

## Chapter 3

### Regulatory framework

3.1 The fires in the Grenfell Tower, and other high-rise buildings in Australia and internationally, linked to flammable external building cladding highlight a wide range of issues surrounding non-conforming and non-compliant building products.

3.2 This chapter examines a range of matters that have aggravated the issues of non-compliance and non-conformity in building products in Australia such as, product importation, reports of fraudulent certification and the risks associated with product substitution. The chapter discusses some of the proposed measures to address both the use of non-complaint and non-conforming building products more broadly. In particular, it looks at measures to address the use of Aluminium Composite Panels (ACPs) with polyethylene (PE) cores which have been identified as a major fire safety risk in modern buildings.

#### Aluminium Composite Panels

3.3 The fires in the Lacrosse and Grenfell buildings, as well as similar fires in Dubai and China, have all involved ACPs, made of highly combustible PE Aluminium Composite Material (ACM).

3.4 This type of panelling consists of two thin aluminium sheets bonded to a non-aluminium core, and are most frequently used for decorative external cladding or facades of buildings, and signage. They are classified as attachments in Australia and New Zealand, and it is a requirement of the Building Codes in both countries that the panels, 'irrespective of their fire classification', only be attached to fire rated walls. Such panels must demonstrate that they will not contribute to the spread of flame in the event of fire.<sup>1</sup>

3.5 ACPs are manufactured with various cores ranging from a highly combustible PE core up to the non-combustible Aluminium honeycomb core. It is important to note that there is a difference in price and weight between the flammable PE cored material and the fire retardant and fire-proof cored material.<sup>2</sup>

3.6 The Australian Building Codes Board (ABCB) noted that ACP cladding is not the only external wall components that could be dangerous if used in a non-compliant manner. As such the National Construction Code (NCC) 'takes a blanket approach to

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1 CertMark International, Advisory Notice No. 06/2017, 'Subject: Aluminium Composite Panels (ACP) - Fire Risk - Australia & New Zealand', additional information received 28 June 2017, p. 1.

2 CertMark International, Advisory Notice No. 06/2017, 'Subject: Aluminium Composite Panels (ACP) - Fire Risk - Australia & New Zealand', additional information received 28 June 2017, p. 1.

all external wall components, including assemblies (or systems) to reduce the spread of fire within and between buildings'.<sup>3</sup>

3.7 The table below explains the types of ACPs available and details their uses.<sup>4</sup>

**Table 1: Type of Aluminium Composite Panels and their uses**

Panel type	Fire rating	Use	Note
<b>PE</b> is a light composite material consisting of two aluminium cover sheets and a core made of polyethylene.	Flammable	This type of panel is restricted in its use to signage, low rise developments, factories and warehouses.	<b>Restricted Use: Type C Construction Only</b>
<b>FR</b> Panels. The designation FR refers to 'Fire Resistant' and as with A2 panels it has been tested to EN 13501: B-s1,d0.	B-s1,d0 Difficult to ignite	This type of panel may be used on high rise buildings. It must be attached to a fire rated wall. Although not strictly referred to as Non-combustible it has a very low spread of flame indices and will not contribute to the spread of flame.	<b>ACCEPTABLE FOR USE ON HIGH RISE CONSTRUCTIONS</b>
<b>A2</b> , This type of panel gets its name from a specific fire test (EN 13501: A2-s1,d0).	A2-s1,d0 Classified as Non-combustible	This type of panel may be used on high rise buildings. It must be attached to a fire rated wall.	<b>ACCEPTABLE FOR USE ON HIGH RISE CONSTRUCTIONS</b>
<b>Aluminium-Core Composite Panel</b> are classified as A1 or noncombustible.	A1 Non-combustible	This type of panel may be used on high rise buildings. It must be attached to a fire rated wall.	

