

# MFB Submission:

## Senate Economics Reference Committee Inquiry into Non-Conforming Building Products

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### 1. Introduction

The Metropolitan Fire and Emergency Services Board (**MFB**) is a Victorian emergency management organisation whose primary aim is to create a safer community. Under the *Metropolitan Fire Brigades Act 1958* (Vic) (**MFB Act**), the MFB is responsible for providing emergency response, fire safety, suppression and prevention services to over 4 million residents, workers and visitors in metropolitan Melbourne and the Port Waters of the Port of Melbourne. In all its operational activities, the MFB's primary objectives are the preservation of life, property and the environment.

In addition to its fire and rescue functions, the MFB undertakes a range of other activities, including:

- providing advice on fire safety issues in the built environment;
- providing emergency medical response;
- providing emergency response coverage to the inland waters and the Port Waters of the Port of Melbourne within the Metropolitan District;
- developing fire safety and emergency plans for major events;
- participating in community safety activities; and
- providing assistance in relation to a range of emergencies, including industrial accidents, hazardous material handling and storage incidents and chemical, biological and radiological emergencies.

The MFB is the statutory authority that has the responsibility to provide fire safety, fire suppression and fire prevention services along with emergency response services in the metropolitan district of Melbourne.

The MFB is committed to publically advocating for the safety of members of the community to ensure the risk to life and property is reduced so far as is possible. It also works closely with community groups, facilitating education campaigns and programs to ensure that people are equipped with the skills, information and tools needed to prevent, prepare, respond and recover from emergencies. The MFB has a long history of advocating for improved fire measures, including leading debate on compulsory smoke alarms, sprinkler systems in homes for the disabled, fire systems in tunnels, fires arising from insulation during the Home Insulation Programme, fire risks arising from hoarding, addressing juvenile fire lighting behaviour and improving fire safety in boarding houses.

The Senate Inquiry's terms of reference seek submissions regarding the economic impact of non-conforming building products, the workplace safety risks, the associated costs passed to the community, the overall quality of buildings and the effectiveness of the current regulatory framework. The purpose of this submission is to assist the Senate by explaining the MFB's views on the fire-

related safety risks, costs and impacts of non-conforming building products, the gaps in the regulatory scheme and the effect of decreased building quality as they relate to the responsibilities and activities of the MFB. This submission defines both non-conforming and non-compliant building products as those products that do not meet standards set under the Building Code of Australia (BCA).

This submission focuses on the November 2014 Lacrosse building fire in Melbourne as a case study of regulatory failures and the significant risks and impacts caused by the use of combustible non-compliant building products. The issues encountered in the Lacrosse fire raise questions about how non-compliant products are allowed to enter the Australian market and how the regulatory scheme fails to:

- identify the products;
- consider their application in product testing;
- provide sufficient documentation to determine compliance with product design standards or responsibility for inappropriate product use; and
- take action to mitigate risks.

These failures result in significant risks to the safety of community members and significant increases in occupational health and safety risks to firefighters and the operating costs of the MFB. These increased costs are eventually passed on to the community.

The MFB raises these issues in the context of the Lacrosse fire in Melbourne's Docklands as one example of a dangerous non-compliant building product, but it is aware of a number of other non-compliant products and how similar issues are faced in other states and territories across Australia.

The product identified in the Lacrosse fire was combustible aluminium/polyethylene composite panelling (ACP). The use of this product in a non-compliant manner means fires are more likely and those fires will spread more rapidly, cause more damage and potentially result in a loss of life. The extent of penetration of this product across Australia is currently undetermined. The unquantified risk and lack of understanding of the extent to which this product has been used in Australia directly impacts on the MFB's planning and operational response by changing its fundamental assumption that buildings are constructed in compliance with the BCA.

The MFB's role in the built environment has been significantly diminished over time within the building regulatory framework. In earlier periods of its history the MFB was more directly involved in approving and overseeing compliance requirements in relation to the structures within the Metropolitan District. Since the mid 1990's MFB has two key areas where it is formally referred to in the regulations. Firstly, the Chief Officer of the MFB is a prescribed reporting authority for the issuing of a building permit or of an occupancy permit (regulations 309 and 1003 respectively). Secondly, the MFB is listed as a 'major stakeholder' in the development and approval of performance based fire safety building designs and alternative solution under the BCA. Neither of these roles allows the MFB to formally exercise any authority in preventing the use of non-compliant building products.

