

Chapter 2

Background to the inquiry

2.1 In November 2014, the Melbourne Dockland's Lacrosse apartment building fire in Victoria drew attention to the serious implications for fire safety of the use of non-compliant external cladding using Aluminium Composite Panels (ACP), made of Aluminium Composite Material (ACM) that contained a highly flammable polyethylene (PE) core. Three years later, on 14 June 2017, these issues were again brought into sharp focus by the London Grenfell Tower fire which had recently been clad in this material.

2.2 Australian Fire Safety Engineer, Mr Tony Enright stated in a recent ABC Four Corners program examining PE cladding that:

A kilogram of polyethylene will release the same amount of energy as a kilogram of petrol, and it gets worse than that because polyethylene is denser than petrol too, so that's about, a kilogram of polyethylene is like about one and a bit, one and a half litres of petrol. If you look at a one metre by one metre square section [of PE core ACP cladding] that will have about three kilograms, the equivalent of about five litres of petrol.¹

2.3 This chapter provides a summary of the Lacrosse apartment building fire, and the issues in the building industry that were highlighted by the subsequent analysis of the incident. The chapter will also provide an overview of the Grenfell Tower fire, including highlighting some of the broader fire safety and insurance implications of the recent fires in high rise buildings in Australia and internationally. Finally, the chapter includes a brief overview of the Commonwealth, state and territory governments' responses following the tragic Grenfell Tower fire. Chapter Three discusses the PE core ACPs and the issues associated with them.

Lacrosse apartment building fire—25 November 2014

2.4 On 25 November 2014, a fire occurred at the Lacrosse apartment building in Docklands, Melbourne. The fire started on an eighth floor balcony, and affected 'two floors below and extended upward to all floors in the building to the roof'.² The Metropolitan Fire and Emergency Services Board (MFB) found that the use of ACP cladding was a contributing factor to the rapid vertical spread of the fire. The CSIRO conducted tests on the cladding and found it to be combustible and non-compliant with National Construction Code (NCC) standards for use in buildings of three or more storeys.³

1 Debbie Whitmont, Patricia Drum, Anne Davies, 'Combustible', *ABC Four Corners*, 4 September 2017, <http://www.abc.net.au/4corners/stories/2017/08/31/4726881.htm> (accessed 5 September 2017).

2 Victorian Government, *Submission 57*, p. 3.

3 Victorian Government, *Submission 57*, p. 3.

2.5 The committee was advised that 'the imported combustible cladding installed at the Lacrosse building was 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

2.6 The committee's initial interim report which also covered cladding, *Safety—'not a matter of good luck'*, noted that submissions raised concerns about the non-compliant use of building products, and highlighted the Lacrosse building fire as an example of the dangers associated with product non-compliance. Indeed, Mr Adam Dalrymple, then Director of Fire Safety, MFB, described this incident as one that alone could have 'claimed hundreds of lives if things had turned out a little differently'. He told the committee:

We were probably really lucky that did not happen on that occasion. What we are saying here is that fire safety really should not be a matter of good luck. The fire started on a balcony from an unextinguished cigarette—an innocuous type of thing, you would think. This set fire to the cladding, and the panelling itself allowed the fire to travel the full extent of the building—23 levels in 11 minutes. That is something we have never, really, seen before. We would say this should not have been allowed to happen.

...

In 31 years as a firefighter and 20 years as a fire safety specialist I have never seen a fire like this—in my lifetime—and I have made it my business to study fires of this nature, so we can get a better outcome for firefighters in the community. We have grave concerns about the use of non-compliant product and that it may result in disastrous loss of life, and we cannot tell you when the next event is going to happen. This is a modern building, constructed within the last five years. It has been a valid assumption, up until now, that newer buildings are relatively safe and probably safer than old ones. From a fire services perspective, right now, I cannot guarantee that and I cannot, categorically, state that that is a true fact.⁵

2.7 The MFB's post incident analysis report noted that the Lacrosse fire was a 'rare and challenging fire incident'. Over four hundred people were evacuated from the building with fire crews forced to enter every level and alert occupants of each apartment to ensure total evacuation as the building's electrical systems were compromised by the fire. The MFB's report observed that 'it was fortunate that the installed fire sprinkler system operated well above its designed capability preventing further internal spread'.⁶ The MFB noted that if not for the performance of the

4 Mr Sahil Bhasin, National Manager, Roscon Property Services, *Committee Hansard*, 19 July 2017, p. 53.

5 Mr Adam Dalrymple, Director, Fire Safety (now Acting Deputy Chief Officer), Metropolitan Fire Brigade, *Committee Hansard*, 13 November 2015, p. 65.

