

landlords. Property managers may have authority from their landlords to handle premium payments on their behalf.”

realtyprotect.com.au/agent

FOCUS / STRATA MANAGEMENT

The fiery fallout of combustible cladding

Despite incidents around the world sounding alarm bells over the last decade, the NSW Government has finally implemented reforms on flammable cladding following London's Grenfell Tower disaster in 2017. Here's what strata managers need to know about how to minimise their risk.

By LEISHA DE ABOITIZ and RACHAEL BASS

It's the stuff of nightmares.

In June 2017, as the world watched on in horror, London's Grenfell Tower was devoured in flames. What started as a small fire in one of the building's 120 apartments, quickly leapt from floor to floor before engulfing the entire 24-storey building at terrifying speed.

Grenfell Tower isn't the first building to suffer the effects of substandard cladding and it won't be the last. Cladding has been blamed for serious high-rise fires over the last 10 years in the US, France, the Middle East and Asia.

Closer to home, Melbourne's Docklands Lacrosse apartment fire in November 2014 saw a small fire starting on a lower-level balcony quickly race its way up 13 floors in less than 10 minutes. The speed of ascent was, in part because of combustible cladding on the outside of the building. Had the weather been different, had the sprinkler system not performed to capacity, Lacrosse could all too easily have been Grenfell.

Legislative reform

These incidents kicked authorities into action and cladding reforms have now been implemented across Australia.

Legislative reform is state based and in New South Wales new laws and product bans have been introduced to mitigate risk associated with combustible cladding. In addition, an inter-agency Fire Safety and External Wall Cladding Taskforce was established.

Reform has been targeted primarily at buildings considered to be "high-risk" based on use (for example, residential buildings or buildings used for public gatherings) and

construction type (for example, multi-storey towers).

While the new cladding laws do not expressly impose any specific obligations on strata managers, you need to familiarise yourself with the new laws so you can:

- assess which strata schemes within your portfolio may be at risk and alert the affected owners; and
- assist owners in managing any associated risks or impact, including:
 - the building registration process (where required); and
 - any remediation works for affected buildings.

Cladding product ban

Effective from 15 August 2018, the Commissioner for NSW Fair Trading prohibited the use of certain types of aluminium composite panels (ACP) in certain classes of buildings. This ACP ban prohibits ACP with a core comprised of more than 30 per cent polyethylene in any external cladding, external wall, external insulation, façade or rendered finish.

The ACP ban applies to apartment buildings, commercial office buildings and shops (among other buildings) and is retrospective; it applies even if the ACP was installed before the ACP ban came into force. Certain authorities have the power to issue a rectification order for affected buildings if occupants of the building are, or will likely be, at risk of death or serious injury from the use of the ACP. The order can require the owner to eliminate the safety risk by remediating the building.



Registration requirements

The Environmental Planning and Assessment Regulation 2018 (NSW) has been amended to introduce a requirement for building owners to register certain classes of buildings using an online NSW Government portal. It's anticipated that most strata managers will be dealing with Class 2 buildings, which are typically multi-unit residential apartment buildings.

If a building (or part of it) is in an affected class, is two or more storeys high and it has external combustible cladding, then it must be registered on the portal. Penalties may apply if a building that's required to be registered is not registered.

The definition for "external combustible cladding" in the Regulations is very broad. In short, any kind of external cladding will most likely require investigation and potentially registration. In this respect it's worth noting that some external cladding can have the appearance of a rendered finish and so may not always be easily identifiable.

The deadline to register buildings occupied before 22 October 2018 was 22 February 2019. New buildings must be registered within four months after the building is first occupied.

Strata managers can register apartment buildings on behalf of their owners' corporations. A separate online form must be completed for each building the strata manager is registering. The online registration system has a number of features to reduce the burden for strata managers, including the ability to register all buildings using one login account, save draft forms for different buildings and finalise forms at different times, as well as to send registration details to the relevant owners' corporation. ♦

You can find the online portal and relevant FAQs at claddingregistration.nsw.gov.au

DISCLAIMER

This article is intended to provide commentary and general information. It should not be relied upon as legal advice. Formal legal advice should be sought having regard to any particular facts or circumstances.



LEISHA DE ABOTIZ is a Partner and RACHAEL BASS is a Lawyer at Massons.

What can strata managers do to minimise risk?

Identify buildings

Review your management portfolio to identify any buildings with cladding (of any type). In particular, you should identify buildings that may contravene the ACP ban and those that may require registration.

Notify strata schemes

You should discuss combustible cladding and the consequences of any non-compliance with your owners' corporations to raise awareness. This may involve raising the issue at general meetings (for example, as an agenda item) until the matter is investigated and resolved. This is particularly relevant for any schemes that may have been identified as being at risk.

Seek expert advice

If you suspect a building has ACP or external combustible cladding is suspected, you should seek authority from the owners' corporation to engage relevant technical experts (for example, a fire safety engineer) or make enquiries (for example, with the local council) to investigate the suspect cladding and make recommendations.

Interim measures

If ACP or external combustible cladding is suspected, but the results of investigations are not yet known, you should take general precautions regarding fire safety. For example, consider:

- whether the annual fire safety statement for the building is up to date;
- introducing by-laws or temporary building rules to prevent hot works in certain areas (for example, on balconies) to mitigate risks during the investigation phase.

Take action

Be sure to seek instructions from the owners' corporation regarding the implementation of any expert recommendations. This could potentially include management of rectification works or registration of an affected building with the NSW Government.

Seek independent advice

While you should be proactive in alerting strata schemes to their obligations in relation to ACP and external combustible cladding, be careful to seek appropriate expert advice as required.

As well as seeking technical advice on the composition of relevant materials, you may also require legal advice to fully understand the risks associated with changes to cladding regulation in NSW and compliance obligations for a particular strata scheme.

Consider other issues

The following ancillary issues may also be relevant for you to take into consideration:

- **Contractual risk.** Consider whether the owners' corporation has any contractual arrangements in place that may be impacted by the presence (or non-disclosure) of combustible cladding.
- **Insurance risk.** Most insurers now ask for specific disclosures from building owners in relation to the presence of external combustible cladding. Disclosures should be considered carefully, given that premature, incomplete or inaccurate disclosures may impact coverage for the strata scheme or their premium costs.
- **Owners and occupiers.** Rectification works may impact occupiers and may impact on the rights of any tenants in the building.
- **Common property.** Consider cladding in the context of statutory obligations to repair and maintain common property under section 106 of the *Strata Schemes Management Act 2015* (NSW), as well as any common law duty of care to owners and occupiers of the building.