3.8 The ABCB made the following observations in relation to the combustibility of external walls:

- With the exception of low-rise buildings (typically single storey residential buildings and two storey commercial, industrial and public buildings) and single dwellings, the NCC requires that external walls must be non-combustible if using a Deemed to Satisfy Solution. In this context, the NCC contains some concessions whereby, provided specified conditions are met, a multi-residential building of up to four storeys may be permitted to have combustible external walls.
- Non-combustibility of a material is determined by testing to Australian Standard AS 1530.1. The NCC also lists some low hazard combustible materials that can be used where a non-combustible material is required (such as fibre-cement sheeting).
- The NCC Deemed-to-Satisfy Provisions also require that any attachments to the external wall must not impair the fire performance of the external wall or create an undue fire risk to the

3 Australian Building Codes Board, *Submission 150*, p. 4.

4 CertMark International, Advisory Notice No. 06/2017, 'Subject: Aluminium Composite Panels (ACP) - Fire Risk - Australia & New Zealand', additional information received 28 June 2017, p. 1.

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building's occupants as a result of fire spread or compromising fire exits. Permitted attachments are generally incidental in nature such as a sign, sunscreen, blind, awning, gutter or downpipe.

- If not following the Deemed-to-Satisfy compliance pathway, a Performance Solution for combustibility of external walls must be able to demonstrate that it will avoid the spread of fire in and between buildings, including providing protection from the spread of fire to allow sufficient time for evacuation.<sup>5</sup>

### **Increase in the number of products being imported from overseas**

3.9 Since the 1990s, there has been a significant decline in Australia's manufacturing base. The effect of this decline has been a transition where the majority of products used in the Australian domestic building market are now imported from overseas.<sup>6</sup> The prime risk identified with the importation of construction materials into Australia is the difficulty in establishing if the materials are compliant with the relevant Australian standards.

3.10 Certification of a product indicates that it is compliant with a mandatory standard like the Australian Standards or a voluntary third party certification scheme (like the CodeMark), which confirms that a required standard has been met. For certification to be effective a standard must be clear, information about the standard should be easily accessible, monitoring and auditing of material against the standard must be maintained and consumers must have confidence in the credibility and integrity of the certification system whether it is onshore or offshore. Furthermore, enforcement, including penalties for non-compliance, need to be maintained.

3.11 In its submission to the inquiry, the Australian Institute of Architects noted the 'enormous array of materials coming from international manufacturers'. It flagged the concern that the certification credentials of imported products are not always reliable. It noted that at this point in time, 'any person can import construction products and materials, and many of these would not understand the Australian Standards relating to the materials they import. Nor would many understand the implications of using the material inappropriately'.<sup>7</sup>

### **Reliability of certification documentation**

3.12 The committee heard of numerous incidents where individuals and businesses believed that import materials compliance documentation was possibly suspect. Fraudulent or misleading product certification documentation enables non-compliant or non-conforming materials to be easily used or substituted on Australian building sites. For example, the Australian Institute of Building Surveyors (AIBS) stated that they had identified 'incorrect, fraudulent or inadequate documentation and certificates

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5 Australian Building Codes Board, *Submission 150*, pp. 4–5.

6 Dr Darryl O'Brien, National Technical Committee representative, Non-Conforming Building Products, Australian Institute of Building Surveyors, *Committee Hansard*, 19 July 2017, p. 21.

7 Australian Institute of Architects, *Submission 157*, p. 2.

of adequacy' as one of the potential reasons 'why non-compliant external wall cladding has been installed on so many buildings in Australia over the past 30 years'.<sup>8</sup>

3.13 Mr Travis Wacey, national Policy Research Officer from the Construction, Forestry, Mining and Energy Union (CFMEU) also raised similar concerns about the prevalence of the use of fraudulent certification. Mr Wacey considered the issue to be widespread and provided an example of the types of fraudulent certification that has been found by the CFMEU:

The example is that we find something that is stamped as a certain product or comes with certain paperwork, certain certificates, saying something along the lines that this is compliant with a certain standard and has been certified under this testing regime by this testing authority, and subsequently someone makes an inquiry with that testing authority and it is found that the test never occurred; they have never heard of this distributor or manufacturer.<sup>9</sup>

3.14 Mr Wacey also highlighted the limited number of prosecutions in relation to fraudulent certification. He was aware of examples where false or misleading statements claiming conformity with a standard had been raised with the Australian Competition and Consumer Commission. However, he understood the 'examples might not have been prosecuted with reference to the list of priorities in terms of the agency'.<sup>10</sup>