6 Metropolitan Fire and Emergency Services Board, *Post Incident Analysis Report, Lacrosse Docklands, 673-675 La Trobe Street, Docklands 25 November 2014, 27 April 2015*, pp. 5–6. See Metropolitan Fire and Emergency Services Board, *Submission 22, Attachment 1*.

sprinkler system and the quick and professional response by MFB fire-fighters, there 'could have been a greater likelihood of serious injury or even loss of life'.⁷

2.8 The Victorian Building Authority (VBA) launched an external wall cladding audit in Melbourne following the Lacrosse fire. The VBA Audit report, which was released on 17 February 2017, found that 'non-compliance in the use of external wall cladding materials is unacceptably high'.⁸ The VBA Audit also found:

- While the levels of non-compliance identified by the VBA were too high—they generally did not pose a risk to safety. Apart from the Lacrosse building, only one other building identified through the VBA Audit was deemed to pose a significant safety issue due to the non-compliant use of external wall cladding material;
- There are many types of external cladding material in use throughout the Victorian building industry but whether one is 'fit for purpose' over another is not always properly understood by architects, designers, engineers, building surveyors and builders;
- The National Building Code of Australia (BCA) requirements for external walls, including the suitability of materials, are inconsistently applied and poorly understood; and
- No single category of practitioner involved in the design, approval or construction of those building projects audited is consistently responsible for the non-compliant use of cladding.⁹

2.9 The VBA has taken disciplinary actions against the practitioners involved in the Lacrosse building fire—the cases are ongoing. The VBA referred the following practitioners responsible for the project to the Building Practitioners Board: the fire safety engineer, the registered builder and the relevant building surveyor. The architect's conduct was also referred to the Architects Registration Board of Victoria. The Architects Registration Board has determined not to proceed with any action against the architect.¹⁰

7 Metropolitan Fire and Emergency Services Board, *Post Incident Analysis Report, Lacrosse Docklands, 673-675 La Trobe Street, Docklands 25 November 2014*, 27 April 2015, p. 36.

8 Victorian Building Authority, 'VBA Releases External Wall Cladding Audit Report', *Media Release*, 17 February 2016, http://www.vba.vic.gov.au/_data/assets/pdf_file/0015/39102/VBA-External-Wall-Cladding-Report-VBA-Media-Release.pdf (accessed 22 April 2016).

9 Victorian Building Authority, *VBA External Wall Cladding Audit Report*, 17 February 2017, http://www.vba.vic.gov.au/_data/assets/pdf_file/0016/39103/VBA-External-Wall-Cladding-Report.pdf (accessed 21 August 2017), p. 2.

10 Mr Murray Smith, Acting Chief Executive Officer, Victorian Building Authority, *Committee Hansard*, 19 July 2017, p. 75. See Metropolitan Fire and Emergency Services Board, *Submission 22, Attachment 1*.

2.10 In addition to establishing the facts of the fire, remediation of the Lacrosse building remains another ongoing issue. 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. The Owners Corporation Network (OCN) told the committee that the cost of remediation to the owners of the Lacrosse apartment building is significant:

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.¹¹

Building Ministers' Forum

2.11 Under the Australian Constitution, governance of the built environment is the responsibility of state and territory governments. While the Australian Government does not have a formal role in the administration of building, plumbing and construction works, it assists at the policy level, in particular through the Council of Australian Governments (COAG) to facilitate agreement and adoption of the nationally consistent building regulations expressed primarily through the NCC. Licencing of trades and regulation of the construction is left to the relevant state and territory governments. Greater detail on the NCC is provided in Chapter 3, while licencing of trades and certification of works is dealt with in Chapter 4.

2.12 The Australian Government also convenes a body of Commonwealth, state and territory Ministers responsible for building and plumbing policy and regulation referred to as the Building Ministers' Forum (BMF). The Hon Craig Laundy MP, Assistant Minister for Industry, Innovation and Science, is the current Chair of the BMF; with the Department of Industry, Innovation and Science providing secretariat support.

2.13 The BMF oversees the implementation of nationally consistent building and plumbing regulation through the 2015 Intergovernmental Agreement for the Australian Building Codes Board (ABCB). The BMF meets annually or on a needs basis.¹²

2.14 In response to the Lacrosse fire and the subsequent VBA audit findings, the BMF agreed to work cooperatively to implement a range of measures to address safety issues associated with high risk building products, as well as the wider issue of non-compliance. The ABCB will support measures to address the risks specifically

11 Owners Corporation Network, *Submission 88.1*, pp. 2–3.

12 Department of Industry Innovation and Science, 'Building and Construction', <https://industry.gov.au/industry/IndustrySectors/buildingandconstruction/Pages/default.aspx> (accessed 12 July 2017).

associated with cladding used in high-rise buildings, as well as developing proposed additional actions to address the wider issue of non-compliant use of building products.¹³ This includes the ABCB working with the Senior Officers' Group (SOG) to review NCC requirements related to high risk building products, with a view to assessing the costs and benefits of mandating third party certification and establishing a national register for such products.¹⁴ The ongoing work of the BMF is discussed in more detail later in this chapter.

Grenfell Tower Fire—14 June 2017

2.15 On 14 June 2017, a fire broke out at Grenfell Tower, a 24 storey residential housing block in North Kensington, London, United Kingdom (UK). In a statement on 28 June 2017, the London Metropolitan Police confirmed that 80 people were dead or missing presumed dead following the fire. The tower, built in 1974, provided 129 social housing flats. On the night of the fire it was estimated to house 350 people.

