

# Flammable cladding on high-rise apartment buildings – challenges for Owners Corporations



Over the past few years, flammable exterior cladding has been identified as a cause of numerous fires in high rise buildings around the world. One fire occurred in Melbourne in 2014, in the Lacrosse tower in Docklands. In London in 2017, the tragic Grenfell fire made international headlines when it took 72 lives.

## 1. What is flammable cladding?

Two types of cladding are implicated in the problem - aluminium composite panels (**ACP**) and expanded polystyrene (**EPS**). These products have been used in high rise construction since the 1990s.

ACP products are flat panels, generally 3-6mm thick consisting of two thin aluminium sheets bonded to a non-aluminium core, such as polyethylene. Panels are produced in various formats, but can be up to 6m in length and 2m wide. ACP is an attractive design feature, as it is lightweight and comes in a variety of colours and finishes.

EPS is a lightweight plastic material used in packaging, as well as in building projects. It is easy to install and has thermal insulation properties. It is typically rendered with cement when used as cladding.

## 2. How many buildings are affected?

The precise number of buildings affected is not certain. The Victorian Building Authority (**VBA**) conducted an audit in 2015 of 188 high-rise and public buildings in Melbourne's CBD. This audit found that a staggering 51% were non-compliant. In 2017, the Victorian Cladding Taskforce identified 1,369 buildings in Victoria which may have flammable cladding. The list of suspect buildings has not been made public.

In January 2018, the VBA wrote to all Victorian local councils, identifying the buildings within their local government area likely to have combustible cladding.

ABC News reports that the numbers of potentially non-compliant buildings in the following municipalities are:

Moreland	150
Monash	86
Greater Dandenong	52
Stonnington	49
Glen Eira	39
Boroondara	38
Yarra	27
Melbourne	22

Other councils did not respond to the ABC.

Councils are currently working with affected building owners in relation to compliance. This presents a resourcing problem for Councils, and in at least one case, the Planning Minister has stepped in and directed the VBA to issue building notices requiring immediate fire safety upgrades.

## 3. What should an OC, OC Committee or OC Manager do?

The dangers of flammable cladding are now well known. A proportion of all high rise apartment buildings built in the last 30 years have flammable cladding. For buildings under 30 years old, it is now beyond question that the Owners Corporation (**OC**), itself or through committee or manager, must take steps to determine definitively whether their building is affected.

Exterior cladding is typically common property in a residential high rise. The cladding may also form part of private lots, especially around balconies.

The OC is responsible for the repair and maintenance of the common property. Importantly, this will extend to ensuring that the common property is not a fire risk.

To get a definitive answer as to whether your building has flammable cladding, the OC should engage a registered building practitioner to investigate. McKean Park can refer you to the appropriate person.

#### 4. What if my apartment building does have flammable cladding?

If the building has flammable cladding, the OC needs to develop a plan to address the immediate fire risk. Depending on the situation, there may be solutions short of cladding removal that satisfy the Building Code, including upgraded sprinkler systems.

Confirmation that the building is non-compliant will have financial consequences, including loss of value of apartments and the cost of rectification, which may be significant. The OC will need legal advice on avenues for recovery.

In Victoria, there is a limitation period of 10 years from the occupancy permit for building claims. In the case of buildings approaching 10 years of age, urgent legal advice may be required.

Councils and the VBA have issued a number of building notices requiring fire safety upgrades in recent weeks. These notices can have serious consequences, and legal advice should be sought immediately.

Legal liability of the builder, developer, building surveyor or others is a complex issue. The OC should seek legal advice from lawyers with experience in construction law about this issue. McKean Park has worked in both Owners Corporation and construction law for many years and offers specialised advice in this area.

#### Contact Us

If you wish to discuss any of the material above in more detail, please contact **Roland Burt** on (03) 8621 2812.

#### Roland Burt

Partner – Commercial Litigation  
Accredited Specialist in Commercial Litigation  
[roland.burt@mckeanpark.com.au](mailto:roland.burt@mckeanpark.com.au)

#### Expert advice. Practical solutions. Personal service.

Level 11, 575 Bourke Street, Melbourne Vic 3000 Australia | GPO Box 38, Melbourne 3001 | DX 400

T 03 8621 2888 F 03 9614 0880 | [www.mckeanpark.com.au](http://www.mckeanpark.com.au)