Despite its limited formal role, the MFB provides proactive guidance and assistance to the industry and the community, issuing building and product guidelines, assisting with fire engineering reports, and advocating for regulatory reform where there is a risk to life or where safety is likely to be compromised. It is in this capacity that the MFB makes this submission and asks the Senate to investigate potential actions to prevent future risks to community safety.

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**Key points**

- The non-conforming ACP cladding in the Lacrosse building fire was combustible and contributed to rapid-fire spread and greater risk to the community and fire fighters than should have occurred. The MFB's analysis indicates that it is fortuitous that the fire did not cause greater property damage and loss of life. Fire safety in modern buildings should not be a result of good luck.
- The ACP cladding at the Lacrosse building has been found in a number of other buildings after an audit of 170 high-rise buildings, but the extent of its use is unknown and the resultant risk is unquantified.
- The existence of a combustible non-conforming product indicates there are failures in the regulatory scheme. These failures are likely to result in higher numbers of structure fires and for these fires to be of greater intensity with higher consequential costs to the community.
- The MFB bears increased costs across its operations, from planning and response, to investigations and ongoing activities, including mitigation activities for existing building where ACP has been identified.
- The highly combustible nature of ACP means the MFB cannot rely on its fundamental assumption that buildings are constructed from products that comply with fire-safety regulations and testing.
- The MFB has responsibilities for fire fighter safety under relevant occupational health and safety legislation. The use of ACP changes the risk-profile of a fire incident, especially in a high-rise building.
- The use of non-compliant products means the BCA cannot be relied upon to ensure products are fit for the purpose for which they are used, and that fire-safety objectives in the code are being met. The use or application of building products must be considered as part of the testing and approvals process.
- One clear gap in the regulations is the test for combustibility under the BCA. The requirements for 'evidence of suitability' are not robust, and fire safety engineers are not always appropriately experienced to assess the use of products.
- MFB believes product testing should occur prior to importation.
- There is a lack of product design documentation in the Lacrosse fire and this makes it virtually impossible to ensure compliance testing has been satisfied or determine responsibility when products are used illegally or incorrectly.
- There are a number of non-compliant products other than ACP in use in buildings such as glass, plywood and electrical wiring. These create additional fire risk. In situations such as Lacrosse where there are other complicating factors such as overcrowding, the risk of loss of life or injury is multiplied. The MFB is concerned that the examples involving ACP are only a very small proportion of the buildings where non-compliant products pose a life safety risk. This could be the tip of the iceberg.
- The failure of the enforcement and audit regime means both risk to life and costs are increased. This regime needs immediate improvement, and severe penalties for failure to comply with the appropriate standards.

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## 2. Case study – Lacrosse Dockland Fire

At 2:24 am on 25 November 2014, MFB fire crews responded to a call for an apartment fire at the Lacrosse Building on La Trobe Street, Docklands. When fire crews arrived on scene at 2:29 am, the fire had extended up the external walls and balconies over approximately six levels. Six minutes later the fire had reached the roof of the building above the 21st floor. A subsequent investigation found that the fire was started by an unextinguished cigarette left on a balcony on level eight.

This fire spread much more rapidly than would normally be expected and lead to multiple seats of fire on multiple levels simultaneously. The use of a non-compliant or non-conforming **ACP** material lead to significant vertical fire spread.

While MFB acted to minimise damage and injury, the social impact of this fire was considerable. All residents of the building were displaced for nearly a week during building refurbishment and reinstatement of the fire safety systems. The fire affected apartments remain uninhabitable.