3.15 Mr Murray Smith, Acting Chief Executive Officer, Victorian Building Authority (VBA), highlighted a recent case which had been prosecuted by Consumer Affairs Victoria involving a false certificate for a fire safety or separation wall—a product designed to prevent or delay the spread of fire.<sup>11</sup>

3.16 Many in the industry told the committee that they felt that the problem of fraudulent documentation was significant, Mr Rodger Hills, Executive Officer, Building Products Innovation Council (BPIC), considered it was a 'massive problem within the industry'. Mr Hills noted that one of BPIC's members, the Australian Windows Association had 'literally thousands of documents that are fraudulent'.<sup>12</sup>

3.17 Mr Hills observed that in his experience:

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8 Australian Institute of Building Surveyors, *Submission 124.1*, p. 3.

9 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. 4.

10 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. 5.

11 Mr Murray Smith, Acting Chief Executive Officer, Victorian Building Authority, *Committee Hansard*, 19 July 2017, pp. 75–76.

12 Mr Rodger Hills, Executive Officer, Building Products Innovation Council, *Committee Hansard*, 19 July 2017, p. 6.

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A large part of it—I won't say all of it—is from imported products. The imported products, for whatever reason, can be tested to varying standards and not necessarily the standards that people think. The documentation could be completely fraudulent, with no testing done at all. There has been forging of NATA [National Association of Testing Authorities, Australia] certificates and forging of industry code certificates and things like that. It gets very difficult then for a building certifier or an engineer who is trying to check...If you look at the asbestos contamination in the Perth hospital, the builder had all of the proper information and all of what they believed to be relevant certification documentation, which turned out not to be correct.<sup>13</sup>

3.18 Likewise the Australian Institute of Architects submitted that 'fraudulent documents abound', noting that architects had reported that 'relying on the supplier/agent to supply the appropriate information and documentation can be difficult'. In its view:

To avoid fraudulent documentation, it appears that the only avenue for a higher degree of certainty is to request third party product certification. However, for the construction industry, the current patchwork system of assessment schemes is unwieldy. There is great disparity amongst the schemes as to the quality of assessment, level of auditing and checking for fraudulent documentation.<sup>14</sup>

### **The risks associated with product substitution**

3.19 Along with deliberate misleading or fraudulent documentation or certification, non-compliance and non-conformity can be demonstrated through product substitution. When a similar, often inferior and, generally cheaper product is substituted it has the significant potential to underperform when compared to the original product specifications. Product substitution has been identified as perhaps the most significant contributing factor to the prevalence of non-compliant external cladding materials on Australian buildings.

3.20 Mr John Thorpe, Chief Executive Officer of CertMark International, noted that since the Lacrosse fire in 2014, his company has examined high-rise properties where the body corporate provided the building plans which specifically state that fire-retardant material was to be used and there has been a substitution for a PE. In CertMark International's experience:

Substitution occurs, from our perspective, when a builder, or somebody in involved in the purchasing process, is looking to save money. Basically, what's happened is there's been a tender go out for the building, a

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13 Mr Rodger Hills, Executive Officer, Building Products Innovation Council, *Committee Hansard*, 19 July 2017, p. 7.

14 Australian Institute of Architects, *Submission 157*, p. 3.

company's won the tender and the first thing that happens is they look to find savings.<sup>15</sup>

3.21 Icon Plastics cautioned that product substitution was a 'major problem within the construction industry'. Of particular concern was:

...the continued substitution of compliant products in favour of lower cost non-compliant products and systems. This unfortunately is done mainly through the construction phase of the project. Either building companies or installers will substitute products to make the project more profitable for themselves.<sup>16</sup>

### **Concerns about the National Construction Code**

3.22 Ignis Solutions told the committee that it considered the complexity and lack of clarity in the National Construction Code (NCC), to be a primary factor leading to the use of flammable cladding materials.<sup>17</sup>

3.23 The ABCB is a joint initiative of all levels of government in Australia. As such, the Board is a Council of Australian Government (COAG) codes and standards writing body that is responsible for the development and maintenance of the NCC, which comprises the Building Code of Australia (BCA) and the Plumbing Code of Australia (PCA). While the ABCB submission notes that it 'aims to establish minimum performance based and proportional codes, standards and regulatory systems that are consistent, as far as practicable, between states and territories', Mr Neil Savery, General Manager of the ABCB, emphasised that 'the ABCB is not a statutory authority; it has no regulatory powers, no powers of compliance'.<sup>18</sup> These responsibilities lie with the relevant state and territory authorities.

