

Victorian Cladding Taskforce

Taskforce Update

October 2018



Environment,
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and Planning

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Foreword

On 1 December 2017 we handed down our Interim Report to the Minister for Planning on the work of the Victorian Cladding Taskforce established to investigate the prevalence of combustible cladding across Victoria.

Over the past 10 months we have overseen:

- a state wide building audit piloted by the Taskforce and transitioned to the Victorian Building Authority (VBA),
- the issuing of emergency orders in relation to certain buildings with cladding to improve their safety level,
- a whole of government building audit conducted by individual agencies and departments,
- the introduction of restrictions on the use of certain cladding materials, and
- new legislation to provide a low interest long term loan scheme for owners to finance rectification of their buildings.

The 2014 fire at the Lacrosse apartment building in Melbourne's Docklands and the tragic Grenfell fire in London in June 2017, highlighted the fire safety risks arising from the non-compliant use of exterior cladding. Our investigations found dangerous materials are widely used on buildings throughout Victoria, a finding that is consistent with inquiries carried out interstate and internationally.

The work of the Taskforce continues with the Department of Environment, Land, Water and Planning (DELWP) working on policy reforms based on our recommendations to try and ensure Victorian buildings are safe, property is protected, and buildings comply with the law.

We believe we continue to lead nationally and internationally on dealing with this critical task. Victoria has undertaken more physical audits of buildings, both public and private, than any other state. We have provided our counterparts interstate with a Risk Assessment Tool to assess building fire safety and have taken the initiative on restricting the use of dangerous cladding products.

We are going further than the rest of the country in assisting building owners directly impacted by combustible cladding through the development of a financial scheme Victorians can access to pay to rectify their buildings.

We continue to work closely with key stakeholders, industry professionals and interested parties and thank them for their contribution in dealing with this important task. The knowledge, expertise and experience they bring to the table has been invaluable.

State wide audit

The VBA has completed its initial assessment of 1369 building and planning permits where cladding had been specified as a construction material. The permits were prioritised by the Taskforce and the VBA for detailed scrutiny.

The work, which began as a pilot under the Taskforce and then transitioned to the VBA, was done in close collaboration with local government. The program has been completed efficiently due to the support and expertise of the Municipal Building Surveyors in each jurisdiction, the Metropolitan Fire Brigade (MFB), the Country Fire Authority (CFA), DELWP, building owners, owners corporations and building industry practitioners.

Findings include:

- expanded polystyrene (EPS) has been inappropriately used on a small percentage of low-rise buildings in major population centres, such as suburban Melbourne and regional cities.
- the majority of higher risk buildings involving EPS are two or three storeys high with a single exit and inadequate fire safety measures.
- visually identifying aluminium composite panels (ACPs) with a polyethylene core and EPS is difficult – even for highly qualified and experienced building practitioners. Destructive testing is often necessary.
- the maintenance of Essential Safety Measures (ESMs) in multi-storey buildings requires improvement.
- building owners face increased insurance premiums and reduced property values while combustible cladding remains on a building.

During the audits, projects requiring investigation and intervention were at various stages –

- in planning,
- under construction, or
- completed and occupied.

This has allowed the VBA to deal with non-compliant cladding on existing buildings as well as preventing it being used on unfinished buildings by working with industry and developers during the key stages of construction.

Buildings where combustible cladding was thought to be present were thoroughly assessed by an expert panel made up of a fire safety engineer, a VBA nominated building surveyor and a representative of the relevant fire service (MFB/CFA). The panel considered the risks of fire spread and the ability for occupants to exit each building and entered the findings into the Risk Assessment Tool custom-designed by the Taskforce. Upon review of the building the panel made recommendations to the Municipal Building Surveyor to mitigate risk.

Emergency orders

Emergency Orders have been issued to owners of 12 buildings for urgent short-term remediation work to make the building safe to occupy. Measures include installing sufficient detection and warning systems, installing sprinklers and removing ignition sources.