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## 3. The fire safety risk of non-conforming building products

### Realisation of the risk

The use of non-compliant building products has been a national issue within the building industry for many years. The extent of the risk of using such products was recently realised for the MFB as a result of:

- responding to a fire at the Lacrosse building (as detailed above in the case study);
- the Post Incident Analysis (**PIA**) prepared by the MFB that was undertaken as a result of the fire at Lacrosse; and
- an audit being undertaken by the Victorian Building Authority (**VBA**) into the use of exterior cladding on 170 high rise buildings within inner Melbourne.

The PIA is attached to this submission at Attachment A. In summary, the PIA outlines the sequences of the fire events, and comments upon the suitability of the building materials used in the construction of Lacrosse, the performance of the installed fire equipment, evacuation of the building and fire causation. Some of the relevant observations that came out of the PIA included:

- the ACP cladding used on the façade of the building was combustible and did not conform with the National Construction Code (**NCC**) as it should not have been used on a Type A building such as residential apartments in this application;
- as the ACP cladding was combustible, it contributed to rapid fire spread up the façade of the building;
- the ACP cladding was affixed to the building using double sided tape which failed in the presence of fire, causing large panels of flaming cladding to delaminate from the building and create fires in apartments below the original source;
- there was evidence of a high occupancy rate in some of the apartments;
- some balconies were being used to store household goods, meaning there were increased fuel loads on balconies;
- the rapid spread of fire created the need for a mass evacuation; and

- some firefighting equipment was inaccessible due to occupants storing goods in fire-safe equipment cupboards.

As a result of the PIA and the specific risks identified by the presence of ACP, the VBA took a number of actions. These included commencing an audit on high rise buildings in inner Melbourne and surrounding suburbs built in the last 10 years to determine whether the use of external cladding complies with the NCC. This audit is yet to be completed, but has already identified a number of buildings with elevated risk profiles including critical community infrastructure, such as hospitals.

### **Unquantifiable risk**

Based on the risks that were realised as a result of the Lacrosse fire and subsequent reports and audits, the MFB's position is informed by its knowledge in relation to the use of ACP cladding in high rise buildings. The MFB does, however, acknowledge that the risks associated with the use of non-conforming building products extend much further than just ACP cladding, into products such as electrical cabling and fire rated plaster board. These issues are discussed in more detail later in this submission.

A major concern for the MFB is that the risk created by ACP cladding and other non-conforming building products in metropolitan Melbourne is unquantifiable. This makes both the MFB's short term planning and response to fires and other emergency situations and its long term planning for resourcing and appliance needs more difficult.

Even in relation to the risk posed by ACP, the current audit conducted by the VBA involves buildings over 25 metres in height. Further work will be needed to identify the risk for buildings of a lower height. The risk in these buildings is currently unquantifiable. There may be a significant cost involved in making these buildings safer for residents, for example the retrofitting of sprinklers.

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## **4. The impact of the risks**

This part addresses the Committee's terms of reference (a) the economic impact of non-conforming building products on the Australian building and construction industry, and (b)(ii) and (iii) the impact of non-conforming products on workplace safety and any associated risks, and on costs passed on to customers, including any insurance and compliance costs.

### **Life Safety and Property Loss**

Ultimately the MFB makes this submission because of a concern about a risk to life safety because the use of non-compliant building products means that fires may spread faster, cause more damage, be more unpredictable and be less safe for firefighters. In some situations the MFB may need to withdraw firefighters from responding to parts of a building where non-compliant products are in use because of a risk to their life.

It is difficult to accurately estimate the potential for property loss or loss of life or to put an economic value on this. The MFB asks the Senate Economics Reference Committee to recognise that the cost of non-compliant building products is an increased risk to life safety, and a related possible drop in confidence of property owners in (a) the safety of their homes and (b) the ability of the fire services to protect them. This is of the utmost concern to the MFB.

### **Safety of fire fighters**

Responding to fires at buildings that contain non-compliant products not only increases response costs, but also increases the risks to the safety of fire fighters responding to the fire.

The health and safety of fire fighters is paramount to the MFB. The MFB has responsibilities under the *Occupational Health and Safety Act 2004 (Vic)* to provide a safe workplace for its employees, including responding fire fighters. The concept of 'workplace' is far-ranging for fire-fighters, as any

structure or building within the area of the MFB's responsibility can become the workplace of a fire fighter, most critically in this case where the MFB is called to a property where there is an alarm of fire.

