http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Non-conforming45th/Interim_report_cladding

David Glinatsis is the Director of Kreisson.

For more information, contact us at excellence@kreisson.com.au or on 02 8239 6500

REFERENCES

- ¹ Interim Report – Chapter 2 Background to the inquiry
- ² Interim Report – para [2.4]
- ³ Interim Report – para [2.4]
- ⁴ Interim Report – para [2.5]; Mr Sahil Bhasin, National Manager, Roscon Property Services, Committee Hansard, 19 July 2017, p. 53.
- ⁵ Interim Report – para [2.8]
- ⁶ Interim Report – para [2.9]
- ⁷ Interim Report – para [2.10]
- ⁸ Interim Report – para [2.10] Owners Corporation Network, Submission 88.1, pp. 2–3.
- ⁹ Interim Report – para [2.15]
- ¹⁰ Interim Report – para [2.16]
- ¹¹ Interim Report – para [2.18]
- ¹² Interim Report – para [2.19]
- ¹³ Interim Report – para [2.20]
- ¹⁴ Interim Report – para [2.21]; Mr Adam Dalrymple, Acting Deputy Chief Officer, Metropolitan Fire and Emergency 16 Services Board, Committee Hansard, 14 July 2017, p. 29.
- ¹⁵ Interim Report – para [2.22]
- ¹⁶ Interim Report – para [2.22]
- ¹⁷ Interim Report – para [2.23]; Mr Travis Wacey, National Policy Research Officer, Forestry, Furnishing, Building Products and Manufacturing Division, Construction, Forestry, Mining and Energy Union, Committee Hansard, 14 July 2017, p. 2.
- ¹⁸ Interim Report – para [2.23];
- ¹⁹ Interim Report para [2.32]; The Hon Craig Laundy MP, Assistant Minister for Industry, Innovation and Science, 'Governments cooperating to ensure building safety', Media Release, 3 July 2017, <http://minister.industry.gov.au/ministers/laundy/media-releases/governments-cooperatingensure-building-safety> (accessed 25 August 2017)
- ²⁰ Interim Report – [2.46] Building Ministers' Forum, Communiqué, 30 June 2017.
- ²¹ Interim Report – para [2.49] to [2.52]
- ²² Interim Report – para [2.52]
- ²³ Interim Report – para [2.54]
- ²⁴ Interim Report- Para [2.55]