2.16 The Grenfell Tower had just completed a major refurbishment in 2016 which included new exterior cladding, replacement windows, new heating systems and remodelling of the bottom four floors. The fire appeared to spread rapidly up the building and concerns have been raised over the recent renovations and the fire safety measures in place.¹⁵

2.17 The UK Government response to the Grenfell Tower fire has been wide ranging.¹⁶ On 28 July 2017, the UK Government announced an independent review of building regulations and fire safety. The review was established in light of the serious questions about the fire safety of high rise residential buildings following the Grenfell Tower fire, and subsequent government testing of ACP cladding from similar buildings across the country. The review is expected to present an interim report

13 Building Minister's Forum, *Communiqué*, 19 February 2016, all BMF Communiqués are available on the Department of Industry, Innovation and Science's 'Building and Construction' webpage: <https://industry.gov.au/industry/IndustrySectors/buildingandconstruction/Pages/default.aspx> (accessed 30 August 2017). The ABCB published a list of the measures undertaken on its website: 'Actions to be taken on Fire Safety in High Rise Buildings', 24 February 2016, <http://www.abcb.gov.au/News/2016/02/24/Actions-to-be-taken-on-Fire-Safety-in-High-Rise-Buildings> (accessed 30 August 2017).

14 Australian Building Codes Board, 'Actions to be taken on Fire Safety in High Rise Buildings', 24 February 2016, <http://www.abcb.gov.au/News/2016/02/24/Actions-to-be-taken-on-Fire-Safety-in-High-Rise-Buildings> (accessed 30 August 2017).

15 Ed Potton, Elena Ares and Wendy Wilson, 'Grenfell Tower fire: Response and tackling fire risk in high rise blocks', *House of Commons Library Briefing Paper Number 7993*, 31 July 2017, p. 4, available at <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7993> (accessed 30 August 2017).

16 Department of Communities and Local Government, UK Government, 'Collection: Grenfell Tower', last updated 15 August 2017, <https://www.gov.uk/government/collections/grenfell-tower> (accessed 22 August 2017).

before the end 2017, and a final report no later than Spring (northern hemisphere) 2018.¹⁷

2.18 On 15 August 2017, the UK Government established the Grenfell Tower Inquiry under the *Inquiries Act 2006* to investigate the circumstances surrounding the fire at Grenfell Tower. The Chair of the inquiry, Sir Martin Moore-Bick, has indicated to the Prime Minister that he would like to produce an interim report by Easter 2018 but this is dependent on the progress of other related investigations.¹⁸

2.19 In the wake of the fire, Camden Council, one of the nearby London councils to the Grenfell Tower fire, announced it would remove combustible cladding from five of its tower blocks.¹⁹

Broader concerns around fire safety

2.20 In the Australian context, 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.

2.21 At the committee's public hearing on 14 July 2017, Mr Adam Dalrymple, Acting Deputy Chief Officer, expressed the MFB's 'disappointment at the apparent lack of movement by regulators' since the Lacrosse fire in 2014. He observed:

Lacrosse for us was a bit of [a] wake-up call. Since then I believe that regulators have been rubbing the sleep out of their eyes. With this tragic event, everyone has woken up, albeit some 2½ years after we had a similar event in our own backyard.²⁰

2.22 Mr Dalrymple also highlighted the fact that the Grenfell and Lacrosse fires are not isolated incidents. At the hearing on 14 July 2017 he noted:

There have been 19 fires involving cladding worldwide since 2005. The death tolls range from none to 80, and there were a significant number of deaths in Grenfell, as we know. There has been some remedial action in various jurisdictions worldwide. That ranges from removal of cladding and changes to evacuation policy to even changes to fire service doctrine.²¹

17 Department of Communities and Local Government, UK Government, 'Press Release: Independent review of building regulations and fire safety', 28 July 2017, <https://www.gov.uk/government/news/independent-review-of-building-regulations-and-fire-safety> (accessed 22 August 2017).

18 Grenfell Tower Inquiry, 'Frequently asked questions', <https://www.grenfelltowerinquiry.org.uk/about/faqs/> (accessed 22 August 2017).

19 Robert Booth, Lisa O'Carroll, Jamie Grierson, David Pegg and Josh Halliday, 'Cladding to be removed in Camden as councils scramble to check tower blocks', *Guardian*, 22 June 2017, <https://www.theguardian.com/uk-news/2017/jun/22/grenfell-tower-camden-council-to-remove-cladding-from-five-tower-blocks> (accessed 5 September 2017).

20 Mr Adam Dalrymple, Acting Deputy Chief Officer, Metropolitan Fire and Emergency Services Board, *Committee Hansard*, 14 July 2017, p. 29.

21 Mr Adam Dalrymple, Acting Deputy Chief Officer, Metropolitan Fire and Emergency Services Board, *Committee Hansard*, 14 July 2017, p. 29.