When non-conforming building products are utilised in the construction of a building, or compliant products are utilised in a non-conforming manner, the MFB's standard firefighting responses may become counterproductive, and the circumstances would pose a significant risk to firefighter workplace safety as materials used in the construction of the building may not behave as expected during a fire. Such circumstances may prevent or compromise the safe evacuation of premises, resulting in an increased likelihood of injury or death of occupants of the premise or responding firefighters. In situations where the MFB does not know if conforming products have been used, it is also possible that the MFB may need to modify its response to be less aggressive and therefore safer for firefighters because of an apprehension of risk.

The risk to firefighters may also be greater for fires where non-conforming products are used, because of other related factors. For example, responding fire fighters at Lacrosse, and the subsequent PIA, found evidence that some apartments contained bedding arrangements and ad hoc room partitions indicating a higher occupancy level than would usually be expected. Unexpected environments such as overcrowding only multiply the already increased risk to the safety of firefighters and the occupants of the building. The MFB is generally considering how it responds to fires in high rise towers in some areas as it is increasingly common for occupancy levels to be exceeded.

Where high risk buildings have been identified by the MFB, it is likely an enhanced response has been implemented in relation to that location and more fire fighters will be deployed to respond to the incident. This increases the number of firefighters who are potentially faced with a high risk situation. It is the MFB's position that as a result of firefighters being placed in high risk situations more frequently, the MFB could be faced with increased costs such as WorkCover insurance.

#### **Cost shifting to the MFB**

It is the MFB's position that the use of non-compliant building products, or compliant products being used in a non-conforming manner, occurs as a result of major failures in the regulatory system. The regulatory system does not ensure that stakeholders, such as building surveyors, architects and builders, comply with the requirements set out in the Victorian and national building regulatory framework. Such major failures in the regulatory system have recently been reported in the media following the Lacrosse incident and a building excavation pit collapse where the permits for these developments were issued by the same building surveyor. This is detailed in the link to the following media article. <http://www.theage.com.au/victoria/victorian-building-surveyors-guilty-over-more-than-700-misconduct-claims-20150730-qiofcr>

The effect of the failure of the regulatory system and the resultant use of non-conforming building products is ultimately contributing to increased risks to community safety and increased costs associated with fire brigade activities and insurance. The costs are passed on to consumers by way of an increase in council rates on property owners from grants from the Victorian Government, and from other charges such as false alarm charges.

### *Planning*

The MFB is now aware of the significant risks of responding to a fire incident at a building or structure where non-conforming building products are or may be present. However, as set out above, this risk is unquantifiable. This means the MFB has had to put considerable time and resources into planning how to mitigate and respond to such risks.

An immediate cost to the MFB is the requirement to provide additional fire fighters and fire appliances (referred to as an enhanced response) when responding to fire incidents in buildings that are known to contain non-compliant building products. For example, the incident at the Lacrosse building has resulted in the MFB implementing an enhanced response for all future incidents at that building.

As more buildings are identified as high risk, the MFB will be required to consider the implementation of more enhanced responses to deal with the possibility of an increase in significant fire incidents such as Lacrosse. While it is hoped the risks will never be realised, the requirement to implement a greater number of enhanced responses will have long term cost implications for the MFB, as it may be required to spend money on recruitment, training, additional appliances and specialised appliances.

### *Response*

MFB practices are informed by training and experience that allow fire fighters to determine appropriate actions in specific environments under specific circumstances. By way of example, it is generally accepted by fire services across Australia that the procedures implemented to deal with medium-high rise building fire events do not require significant variation. Such procedures are based on a long history of analysis of fire behaviour in this type of structure and well-founded assumptions in relation to:

- the spread of the fire;
- the point of origin of a fire; and
- the nature of the materials that may be present and their locations.

However, when the MFB responds to a fire at a building or structure that contains non-compliant building products, the MFB's model of response is compromised as the MFB cannot rely on its usual practices and assumptions to control the fire and risk. As such, the MFB is required to implement mechanisms to mitigate risk to life and reduce property damage by providing an enhanced response. The need to provide an enhanced response places a strain on limited resources and potentially compromises response times at other locations.