3.24 As outlined, the code governing the built environment in Australia is the NCC. The NCC is a performance-based code, meaning there is no obligation to adopt any particular material, component, design factor or construction method. The Performance Requirements for the construction of all buildings can be met using either a Performance Solution (Alternative Solution), which can be done in consultation with the state and territory planning and design authorities or using a Deemed-to-Satisfy (DTS) Solution:

A Performance Solution is unique for each individual situation. These solutions are often flexible in achieving the outcomes and encouraging innovative design and technology use. A Performance Solution directly addresses the Performance Requirements by using one or more of the Assessment Methods available in the NCC.

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15 Mr John Thorpe, Chief Executive Officer, CertMark International, *Committee Hansard*, 19 July 2017, p. 36.

16 Icon Plastics, *Submission 149*, p. 2.

17 Ignis Solutions, answers to written questions taken on notice received 10 August 2017, p. 2.

18 Mr Neil Savery, General Manager, Australian Building Codes Board, *Committee Hansard*, 14 July 2017, p. 37.

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A Deemed-to-Satisfy Solution follows a set recipe of what, when and how to do something. It uses the Deemed-to-Satisfy Solutions from the NCC, which include materials, components, design factors, and construction methods that, if used, are deemed to meet the Performance Requirements.<sup>19</sup>

3.25 Prior to the introduction of the performance-based codes, building codes were very prescriptive, as Mr Norman Faifer, Immediate Past National President, Australian Institute of Building noted:

Before the Building Code of Australia was in, we had only one regime, and that was prescriptive, highly specified, in the book. If it was not in the book, it did not get a look. In order to provide innovation and inventiveness and allow some latitude to architectural design and construction techniques, we went to performance based. Opening the door to performance based product and solutions then opened up the regime of who certifies, who says that this is an approved method or product to use, under the performance based.<sup>20</sup>

3.26 The Warren Centre for Advanced Engineering observed that the 'greater use of performance-based design appears to be threatened by inadequate regulatory and administrative weaknesses and a lack of attention to practitioner competence'. At the same time, it also considered that performance-based codes had provided many benefits to the building and construction industry, such as innovative buildings and cost effective construction projects.<sup>21</sup>

3.27 Ai Group recommended that the evidence of suitability provision in the NCC be reviewed as they felt that the provisions are too broad. It suggested rewriting the provisions to:

- differentiate between the varying levels of assurance (i.e. third party certification is more credible than self-declaration) and the types of building materials and systems that should align with these levels of assurance; and
- differentiate between material conformance and design conformance.<sup>22</sup>

3.28 The AIBS, while supportive of the Code, maintained that the NCC needs to be revised to 'remove ambiguity of interpretation and provide greater clarity around the evidence of suitability provisions supporting performance based design and assessment'.<sup>23</sup> The AIBS also expressed its support for the BMF's resolution to improve industry wide understanding of the performance assessment process available within the NCC, noting:

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19 Australian Building Codes Board, 'How it works' <http://www.abcb.gov.au/NCC/How-it-works> (accessed 30 August 2017).

20 Mr Norman Faifer, Immediate Past National President, Australian Institute of Building, *Committee Hansard*, 19 July 2017, p. 49.