2.23 Similarly, Mr Travis Wacey, from the Construction, Forestry, Mining and Energy Union (CFMEU) stressed that the Grenfell Tower fire tragedy was not only preventable but foreseeable—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. Mr Wacey observed:

Of course what makes Grenfell more unjust for these victims is that the extent of the damage done and the extent of the lives ruined and the lives lost could have been mitigated, if not prevented. The word deathtrap gets bandied about quite a lot, but there is no doubt that, when you look at this case in detail, it would appear to be an appropriate description of the Grenfell Tower. So, the investigation continues, but the lack of sprinklers, inadequate alarm systems, flawed fire evacuation plans and procedures, and narrow exits are all part of this. Of course, playing an instrumental role in the extent of the tragedy is the speed and intensity of the fire due to the highly combustible nature of the aluminium composite panels used to clad the external walls and buildings.²²

2.24 The committee notes that the CFMEU advised it had written to the Commonwealth and state and territory governments in May 2015 seeking audits of the use PE core ACPs. The CFMEU has also advised its members to 'resist the installation of this sort of cladding in a non-compliant manner and provided information with regard to that to our members and delegates'.²³

2.25 Mr Phillip Dwyer, National President of the Builders Collective of Australia noted that for '20 years we've had aluminium cladding, and we estimate at least tens of thousands of buildings would be the number we've got in terms of cladding, if we are just talking about cladding. But we have so many other areas where non-compliance is just rife'.²⁴

2.26 The fires overseas and in the Lacrosse building have raised concerns not just about external cladding materials, but also fire safety in buildings more generally, such as correct design and operation of fire safety systems, maintenance, testing, and licensing. Ms Amanda Leck from the Australasian Fire and Emergency Service Authorities Council (AFAC) advocated for an examination of current regulatory controls in key areas to improve building safety outcomes and the performance of building practitioners. Ms Leck observed:

As we have seen overseas recently and also in the Lacrosse building in Melbourne, it is the fire and emergency services who must decide to send more firefighting appliances to some buildings because the risk to life is

22 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.

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.

24 Mr Phillip Dwyer, National President, Builders Collective of Australia, *Committee Hansard*, 19 July 2017, p. 52.

greater than if the building was constructed properly. It is the firefighters who must confront risks and try to assist scared, vulnerable, elderly and disabled residents. It is the senior officers who must make decisions about whether the risk at a fire is so great that firefighters must be withdrawn to protect their own safety, with residents consequently unable to be assisted as they otherwise would be. Change is needed so that the emergency services are not forced to make these decisions and the community does not bear the human and financial cost of regulatory failure.²⁵

Insurance implications

2.27 The Insurance Council of Australia (ICA) explained that the non-compliant use of building products such as external cladding materials 'critically undermines the ability for an insurer to rely upon the safety and performance of the building'. This directly impacts the insurer's ability to establish their risk exposure which, the ICA stated, influences the setting of insurance premiums.²⁶

2.28 Raising similar concerns, Insurance Australia Group (IAG) noted the non-compliant use of PE cladding has increased in recent years posing a fire risk much higher than other materials available, particularly when paired with equally combustible plastic foam insulation. IAG also commented that these materials are often being used in a way that does not conform with the NCC and Australian Standards, which was a particular concern to IAG as:

- This threatens the safety of our customers, employees and the broader community;
- It increases the fire risk of buildings placing upward pressure on premium cost for consumers; and
- Non-compliance is a hidden risk. If we cannot accurately assess risk, the uncertainty results in sub optimal outcomes for customers and insurers.²⁷

2.29 The OCN also noted there are insurance implications for existing buildings which discover non-compliant cladding material and do not disclose it to their building insurance company. Conversely, the OCN was aware of one building that did disclose and they are now unable to get building insurance. Leaving all the owners in that building 'jointly and severally liable for any debt'.²⁸

2.30 The Australian Institute of Building Surveyors (AIBS) expressed concern surrounding professional indemnity insurance:

25 Ms Amanda Leck, Director, Information and Community Safety, Australasian Fire and Emergency Service Authorities Council, *Committee Hansard*, 19 July 2017, p. 13.

26 Insurance Council of Australia, *Submission 152*, p. 2.

27 Insurance Australia Group (IAG), *Submission 160*, p. 1.

28 Mr Stephen Goddard, Spokesperson, and Ms Karen Stiles, Executive Officer, Owners Corporation Network, *Committee Hansard*, 19 July 2017, p. 44.

...an emerging area of concern for the regulatory system and consumers is the issue of professional indemnity insurance. The current public debate on external cladding is already having a negative impact, with AIBS recently being advised that some insurance companies are inserting exclusion clauses for external cladding and non-complying building products into their policies.²⁹

Australian government responses following the Grenfell Tower fire

2.31 On 19 June 2017, in response to a question raised in the Senate Chamber relating to the Grenfell Tower fire, Senator the Hon Arthur Sinodinos AO, Minister for Industry, Innovation and Science, indicated that the Government would write to the Senate Economics Committee asking that it examine the current state and territory regulatory frameworks as part of the inquiry into non-conforming building products.³⁰

2.32 On 21 June 2017 the Assistant Minister for Industry, Innovation and Science, the Hon Craig Laundy MP wrote to the Senate Economics Committee requesting the committee 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'.³¹

2.33 In a media release on 3 July 2017, the Hon Craig Laundy MP, noted that the Prime Minister had asked Premiers and Chief Ministers to urgently audit their high-rise buildings in regard to non-conforming combustible cladding. Mr Laundy also stated, that the BMF had agreed to engage an expert to examine broader compliance and enforcement issues:

It's essential that all governments work together to make sure our builders not only have the right products to do their job, but are also using the right products for the job, to ensure we can provide continued confidence in Australia's built environment.