Building notices

Building notices asking owners corporations to “show cause” why combustible cladding should not be removed, were issued for around 150 buildings assessed as part of the pilot and the state wide audit. This process will give owners the opportunity to provide evidence their building is safe without the removal of cladding, but also allows the council or VBA to disagree with that evidence.

The VBA will use a risk-based inspections approach working closely with owners and residents of all affected buildings now the original audit is completed. It is already looking at buildings outside the original remit. Some of these buildings have been referred to them by local Municipal Building Surveyors. This work will be ongoing.

Private building inspections and referrals

1369 permits were initially identified with possible combustible cladding. Nearly a third of these had not commenced building and the VBA inspected 550 building sites, of which 218 were found to have some level of combustible cladding.

In addition to the original permits, the VBA has now inspected another 237 buildings and there were also 372 buildings originally considered in a pilot audit across five municipalities. The City of Melbourne has looked at an additional 110 buildings.

Of all these inspections, 43 buildings have been found to be in a higher risk category and the VBA has now been appointed MBS for these buildings. This is in addition to the one it is already acting as MBS for. The VBA is now MBS for 44 buildings.

While they have had some measures already put in place to make them safe, there is a longer term rectification issue to be discussed with owners, which may involve removal of some or all of the cladding.

Private building inspection summary

| Inspections | Proactive VBA audit | City of Melbourne audit | Priority permit (1369) audit | Pilot audit | Total |
|------------------------|---------------------|-------------------------|------------------------------|-------------|-------|
| Inspected | 237 | 110 | 550* | 372 | 1269 |
| Expert panels ^ | 149 | 7 | 234 | 380 | 770 |

* VBA inspections included 361 post occupancy permits and 189 pre-occupancy permits

^ Only buildings inspected and believed to have cladding were referred to expert panels

Private building Expert Panel determinations

| Risk Ratings | Number of Buildings |
|----------------------|---------------------|
| Highest risk | 43 |
| High risk | 232 |
| Moderate risk | 228 |
| Low risk | 126 |

Private building audit enforcement outcomes

| Buildings with Orders Issued | Proactive VBA audit | City of Melbourne audit | Priority permit (1369) audit | Pilot audit | Total |
|------------------------------|---------------------|-------------------------|------------------------------|-------------|-------|
| Evacuation Orders | 0 | 0 | 0 | 0 | 0 |
| Emergency Orders | 7 | 1 | 12 | 39 | 59 |
| Building Notices | 0 | 34 | 30 | 89 | 153 |
| Buildings Orders | 0 | 2 | 2 | 0 | 4 |

The Victorian Government audit – owned and leased buildings

The Taskforce recommended the State Government carry out its own audit.

In response, the intergovernmental Government Audit Working Group was established and has developed a consistent approach to assessing cladding on all government occupied buildings in scope.

- **4,700** (approximately) government-owned and occupied buildings have been reviewed for ACP or EPS cladding.
- **384** have been identified as having potentially combustible cladding, with 21 on a higher risk list. These are being dealt with as a matter of urgency by government and longer term rectification involving removal of some or all of the cladding may be needed.

Government buildings are still being reviewed by Advisory Reference Panels facilitated by the VBA. All government buildings with combustible cladding have had emergency measures put in place and are safe to occupy.

Improved testing and sampling powers

With the Building Amendment (Trades Registration and Other Matters) Act, the VBA will also now have improved testing and sampling powers, including the ability to destructively test a building material or product where it is suspected of being non-compliant cladding.

Ministerial power to ban use of non-compliant products

The new legislation will also allow the Minister for Planning to declare a prohibition on the use of high-risk cladding products which will be enforced by the VBA and be subject to serious penalties for non-compliance.

Interim report recommendations

Ministerial Guideline 14

A priority recommendation made by the Taskforce was to prevent the use of combustible cladding products on Victorian buildings. In March 2018, the Minister for Planning Richard Wynne announced restrictions on the use of specific cladding materials through the gazettal of Ministerial Guideline MG-14: *Issue of building permits where building work involves the use of certain cladding products.*

The use of ACPs with a polyethylene core of 30 per cent or more, and 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, now requires approval from the Building Appeals Board before they can be installed.