21 The Warren Centre, *Submission 158*, p. 5.

22 Ai Group, *Submission 46*, p. 25.

23 Australian Institute of Building Surveyors, *Submission 124.1*, p. 7.

Building surveyors are often frustrated by the lack of understanding of the evidence of suitability requirements and performance assessment processes among design consultants and believe a widespread mandatory education program on these aspects of performance design is required to address the issue.<sup>24</sup>

3.29 In relation to the code's effectiveness regarding flame retardant products, Mr Graham Attwood, Director of Expanded Polystyrene Australia, considered that there were loopholes in the NCC, that need to be 'tightened up' to ensure only flame retardant products are used in building and construction.<sup>25</sup> Mr Attwood stated:

There are loopholes in the Australian standards, and there are loopholes in the NCC, the National Construction Code, that allow certain product lines to fall into play. That may or may not be a conscious decision, but, in the whole building process, once an approval is given to construct a domestic or commercial building, the next stage on is to look at ways to minimise cost in the construction phase. Sometimes loopholes are found to actually implement and move away from this, while still supposedly compliant with the broad element of documentary compliance; however, the specific and detailed areas of, for instance, applying certain Australian standards to this particular code have got flaws and have got holes in them that need to be tightened up.<sup>26</sup>

3.30 Furthermore, the AIBS provided a number of examples to emphasise its concerns about the lack of clarity in the NCC including the concern that 'Specification C1.1 Clause 2.4 [in the NCC] has been identified as providing for some degree of use of combustible elements on parts of building facades'.<sup>27</sup>

3.31 The committee heard that performance-based pathways can enable a collective arrangement of adaptations, suggested by builders, such as additional sprinklers or fire walls to circumvent more prescriptive elements of the NCC. Ignis Solutions stated that the NCC currently has a performance-based pathway which permits the use of PE core ACPs in high rise buildings above the prescribed floor height limit for such panels. Additionally, Ignis Solutions also raised concerns in relation to wall fire safety compliance, stating that 'the NCC is fragmented, confusing, lacking in definitions, contradictory with conflicting prescriptive clauses and has no hierarchy between the conflicting prescriptive clauses'.<sup>28</sup>

3.32 Mr Benjamin Hughes-Brown, Managing Director of Ignis Solutions explained:

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24 Australian Institute of Building Surveyors, *Submission 124.1*, pp. 7–8.

25 Mr Graham Attwood, Director, Expanded Polystyrene Australia, *Committee Hansard*, 19 July 2017, p. 3.

26 Mr Graham Attwood, Director, Expanded Polystyrene Australia, *Committee Hansard*, 19 July 2017, pp. 3–4.

27 Australian Institute of Building Surveyors, *Submission 124.1*, p. 7.

28 Ignis Solutions, *Submission 153*, p. 4.

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[The NCC] is contradictory, with no hierarchy of control for various clauses which compete with each other. The matter of fire safety and building compliance is too great to rely on one person. By way of example, let's take sarking used for external walls for weatherproofing. One part of the code requires it to have a flammability of less than five. This indicates that combustibility is permitted. Another part of the code says that the external wall must be non-combustible. How is this to apply for a consecutive nature? If it is used externally, does the clause that allows it to be used as combustible apply internally? Well, you don't put sarking on internal aspects of a building. And does it apply to only low-rise type C construction? There are no requirements for fire resistance in many applications for that. So what does the flammability requirement actually hold on that front? The Australian Building Codes Board has written a nine-page document to provide clarification on these two levels of clauses. A nine-page document to provide clarification certainly highlights that something is not right.<sup>29</sup>

3.33 Ms Liza Carroll, Director-General, Queensland Department of Housing and Public Works, noted that the introduction in Queensland of a performance-based building code in 1996 informed the Queensland Government's decision to examine those buildings that were constructed between 1994 and 2004 as the initial scope for its cladding audit. Ms Carroll noted:

I think this goes to the kind of thing that happens within the Building Code, as I am sure you are aware, which is: is it non-flammable, non-combustible cladding or is it a performance solution so it can effectively replicate the standards that might be required? So there is a focus on: do some of these buildings have performance solutions and were they appropriately tested back then.<sup>30</sup>

3.34 In addressing these and other concerns raised about the effectiveness of the NCC, Mr Savery of the ABCB stated that 'the performance based code is a highly sophisticated regulation and it needs properly qualified and trained individual assessors in order to understand how a performance based code works'. He observed:

In the early 1990s, we introduced a performance based code which is highly sophisticated regulation; it is not something that the average individual can necessarily understand. You need qualified, trained people to understand how a performance based code works. At the same time as that, private certification was incrementally introduced around the country. At the same time as that, we had a process around the country of deregulation or reduction in regulatory requirements around things like mandatory inspections. At the same time as all of that is happening, the world is

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29 Mr Benjamin Hughes-Brown, Managing Director, Ignis Solutions, *Committee Hansard*, 19 July 2017, p. 28.

