Post Grenfell Safety Legislation in NSW

In A Nutshell

Following the devastating fire that destroyed the Grenfell Tower in London last week, the topic of aluminium cladding has risen across the globe.

Unfortunately, the London Fire is not the first of its kind involving aluminium cladding, however, it was the first of its kind where significant loss of life has occurred.

Following a significant fire in a 23 storey apartment building in Melbourne's Docklands area on 25 November 2014 (the Lacross Apartments Fire), the rapid spread of which was attributable to composite aluminium cladding on the building's façade[1], the Victorian Building Authority completed an audit of some 170 high rise buildings in central Melbourne and surrounds with a finding that 51% of the audited buildings contained non-compliant cladding[2].

While the Victorian authorities have taken a lead in compliance activities to ensure that accredited cladding materials are used in the building industry, NSW Fair Trading on 18 June 2017 announced that it will set up a special task force to deal with this issue and it is likely that the owners of buildings with non-compliant cladding will be ordered to remove the cladding and these products will not be permitted to be sold in NSW.

There is a broad range of parties who could be liable for the costs and damages associated with the removal and replacement of these non-complying products, including, designers, developers, builders, subcontractors, manufacturers, importers, private certifiers and Council.

Investigation by the Metropolitan Fire and Emergency Services Board (MFESB)

The following emerged from the investigation of the Lacross Apartments Fire by the MFESB:

a. There was an estimated property loss of $5,000,000 and fortunately no loss of life[3].

b. Alucobest, a Chinese manufactured, aluminium/polyethylene composite panel cladding product, that was used in the construction of the building was directly related to rapid spread of the fire[4].

[1] Metropolitan Fire and Emergency Services Board, Post Incident Analysis Report, 25 November 2014, page 36
[2] Victorian Building Authority External Wall Cladding Audit Report, issued 17 February 2016, page 6
[3] Metropolitan Fire and Emergency Services Board, Post Incident Analysis Report, 25 November 2014, page 4
[4] Metropolitan Fire and Emergency Services Board, Post Incident Analysis Report, 25 November 2014, page 36

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c. While there is an aluminium composite cladding product in Australia that has been accredited by the Australian Building Codes Board, named Alucobond Plus, a simple visual inspection cannot distinguish between Alcuobest and Alucobond Plus[5].

Audit by the Victorian Building Authority (VSB)

The MFESB's investigation sparked an audit by the VSB which delivered its findings on 17 February 2016, including the following:

a. 51% of the 170 audited high rise residential and public buildings in central Melbourne and surrounds were found to contain non-compliant cladding[6].

b. After applying a risk matrix which took into account external cladding and other building elements that could contribute to fire spread (e.g. balconies, sprinklers, window/door openings) only one of the audited buildings required an immediate emergency fire order from the Municipal Building Surveyor[7].

The action items arising from the audit by the VSB included:

a. Investigation of building industry practitioners that have been involved multiple times in the specification and use of non-compliant building materials[8].

b. Preparation of a technical document to clearly explain the BCA and types of cladding permitted[9].

c. An ongoing audit to ensure that building permits contain clear specifications on the cladding to be used and that documentation showing "as built" compliance with building permits contain sufficient detail[10].

Significance for industry

There are a lot of buildings under construction involving aluminium cladding and many may have non-complying products and in that regard:

a. Urgent consideration needs to be given about what are the complying products and complying methods of installation;
b. Numerous projects may need to be urgently varied and careful consideration needs to be given as to how that variation will occur; and
c. Those who been involved in the installation of these materials will need to give careful consideration as to how they will deal with their liabilities arising.

*****The information contained in this article is general information only and not legal advice. The currency, accuracy and completeness of this article (and its contents) should be*

[5] Metropolitan Fire and Emergency Services Board, Post Incident Analysis Report, 25 November 2014, page 57
[6] Victorian Building Authority External Wall Cladding Audit Report, page 6
[7] Victorian Building Authority External Wall Cladding Audit Report, page 6
[8] Victorian Building Authority External Wall Cladding Audit Report, page 6
[9] Victorian Building Authority External Wall Cladding Audit Report, page 7
[10] Victorian Building Authority External Wall Cladding Audit Report, page 7

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