### *Inspection/advice*

MFB resources are increasingly being consumed to provide advice to various stakeholders in relation to the mitigation of fire risk.

As the MFB is now aware of additional risks in relation to non-conforming products being used in the construction of buildings, it may require more thorough inspection and examination of structures to ensure that a building is safe for occupancy. This is especially true because documentation in relation to product specifications is often inadequate.

### *Ongoing issues and activities*

Significant cost is created for the MFB once it becomes aware of the risk of non-conforming products in a building, as it creates an obligation on the MFB for ongoing involvement.

For example, as a result of the Lacrosse fire, the MFB:

- has been involved in community meetings with different stakeholders about the potential risks to owners and occupiers, and the general community;
- is assisting the VBA in its audit of 170 high rise building in metropolitan Melbourne, through accompanying municipal building surveyors to locations and inspecting elements of fire safety; and
- receives notification of the Lacrosse building's enhanced maintenance schedule, every 3 months (instead of once a year).

While these measures are necessary and help to manage the risks to the lives of the owners and occupiers, they come at a cost to the MFB.

### **Cost shifting to the community**

There are also additional costs to the community of responding to incidents created by fires enhanced by non-conforming products. Ultimately, as a result of the presence of non-conforming building products costs are passed on to the greater community.

The higher costs in relation to responses to system-generated calls that are determined upon investigation to be false alarms will be passed onto owners/occupiers. Pursuant to the MFB Act, an owner, occupier or Owners Corporation can be required to pay to the MFB the fees and charges associated with the attendance of fire fighters in the event of a false alarm, based on a charge per appliance. Unfortunately, despite the best efforts of the MFB to educate building managers and residents, and despite the presence of the charging mechanism, the MFB attends over 14,000 false alarms every year, making up a large proportion of the total number of around 35,000 emergency responses per annum.

In most cases, the MFB's automated response arrangements respond to fires in particular residential premises by dispatching 2 or 3 appliances. If a building is subject to an 'enhanced response' from the MFB because of the presence of materials such as ACP, and a false alarm occurs, the person or body responsible will be subject to increased costs, because 3, 4 or 5 appliances will be dispatched based on the risk profile. This will, in many cases, double false alarm charges. The MFB will have to take steps to monitor use of alarm systems to ensure that property owners do not interfere with or isolate automatic fire alarms and monitoring arrangements to avoid false alarm charges. The MFB will incur additional costs to not only monitor use of alarm systems but to take steps to prosecute building owners and occupiers for non-compliance in relation to alarm use and maintenance.

While the extent of the risk has not yet been determined, the community may encounter future cost implications including:

- rectification costs in making buildings safe and compliant with the regulatory scheme; and
- costs associated with recovering the costs of rectification such as costs relating to obtaining legal advice and other professional advice.

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## **5. Identified problems with building regulation in the industry**

This part addresses the Committee's terms of reference (c) possible improvements to the current regulatory frameworks for ensuring that building products conform to Australian standards, with particular reference to the effectiveness of (i) policing and enforcement of existing regulations, (ii)



independent verification and assessment systems, (iii) surveillance and screening of imported building products, and (iv) restrictions and penalties imposed on non-conforming building products.

As a result of the Lacrosse fire and other incidents, the MFB has identified a number of areas of concern in the building regulatory scheme that directly impact on public safety. The MFB believes that these areas should be thoroughly investigated and that solutions to these problems will require consideration from all relevant stakeholders within and outside of the building industry.

### **Fit for purpose**

The foundation principle in the BCA with respect to building products and forms of construction is that they must be "fit for the purpose for which they are intended". With this basic principle in mind, the BCA contains a number of specific safety objectives. The most relevant objectives for fire safety are to:

- safeguard people in the event of fire in a building and during evacuation;
- facilitate the activities of emergency services personnel; and
- avoid the spread of fire between buildings.

