

Committee views and recommendations

Concerns about the National Construction Code

Committee view

3.38 The committee notes the concern from witnesses and submitters that the non-compliant use of cladding is widespread and that there have been extensive delays in developing and implementing policies to address non-compliance and non-conformity in the building industry.

3.39 As highlighted in Chapter 2, the committee notes that the Building Minister's Forum (BMF) has now released the Assessment of the Effectiveness of Compliance and Enforcement Systems for the Building and Construction Industry across Australia review's terms of reference and its timeline. The committee looks forward to following this review and learning about its outcomes.

3.40 The committee also welcomes the recent announcement that the National Construction Code (NCC) would be amended to reflect the Australian Building Codes Board's (ABCB) new comprehensive package of measures for fire safety in high rise buildings. The committee is hopeful that this amendment to the NCC, if delivered in a timely manner, will provide greater clarity and reduce the ambiguity around interpretation which has been identified by stakeholders.

3.41 Of particular concern to the committee, and stakeholders, is the long time lag between government responses to the Lacrosse fire in 2014 and any meaningful resolution between governments, the BMF, and the Senior Officers' Group (SOG) on possible steps forward. Furthermore, the committee notes that more disastrous fires have occurred internationally, but Australia has yet to implement any major reforms or communicate any course of action publically. Considering the prevalence of polyethylene (PE) core Aluminium Composite Panels (ACPs) across Australia, the committee considers it paramount that all governments focus attention on this issue before the next disaster occurs.

Mandatory third party certification, national register and product auditing

Committee view

3.50 Submitters and witnesses have raised concerns about the progress of the SOG Report's recommendations, which were due to be finalised in May 2017. The committee is concerned that progress appears to have stalled and there is no clearly identified timetable for implementation. The committee is of the view that the implementation plan should be released as soon as possible to assure stakeholders that progress is being made and again makes its point about the timeliness in response to these issues.

Proposal to ban Aluminium Composite Panels with a Polyethylene core

Committee view

3.63 The committee understands that under the NCC in its current form, there are compliant uses for PE core ACPs in low-rise buildings, as well as pathways through performance-based solutions to allow the use of PE core ACPs in high-rise buildings. The committee also understands that the signage industry uses PE core ACPs.

3.64 In light of the Grenfell Tower fire tragedy, the committee does not consider there to be any legitimate use of PE core ACPs on any building type. The committee believes that as there are safe non-flammable and fire retardant alternatives available there is no place for PE core ACPs in the Australian market. While Australian Border Force and suppliers of ACM are currently unable to determine whether an imported building product will be used in a compliant manner, the committee believes a ban on importation should be placed on all PE core ACPs. In addition, the sale and use of PE core ACPs should be banned domestically.

Recommendation 1

3.65 The committee recommends the Australian government implement a total ban on the importation, sale and use of Polyethylene core aluminium composite panels as a matter of urgency.

Greater coordination and a national approach to reform

Committee view

4.13 The committee acknowledges that greater enforcement of existing regulations is needed. However, current building regulations appear inadequate and are too easily evaded, largely due to existing deemed-to-satisfy and performance-based pathways, which provide avenues to circumvent Australian Standards in the NCC. The committee supports the BMF's decision to establish an independent review to assess the broader compliance and enforcement problems within the building and construction systems across Australia. The committee is encouraged by the fact that the terms of reference include developing recommendations for a national best practice model for compliance and enforcement to strengthen the effective implementation of the NCC. The committee believes consideration should also be given to an expanded national role for the Commonwealth government across all elements of the building and construction industry, starting with the BMF.

National licencing schemes

Committee view

4.20 The committee considers that a national licencing scheme for all trades and professionals involved in the building and construction industry including: building surveyors, building inspectors, builders and project managers, would improve compliance and provide greater consumer protection and public safety outcomes. A national licencing scheme, including requirements for continuing professional development would ensure that building practitioners have the necessary skills and knowledge to operate in the building industry's complex regulatory environment.

Recommendation 2

4.21 The committee recommends that the Commonwealth government work with state and territory governments to establish a national licensing scheme, with requirements for continued professional development for all building practitioners.

Need for greater on-site supervision and oversight

Committee view

4.39 The committee supports the implementation of nationally consistent mandatory on-site inspections throughout the construction process. Whether this is done through the reinstatement of the role of Clerk of Works or some other process is eventually a decision for governments. Either way, it is evident from the evidence received that there needs to be a central oversight role independent from industry to provide assurance to the public that structures are built according to the agreed national standards. The committee also endorses the inclusion of mandatory inspections by fire safety engineers and fire authorities to ensure buildings are compliant and public safety is upheld.