I want to assure the public that the Australian Government will continue to encourage the states and territories to work with us to improve their compliance regimes to prevent further instances of noncompliant wall cladding impacting the safety of Australia's high-rise buildings.

Put simply, a Grenfell apartment block would not comply with Australia's National Construction Code. We need to ensure compliance with that Code so that such disasters do not occur in Australia.³²

29 Mr Timothy Tuxford, National President, Australian Institute of Building Surveyors, *Committee Hansard*, 19 July 2017, p. 20.

30 Senator the Hon Arthur Sinodinos, Minister for Industry, Innovation and Science, *Senate Hansard*, 19 June 2017, p. 4184.

31 See Appendix C.

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-cooperating-ensure-building-safety> (accessed 25 August 2017).

2.34 The BMF has since announced that Professor Peter Shergold AC and Ms Bronwyn Weir have been commissioned as the 'experts' to assess the compliance and enforcement problems within the building and construction systems across the country that are affecting the implementation of the NCC.³³ The terms of reference for the review and associated information is further discussed at paragraph 2.47.

2.35 The Hon Craig Laundry MP again wrote to the Senate Economic Committee on 17 August 2017, to raise further concerns about the validity of the claims made in relation to non-conformance and fraud that had been raised in evidence to the committee.³⁴

State and territory governments responses to the Grenfell Tower fire

2.36 A number of state and territory governments have announced audits of external cladding materials. However, it is worth noting that most of these audits are generally restricted to their respective central business districts and do not examine compliance in broader metropolitan areas.

- South Australia—the state government and the City of Adelaide have accelerated an audit of ACP cladding led by the Department of Planning, Transport and Infrastructure.³⁵ The cladding has been checked on 4,500 buildings of two storeys or more, with 77 buildings listed for further checks.³⁶
- Victoria—the state government will establish an expert taskforce to investigate the extent of non-compliant cladding on Victorian buildings. The Victorian Cladding Taskforce will be jointly chaired by former Premier and architect Mr Ted Baillieu, and former Deputy Premier and Minister for Planning, Mr John Thwaites. Key agencies on the taskforce include: Worksafe Victoria, the Metropolitan Fire Brigade, the Victorian Building Authority, the Municipal Association of Victoria and Emergency Management Victoria.³⁷
- Western Australia (WA)—the WA Building Commission commenced an initial audit following the 2014 Lacrosse building fire and has announced it is broadening its audit of ACPs following the Grenfell Tower fire in London.

33 The Hon Craig Laundry MP, Assistant Minister for Industry, Innovation and Science, 'Experts appointed to review building and construction safety issues', *Media Release*, 24 August 2017, <http://www.minister.industry.gov.au/ministers/laundry/media-releases/experts-appointed-review-building-and-construction-safety-issues> (accessed 25 August 2017).

34 See Appendix C.

35 The Hon John Rau, SA Attorney General, 'Building cladding audit to be accelerated', *news release*, 3 July 2017, <https://www.premier.sa.gov.au/index.php/john-rau-news-releases/7713-building-cladding-audit-to-be-accelerated> (accessed 25 August 2017).

36 Nathan Stitt, 'Cladding Audit identifies 77 Adelaide CBD buildings warranting fire safety inspections', *ABC Online*, 25 August 2017, <http://www.abc.net.au/news/2017-08-25/cladding-audit-identifies-77-adelaide-buildings-for-fire-checks/8842616> (accessed 1 September 2017).

37 The Hon Daniel Andrews MP, Premier of Victoria, 'Taskforce To Address Cladding In Victoria', *Media release*, 3 July 2017, <http://www.premier.vic.gov.au/taskforce-to-address-cladding-in-victoria/> (accessed 25 August 2017).

The new audit scope includes all high-risk, high-rise buildings in WA that have cladding attached. One WA building, Foyer Oxford in Leederville, was recently found to contain non-compliant cladding.³⁸

- Queensland—the state government has established an Audit Taskforce to conduct a targeted audit with a primary focus on buildings constructed between 1994 and 2004 using ACP cladding.³⁹ Potentially dangerous ACPs were found on the Princess Alexandra Hospital in Brisbane.⁴⁰
- Australian Capital Territory (ACT)—the ACT Government announced it would establish a taskforce to review the amount of flammable cladding used in Canberra.⁴¹
- New South Wales (NSW)—the Minister for Better Regulation, the Hon Matt Kean MP, announced a comprehensive response which would include a whole of government taskforce and new legislation to prohibit the sale and use of unsafe building products.⁴²
- Tasmania—the state government will conduct a further audit of buildings where non-compliant use of external cladding materials could result in an unacceptable risk to the community.⁴³

Ongoing work of the Building Ministers' Forum

2.37 As stated at paragraph 2.13, the BMF meets annually or on an ad hoc basis. Since the Lacrosse apartment building fire in November 2014 the BMF has met on the following dates:

- 31 July 2015;
- 19 February 2016;
- 14 December 2016;
- 21 April 2017;

38 WA Building Commission, 'State-wide cladding audit underway', *Media Release*, 4 July 2017.

39 Queensland Department of Housing and Public Works, 'Non-conforming building products', last updated 28 August 2017, <http://www.hpw.qld.gov.au/construction/BuildingPlumbing/Building/Pages/NonConformingBuildingProducts.aspx> (accessed 30 August 2017).