The MFB believes that these objectives must be met at the product testing and certification stage in order for risk to the public and fire-fighters to be reduced.

The MFB's view is that all building products must be fit for purpose based on independent testing and certification that conform to Australian Standards. The MFB notes that the testing and certification process under the Australian Standards regime does not mandate independent testing, and that other models for certification exist. The MFB recommends that the Senate explore the applicability of these other models to ensure that products are assessed by an independent body.

In order for testing to appropriately assess the suitability of building products, the MFB recommends that testing must consider the real-world applications of such product. That is, all the probable uses by those in the industry should be contemplated and specifically addressed. In the case of the combustible aluminium composite panels found in the Lacrosse building fire, it is clear that the testing only considered the internal application of the product and did not consider the use of the product on an external façade. The MFB has found that many engineers have attempted to use tests based on internal application standard (AS9705) to justify the use of combustible products on external façades.

### **Example: Gaps in BCA 'evidence of suitability' for combustible products**

In order to prove a product is non-combustible under the BCA, there are several steps to be followed and options for proving a product is suitable for use. A detailed examination of the application of the BCA provisions, and specifically the option to provide 'evidence of suitability,' is illustrative of the gaps in the regulatory scheme under the BCA.

Under the BCA, a product is considered non-combustible only if:

- it is successfully tested according to the Combustibility Test for Materials standard (1530.1:1994);
- it meets the criteria in c.1.12 of the BCA; or
- 'evidence of suitability' is submitted to show the material is fit for purpose under A2.1, and meets the level of performance required under the BCA.

When a sample of the ACP product used as external cladding the Lacrosse Docklands fire (Alucobest) was given to the CSIRO to be tested using the Combustible Test for Materials, it failed to satisfy the test. There was no documentation that Alucobest was tested under the Combustible Test for Materials

or that it met the criteria in c.1.12 of the BCA. It is uncertain as to whether Alucobest was approved through the submission of 'evidence for suitability'. The MFB has not been advised of this nor has the MFB been provided with any documentation to confirm this to be the case. Nevertheless, in the event it was approved in this way the 'evidence of suitability' method for establishing non-combustibility has a number of gaps.

Under the BCA, 'evidence of suitability' may be provided by one or a combination of five possible methods:

1. A report by a Registered Testing Authority;
2. A current Certificate of Conformity or Certificate of Accreditation;
3. A certificate from:
  - a. a professional engineer; or
  - b. 'other appropriately qualified person';
4. A certificate from a product certification body accredited by the Joint Accreditation System of Australia and New Zealand (**JAS-ANZ**); or
5. 'Any other form of documentary evidence' describing the properties and performance of the material and 'adequately demonstrates its suitability for use in the building.'

The testing method required to prove there is 'evidence of suitability' that a product is non-combustible is not specified in the BCA. This means a building surveyor or certifier becomes the ultimate decision-maker in determining whether there is evidence of suitability, and as a result whether the tests performed to produce that evidence, will satisfy the safety objective and be fit for purpose.

#### *Analysis of five methods for providing 'evidence of suitability'*

For the first method of providing evidence of suitability, there is no requirement that a report by a Registered Testing Authority under the National Association of Testing Authorities (**NATA**) in the relevant field must consider the intended application of a product.

For the second method, many ACP products have Certificates of Conformity under the CodeMark scheme. The registered building surveyor must accept a CodeMark Certificate of Conformity as evidence of suitability of a product for the proposed use. However, CodeMark certificates do not list details of the evidence, test reports, assessments and other supporting documentation that the certification is based upon. No details are provided about the qualifications, experience or competence of the person performing the assessment. As an example of the discrepancies in this process, the MFB has encountered products that appear to be identical in construction and composition but have been subject to different limitations. The MFB is also aware of situations where CodeMark certificates have been revised without the knowledge of the manufacturer.

For the third method of providing evidence, the MFB has observed that many assessments have been performed by registered fire safety engineers who do not have the appropriate experience and competence in the field of fire testing, and do not appear to understand the difference between resistance to fire tests and fire hazard property tests. In the MFB's opinion, many engineers do not appear to understand the test methods and their limitations, including the applicability of the tests to real fires scenarios. The MFB recommends that assessments should be performed by engineers not only with appropriate qualifications but also with a requisite level of experience.