30 Ms Liza Carroll, Director-General Department of Housing and Public Works, *Committee Hansard*, 14 July 2017, p. 19.

changing around us. We have global supply chains. We have multinational companies operating.<sup>31</sup>

3.35 Mr Savery, having agreed with the committee on a number of statements regarding the lack of compliance in the system and the erosion of confidence through the gradual removal of elements such as mandatory inspections, also noted that there is considerable non-compliance occurring in the industry.

There is noncompliance occurring. We have got non-compliant products, but I would suggest to you that it does not end at non-compliant cladding.

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Not just products; non-compliant construction. It is not just a product; the actual potential construction of a building<sup>32</sup>

3.36 Mr Savery was asked 'who was responsible for the existence of these unsafe buildings' and whether they were a product of deregulation. Further, the committee asked Mr Savery if he believed the answer was to reregulate. Mr Savery informed the committee that these particular question was being considered by the BMF's expert review into the *Assessment of the Effectiveness of Compliance and Enforcement Systems for the Building and Construction Industry across Australia*.<sup>33</sup>

3.37 Mr Hills from the Building Products Innovation Council (BPIC) believed the industry support a move to reregulation including 'nationally consistent approaches to training, licensing and banning of non-complying products and buildings'.<sup>34</sup>

### ***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 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 NCC would be amended to reflect the ABCB's new comprehensive package of measures for fire

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31 Mr Neil Savery, General Manager, Australian Building Codes Board, *Committee Hansard*, 14 July 2017, p. 40.

32 Mr Neil Savery, General Manager, Australian Building Codes Board, *Committee Hansard*, 14 July 2017, p. 40.

33 Mr Neil Savery, General Manager, Australian Building Codes Board, *Committee Hansard*, 14 July 2017, p. 40.

34 Mr Rodger Hills, Executive Officer, Building Products Innovation Council, *Committee Hansard*, 19 July 2017, p. 9.

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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 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 PE core cladding across Australia, the committee considers it paramount that all governments focus attention on this issue before the next disaster occurs.

### **Need for greater clarity of CodeMark Certificates of Conformity**

3.42 The need for confidence in the conformity of Australian building products is paramount. Certificates of Conformity issued under the ABCB's voluntary CodeMark Scheme are evidence that a building material or method of design fulfils specific requirements of the NCC. Currently, there are a number of external wall products on the market displaying a CodeMark Certificate of Conformity, including some aluminium composite panels.<sup>35</sup>

3.43 Icon Plastics highlighted the importance of clear product labelling in reducing the incidence of product substitution. It considered:

One quite simple way of stopping this type of practice is to have all products labelled with the appropriate standards and certificate number, the particular product has passed. All products would then be able to be visually checked as they arrive on construction sites, prior to installation. This would also be confirmed with copies of the test certificates either supplied by the manufacturer or the importer.<sup>36</sup>

3.44 Mr Murray Smith, the VBA, drew the committee's attention to two critical weaknesses in the current building product certification system which were highlighted by the Lacrosse building fire:

...firstly, that there is no single organisation or regulator responsible for certifying products for compliance with relevant standards and, secondly, that, certificates of conformity with the Building Code of Australia performance requirements, where available, are not always explicit in respect of the range of uses and circumstances in which a product may be relied upon to be fit for purpose.<sup>37</sup>

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35 Australian Building Codes Board, *Submission 49*, p. 17.

36 Icon Plastics, *Submission 149*, pp. 2–3.

37 Mr Murray Smith, Acting Chief Executive Officer, Victorian Building Authority, *Committee Hansard*, 19 July 2017, pp. 75–76.