40 Calla Wahlquist, 'Brisbane hospital could have highly flammable cladding, audit finds', *Guardian*, 30 June 2017, <https://www.theguardian.com/australia-news/2017/jun/30/brisbane-hospital-could-have-highly-flammable-cladding-audit-finds> (accessed 22 August 2017).

41 Finbar O'Mallon, 'Grenfell Tower fire compels ACT to establish building safety taskforce', *Canberra Times*, 4 July 2017, <http://www.canberratimes.com.au/act-news/grenfell-tower-fire-compels-act-to-establish-building-safety-taskforce-20170703-gx40bn.html> (accessed 22 August 2017).

42 The Hon Matt Kean MP, Minister for Better Regulation (NSW), 'Fire safety reforms to put consumers first', *Media Release*, 28 July 2017, <https://www.finance.nsw.gov.au/about-us/media-releases/fire-safety-reforms-put-consumers-first> (accessed 22 August 2017).

43 Tasmanian Government, *Submission 161*, p. 1.

- 30 June 2017; and
- 24 August 2017.⁴⁴

2.38 On 31 July 2015, shortly after this inquiry was referred, there was a meeting of the BMF. The BMF released a communique following its meeting, noting that it shared the concerns of industry about the 'health and safety risks posed by potentially non-conforming building products and materials making their way into the Australian building and construction supply chain and the non-compliant use of building products'.⁴⁵

2.39 To address the issue of non-conforming building products, the BMF established a Senior Officers' Group (SOG) which was tasked with reporting back to the BMF in six months on strategies to 'minimise the risks to consumers, businesses and the community associated with failure of building products to conform to relevant laws and regulations and at the point of import'.⁴⁶ The SOG comprises two senior officers from each state and territory as well as the Commonwealth.⁴⁷

2.40 With regard to non-compliant products, particularly in the wake of the Lacrosse building fire in Melbourne, and in order to 'ensure that community health and safety is effectively maintained', the BMF also agreed that the ABCB would investigate 'options for a possible mandatory scheme for high risk building products with life safety implications and report to Ministers within six months'.⁴⁸

Senior Officers' Group (SOG) report

2.41 On 19 February 2016, the BMF met to consider the SOG's report, which it endorsed. Following the meeting, the Queensland Minister for Housing and Public Works, the Hon Mick de Brenni MP, announced that 'for the first time we have a national approach to non-conforming building products'.⁴⁹

44 BMF Communiqués are available on the Department of Industry, Innovation and Science's 'Building and Construction' webpage: <https://industry.gov.au/industry/IndustrySectors/buildingandconstruction/Pages/default.aspx> (accessed 30 August 2017)

45 Building Ministers' Forum, *Communiqué*, 31 July 2015.

46 Building Ministers' Forum, *Communiqué*, 31 July 2015.

47 Queensland Department of Housing and Public Works, 'Non-conforming building products', last updated 28 August 2017, <http://www.hpw.qld.gov.au/construction/BuildingPlumbing/Building/Pages/NonConformingBuildingProducts.aspx> (accessed 30 August 2017).

48 Building Ministers' Forum, *Communiqué*, 31 July 2015.

49 The Hon Mick de Brenni MP, Minister for Housing and Public Works, 'Collaborative national approach to improving building safety standards', Media statements, 25 February 2016, <http://statements.qld.gov.au/Statement/2016/2/25/collaborative-national-approach-to-improving-building-safety-standards> (accessed 22 April 2016).

2.42 In determining its recommendations, the SOG considered a range of information sources, including the submissions made to the Economics References Committee's inquiry.⁵⁰

2.43 The current secretariat for the SOG, the Queensland Department of Housing and Public Works, coordinated feedback on implementing the strategies in the SOG's report to address non-conforming building products. A consultation draft of the SOG's *Strategies to address risks related to non-conforming building products* report was released. The closing date for written submissions providing feedback on the SOG report's proposals was 11 April 2016.⁵¹

2.44 In its recommendations to the BMF, the SOG highlighted the importance of taking a measured and proportionate risk-based approach to addressing the issue of NCBPs and suggested a number of complementary strategies that should be considered as a package. Firstly, it noted the 'current legislative roles and responsibilities of the Commonwealth, states and territories, including the identified gaps and weaknesses, impacting on action in relation to NCBPs'.⁵² It made the following recommendations:

- Provide in-principle support for improvements to the regulatory framework to enhance the powers of building regulators to respond to incidences of NCBPs (e.g. providing the ability to conduct audits of existing building work or take samples from a building for testing).
- Provide in-principle support for improving Commonwealth, state and territory processes for addressing issues involving NCBPs by:
 - (a) establishing a national forum of building regulators to facilitate greater collaboration and information-sharing between jurisdictions;
 - (b) improving collaboration between building and consumer law regulators and consistency in the application of the 'false and misleading claims' aspect of the Australian Consumer Law;
 - (c) developing education strategies to better inform consumers and building industry participants and to encourage greater responsibility in the safe use of building products; and
 - (d) considering the establishment of a 'one-stop-shop' national website to provide a single point of information for consumers and building

50 Senior Officers' Group, *Strategies to address risks related to non-conforming building product*, p. 4, available at <http://www.hpw.qld.gov.au/construction/BuildingPlumbing/Building/Pages/NonConformingBuildingProducts.aspx> (accessed 30 August 2017).