For option (b) under the third method of evidence, the MFB believes the approval authority has too wide a discretion in determining who is an 'other appropriately qualified person,' as the term is not defined and can be applied loosely.

For the fifth method of evidence, the MFB's opinion is that it is difficult to determine what 'other forms of documentary evidence' would be appropriate to satisfy this requirement, particularly in relation to issues such as combustible façades, where no appropriate testing is specified in the BCA.

As shown above, the method of providing evidence of suitability and the testing process required to demonstrate that a building product is not combustible and is "fit for the purpose for which it is intended" is complex and difficult to navigate even for expert practitioners. Gaps in the testing and certification process allow products to be certified or used without certification in inappropriate settings such as the Lacrosse building façade. The BCA requirements for evidence of suitability are not robust enough to ensure products satisfy the fit for purpose principle or the safety objectives of the BCA. As the MFB and other emergency management agencies are not actively involved in the testing process, they rely upon the BCA to ensure that fire safety objectives are being met through the testing of building products. Without the ability to rely on this process, the risks transferred to the MFB and other agencies increase significantly.

### **Product importation**

The major risk to the MFB lies in the use of products in ways that do not comply with Australian Standards or the use of products where their application has not been considered in compliance testing. As a result, where importers seek to bring in products without independent accreditation of product certification that considers use or application, the MFB believes these products should not be imported. Independent verification and certification are critical to the proper functioning of the building approval and construction system. The MFB believes the appropriate point for this testing and enforcement to occur is before or at the point of importation.

### **Product Design**

The MFB's view is that the design approval process should be more transparent and include the disclosure of testing information. A greater provision of information and access to that information will result in a better efficiency of operations across all stages of the MFB's responsibilities for planning, response, inspection and advice.

In the Lacrosse fire, it was unclear whether manufacturers or suppliers held responsibility for assessing product design. The product design documentation was vague and misleading, which led to two problems. Firstly, it was virtually impossible to enforce compliance and determine responsibility. Secondly, assessment done solely on documentation and not through a physical inspection could not be relied upon. The MFB is also aware of inaccurate documentation and has found that these product design documentation concerns extend beyond combustible cladding to other products such as glass and electrical wires.

### **Enforcement and audit**

The MFB is reliant on the audit and enforcement process to identify failures in the building regulation system. Similar to the issues in relation to design documentation, audit information is not transparent or easily accessible. Reports by the Victorian Auditor General and the Victorian Ombudsman have found that current audit and enforcement processes need to be more robust. Similar issues have been identified in other Australian jurisdictions. In this context, the failure of the audit system and enforcement of the regulations means the fire safety risks are passed to the MFB without appropriate acknowledgement, funding or resources.

The failure of enforcement and auditing is not limited to one product. The MFB has experience where non-compliant plaster boards, electrical wiring and most recently cladding have caused risk to life and property. As a result, the MFB's view is that penalties for failures in the audit and review process should be severe and reflect the substantial costs and risk transferred to the MFB and the community.

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## 6. Conclusion

The MFB relies on the regulatory scheme to ensure that buildings comply with the fire-safety restrictions in the BCA. However, the use of a non-compliant building product in the Lacrosse fire is a clear example that the regulatory scheme has significant gaps that reduce building quality, increase costs and risks to the community and impact on the operations of a fire suppression and fire prevention agency like the MFB.

Ultimately, the MFB has no legislative role beyond raising these issues and responding to incidents as they arise. The MFB hopes to avoid a situation where it is forced to weigh its responsibility to ensure the workplace health and safety of its fire fighters against its operational objectives to preserve life, property and the environment. However, the unquantified risk of non-compliant combustible building products means that this situation may arise. The real economic and social impact of non-compliant building products is the risk of loss of life, a risk the MFB has legislative responsibility to reduce or prevent. The gaps in the building regulations mean this risk is substantially increased. The MFB urges the Senate to consider improvements to the current system so that this risk is reduced and the community is safer.