3.45 Mr Savery of the ABCB advised the committee that the CodeMark Scheme had been overhauled. Mr Savery also explained that there had already been a review in train prior to the Lacrosse fire which was then expedited further noting:

One of the key changes has been the introduction of a new certificate. It was deemed by the board that the existing certificate did not adequately describe to the practitioner what the limitations of the product were or what performance requirements of the code it satisfied. So the new certificates which have been road tested by the conformity assessment bodies—they are the bodies that issue the certificates—are more precise in terms of describing what the product complies with. A product will not comply with every requirement of the code; they will only be seeking to attest to certain parts of the code and what the actual limitations are in respect of that product.<sup>38</sup>

### **Mandatory third party certification, national register and product auditing**

3.46 The committee notes that the SOG report included recommendations to assess the costs and benefits of mandating third party certification and establishing a national register for high risk products (see paragraph 2.44).

3.47 Mr John Thorpe, Chief Executive Officer of CertMark International argued that the quickest way to address the use of high risk products would be to make the CodeMark Scheme mandatory, stating that 'I'm not saying everything needs a mandatory certification—decorative items that are non-flammable, obviously not—but that could be a move that could go ahead quite quickly'.<sup>39</sup>

3.48 The Australian Institute of Architects also considered third party product certification to be only avenue to avoid fraudulent documentation and provide a higher degree of certainty. However, in its view, the 'current patchwork system of assessment is unwieldy. There is great disparity amongst the schemes as to the quality of assessment, level of auditing and checking for fraudulent documentation'. It also noted:

Third party certification from a testing laboratory that is properly recognised and accredited by NATA is essential, as is current certification schemes, and product registers coming under the one umbrella to ensure that minimum standards are upheld. The certification and testing regime should not be limited to imported products, but should apply to those manufacturers in Australia to ensure that all products comply with Australian standards.<sup>40</sup>

3.49 AIBS advocated for random testing and auditing as well as developing a central product register:

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38 Mr Neil Savery, General Manager, Australian Building Codes Board, *Committee Hansard*, 14 July 2017, p. 46.

39 Mr John Thorpe, Chief Executive Officer, CertMark International, *Committee Hansard*, 19 July 2017, p. 38.

40 Australian Institute of Architects, *Submission 157*, p. 3.

An ongoing and proactive system of random auditing and testing of high risk products undertaken by the testing bodies should be introduced, with significant penalties for those found to be involved in the supply or manufacture of non-conforming products. Once a product has been found to be compliant, all testing details and evidence of suitability should be made available via a central body responsible for the coordination and publication of that information, to ensure that the latest information is readily accessible to all involved in the design and assessment processes.<sup>41</sup>

### ***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**

3.51 Many who provided evidence to the committee believed that the complexity of the NCC and the ability to undertake 'Alternative Solutions' to items that would appear to most people to be non-negotiable, led them to advocate for a total ban of the highly flammable ACPs with a Polyethylene (PE) core in Australia.

3.52 The committee heard from three distributors of ACM panels during the inquiry. Two of the companies—SGI Architectural and Fairfax Architectural—supported a ban on PE core ACPs.

3.53 Mr Clint Gavin, National Sales Manager advised the committee that SGI Architectural fully supported a national ban on the importation of PE core ACPs. He noted that SGI Architectural had made a conscious decision in 1999 not to import PE core products, and are now only importing fire retardant products with a fire retardant non-combustible mineral filled composite core. Mr Gavin said that his decision was made despite the fact that SGI Architectural had lost business to companies who provide the cheaper PE core products.<sup>42</sup>

3.54 Fairview also supported a ban of PE core ACPs due to the risk that they can 'inadvertently be substituted for the correct product'. Fairview indicated that it had ceased manufacturing PE core ACPs two years ago, although its remaining PE core stocks may still be sold if requested. Fairview advised the committee that it would write off its remaining stocks if a ban was issued.<sup>43</sup>

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41 Australian Institute of Building Surveyors, *Submission 124.1*, p.11.

