

16 February 2018

Ms Felicity Greenway
Acting Executive Director, Resource and Industry Policy
Department of Planning & Environment
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Sydney NSW 2001
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Dear Ms Greenway

Re: Draft Cladding Regulation

The Association of Accredited Certifiers (AAC) welcomes the opportunity to provide feedback on the draft regulation, *Environmental Planning and Assessment Amendment (Identification of Buildings with Combustible Cladding) Regulation 2017*.

The AAC's comments on the proposed auditing of buildings and register include:

1. Definition of Cladding

- The definition of combustible cladding includes any material that is capable of readily burning. This is too subjective of a measure, noting that virtually every cladding consists of material(s) that are capable of readily burning.

Recommendation: Clarify the definition of combustible cladding to maintain a consistent interpretation.

2. Cladding statement

- Clause 186V outlines the provisions of a cladding statement. The statement requires the properly qualified person to provide an opinion whether the cladding presents a risk. This is too subjective and discretionary.

The requirement of an opinion from a properly qualified person is not a suitable determination of a risk, particularly considering the likely cost implications that will be incurred by property owners and industry if they implement upgrade works. The inspection process from the properly qualified person must result in a definitive declaration that the cladding does or does not present a risk. If a risk is identified, the properly qualified person must explain why there is a risk.

Recommendation: There must be a benchmark or a clear guideline issued to ensure consistency within the industry in relation to providing this opinion.

3. Property qualified person

- There must be a clear and definitive definition of a properly qualified person in relation to the inspection process.
- What qualifications and experience would be acceptable to the Government and Fire & Rescue NSW? Without clear guidelines, it is likely that the role of the properly qualified person would fall to Accredited Certifiers.

There are 217 Category A1 Private Accredited Certifiers and 32 C10 Fire Safety Engineering Certifiers, giving a total of 249 potential properly qualified persons. Not all certifiers will undertake the audits, therefore reducing the pool of available properly qualified persons.

The lack of available of properly qualified persons may lead to significant delays in conducting audits, which may result in some building owners being unable to comply with the 11-month timeframe.

- This legislation cannot be dictated or driven by conservative and uninformed opinions of properly qualified persons. If a declaration of actual risk cannot be made, then the matter cannot progress to a stage of upgrade works, creation of registers or otherwise.

Recommendation: Clarify the role of the properly qualified person that is acceptable to Fire & Rescue NSW and local Councils.

4. Inspections

- How is the required inspection process of existing buildings supposed to include the framing and insulation behind the surface cladding, without invasive and destructive investigation works?

Recommendation: There must be a benchmark or a clear guideline issued to ensure consistency within the industry in relation to the inspection process, including the methodology for inspection of the construction of building elements that are not readily visible.

5. Availability of insurance

- The AAC has been advised that insurers are refusing to offer insurance coverage where combustible cladding is involved, whether directly, indirectly or as a consequence.

Therefore, what protection is available the properly qualified person when providing a determination about the risk to safety in the event of a fire and the recommending of rectification?

Recommendation: Properly qualified persons must be offered protection when undertaking audits and providing reports.

6. Other factors

- The legislation does not take into account the distinctly differently types of buildings. For example, office, warehouse and retail buildings have been profiled the same as residential buildings, yet they have a distinctly different fire risk.

Recommendation: Identify the different types of buildings.

- The legislation has insufficient provision for the decision making/opinion process, as it does not impose the need for all factors of the individual cases to be considered. For example, there is no guideline to consider fire systems such as sprinklers, or no guideline to explain the reduced risk of any cladding material, if there is zero risk of flame impingement or heat exposure.

Likewise, the extent of the cladding used and whether it is a few panels, or the entire building is not considered in the legislation. The potential risk is different when a substantial proportion of a building is covered in cladding, as opposed to a few panels used on a small area. This should be identified in the register.

Recommendation: Provide provision within the legislation for decision making to consider other fire safety features, such as fire systems or the extent of the cladding used. This needs to be clearly stated in the benchmark, or clear guideline, issued to ensure consistency within the industry in relation to providing this opinion.

- Conformation will be required on any approvals paths that will be triggered in relation to replacement of any external cladding. The additional problem that arises in this instance is intervention of a consent authority to review other matters for an existing building when/if an application for a DA is made for cladding works.

Recommendation: The approvals process required for any replacement of external cladding should be clearly stated.

- 186W Register of buildings with combustible cladding

The AAC is concerned about the possible ramifications if this register of buildings is made public, as the data could be misinterpreted, leading to reputational damage.

7. Building Products (Safety) Act 2017

- Clarification needs to be provided as to the interaction of this amendment and the *Building Products (Safety) Act 2017*. It is possible that an opinion could be formed by a properly qualified person that a cladding product is suitable and then at a future time the product could be prohibited under the *Building Products (Safety) Act 2017*.

Recommendation: There must be a benchmark or a clear guideline issued to ensure consistency within the industry in relation to providing this opinion. This guideline could require consideration of the *Building Products (Safety) Act 2017*.

Should you wish to discuss any part of this submission, please contact Jill Brookfield on 1300 735 935 or email jbrookfield@accreditedcertifiers.com.au

Yours sincerely


Jill Brookfield
Chief Executive Officer