51 Queensland Department of Housing and Public Works, 'Non-conforming building products', last updated 28 August 2016, <http://www.hpw.qld.gov.au/construction/BuildingPlumbing/Building/Pages/NonConformingBuildingProducts.aspx> (accessed 30 August 2017).

52 Senior Officers' Group, *Strategies to address risks related to non-conforming building product*, p. 17, available at <http://www.hpw.qld.gov.au/construction/BuildingPlumbing/Building/Pages/NonConformingBuildingProducts.aspx> (accessed 30 August 2017).

product supply chain participants, including examining arrangements for hosting and maintaining a website.

- Provide in-principle support for:
 - (a) mechanisms that ensure that, where all states and territories prohibit the use of a NCBP, evidence is provided to the Commonwealth enabling proportionate action to be taken based on the risk posed by the product; and
 - (e) an information sharing arrangement where import data collected by the Department of Immigration and Border Protection (for the purposes of reporting, detecting and controlling the movement of goods across the Australian border) can be provided to state and territory regulators to facilitate compliance and enforcement activities in relation to NCBPs.
- Approve that the SOG and the ABCB work with Standards Australia to initiate a review of Australian Standards related to high risk building products referenced under the NCC, with a view to assessing the costs and benefits of mandating third party certification and establishing a national register for these products.
- Provide in-principle support for independent research to be undertaken, including manufacturer and random off-the-shelf product testing, to improve the evidence base relating to NCBPs.

2.45 It also recommended that the BMF:

- Note the value and importance of existing building industry initiatives, such as industry third party certification schemes, in identifying instances of building product non-conformity.⁵³

The BMF's response following the Grenfell Tower fire

2.46 On 30 June 2017, in response to the concerns raised as a result of the Grenfell Tower fire in London, the BMF agreed to commission an expert to report back as quickly as possible to examine the broader compliance and enforcement problems within the building and construction systems (for example: education, licensing, design, quality assurance, competencies of practitioners, importation) affecting the implementation of the NCC.⁵⁴

2.47 As noted at paragraph 2.34, on 24 August 2017, the BMF announced that Professor Peter Shergold AC and Ms Bronwyn Weir have been commissioned to conduct the review.⁵⁵

53 Senior Officers' Group, *Strategies to address risks related to non-conforming building product*, pp. 17–27, available at <http://www.hpw.qld.gov.au/construction/BuildingPlumbing/Building/Pages/NonConformingBuildingProducts.aspx> (accessed 30 August 2017).

54 Building Ministers' Forum, *Communiqué*, 30 June 2017.

55 Building Ministers' Forum, *Communiqué*, 24 August 2017.

2.48 *The Assessment of the Effectiveness of Compliance and Enforcement Systems for the Building and Construction Industry across Australia* will provide an initial report to the BMF at its meeting in October 2017. A final report will be provided to the BMF as soon as possible after the October 2017 meeting. The terms of reference are as follows:

1. Examine compliance and enforcement problems within the building and construction systems across Australia that are affecting the implementation of the NCC, as they relate to:

- a) roles, responsibilities and accountabilities of different parties;
- b) education and training;
- c) licensing and accreditation;
- d) accuracy of design and documentation;
- e) quality control and assurance;
- f) competencies of practitioners;
- g) integrity of private certification;
- h) inspection regimes;
- i) auditing and enforcement practices; and
- j) product importation and chain of custody.

2. In undertaking the assessment, Professor Shergold and Ms Weir are to take into account the impact of recent building regulatory reviews and reforms undertaken and implemented by state and territory governments, including but not limited to:

- a) Australian Capital Territory—Improving the ACT Building Regulatory System Review;
- b) New South Wales—2016 Response to the Independent Review of the Buildings Professionals ACT 2005;
- c) Queensland—2016 Building Plan Review;
- d) Tasmania—2017 Building Regulatory Framework;
- e) Victoria—2017 Building Regulations Sunset Review;
- f) Western Australia—2016 Auditor General Report on Regulation of Builders and Building Surveyors; and
- g) Senate Economics Committee Inquiry into Non-Conforming Building Products.

3. Based on the outcome of the assessment, consider strategies for improving compliance and enforcement practices and make

recommendations for a national best practice model for compliance and enforcement to strengthen the effective implementation of the NCC.⁵⁶

Progress on the work coming out of the BMF

Building Regulators' Forum (BRF)

2.49 The establishment of the Building Regulators' Forum (BRF) was a key recommendation arising from the SOG report. The BRF's first meeting was held on 13 July 2017. The Queensland Department of Housing and Public Work's advised the committee that, while building regulators have already been communicating regularly and sharing jurisdictional responses to the SOG's work, the BRF will formalise these interactions.⁵⁷

2.50 The newly-established BRF will provide more clearly defined membership, agreed priorities and information sharing arrangements, including focus on matters such as:

- sharing information on best practice regulation and enforcement activities;
- collaboration to deliver timely and coordinated responses to issues of national significance related to NCBPs and other matters as directed by the BMF; and
- consideration and triage of issues for escalation to relevant entities for response or to the BMF for consideration.