42 Mr Clint Gavin, National Sales manager, SGI Architectural, *Committee Hansard*, 31 July 2017, p. 50.

43 Mr Andrew Gillies, Managing Director, Fairview Architectural, *Committee Hansard*, 19 July 2017, pp. 71–73.

3.55 Mr Bruce Rayment, Chief Executive Officer of Halifax Vogel Group, cautioned against a blanket ban as PE core ACPs are also widely used in the signage industry. Mr Rayment noted that the company was not able to confirm where its products had ended up, or whether they were used in a compliant manner.<sup>44</sup>

3.56 Mr Thorpe, CertMark International, did not believe there was strong argument for being able to have a niche market for flammable products in the building industry. He concluded that 'the simplest way with PE flammable core materials, as with any flammable material that is in a building, is it should be banned; it should be kept out of the marketplace'.<sup>45</sup>

3.57 Mr Smith from the VBA observed that banning PE core ACPs would 'make regulation a lot simpler'.<sup>46</sup>

3.58 Similarly, Ignis Solutions submitted that there were 'no legitimate uses for PE core materials in Australian buildings be it cladding or signage, that cannot be cost and life safety effective with a fire retardant core panel'.<sup>47</sup>

3.59 The committee was advised that there was not a significant price difference between PE core and fire retardant panels, particularly in light of the potential cost of millions of dollars for remediation of buildings found to be clad in PE core ACPs. The committee was informed that the price of a panel is approximately \$50 per square metre. Mr Rayment of Halifax Vogel Group advised that 'for us the difference in price between the polyethylene cored material and the fire-resistant material, at a wholesale price, is A\$3 a square metre'.<sup>48</sup>

3.60 However, the CFMEU acknowledged the complexities surrounding the introduction of an import ban while there are still compliant uses of PE core ACPs.<sup>49</sup> The committee also notes that Australian Border Force has previously advised that it is not in a position to reliably determine whether an imported building product will be used or installed correctly.<sup>50</sup>

3.61 Despite this complexity, the CFMEU suggested that if necessary, the Australian Government could introduce interim import bans on the product 'until systems were established to provide the public with confidence that products of this

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44 Mr Bruce Rayment, Chief Executive Officer, Halifax Vogel Group Pty Ltd, *Committee Hansard*, 19 July 2017, p. 66.

45 Mr John Thorpe, Chief Executive Officer, CertMark International, *Committee Hansard*, 19 July 2017, p. 38.

46 Mr Murray Smith, Acting Chief Executive Officer, Victorian Building Authority, *Committee Hansard*, 19 July 2017, p. 85.

47 Ignis Solutions, answers to written questions taken on notice received 10 August 2017, p. 2.

48 Mr Bruce Rayment, Chief Executive Officer, Halifax Vogel Group Pty Ltd, *Committee Hansard*, 19 July 2017, p. 66.

49 Construction, Forestry, Mining and Energy Union, *Submission 128.1*, p. 18.

50 Department of Immigration and Border Protection, *Submission 56*, p. 4.

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type were going to be used appropriately and compliantly only'.<sup>51</sup> The CFMEU considered that such an action would be consistent with Australia's international obligations as the World Trade Organisation's Agreement on Technical Barriers to Trade states:

No country should be prevented from taking measures necessary to ensure the quality of its exports, or for the protection of human, animal or plant life or health, of the environment, or for the prevention of deceptive practices, at the levels it considers appropriate.<sup>52</sup>

3.62 The Hon John Rau MP, Deputy Premier of South Australia stated:

We have the capacity, if there is completely unsafe building material—whether it be cladding or something else—at risk of coming into the country, to stop it at the border. Once it's in, once it's past the port and it's into the distribution network, chasing it, catching it and identifying it, particularly after it's been used, is an absolutely massive task and one for which, quite frankly, as far as I'm aware, nobody is adequately resourced. When I say 'nobody' I mean any level of government. So the obvious answer, it would seem to me, is to find effective mechanisms to root this material out at the point of entry into the country to the extent that we possibly can.<sup>53</sup>

### *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

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51 Construction, Forestry, Mining and Energy Union, *Submission 128.1*, p. 18.

52 Construction, Forestry, Mining and Energy Union, *Submission 128.1*, p. 18.

53 The Hon John Rau MP, Deputy Premier of South Australia, *Committee Hansard*, 31 July 2017, p. 42.

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.**