Addressing the need for greater accountability

Committee view

4.44 The committee agrees that responsibility for building compliance is currently weighted too heavily at the end of the supply chain. Consequently, measures need to be put in place to ensure greater accountability across the supply chain. The committee considers that the Queensland bill will go some way to ensuring accountability is spread more evenly across the supply chain from designers, manufacturers, importers, suppliers and installers and supports the bill's intent. The committee also encourages other jurisdictions to examine the bill and consider developing similar approaches as a starting point to addressing this serious issue.

Recommendation 3

4.45 The committee recommends that the Building Minister's Forum give further consideration to introducing nationally consistent measures to increase accountability for participants across the supply chain.

Availability of Australian Standards

Committee view

4.54 The committee is dismayed that building practitioners are expected to pay unreasonable sums of money to access Australian Standards which are required to ensure they comply with the NCC. In the committee's view, making Australian Standards freely available would have a significant impact on building compliance. More importantly it will reduce the overall cost of compliance and insurance and most significantly, it will reduce the cost and impact on future state and territory emergency, fire and medical services.

4.55 The committee understands that Standards Australia International (SAI) Global's contract with Standards Australia is coming up for renewal. The committee believes the Commonwealth government should give serious consideration to

engaging with Standards Australia to explore possible options to providing free access to Australian Standards, including reinstating online access to the Standards through Australian libraries.

Recommendation 4

4.56 The committee strongly recommends that the Commonwealth government consider making all Australian Standards and codes freely available.

Role of the Federal Safety Commissioner

Committee view

4.64 The committee considers that the Federal Safety Commissioner (FSC) has an important role in ensuring compliance with the NCC of Commonwealth funded construction work. The committee is concerned that the FSC does not appear to be adequately resourced to carry out its newly legislated function to audit compliance with NCC performance requirements in relation to building materials. Mr Edwards advised the committee that his office does not have the resources or the expertise to conduct audits

4.65 In addition, the committee believes that loss of accreditation to conduct Commonwealth funded work is not a strong enough penalty for non-compliance with the NCC. The committee is of the view that a stronger penalties regime should be imposed.

Recommendation 5

4.66 The committee recommends the Commonwealth government consider 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.

Recommendation 6

4.67 The committee recommends the 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.

Illegal phoenix activity in the building and construction industry

Committee view

4.73 The committee is concerned that it has been nearly two years since its report on insolvency in the construction industry was tabled and the Productivity Commission's report was released and considers that a Director Identification Numbers (DIN) initiative should be considered as a matter of urgency. A DIN initiative would go some way to preventing directors engaging in illegal phoenix activity. The committee also considers that the potential for a DIN initiative to assist credit reporting agencies in identifying individuals who engage in illegal phoenix activity is worth further investigation. The committee is encouraged by the government's willingness to give further consideration to DIN's, it is concerned by the lack of a clear timeframe for consideration.

Recommendation 7

4.74 The committee welcomes the Commonwealth government's decision to give further consideration to Director Identification Numbers and recommends that it expedites this process in order to prevent directors from engaging in illegal phoenix activity.

Increasing protections for end users

Committee view

4.80 The committee believes there needs to be a greater awareness and protection for consumers in the residential strata sector. The committee considers there is an urgent need to provide a statutory duty of care to cover the discovery of non-compliant or non-conforming building products for the increasing number of the Australian public who purchase residential apartments.

Recommendation 8

4.81 The committee recommends that state and territory governments work together to develop a nationally consistent statutory duty of care protection for end users in the residential strata sector.

Next steps for the committee

4.82 The committee anticipates that significant changes will arise from the reforms that the Commonwealth, state and territory governments will undertake as a result of this serious issue. The committee intends to keep a close eye on how these reforms are developed and the eventual timeliness of their implementation as this continues to be a significant shortcoming across all governments.

4.83 The committee urges, as a matter of the utmost importance, to work effectively together and to get the job done expeditiously. The committee will also continue to monitor the progress of the BMF, its review, and also its ongoing work on the issues of non-conforming and non-complaint building products. The committee will present an interim report on the illegal importation of asbestos on 31 October 2017 and its final report for the broader inquiry by 30 April 2018.

