



9 February 2018

**Response to the public consultation draft re:
“Environmental Planning and Assessment Amendment
(Identification of Buildings with Combustible Cladding)
Regulation 2017”**

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POA Response to Draft

Following disasters such as the Grenfell Tower there is a clear need to address the potential for a building's cladding to contribute to the spread of fire and the production of noxious gases. The key questions appear to be:

#1 Are the definitions appropriate and clear?

#2 Are the actions proposed appropriate and thought through?

- Creation of Database
- Production of Cladding Statement

#3 Is it appropriate that the individual unsuspecting home owners should be required to pay for the upgrades?

- Increased Insurance Costs
- Mortgage Loan Exposure
- Devaluation of Property
- Remedial Costs

#4 What alternative light weight products are available that will satisfy the new fire safety tests for cladding?

- Remedial Solutions
- Building Product Bans

#1 Are the definitions appropriate and clear?

We note that in the NCC “cladding” is found in the definitions as:

“Direct fix cladding wall, for the purposes of FV1, means a wall with cladding attached directly to the wall framing without the use of a drained cavity.”

We believe that there should be a revision of the definitions to differentiate between “curtain walling” and “panel walling”.

The reasons for this are that panel walling can be physically separated by floors (by stepping them back) and therefore need to be attacked from the front by flame as a fire climbs a building, whereas curtain walls provide a direct route for flames and smoke from the ground floor to the roof level between the external envelope of the building and the structural frame, allowing flames to skip more rapidly from floor to floor.

NCC Definitions:

“Panel wall means a non [load bearing external wall](#), in frame or similar construction, that is wholly supported at each [storey](#).”

“Curtain wall means a non [load bearing external wall](#) that is not a [panel wall](#). “

#2 Are the actions proposed appropriate ?

The actions proposed are:

- a.) **Create a database** of buildings to which combustible claddings have been applied.

This is sensible and the author has suggested the creation of a building “passport” to several Ministers over many years. The POA supports the creation of the database.

Our issues here are:

- I. **Staged Implementation:** That the database creation should be staged so that high risk tower blocks are assessed immediately and lower rise (say under 4 storeys) are assessed within say 12 months.
This will give the inspection industry time to properly educate itself on the requirements and not be flooded with enquiries for a 3 month period necessitating possibly over rapid assessments and over zealous assessments (purely to protect themselves while they gain an understanding of the new requirements).
- II. **Positive Identification of Initial Registrant as the Owner:**
We note that following registration there is a snowball effect once registration has occurred. From our questions at the meeting it is clear that there is no understanding by the department of how the online portal will assess that only the owner (or an authorised officer) is making the initial entry. So there is currently no guard against malicious entry by a disgruntled tenant (or neighbour).

III. **Access to the database:** Whatever is proposed in terms of privacy because the local council will need to be aware of buildings in it's area that are non-conforming there will be significant "leakage".

Our suggestion is that you make the register public so that all purchasers are equally aware.

b.) **Owners to produce a "cladding statement"**

The issue here is that due to the breadth of the materials that need to be reported most property owners in buildings over 1 storey will fall within the criteria of needing to employ a "properly qualified person" to make an assessments on their cladding in relation to flammability.

Our suggestion is that you ask the local fire stations in each area to make a street by street assessment of their housing stock (starting with the buildings they consider most at risk). This way you have competent people with a vested interest in correctly assessing the

buildings, who also an existing understanding of the highest risk buildings in their area.

In addition this removes an impost on existing owners who happen to have bought into a multi-occupancy building with cladding on it.

#3 Is it appropriate that the individual unsuspecting home owners should be required to pay for the upgrades?

a.) **Increased Insurance costs / effect on banks willingness to maintain mortgages.**

The issue here: is that as soon as Insurers are aware that they may have a potential "Roman Candle" on their hands they will **at best significantly increase the cost of their insurance or exclude cladding transmitted damage or not insure a building.**

Mortgage lenders normally insist that the asset they're investing in is fully insured. This legislation could have unintended consequences on a wide scale.

This will be an **unbudgeted increased cost and will be only the beginning of the additional expenses for unsuspecting home owners** who have bought what were certified "compliant" properties. They will also (under the current proposal) be faced with significant special levies to remedy the situation.

Our suggestion is that you protect home owners from being ejected from their homes due to lack of insurance (or reduced

cover) by either temporarily covering insurance company exclusions or by temporarily covering mortgage originators (should a home be lost to fire that was caused by the spread of fire etc due to the cladding used). This will give building owners the opportunity to remove and install cladding in a sensible timeframe.

b.) Devaluation and Remedial Costs

The issue here: is that **only in NSW** will owners be given the liability and cost of initial assessment and then rectification costs.

Some will not be able to afford the upgrades that will be imposed upon them.

Our suggestion is that you protect home owners who are under the current proposal being made the innocent financial victims.

Whatever cladding issue mitigation measures are ultimately regulated **there will be an instant devaluation of properties that have suspect cladding** (whether or not the register is officially made public).

Devaluation plus increased insurance costs will be borne by the home owner, remedial costs should be borne by the State.

The other parties that should be deemed liable (as appropriate) are;

- the builder if non-compliant cladding (at the time of installation) was installed by a builder
- the manufacturer / importer if the cladding was incorrectly promoted for use or labelled as compliant cladding when supplied to the builder

..... in which case they should bear the cost.

#4 What alternative light weight products are available that will satisfy the new fire safety tests for cladding?

The new fire test standard will be introduced soon. It is our understanding that the debris requirement in the standard is a hurdle that is very difficult for products to overcome.

The issue here is that following a request at the meeting for suggested alternative light-weight materials that would comply no one in the room could offer a single product.

Our suggestion is that you encourage assessment and provide public notification on your website of products that do comply with the new Australian Standard (AS3115).

Remedial Solutions

The issue here is that following a request at the meeting the only remedial action that could be teased out of the experts was to install external sprinklers.

Our suggestion is that you encourage assessment and provide public notification on your website of any other remedial solutions that could be used to comply with the NCC.

Building Product Use Bans:

The issue here is that for owners who are building new residential accommodation it is noted that Fair Trading can issue product use bans even if it complies with the NCC.

This needs to be carefully managed so that builders and developers are made aware ASAP.

Our suggestion is that if a cladding product is installed prior to any ban being issued it should not be incumbent upon the owner or builder to pay to replace it but rather the manufacturer or importer if due process has not been followed – **due process for manufacturers and importers should include clearance for use as cladding by Fair Trading.**