2.51 The VBA is the current Chair and Secretariat for the BRF. The committee understands that the VBA is finalising details for the BRF such as governance arrangements and an online information sharing mechanism to enable members to informally and confidentially collaborate outside of meetings and respond to issues as they arise.⁵⁸

One-stop-shop website for non-conforming building products

2.52 Commencing 1 July 2017, the BMF implemented a one-stop-shop website that will provide general information on non-conforming and non-compliant building products, and include the ability for the public to submit a complaint or enquiry about a product or material.⁵⁹

56 Building Minister's Forum, *Assessment of the Effectiveness of Compliance and Enforcement Systems for the Building and Construction Industry across Australia—Terms of reference*, <https://industry.gov.au/industry/IndustrySectors/buildingandconstruction/Documents/Terms-of-Reference.pdf> (accessed 24 August 2017).

57 Department of Housing and Public Works, answers to questions taken on notice from a public hearing on 14 July 2017, received 1 August 2017, pp. 2–3.

58 Department of Housing and Public Works, answers to questions taken on notice from a public hearing on 14 July 2017, received 1 August 2017, pp. 2–3.

59 The website can be found at: <http://www.abcb.gov.au/%20NCBP/Non-Conforming-Building-Products>

Comprehensive package of measures to improve fire safety in high rise buildings

2.53 On 14 December 2016, BMF agreed to a comprehensive package of measures to improve fire safety in high rise buildings. The comprehensive package of measures, which includes measures that the BMF previously requested the ABCB to implement at its meeting on 19 February 2016, seek to:

- Reference a contemporary and rigorous testing standard, developed based on international best practice, for full scale testing of the fire performance of external façade systems, which is particularly relevant for new and innovative systems.
- Provide rigorous, contemporary and clear Code requirements to improve application and compliance.
- Provide practitioners with the tools and supporting material to support Code compliance.
- Increase industry awareness of the need to be cognisant to the potential risks associated with non-compliance.
- Enhance on-site checking, auditing and enforcement.⁶⁰

2.54 At the BMF meeting on 30 June 2017, the ABCB was directed to expedite completing and adopting 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.

NCC 2016 Volume One Amendment 1

2.55 On 14 August 2017, the ABCB announced that the NCC would be amended out-of-cycle prior to the next scheduled edition of the NCC in 2019. The key aspects of the amendment cover:

- A new Verification Method that adopts the external wall testing standard, AS 5113.
- Improving the evidence of suitability provisions.
- Clarifying the Deemed-to-Satisfy Provisions relating to the fire performance of external walls.
- Referencing an updated sprinkler standard, AS 2118.

2.56 Feedback on the public comment draft of the NCC 2016 Volume One Amendment 1 is due on 10 September 2017, with the amendment's anticipated adoption in March 2018.⁶¹

60 Australian Building Codes Board, 'Building Ministers agree to comprehensive package of fire safety measures', 20 December 2016, <http://www.abcb.gov.au/News/2016/12/19/Building-Ministers-agree-to-comprehensive-package-of-fire-safety-measures> (accessed 30 August 2017).

61 Australian Building Codes Board, *Public Comment Draft: NCC 2016 Volume One Amendment 1*, p.1. <http://www.abcb.gov.au/Resources/Publications/Consultation/NCC-2016-Volume-One-Amendment-1> (accessed 30 August 2017).

2.57 In early 2016, Standards Australia completed the development of *AS 5113, Fire propagation testing and classification of external walls of buildings* which will be included in the NCC 2016 Volume One Amendment 1.

2.58 The old standard for testing combustibility, AS 1530.1 was not considered to be appropriate for testing bonded laminated products such as ACPs.⁶² Mr Wade Martin, National Technical Manager of Halifax Vogel Group stated: 'There is no such thing as a panel that passes AS1530.1'.⁶³

2.59 The new standard sets out procedures for testing and classification of external walls according to their tendency to limit the spread of fire across their surface and between neighbouring buildings. It can be applied to external vertical surfaces and external wall systems. AS 5113 also integrates international standard test methods where practicable.⁶⁴

Senior Officers' Group (SOG) Implementation plan yet to be released

2.60 On 14 July 2017, the committee was advised by the BMF that the SOG implementation plan, which was due to be published by May 2017, was still being finalised.⁶⁵ At the time of writing—6 September 2017—the implementation plan has still not been release.

62 Australian Institute of Building Surveyors, *Submission 124, Supplementary*, p. 16.

63 Mr Wade Martin, National Technical Manager, Halifax Vogel Group Pty Ltd, *Committee Hansard*, 19 July 2017, p. 66.

64 Standards Australia, *Submission 147*, pp. 1–2.

65 Ms Liza Carroll, Director-General Department of Housing and Public Works, *Committee Hansard*, 14 July 2017, p. 21.