



**BUILDING
PRODUCTS
INNOVATION
COUNCIL**

Response to the

Draft Amendment to the NSW Environmental Planning and Assessment Regulation 2000 (the Regulation) to identify buildings with combustible cladding

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BPIC Response to the Draft Amendment

This submission questions the rationale behind the introduction of the *Environmental Planning and Assessment Amendment (Identification of Buildings with Combustible Cladding) Regulation 2017* (the **Regulation**), which is to make provision for the identification of, and collection of information about, buildings to which combustible cladding has been applied.

The Building Products Innovation Council (BPIC) commends the New South Wales government for its ambition to address the community's concerns regarding flammable cladding material on residential apartment buildings (and other high-rise buildings). However the way the government is going about this will not hold accountable those responsible for the wide-spread use of non-conforming and non-compliant cladding, and it will have major unintended consequences for building owners and occupiers.

All Australian jurisdictions except for NSW have acknowledged the failure of their respective regulatory systems in preventing non-compliant cladding to be used on buildings in contravention to the National Construction Code. Each is undertaking a cladding audit at government expense to identify potentially non-compliant buildings. Of concern to us, is the observation that via this Regulation, the NSW Government appears to be placing the cost and responsibility for identifying potentially flammable cladding with building owners.

Not only is this out of step with the approach of all other jurisdictions, it is out of step with both industry and community expectations.

BPIC cannot understand why the NSW government would consider it appropriate for buildings that have been sold to new owners or for strata developments where building management has passed from the original builder/developer to an Owners Corporation, to be made responsible for the cost and effort of cladding identification.

Surely the responsibility for identifying potentially flammable cladding, lies with those responsible for allowing the material to be used in the first place? It is a requirement of the EPAA Act and its Regulations that those who build a building and certify it as compliant must do so in accordance with the National Construction Code (NCC), Australian Standards and all other relevant fire and building regulations. Furthermore, clause 129C Record of site inspections of the Environmental Planning and Assessment Regulation 2000 requires accredited certifiers to keep detailed records of all the inspections and certifications they have made.

Any reasonable person would conclude that the onus should be on builders and certifiers to identify through their own records, which buildings have cladding and which do not.

This sensible approach has already been adopted by major banks and insurers. For example, Westpac has audited all new and current building projects it has funded over flammable cladding used in construction by requiring developers of new and current projects to provide confirmation of compliance on external wall cladding products that are either designed [to be installed], being installed or are already installed.

By instituting this Regulation, the public cost will be high because the only way to determine if a building has cladding that will "readily burn" is via expensive investigation, analysis and testing on each and every building over 2 storeys. Given the limited test facilities available in Australia for this type of work and the current backlog of similar tests, it will be difficult to get test results back in a timely manner (and possibly not within that 3 month notice period).

The most cost effective approach is simply to require builders and certifiers to search their records for the relevant information. Given this reality, it is unconscionable for the government to allocate such a heavy cost burden on the public when a far cheaper, easier and more reliable alternative exists.

Apart from the unfairness of burdening innocent building owners with exorbitant investigative costs and loss of insurance cover, this Regulation is sending the wrong message to those responsible for the use and installation of potentially flammable cladding, other non-conforming products and non-compliant building practices. In

effect the government is conveying to the building community that there is little or no consequence for those creating problems and that they can continue in a business-as-usual manner.

This is especially important because the Regulation states that the Secretary may establish a ‘Register of buildings with combustible cladding’ yet there is no indication of what, if anything the government is going to do about the problem. Nor is it not clear how such information will be used or who will have access to it.

Furthermore BPIC has several concerns regarding the definitions contained in the Regulation. Firstly we would suggest having the words “under 5 percent pitch” added to the definition. While flame spread will probably not be as fast as in a vertical situation, it could still be significant for any paneling/surface greater than 5 degrees from horizontal.

Secondly BPIC would suggest having the term ‘readily burning’ carefully defined in order to clearly classify the level or degree of combustibility the new regulation is setting. After all, practically any solid material will ‘burn’ under the right conditions, so specifying the degree of combustibility provides certainty to all who must comply with the regulations.

In conclusion BPIC is of the opinion that this Regulation will not create a disincentive to the future use of potentially flammable cladding, it fails to tackle instances of other potentially dangerous non-compliant and non-conforming materials on building, it appears to be an attempt to transfer cladding audit costs from the government to the public, and by leaving builders and certifiers out of the sphere of the Regulation’s influence, it helps perpetuate a situation where nobody in the state of NSW can accurately determine what has been built, by whom and to what standard. In effect, the Regulation helps maintain a paradigm whereby the NSW government is largely powerless to regulate its own building legislation.

The Role of BPIC

The Building Products Innovation Council (BPIC) is a national peak body representing Australia's leading building products industries and related services (listed in the footer of this document) in:

Steel	Gypsum Board	Concrete
Insulation	Timber Products	Roof Tiles
Windows & Glass	Clay Bricks	Concrete Masonry
Cement	Housing Industry	Insulated Sandwich Panels

BPIC's members and associated companies directly employ over 200,000 Australians with more than 470,000 employed indirectly. Their collective industries are worth over \$54B in annual production to the Australian economy. BPIC is a not for profit organisation governed by a Board of Directors comprised of representatives from its member organisations.

BPIC's primary objective is to provide coordinated representation of the building products industry to interested parties including Government, the construction industry, and the general public to help improve building and construction standards. We also provide a forum for discussion, information sharing and policy formulation among major product categories in the building industry.

BPIC's mission is to:

- Promote the efficient production and use of building products within a nationally consistent regulatory environment.
- Develop policy and make submissions or representations to governments, industry and the community on agreed technical standards, codes and regulatory issues of mutual concern to Members.
- Promote the innovative use of building products.

BPIC works to fulfill these aims by gathering and supplying practical and current industry information on behalf of BPIC member organisations and other organisations and companies that are not members but follow BPIC through various means. This industry-wide approach to responding to regulatory issues, helps to ensure that Governments are informed of potential problems in the building industry and are provided with appropriate industry-considered responses.

BPIC also encourages investment in skills formation, product development and industry research by helping to identify and remove regulatory impediments to innovation.