

16 February 2018

Ms Felicity Greenway
Acting Executive Director, Resource and Industry Policy
Department of Planning and Environment
GPO Box 39, Sydney NSW 2001

Dear Ms Greenway,

RE: Proposed reforms: buildings with combustible cladding.

The Property Council welcomes the opportunity to provide feedback on the draft *Environmental Planning and Assessment Amendment (Identification of Buildings with Combustible Cladding) Regulation 2017* and the Explanation of Intended Effect.

The property industry acknowledges the gravity of the issues surrounding combustible cladding and the need for urgent action to mitigate fire risk. For this reason, in November 2017, the Property Council made a strong statement supporting the ban on the future importation and sale of 100% polyethylene core aluminium composite panels and the systematic auditing of existing buildings with cladding.

Building Audits

We are concerned about the proposed method for the building audits. Consistently, State and Territory governments have chosen to conduct audits themselves rather than placing this burden on building owners.

This presents several clear benefits:

- Under the draft regulation, an owner must determine whether their building has combustible cladding applied to its external walls. This is problematic as the definition provided defines **combustible cladding** as “...materials that are capable of readily burning”. This definition leaves significant room for interpretation based on individual understanding of what can readily burn. If the audits were being conducted by a central body under government supervision, there would be a consistent interpretation of this definition.
- The draft regulation prescribes that owners must engage a *properly qualified person* to give a statement on whether the cladding represents a risk and details of actions required to rectify it. However, this qualified opinion is subject to be

overturned by Fire and Rescue NSW or agents of a local council who may also question the person's qualifications - which brings the question of why audits would not be handled by the ultimate decision makers in the first instance.

- Initial reports from industry indicate that there would not be large numbers of *properly qualified persons* available to undertake the work. This has the potential to lead to significant delays in conducting audits which will put occupants at risk in the meantime. It will also jeopardise the ability of some owner to comply with this regulation in the allotted 11 months from commencement.
- Insurance companies are reticent to provide professional insurance to professionals providing advice on flammable cladding which will lead to uninsurability or high premiums which will be passed on to building owners.
- We suggest that that Government would be better placed to conduct the audits in situations where it has not already been done by the building owner. If the building owner or another party has already audited their building, an assessment of the method used should be conducted to determine its validity. Many building owners in the industry have already audited their portfolios and acted to rectify any fire risks that were detected. The audit process described in the draft regulation is prescriptive and previous efforts do not appear to have been given a status under the regulation. This would force building owners to replicate their efforts and bear the costs of engaging a *properly qualified person*. We request that retrospective provisions for assessing the validity of previously conducted audits be included.

We urge the government to align with other States and Territories and to deliver the audits as a government funded program.

Properly qualified person

The term ***properly qualified person*** is not defined with sufficient accuracy to avoid confusion within the industry. We request that the Department issue a draft definition of ***properly qualified person*** for further consultation with industry.

Public register

Section 186W (3) states the following:

“(3) The Secretary may do any or all of the following:

- (a) make the register, or any part of it, available to Fire and Rescue NSW, any council, or any other person,*
- (b) make the register, or any part of it, available to the public,”*

This is problematic as it could lead to a misuse or misinterpretation of the data provided by our members. While experts can determine the risk presented by cladding on a building, this is not within the ability of a layperson. There would be a severe reputational risk for the industry should building data be released and misinterpreted.

Further, should this information be made available, it could unjustifiably affect the valuation and insurability of a building due to perceived risks which could impact future sales of the building.

We request that additional safeguards be put in place to ensure this doesn't happen.

Cladding inspection

The draft regulation specifies that a building's cladding must be 'inspected' but it does not provide further detail. A simple, visual inspection can often be insufficient to determine the fire safety risk. Further, considering the cladding in isolation does not represent a comprehensive view of potential risk – an assessment of fire-related countermeasures across the whole building should be considered when making this judgement.

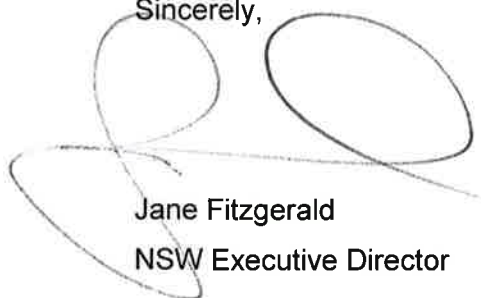
The regulation requires more sophistication on how the inspection should be conducted to ensure the risk is accurately quantified.

The Property Council recommends that the fundamental issues listed above be addressed before the regulation is commenced to avoid unforeseen and undesirable consequences.

Should you have any questions on these issues, please don't hesitate to contact Tim Wheeler, Senior Policy Advisor on twheeler@propertycouncil.com.au or 02 9033 1909.

We thank the Department for their ongoing consultative approach on this matter.

Sincerely,



Jane Fitzgerald
NSW Executive Director