

Aluminium Cladding - Real and Significant Risks and Problems.

What is NSW Fair Trading doing?

In A Nutshell

Following the devastating fire that destroyed the Grenfell Tower in London this week, the topic of aluminium cladding has risen across the globe.

Unfortunately, the London Fire is not the first of its kind involving aluminium cladding, however, it was the first of its kind where significant loss of life has occurred.

Following a significant fire in a 23 storey apartment building in Melbourne's Docklands area on 25 November 2014 (the Lacross Apartments Fire), the rapid spread of which was attributable to composite aluminium cladding on the building's façade¹, the Victorian Building Authority completed an audit of some 170 high rise buildings in central Melbourne and surrounds with a finding that 51% of the audited buildings contained non-compliant cladding².

While the Victorian authorities have taken a lead in compliance activities to ensure that accredited cladding materials are used in the building industry, it is unclear at this stage whether NSW Fair Trading has taken the same pro-active steps as their Victorian counterparts, despite an announcement in October 2015 that it would give consideration to it.

There is a broad range of parties who could be liable for the costs and damages associated with the installation of these non-complying products, including, designers, developers, builders, subcontractors, manufacturers, importers, private certifiers, Council and insurers, such as, the Home Building Compensation Fund managed by NSW Fair Trading.

Considerations for owners

Owners of residential and commercial high-rise buildings where aluminium cladding has been used should be giving consideration to carrying out an audit and risk assessment to identify the type of aluminium cladding used in the building and the fire risk.

Investigation by the Metropolitan Fire and Emergency Services Board (MFESB)

The following emerged from the investigation of the Lacross Apartments Fire by the MFESB:

¹ Metropolitan Fire and Emergency Services Board, Post Incident Analysis Report, 25 November 2014, page 36

² Victorian Building Authority External Wall Cladding Audit Report, issued 17 February 2016, page 6

- a. There was an estimated property loss of \$5,000,000 and fortunately no loss of life³.
- b. Alcuobest, a Chinese manufactured, aluminium/polyethylene composite panel cladding product, that was used in the construction of the building was directly related to rapid spread of the fire⁴.
- c. While there is an aluminium composite cladding product in Australia that has been accredited by the Australian Building Codes Board, named Alucobond Plus, a simple visual inspection cannot distinguish between Alcuobest and Alucobond Plus⁵.

Audit by the Victorian Building Authority (VSB)

The MFESB's investigation sparked an audit by the VSB which delivered its findings on 17 February 2016, including the following:

- a. 51% of the 170 audited high rise residential and public buildings in central Melbourne and surrounds were found to contain non-compliant cladding⁶.
- b. After applying a risk matrix which took into account external cladding and other building elements that could contribute to fire spread (e.g. balconies, sprinklers, window/door openings) only one of the audited buildings required an immediate emergency fire order from the Municipal Building Surveyor⁷.

The action items arising from the audit by the VSB included:

- a. Investigation of building industry practitioners that have been involved multiple times in the specification and use of non-compliant building materials⁸.
- b. Preparation of a technical document to clearly explain the BCA and types of cladding permitted⁹.
- c. An ongoing audit to ensure that building permits contain clear specifications on the cladding to be used and that documentation showing "as built" compliance with building permits contains sufficient detail¹⁰.

Significance for NSW

³ Metropolitan Fire and Emergency Services Board, Post Incident Analysis Report, 25 November 2014, page 4

⁴ Metropolitan Fire and Emergency Services Board, Post Incident Analysis Report, 25 November 2014, page 36

⁵ Metropolitan Fire and Emergency Services Board, Post Incident Analysis Report, 25 November 2014, page 57

⁶ Victorian Building Authority External Wall Cladding Audit Report, page 6

⁷ Victorian Building Authority External Wall Cladding Audit Report, page 6

⁸ Victorian Building Authority External Wall Cladding Audit Report, page 6

⁹ Victorian Building Authority External Wall Cladding Audit Report, page 7

¹⁰ Victorian Building Authority External Wall Cladding Audit Report, page 7



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On 3 August 2015, in the wake of the Lacross Apartments Fire the NSW Department of Planning and Environment issued a Planning Circular¹¹ relating to:

- a. the use of aluminium composite cladding;
- b. the requirements of the BCA; and
- c. Stressing that certifiers, designers, builders and installers need to ensure that building components comply with the BCA.

On 14 October 2015, the Minister representing the Minister for Innovation and Better Regulation in the NSW Legislative Council (the upper house of the NSW parliament) stated that the NSW Government is giving consideration to conducting an audit of high rise and apartment buildings built over the last decade to ensure any aluminium cladding used complied with the National Construction Code¹².

In the past 18 months, however, there has been no announcement from Fair Trading NSW that an audit has or will be undertaken.

**Prepared by Bannermans Lawyers
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¹¹ Planning Circular BS15-001, Building Regulation Advisory Note, External Walls and Cladding, NSW Department of Planning and Environment

¹² Pages 673 – 674 Legislative Council Questions and Answers No. 28 – Wednesday 14 October 2015