Victorian building surveyors are not able to issue a building permit in such cases unless the Board agrees the cladding is compliant, appropriate and safe for installation on multi-storey buildings. A Product Safety Alert was issued with the guideline to support industry.

The Victorian Government has now used its procurement powers to stop future use of ACPs with a 30 per cent or greater polyethylene core and EPS on government buildings. From 1 July 2018, all construction contracts include this restriction. While the expectation is that a standard form construction contract is used, the restriction on using prescribed cladding products extends to the drafting of bespoke contracts.

The Department of Treasury and Finance has advised that from 1 July 2018 the commonly used model construction contracts for construct-only, design and construct, professional services (long and short forms), minor works and the model conditions of tender have been amended to include clauses restricting the use of ACPs or EPS on government projects, unless the Building Appeals Board determines that the installation complies with the Building Act 1993, consistent with Ministerial Guideline MG-14.

The clauses will be flexible to allow them to be updated to include new or other products if the Ministerial Guideline is amended or replaced in the future.

VBA compliance and enforcement activity

Since 1 December 2017, the VBA has significantly increased the number of inspections of buildings under construction. It has also reviewed and consolidated compliance, enforcement and prosecution policies based on risk.

It has improved data collection and analysis and worked to ensure private building surveyors do not have prohibited exclusions from their PI insurance policies. The VBA is also making sure practitioners have a greater understanding of the National Construction Code so compliance is taken more seriously.

State Building Surveyor

Since 1 December 2017, the VBA has engaged with industry to strengthen and improve compliance advice, technical guidance, and interpretations of building Standards.

The appointment of a State Building Surveyor is expected in December 2018.

Cladding Rectification Agreements

The Building Amendment (Registration of Trades and Other Matters) Act also establishes the ability to have Cladding Rectification Agreements (CRAs). A CRA is a voluntary three-way scheme involving councils, owners or owners' corporations and lenders. The scheme allows loan repayments to be made by individual owners via their council rates. The CRA transfers from a current owner to any future owner if an individual unit is sold. The terms of the loan remain unchanged. This is to ensure land sales settle without impediment.

On change of ownership the purchaser is liable for cladding rectification payments after the settlement date. Depending on the lender's practices, owners may be able to pay out their portion of cladding rectification charges immediately to reduce interest costs or pay in instalments over a minimum of ten years.

Long-term reform

The Taskforce's recommendations for longer term reform highlighted the need for systemic improvements to the building regulatory framework to be managed through a broader policy process.

The Taskforce is nearing completion of a rectification framework which will set out the requirements for fixing both private and government buildings communicated through compliance tools such as building notices and practice notes. The Taskforce has endorsed the Risk Assessment Tool developed by the Taskforce Implementation Team for auditing and has made this available to industry and other jurisdictions upon request to the VBA. This Framework will support the rectification of buildings to ensure practicality, consistency and compliance.

Disciplinary action against professionals

The Building Amendment (Registration of Trades and Other Matters) Act will strengthen the disciplinary powers of the VBA. The new powers will provide the VBA with the ability to immediately suspend a registered building practitioner on public interest grounds where there has been repeated disregard for public health and safety and/or a lack of concern for potential damage to neighbouring properties. The changes also require disciplinary bodies – including the VBA and VCAT – to cancel a practitioner's registration if they find the practitioner is not a fit and proper person to hold that registration.

Overcrowding of high rise apartments

DELWP will consult further with Consumer Affairs Victoria and local councils about a public education campaign and guidelines on the risks of excessive occupancy levels and overcrowding, and enforcement of regulatory measures where appropriate.

Essential Safety Measures regime

DELWP recognises the regime for establishing, maintaining and enforcing Essential Safety Measures, and the qualifications of those inspecting such systems in multi-storey buildings, needs to be strengthened. A review of the current regime will be considered in any future review of the Building Act.

